

# Departmental Disclosure Statement

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Ombudsmen (Protection of Name) Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Justice.

The Ministry of Justice certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

4 April 2019

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## Part One: 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 Ltd 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.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	NO
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### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	NO
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	YES
<p><i>Protection of the name 'Ombudsman'</i>; Ministry of Justice; prepared by the Ministry of Justice on 21 November 2018.</p> <p>This will be published at:</p> <p><a href="https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/regulatory-impact-statements">https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/regulatory-impact-statements</a>; and</p> <p><a href="http://www.treasury.govt.nz/publications/informationreleases/ris">http://www.treasury.govt.nz/publications/informationreleases/ris</a></p>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	NO
<p>The Regulatory Impact Statement did not meet the threshold for receiving an independent opinion on quality from the Regulatory Impact Analysis Team based in the Treasury.</p> <p>The RIS was assessed internally by the Ministry of Justice Regulatory Impact Assessment Quality Assurance Panel. The RIS was determined to <b>meet</b> the quality assurance criteria.</p>	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	NO
<p>The RIS assessed the option of restricting the use of the name "Ombudsman" to the Parliamentary Ombudsman and the Office of the Ombudsman only.</p> <p>The Bill will also provide for the name "Ombudsman" to be used by any public-sector department or organisation approved by the Minister responsible for the administration of the Act.</p>	

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	NO
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	YES
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	YES
The Regulatory Impact Statement (21 November 2018) contains discussions of the costs and benefits of the proposal.	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	NO
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	NO

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

**3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?**

The Ministry of Justice has not identified any obligations that conflict with the policies contained in the Bill.

### Consistency with the government's Treaty of Waitangi obligations

**3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?**

The Ministry of Justice analysed the Bill and did not identify any implications for the rights and interests of Māori protected by the Treaty of Waitangi.

### Consistency with the New Zealand Bill of Rights Act 1990

**3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?**

YES

Advice has been provided to the Attorney-General by the Crown Law Office. This advice is available on the Ministry's website at <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/>

### Offences, penalties and court jurisdictions

**3.4. Does this Bill create, amend, or remove:**

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

### Privacy issues

**3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?**

NO

### External consultation

**3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?**

NO

The Office of the Ombudsman was consulted on the policy and the draft Bill.

### Other testing of proposals

**3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?**

NO

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	NO
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### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	NO
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### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	YES
Crown Law has analysed the Bill. Their opinion is that the Bill is consistent with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990.	

### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	NO
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	NO

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	NO
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### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	YES
The Bill amends the decision-making power for granting permission to use the name "Ombudsman". Under the Bill, the Chief Ombudsman no longer has the ability to give permission for the name to be used outside of his or her Office. The Minister responsible for the administration for the principle Act has the power to grant permission to use the name "Ombudsman" to approved public-sector departments and organisations. To ensure that this power is used appropriately, the Minister's decisions are expected to be subject to Cabinet approval.	

### Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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### Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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