

## Ministry of Agriculture's aerial spray programme had unreasonable impact on population

<b>Legislation</b>	Ombudsmen Act 1975, Health Act 1956
<b>Agency</b>	Ministry of Agriculture and Fisheries
<b>Ombudsman</b>	Mel Smith
<b>Case number(s)</b>	W50181 (previously unpublished, except in Annual Report 2008)
<b>Date</b>	2009

---

*Ministry of Agriculture and Fisheries—Ministry of Health—actions in relation to the aerial spraying of Foray 48B (to eliminate the Painted Apple Moth) in West Auckland and Hamilton—inadequate advice to ministers about impact of spray operations*

The complainant was concerned that the Ministry of Agriculture and Fisheries (MAF) had provided inadequate advice to Ministers regarding the possible dangers associated with the spray 'Foray 48B', and that the Ministry of Health had failed to pursue its responsibilities under the Health Act 1956. The spraying had been conducted on a scale 'unprecedented worldwide' involving 193,000 people in Auckland and 24,000 people in Hamilton. The Ombudsman did not investigate the decisions to authorise the spray operations – those decisions were matters for Cabinet and not within the powers of the Ombudsman to consider. Rather, the Ombudsman's investigation was concerned with the potential impact that the spray had on the 217,000 people within the spray zones.

The Ombudsman concluded that insufficient attention had been paid to the impact of the spray operations and that in future, a structure should be established to avoid the worst features of this operation. For example, there should have been an acceptance that some people might require medical attention (there were some 3000 to 4000 people affected in West Auckland and Hamilton). The Ombudsman considered that there needed to be a public support for such a programme. It was found that at times, MAF had not been listening to the concerns raised by the public.

The Ombudsman made four separate recommendations designed to improve future programmes. These related to the areas of public communications, the role of the Ministry of Health and Environment Court, the health service, and research into the health effects of the spraying programmes to date.

MAF agreed to implement only part of recommendation one (relating to public communications). It did not agree to implement recommendation two (legislative amendments to empower the Environment Court to review spraying programmes). In respect of recommendations three and four, it did not agree to undertake research into the long term effects of the spray, or into the question of whether more intense spraying has a differential health impact on the persons sprayed, but did agree to the Ministry of Health having a central role in future programmes.

*This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.*