



OmbudsmanSA

Code of conduct for elected members

Chapter 5 Part 4 of the Local Government Act and the ICAC framework

Ombudsman investigations

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What I will speak about

- overview of the new Code of Conduct for elected members
- the expanded role of the Ombudsman & Chapter 5 Part 4 of the Local Government Act
- an explanation of how we will investigate complaints under the ICAC framework



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Mandatory Code of Conduct - elected members (1)

- gazetted on 29 August 2013
- has the force of legislation (s 63 Local Government Act)
- Code is divided into three parts:
 - Part 1 - Principles
 - Part 2 - Behavioural Code
 - Part 3 - Misconduct
 - Appendix - Criminal matters



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Mandatory Code of Conduct - elected members (2)

- **Part 1 - Principles** - overarching statements

- **Part 2 - Behavioural Code**
 - deals with general behaviour; responsibilities; relationships; requirement to report breach of Part 3
 - each council to adopt its own process for breach of this Part (must be reviewed within 12 mths of general election)
 - complaints to principal member/CEO/nominated delegate
 - investigation to follow council's adopted process
 - breach of Part 2 must be reported at a public meeting
 - **Outcomes** - include censure motion; requiring an apology; attendance at training; suspension from position; repayment of monies.



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Mandatory Code of Conduct - elected members (3)

- **Part 3 - Misconduct**
 - deals with duties; gifts/benefits; register of interests; campaign donations; conflict of interest; misuse of council resources; repeated breach of Part 2
 - complaints to council, Electoral Commissioner, Ombudsman, OPI
 - may be referred to Ombudsman for investigation
 - breach of Part 3 and Ombudsman report must be provided at a public meeting
 - Council must pass resolution to give effect to Ombudsman recommendations

- **Appendix - Criminal matters**
 - do not form part of the Code of Conduct
 - referred to OPI



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Ombudsman jurisdiction - elected members

- LG Act amended to provide that the Ombudsman can investigate a breach/failure of an elected member to comply with Chapter 5, Part 4 - on complaint from the Minister, or public, or on his 'own initiative' (s 263A)
- This includes:
 - general duties (s 62)
 - code of conduct - misconduct (s 63)
 - register of interest requirements (ss 64-72)
 - conflict of interest (ss 73-75)



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Ombudsman recommended sanctions

- After investigation, Ombudsman can recommend sanctions to be implemented by the council:
 - reprimand (by way of public statement)
 - attend training
 - reimburse monies to council
 - ensure that a complaint is lodged with the District Court (s 263B)
- Council is required to lodge a complaint with District Court if the elected member fails to comply with a council requirement (s 263B)



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District Court sanctions

- a complaint can be lodged in the District Court against an elected member about breach/failure to comply with Chapter 5, Part 4
- however, there must be an Ombudsman investigation before a District Court complaint can be lodged (s 264)
- Court can impose the same sanctions as Ombudsman (s 267), but also:
 - impose a fine up to \$5 000
 - suspend or disqualify a person from holding office
 - disqualify a person from becoming an elected member of a council for five years



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Q. How will the Ombudsman deal with the new responsibilities regarding elected members?

A. In much the same way as at present

- the council and the elected member will be a party to the investigation
- investigations will be carried out using the Ombudsman's powers under the Ombudsman Act



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Complaint is lodged about an elected member ...

- **jurisdiction**
 - is there an administrative act - e.g. a breach/failure to comply with Chapter 5, Part 4 of the Local Government Act or Part 3 of the Code of Conduct?
 - is the complaint within time - 12 months?
 - is there a right of review elsewhere (e.g. is it a breach of Part 2 - of the Code of Conduct)?
- **assess the complaint**
 - is an investigation necessary or justifiable?
- **preliminary investigation**
- **full investigation**
- **report with recommendations**



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Confidentiality

- Although an investigation must be conducted ‘in private’, the Ombudsman can authorise disclosure of information if it is in the public interest (s 26 Ombudsman Act)
- Letters or reports relating to the investigation are normally kept confidential:
 - to protect the integrity of the investigation, or privacy
 - to ensure that natural justice can be provided to the parties
- It is an offence for a person to whom information has been disclosed, from using the information for a purpose other than that for which it was disclosed.
- E.g. if information is disclosed to a party to enable them to participate in the investigation, the party must maintain the confidentiality of that information. To fail to do so may constitute an offence (penalty \$20 000)



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Confidentiality

- provisional reports during investigations will be required to be kept confidential
- final reports of investigations will usually not be required to be kept confidential
- parties will be notified by the Ombudsman about their confidentiality obligations
- Ombudsman still has obligations under the *Whistleblowers Protection Act 1993* to protect the identity of a whistleblower



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Reporting to OPI / ICAC

Directions and Guidelines issued by ICAC require the Ombudsman to report to OPI matters that the Ombudsman reasonably suspects involves:

- corruption in public administration
- serious or systemic misconduct or maladministration in public administration
- any other matter Ombudsman considers appropriate

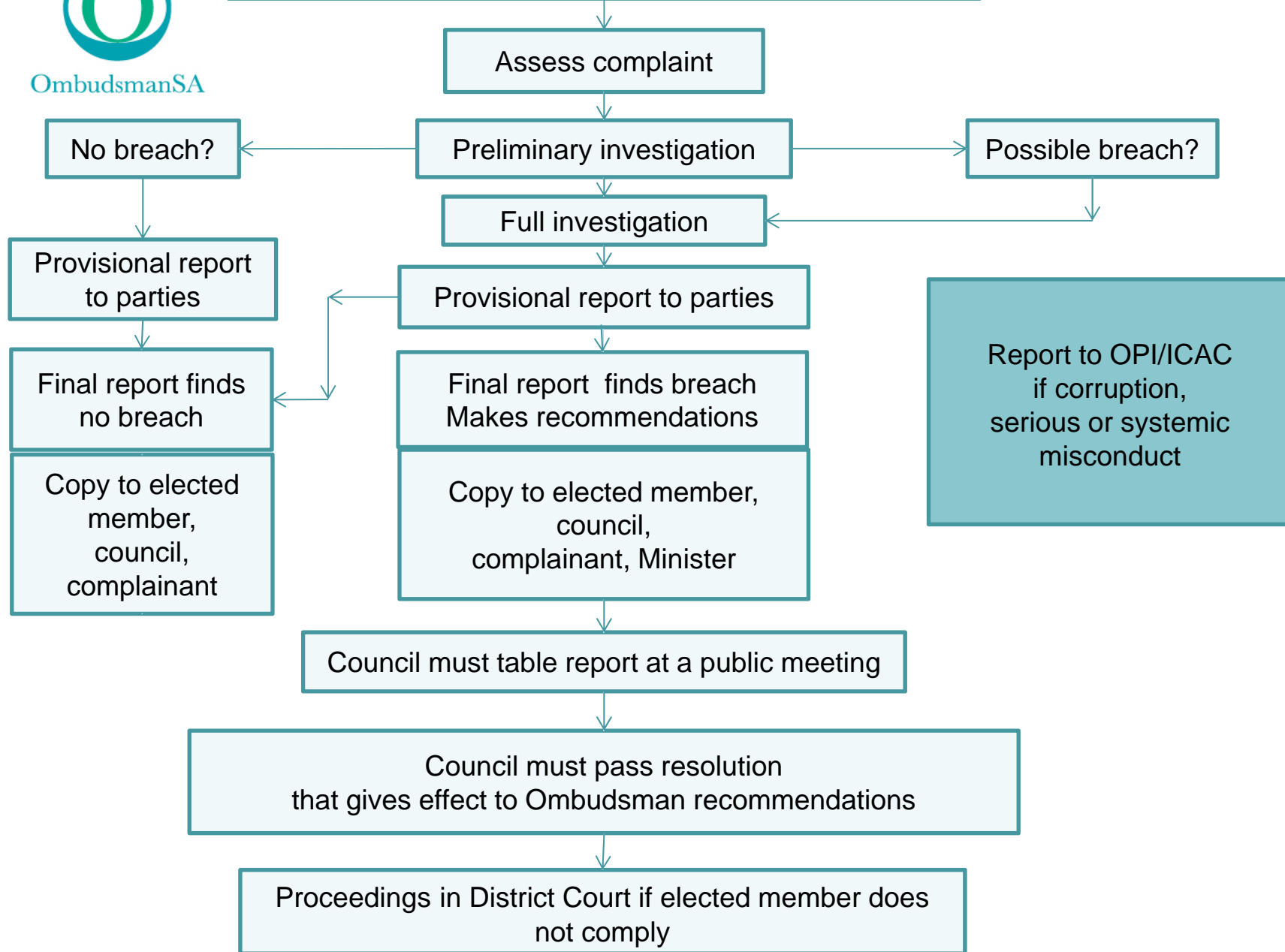
There may be instances where the Ombudsman considers a breach of Part 3 of the Code of Conduct or Chapter 5 Part 4 of the Local Government Act amounts to serious or systemic misconduct, and the matter will be referred to OPI.

However, without the authorisation of ICAC, we will not be able to advise the parties that we have reported a matter.



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Ombudsman Investigation Breach of Part 3 of the Code of Conduct





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