



OmbudsmanSA

www.ombudsman.sa.gov.au



OmbudsmanSA

Council members and Ombudsman SA

Megan Philpot
Acting SA Ombudsman

ICAC morning tea for newly elected members
1 December 2014



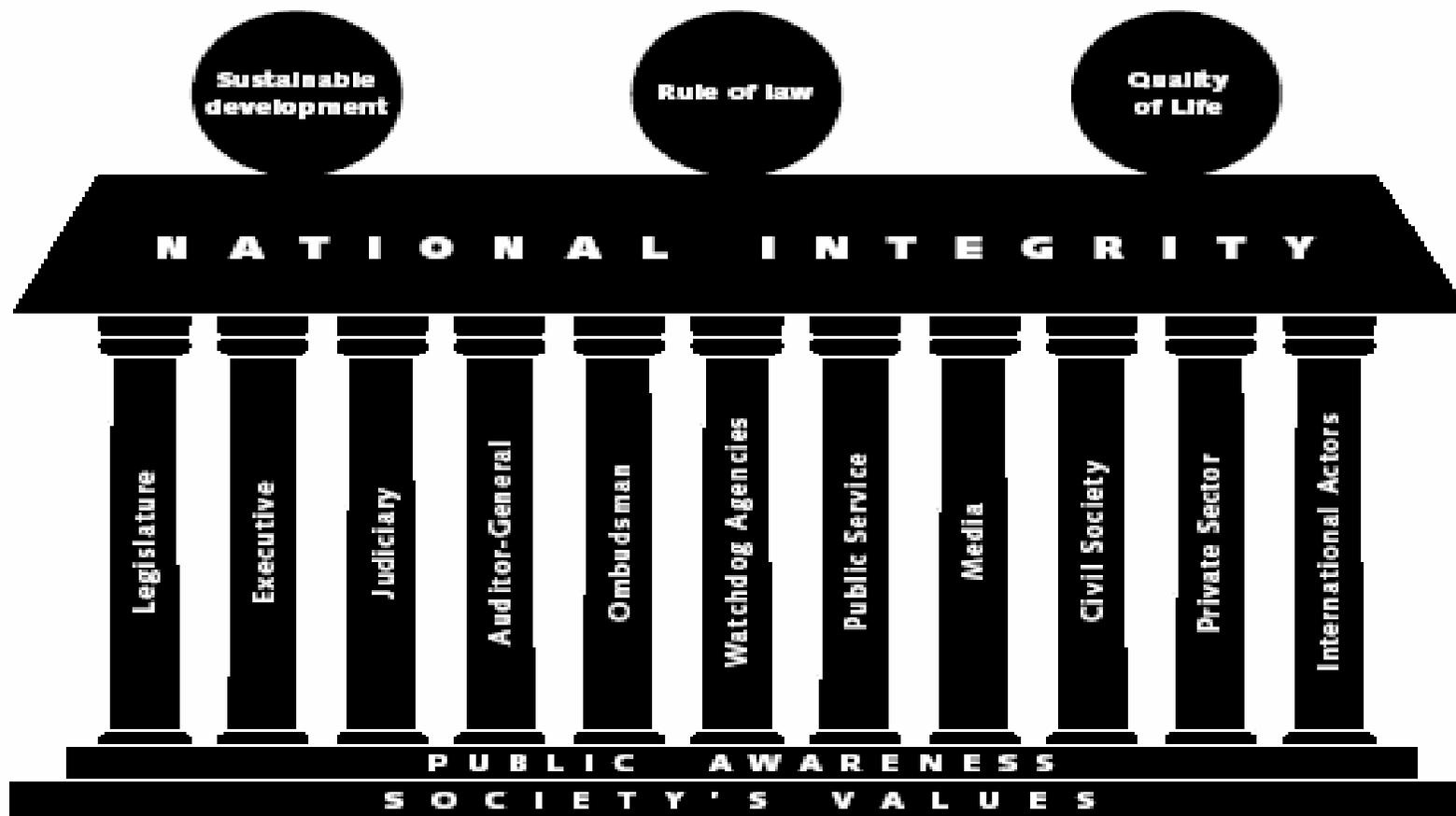
OmbudsmanSA

What I will speak about ...

- the integrity framework in South Australia
- the role of the Ombudsman
- council members' roles in local government
- conduct obligations
- Ombudsman investigations



OmbudsmanSA



Transparency International NIS Greek Temple (Pope 2000)



OmbudsmanSA

SA Ombudsman

- independent statutory officer, reports to the parliament
- oversight of administrative actions of state and local government, statutory authorities, and contracted organisations
- role includes:
 - taking complaints - offering informal resolution, conciliation
 - if no resolution - conducting investigations; making remedial recommendations for change; following up implementation of those recommendations; providing the relevant Minister with a copy of the investigation report
 - conducting investigations on 'own initiative'
 - receiving referrals for investigation from the parliament and ICAC
 - conducting audits to help improve public administration



OmbudsmanSA

Local government in SA

- Local government directly affects the lives of people in the community
- SA Constitution provides for the continuance of local government
- state parliament determines how it is constituted, and the nature and extent of its functions and powers
- *Local Government Act 1999 (SA)* and Regulations



OmbudsmanSA

Council member role and responsibilities

Council members

- politicians but also statutory office bearers, and are therefore subject to the administrative law and accountability framework in SA
- receive an annual allowance and reimbursement of expenses
- are not volunteers (although it may feel like it)
- represent the interest of residents and ratepayers
- collectively decide on policy direction and strategic management and allocation of resources of their council
- have responsibilities regarding their conduct under:
 - Chapter 5, Part 4 - Local Government Act
 - the (mandatory) Code of Conduct for Council Members



OmbudsmanSA

Ombudsman SA and council members

- Ombudsman can investigate a breach/failure to comply with Chapter 5, Part 4 of the Local Government Act -- on complaint from the Minister, the public (including a fellow council member or a council officer), or on the Ombudsman's 'own initiative' (s 263A)
- This includes a breach/failure to comply with :
 - council member general duties (s 62)
 - Code of Conduct for Council Members - misconduct (s 63)
 - register of interest requirements (ss 64-72)
 - conflict of interest requirements (ss 73-75)



OmbudsmanSA

Code of Conduct for Council Members (1)

- came into operation when ICAC commenced in Sept 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



OmbudsmanSA

Council member conduct obligations

Code of Conduct (2)

- Part 1 - Principles
 - Part 2 - Behavioural Code
 - deals with general behaviour; responsibilities; relationships; requirement to report breach of Part 3
 - each council adopt sits own process for breach of this Part (must be reviewed within 12 mths of general election)
 - complaints to principal member/CEO/nominated delegate
 - investigation will follow council's adopted process
 - breach of Part 2 must be reported at a public meeting
- Outcomes of a breach** - include censure motion; requirement to apologise; attendance at training; suspension from position; repayment of monies



OmbudsmanSA

Council member conduct obligations

Code of Conduct (3)

- **Part 3 - Misconduct**
 - deals with council member 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 the Ombudsman for investigation
 - a breach of Part 3 and the Ombudsman investigation report with recommendations must be provided at a public council meeting
 - the council must pass a resolution to give effect to the Ombudsman's recommendations
- **Appendix - Criminal matters**
 - do not form part of the Code of Conduct
 - referred to OPI



OmbudsmanSA

Ombudsman recommended sanctions

- After investigation, the Ombudsman can recommend that sanctions 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)
- if the council member fails to comply with a council requirement made in accordance with the Ombudsman's recommendation, the council must ensure that a complaint is lodged against the member in the District Court



OmbudsmanSA

District Court sanctions

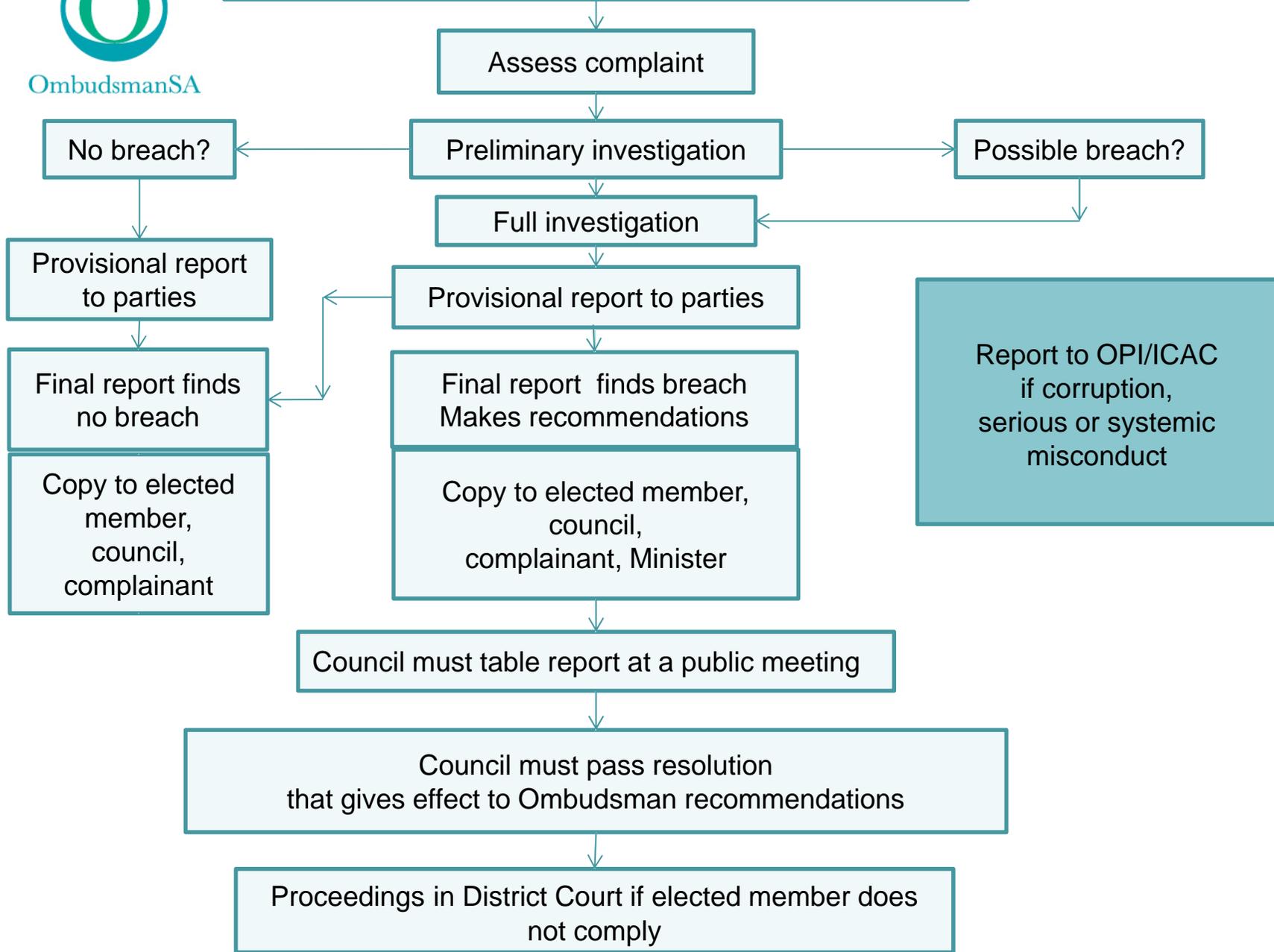
The District Court can impose the same sanctions as Ombudsman, but also can:

- impose a fine up to \$5 000
- suspend or disqualify a the council member from holding office
- disqualify a person from becoming a council member for five years



OmbudsmanSA

**Ombudsman investigation – Ombudsman Act 1972
Breach of Part 3 - Council Member Code of Conduct**





OmbudsmanSA

Statistics - 1 Sept 2013 - 30 June 2014

- Number of approaches - local government = 823
- Number of investigations - local government = 77
- Number of Council Member Code of Conduct approaches = 68
- Number of Council Member Code of Conduct investigations = 36
- Number of reports finding breach of the Council Member Code of Conduct under the Ombudsman Act = 6
- Number of Ombudsman investigations concerning local government on referral from ICAC = 21
- Number of reports to OPI concerning local government = 6



OmbudsmanSA

Questions?