



OmbudsmanSA

# Public integrity reform: The role of the Ombudsman

Richard Bingham  
SA Ombudsman

19 September 2013



OmbudsmanSA

## What I will speak about

- compare and contrast ICAC/OPI and Ombudsman SA
- an explanation of the amendments to the *Ombudsman Act 1972* and the *Local Government Act 1999* made by the ICAC Act



OmbudsmanSA

## ICAC, the Ombudsman and the Parliament

- both ICAC and the Ombudsman are independent statutory officers, appointed through a Parliamentary process
- both are accountable to the Crime and Integrity Policy Committee of Parliament
- either House of Parliament, or a Parliamentary committee, can refer a matter to the Ombudsman for investigation and report: provided it's within the Ombudsman's jurisdiction.



OmbudsmanSA

## Differences in jurisdiction

- ICAC
  - corruption
  - misconduct in public administration
  - maladministration in public administration
- Ombudsman
  - no role in corruption - referral to OPI/ACB
  - 'administrative act' by 'an agency to which the Act applies'
  - administrative error



OmbudsmanSA

# Misconduct

- ICAC
  - ‘contravention of code of conduct ... that constitutes a ground for disciplinary action’
  - ‘other misconduct’
- Ombudsman SA
  - specific misconduct jurisdiction in relation to elected members of councils
  - evidence of misconduct by others must be reported to the ‘principal officer’ of the agency



OmbudsmanSA

# Maladministration

- ICAC
  - ‘irregular and unauthorised use of public money or substantial mismanagement of public resources’
  - ‘substantial mismanagement’
- Ombudsman
  - any ‘administrative act’ by ‘an agency to which the Act applies’
  - we look for administrative error: the 7 administrative sins
  - summarised as ‘unlawful, unreasonable or wrong’
  - this doesn’t include policy matters\*

\* *City of Salisbury v. Biganovsky* (1990) 54 SASR 117



OmbudsmanSA

## The seven administrative sins

- contrary to the law
- unreasonable, unjust, oppressive, or improperly discriminatory
- in accordance with an unreasonable, unjust, oppressive or improperly discriminatory law or practice
- done for an improper purpose, or based on irrelevant grounds
- not giving reasons for a decision
- based wholly or in part on a mistake of law or fact
- wrong.



OmbudsmanSA

## Limitations on Ombudsman's jurisdiction

- the complaint must not have come to the complainant's notice more than 12 months before it's lodged\*
- the complainant must not have an alternative remedy\*
- the complainant must be 'directly affected'
- if the administrative act is done in the agency's capacity as an employer, it's not within jurisdiction

\*Ombudsman has discretion to investigate the complaint





OmbudsmanSA

## Ombudsman matters

Category	Number 2012-13	Target timeframe
Registration	8,720	2 days
Assessment	2,907	14 days
Preliminary investigation	87	4 months
Full investigation	11	6 months
Section 25 report finding administrative error	64	NA
FOI external review	171	4 months
<b>Total</b>	<b>11,960</b>	



OmbudsmanSA

## Differences - focus of work

- ICAC
  - investigative - preparing a brief of evidence
  - preventive/educative role
  - reviewing inquiry agency practices
- Ombudsman SA
  - investigation as one element of complaint resolution - e.g. conciliation is another
  - remedial - findings and recommendations
  - FOI external review role - transparency
  - conduct of audits



OmbudsmanSA

## Differences - powers

- ICAC
  - extensive powers, but only in respect of corruption investigations
- Ombudsman
  - Royal Commission powers available in any investigation



OmbudsmanSA

## Differences - confidentiality

- ICAC
  - offence to mention referral
  - investigations in private
  - no publication of brief of evidence
  - very limited public comment
- Ombudsman
  - investigations in private
  - statutory obligations to report to the complainant
  - publication of reports
  - other public comment where it is 'in the public interest'



OmbudsmanSA

## 'Reports' by the Ombudsman to OPI.....

- it is unlikely that Ombudsman SA will be reporting significant numbers of matters to OPI
- ICAC and ACB will continue to deal with any matter that may involve corruption
- OPI will need to recommend whether misconduct or maladministration (in ICAC terms) should be investigated by ICAC or Ombudsman SA



OmbudsmanSA

## Referrals to the Ombudsman from OPI.....

- we haven't received any referrals so far
- ICAC must consult before referring
- ICAC will need to work out what the misconduct or maladministration issue (in ICAC terms) is, because its obligations are different depending on whether such an issue exists



OmbudsmanSA

## Amendments to the Ombudsman Act

- new section 26 - confidentiality, disclosure of information and publication of reports
- new section 19A - 'injunctive' directions to agencies
- new section 12(2a) - directions to staff
- 'agency to which the Act applies' - new definition
- reporting to the Crime and Public Integrity Policy Committee, not the Statutory Officers Committee



OmbudsmanSA

## Amendments to the Local Government Act

- replacement of sections 63 and 110 - single codes of conduct
- new section 263A - Ministerial referral of complaints against members of a council
- new section 263B - recommending sanctions
- replacement section 272-4 - Ministerial investigation of council or subsidiary to be carried out by the Ombudsman





OmbudsmanSA

## In conclusion - some thoughts from Queensland.....

- What works well in the current system?
  - comprehensive network of bodies ensures integrity system is not dominated by one player
  - entities with specific technical expertise to respond to complex complaints
- What are the problems in the current system?
  - confusion about who does what undermines accessibility
  - time delays
  - duplication



OmbudsmanSA

[www.ombudsman.sa.gov.au](http://www.ombudsman.sa.gov.au)