



OmbudsmanSA

CEOs Residential Seminar

**Post ICAC Ombudsman investigations
local government codes of conduct**

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What I will cover today ...

Pre ICAC Ombudsman Code of Conduct investigations

Post ICAC Ombudsman Code of Conduct investigations

- under the Ombudsman Act
- on referral under the ICAC Act

Statistics since 1 September 2013

Take away message

- the Ombudsman's powers of investigation are the same regardless of which Act applies
- however, the Ombudsman's reporting processes can be different if the investigation is on referral under the ICAC Act
- if the Ombudsman investigation is on referral under the ICAC Act , it is under the oversight of the Commissioner



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Pre ICAC - Ombudsman Code investigations

- Previously, Codes of Conduct for Council Members and Employees were developed by each council
- The Ombudsman had jurisdiction under the Ombudsman Act to investigate Code complaints - upon receiving a complaint or on the Ombudsman's own initiative
- Investigations were conducted using powers under the Ombudsman Act
- If a breach of either Code was found, under the Ombudsman Act:
 - recommendations were made to remedy the breach (s 25), such as making an apology or undertaking training
 - the breach was reported to the mayor/chair of the council and the Minister (s 18(5)).



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Post ICAC - Employee Code complaints

Council Employee Code of Conduct

The Local Government Act now provides for a uniform code and compliance is a legal requirement. Legal consequences apply if there is a breach.

Complaints may still be made about breaches of the Code to the Ombudsman, and the Ombudsman may:

- refer the complainant to the CEO of the council
- conduct an 'own initiative' investigation
- report the matter to OPI under the Commissioner's *Directions and Guidelines* if the alleged breach is serious or systemic.

Complaints may also be made by any party to the Office for Public Integrity (OPI). The Commissioner may then refer the matter for investigation to the council or the Ombudsman, or the Commissioner may exercise the Ombudsman's powers and investigate.



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Post ICAC - Council Member Code complaints

Council Member Code of Conduct

The Local Government Act now expressly provides for the Ombudsman to investigate an alleged breach/failure of a council member to comply with Chapter 5, Part 4 of the Act.

This includes alleged breaches of:

- general duties of council members (s 62)
- the Code of Conduct for Council Members (s 63)
- register of interest requirements (ss 64-72)
- conflict of interest of council members(ss 73-75)

The Code is uniform and compliance is a legal requirement.

Part 3 of the Code (**Misconduct**) includes reference to these legislative provisions, as well as other conduct matters such as commitment to making decisions without bias, and breach of confidentiality.



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Post ICAC - Council Member Code complaints

Complaints may be made directly to the Ombudsman by:

- any person, the Minister, or the Ombudsman can conduct an 'own initiative' investigation (section 263A LG Act)
- investigations are under the Ombudsman Act.

Complaints may also be made by any party to the OPI:

- the Commissioner may then refer the matter for investigation to the Ombudsman - or the Commissioner may exercise the Ombudsman's powers himself and conduct an investigation
- investigations are under the ICAC Act.

For any matters which show serious or systemic misconduct or maladministration, the Ombudsman (and the council) must report this to the OPI, under the Commissioner's *Directions and Guidelines*.



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Post ICAC - Ombudsman Council Member Code investigations - Part 3

The Code anticipates that the Ombudsman will only investigate a breach of Part 3 of the Council Member Code of Conduct - **Misconduct**.

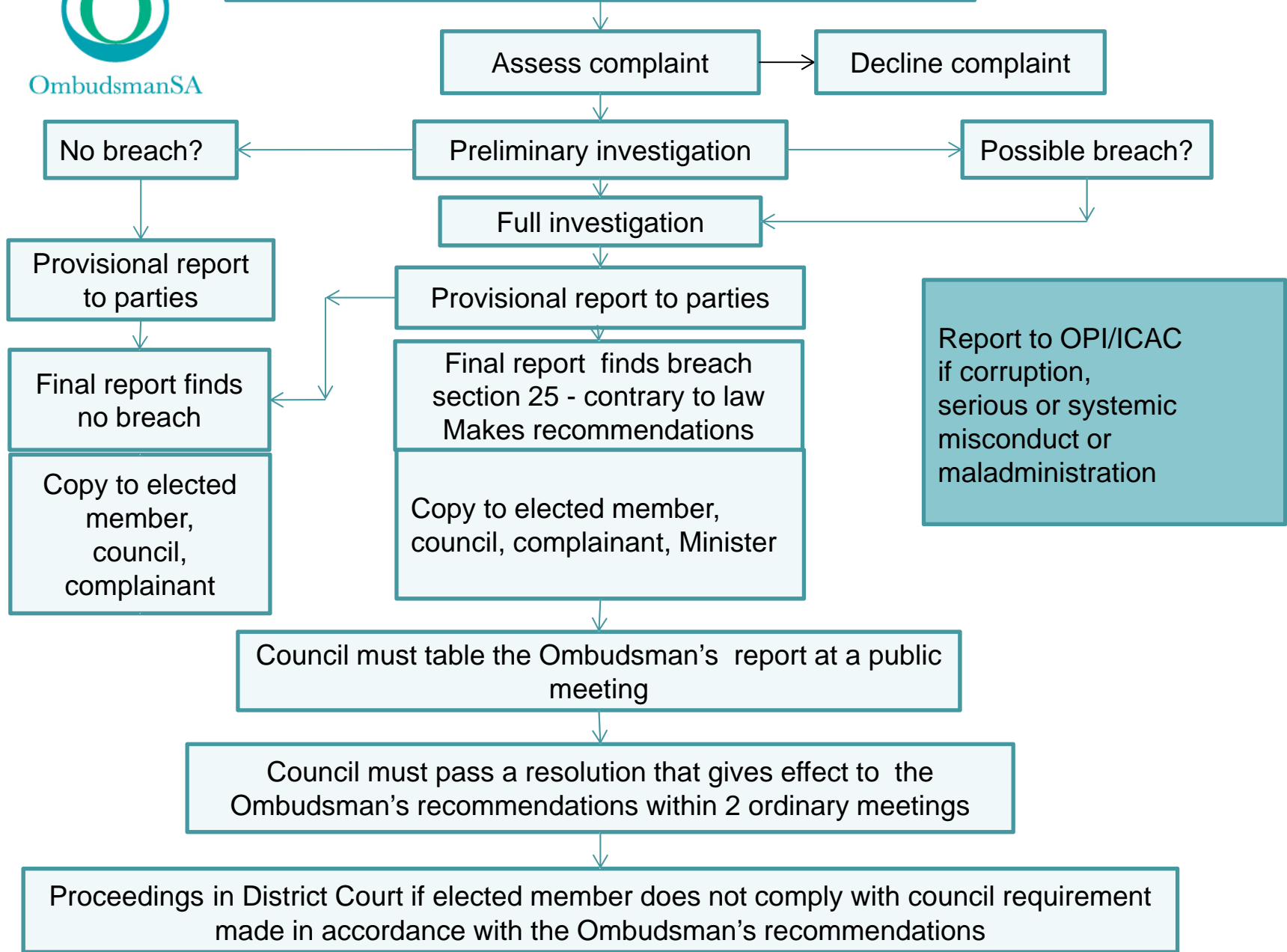
The Ombudsman will refer breaches of Part 2 relating to Behaviour back to the council.

However, repeated or sustained breaches of Part 2 by the same council member may be referred to the Ombudsman as a breach of Part 3 (clause 2.23) - by resolution of the council.

Also, repeated or sustained inappropriate behaviour under Part 2, may be escalated to an allegation of breach of Part 3 (clause 3.17) and referred to the Ombudsman - at the discretion of the council.



Ombudsman Investigation – Ombudsman Act Breach of Part 3 – Council Member Code of Conduct





**Ombudsman Investigation – ICAC Act
Breach of Part 3 – Council Member Code of Conduct**

After consultation with the Ombudsman, the Commissioner refers alleged misconduct in public administration to the Ombudsman to investigate under the *Directions and Guidelines*

Ombudsman conducts investigation using the powers under the Ombudsman Act.
Must report to the Commissioner after 56 days

Send provisional assessment to Commissioner about whether there appears to be misconduct and a breach of Part 3 of the Code

The Ombudsman or the Commissioner may then send the provisional assessment to the parties for their comment

The Commissioner will send the final assessment to the parties with comments and possible directions



Other issues to note ...

Time in which to complain

An Ombudsman Code of Conduct investigation under the Ombudsman Act can only occur if the complaint is made within 12 mths of the complainant having notice of the matter. There is a discretion to extend this time.

There are not time limits for complaints to OPI under the ICAC Act.

Confidentiality

The confidentiality obligations under the Ombudsman Act (section 26) and the ICAC Act (sections 54, 56) are different. We give advice in our correspondence about these obligations, depending on which Act we are investigating under.

Authorisations can be obtained from the Commissioner for council to discuss matters arising in the investigations.

Final Ombudsman Code and other investigation reports under the Ombudsman Act may be published on our website and AustLII.



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Statistics - since the beginning of ICAC

- Number of approaches - local government = 823
- Number of investigations - local government = 77
- Number of Council Member Code of Conduct approaches = 68
- Number of Council Employee Code of Conduct investigations = 0
- Number of Council Member Code of Conduct investigations = 36
- Number of Council Employee Code of Conduct investigations = 0
- 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



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