

THE ICAC ELECTED MEMBERS FORUM



ICAC•OPI

Independent Commissioner
Against Corruption
SOUTH AUSTRALIA

Office for Public Integrity



**The Hon.
Bruce Lander QC**
Independent Commissioner
Against Corruption

ICAC FOR ELECTED MEMBERS

THE ICAC ELECTED MEMBERS FORUM

THE ICAC ACT



OPI
Office for Public Integrity
SOUTH AUSTRALIA

Office for Public Integrity (OPI)



ICAC
Independent Commissioner
Against Corruption
SOUTH AUSTRALIA

**Independent Commissioner
Against Corruption (ICAC)**

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THE ICAC ACT

Office for Public Integrity (OPI)

- Receive and assess complaints and reports
- Recommend whether, and by whom, a complaint or report should be investigated
- Responsible to the Commissioner for the performance of functions



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THE ICAC ACT

Independent Commissioner Against Corruption (ICAC)

- Identify and investigate corruption
- Assist agencies/authorities to deal with misconduct & maladministration
- Evaluate policies and practices
- Education



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CONDUCT AND PRACTICES

Public administration

Public officer + Public authority

Conduct of Interest

- Corruption
- Misconduct
- Maladministration

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PUBLIC OFFICERS

Schedule 1 lists **Public Officers** including:

- Members of Parliament
- members of the judiciary
- police officers
- elected members/employee of local government
- public service employees
- any other public sector employee
- person who is, in accordance with the Act, assisting a public officer in the enforcement of the Act
- a person performing contract work for a public authority of the Crown

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CONTRACTORS

- Contractors have the same reporting obligations as other public officers
- Contractors can be reported and investigated just like other public officers

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CORRUPTION (S5 ICAC ACT)

- an offence relating to Public Officers under the *Criminal Law Consolidation Act 1935*
- an offence against the *Public Sector Honesty and Accountability Act 1995*, or
- the *Public Corporations Act 1993*, or
- any other offence committed by a Public Officer acting in his or her capacity as a Public Officer.

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MISCONDUCT (S5 ICAC ACT)

Misconduct is:

- **a contravention** of a code of conduct by a Public Officer whilst acting in his or her capacity as a Public Officer that **constitutes ground for disciplinary action**, or
- **other misconduct** committed by a Public Officer while acting in his or her capacity as a Public Officer.

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MALADMINISTRATION

Maladministration is:

- **conduct of a public officer, or a practice, policy or procedure of a public authority** that results in an **irregular and unauthorised use of public money** or **substantial mismanagement of public resources**
- **conduct** of a public officer involving **substantial mismanagement** in or in relation to the performance of official functions...

Includes conduct resulting from:

- impropriety
- negligence
- incompetence

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REASONABLY SUSPECT

A suspicion is a subjective state of mind, less than knowledge or belief.

To be reasonable, a suspicion must have a rational basis.

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SERIOUS OR SYSTEMIC

4—Interpretation

(2) For the purposes of this Act, misconduct or maladministration in public administration will be taken to be serious or systemic if the misconduct or maladministration—

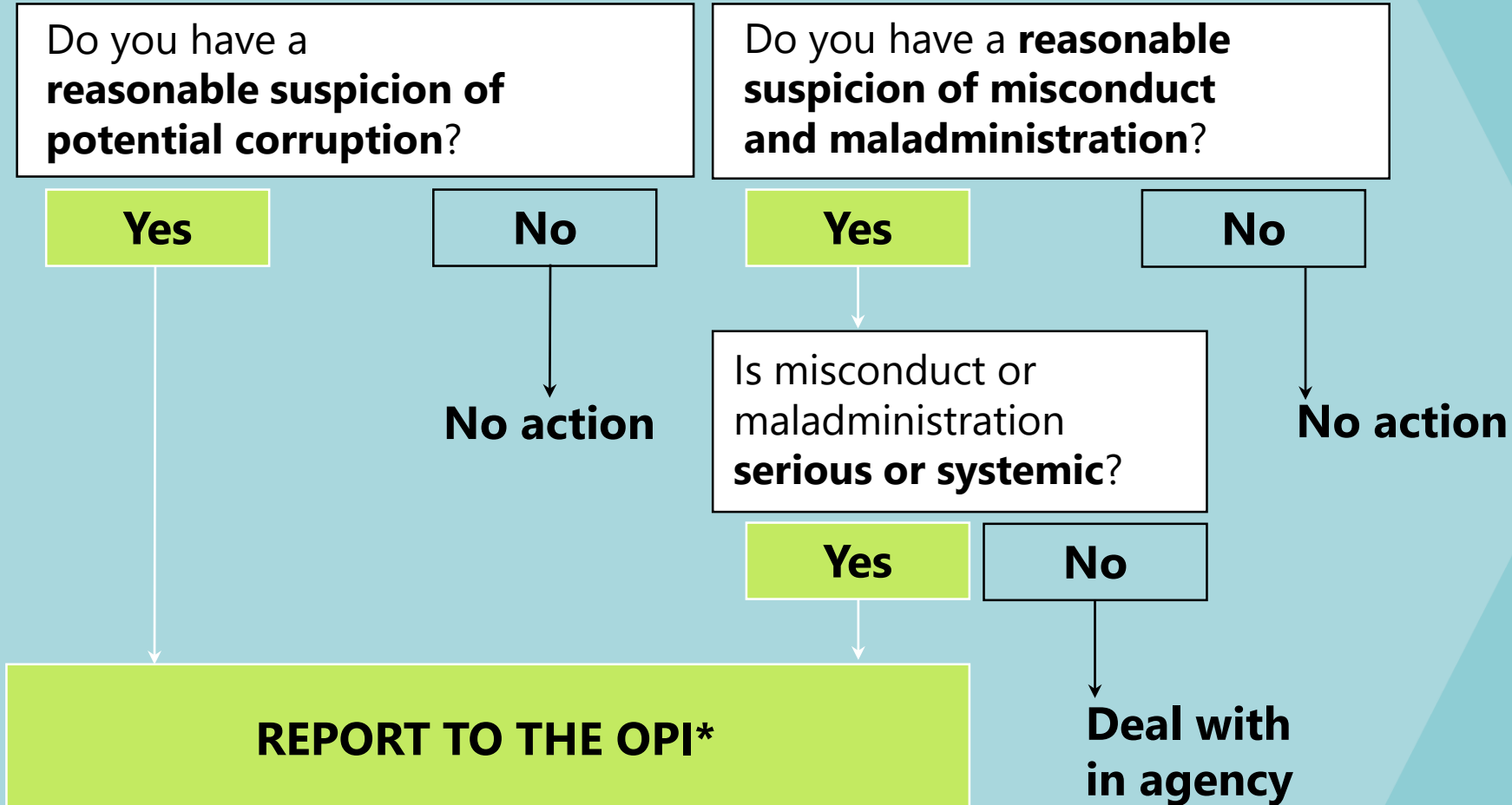
(a) is of such a significant nature that it would undermine public confidence in the relevant public authority, or in public administration generally; and

(b) has significant implications for the relevant public authority or for public administration generally (rather than just for the individual public officer concerned).

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REPORTING OBLIGATIONS

Do you report?



*Unless previously reported (corruption – OPI, misconduct or maladministration – to an inquiry agency or the OPI).

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COMPLAINTS AND REPORTS

Elected members account for 6% of Council personnel

- Elected members make 29% of all local government reports
- Elected members are persons of interest in 34% of all local government reports
- 47% of reports made by elected members are about other elected members

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WHAT HAPPENS NEXT?

Corruption will be:

- Investigated by ICAC or
- Investigated by SA Police

Misconduct or Maladministration will be:

- Referred to a Public Authority
- Referred to Ombudsman
- Commissioner may exercise the powers of the Ombudsman and investigate himself.

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PRIVACY MATTERS

Sections 54 and 56 of the ICAC Act prevent you from publishing or causing to be published certain types of information.

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WHAT IS A COUNCIL?

A Council is a body corporate which consists of members who are appointed or elected to it.

Council has a legal capacity.

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FUNCTIONS OF A COUNCIL

Include:

- provision of services and facilities for benefit of community
- provide for welfare, wellbeing and interests of individuals and groups
- provide infrastructure and development

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COUNCIL PRINCIPLES

Include:

- provide open, responsive and accountable government
- respond to needs, interests and aspirations within the community
- setting public policy
- achieving regional, state and national objectives
- facilitate sustainable development

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COUNCIL ADMINISTRATION

A Council must have a CEO.

The functions of the CEO include:

- implementation of policies and decisions
- day to day operations
- assisting Council to assess its performance
- management of assets and resources

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COUNCIL GENERAL DUTIES

Set out in S62 of Local Government Act

- Act honestly
- Act with reasonable care and diligence
- Not misuse information/obtain an advantage
- Cause detriment to council

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CODE OF CONDUCT

Part 1 Principles

Part 2 Behavioural Code

Part 3 Misconduct

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PUBLIC INTEGRITY SURVEY

985 local government participants

- 40% encountered bullying/harassment
- 35% encountered nepotism/favouritism
- 30% encountered conflicts of interest
- 21% encountered misuse of power

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PUBLIC INTEGRITY SURVEY

985 local government participants

- 1 in 5 did not agree they had reporting obligations
- 1 in 4 did not agree they would report
- 81% had received training on corruption risks

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SUMMARY

ICAC

- investigate corruption
- oversee handling of misconduct and maladministration, or
- investigate serious or systemic misconduct and maladministration

Elected Members

- represent electors' interests
- community leadership
- **do not** deal with day to day administration of Council

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THANK YOU

Questions?

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