

Dealing with suspected breaches of the Associations Incorporation Act 1985

What to report to CBS

If you believe there has been fraud, dishonesty or misconduct in a South Australian incorporated association that is a possible breach of the *Associations Incorporation Act 1985* (the Act), you should report the matter to Consumer and Business Services (CBS). The Act refers to the Corporate Affairs Commission which is administered by Consumer and Business Services.

This document contains guidance on:

- What CBS is able to investigate
- What CBS does not investigate
- Investigation priorities
- Steps CBS may take in assessing reports
- What to expect when a report is made
- What to include in a report to CBS
- Other remedies available where the matters would not involve CBS
- How to contact CBS

Please note: The information provided is of a general nature only and should not be relied upon as legal advice, or as a substitute for the primary Act. You should not rely upon, nor act solely on the basis of the material contained in this brochure. If you are unsure about your rights and obligations, CBS recommends that you seek independent legal advice.

What CBS is able to investigate

CBS is concerned with the duties and obligations placed on an association or its officers by the Act.

CBS has various investigation powers that may be exercised to ascertain whether the provisions of the Act have been or are being complied with.

There are a number of requirements under the Act that associations need to comply with.

For example:

- officers of an incorporated association must act honestly and with reasonable care and diligence: s 39A*
- a prescribed association (one that is currently defined in the *Regulations* as having gross receipts in excess of \$500,000 in its previous financial year) must present audited accounts, auditor's report, and committee's report and statement, before members at an annual general meeting, within five months after the end of the financial year: s 35*
- a prescribed association must lodge the above documents with CBS, within six months after the end of the financial year: s 36*
- an incorporated association must keep and maintain accounting records: s 39C*
- an incorporated association must keep proper minutes of meetings of members of the committee and meetings of members of the association: s 51*

*this refers to sections of the Act.



What CBS does not investigate

A breach of an association's rules, e.g. in relation to the internal organisation or administration of the association.

- An association has rules in order to manage and administer its affairs. This is called self-governance.
- Non-compliance with the rules of an association is generally a private or civil matter to be pursued by the parties bound by the rules, i.e. the association and its members.
- Examples may be rules dealing with the election of committee members, or the calling or conduct of meetings.

CBS does not get involved in matters concerning the rights of members, internal conflict between members or between a member and the association. These matters should be dealt with by the parties to the dispute.

Theft by employees of an association that does not involve a possible breach of the Act.

- These are usually matters that should be referred to the South Australian Police.

Reports that indicate there is little likelihood of CBS obtaining admissible, substantial and reliable evidence to prove the allegations.

- For example, CBS cannot take action based merely on conjecture or assumptions, or unsupported reports. Evidence will be required.

Matters where the conduct occurred more than three years ago.

- Subject to the Minister's discretion, the Act prevents CBS commencing proceedings for offences against the Act outside this period.



Investigation priorities

CBS gives priority to complaints according to the seriousness of the conduct identified and will assess matters and take enforcement action in line with its [Compliance and Enforcement Policy](#).

As outlined in that policy, the key focus for CBS will be that profit obtained by an association is used for the association and not by the members of the association for personal gain.

CBS will take into account whether there was any apparent fraudulent activity involved, the potential for ongoing harm or continuing breach, and the nature and extent of any public interest in the affairs of the association.

Steps CBS may take in assessing reports

Having considered a report and determined the priority of the matter, CBS may take the following steps:

- make initial inquiries to gather more information about the matter; or
- conduct a formal investigation under the Act; or
- take no further action.

Should CBS decide not to pursue compliance or enforcement action in relation to a matter, it may still:

- provide advice to empower association members to seek their own remedy, including enforcing their own private rights through independent legal advice.
- retain the information provided for intelligence purposes and place the relevant association on notice about CBS' concerns
- provide education to the association to inform them of the possible contravention and encourage a culture of compliance
- refer a matter to another agency where there may be scope for the enforcement action to be taken by another agency (i.e. SAPOL or the ATO).



What to expect when a report is made

CBS may ask you for further information either formally or informally. You may also be asked to provide assistance, e.g. as a witness.

What to include in a report to CBS

Written reports of suspected breaches of the Act should be sent to CBS and should include evidence that contains:

- the name of the association, and its registration number, if known
- full details of the misconduct, including the actions, dates and places in sequential order
- the name(s) of the person(s) suspected of wrongdoing (if relevant)
- if the person has been convicted of an offence in relation to the matter as a result of police intervention, include any relevant documentary material.
- if known, the provisions of the Act that may be relevant
- any relevant documentary material that may be used as evidence, such as letters, emails or minutes
- the names and addresses of the persons who may have witnessed, or have information concerning, the suspected conduct or activity
- any report by an expert, e.g. an accountant or auditor, provided to the association in relation to the alleged conduct
- reference to any other authority that has been approached, e.g. the South Australian Police, and what action the authority has or may be taking.

Dispute resolution and other remedies

In cases where it is inappropriate for CBS to investigate a matter, there are various options to resolve disputes or concerns.

Often disputes concern the effective management of an association. There are numbers of books available that describe good management and administrative practices including the proper conduct of meetings.

- If members believe that the association's affairs are not being conducted in accordance with their wishes, the members may call a meeting of members to discuss the issue and decide on an appropriate course of action.
- The association may include a suitable dispute resolution procedure in the rules of the association.
- An example set of rules that includes a dispute resolution clause is available from the CBS website www.cbs.sa.gov.au.
- If the matter concerns a dispute, the parties may meet to resolve the dispute, or if it cannot be resolved at a meeting, the parties may choose to meet and discuss the dispute in the presence of an independent third person agreed to by the parties.
- Section 61 of the Act allows a member to seek an order from the Supreme Court or the Magistrates Court, on the ground that the association has engaged, or proposes to engage, in conduct that is oppressive or unreasonable.

These court remedies are also available to a former member provided that application is made within six months of the cessation of the person's membership.

- Where an association is unable to amend its rules (e.g. where it is impossible to gain a quorum for a meeting because of a high number of members required, or where members are unable to reach agreement) section 24A of the Act allows an association to apply to the court for a variation of the rules.



How to contact Consumer and Business Services

Your report must be lodged with the CBS Registration Unit:

Online	<u>www.cbs.sa.gov.au/contact</u>
Email	<u>associations@sa.gov.au</u>
Post	Registration Unit GPO Box 1719 ADELAIDE SA 5001
Phone	131 882
Appointment	<u>Book a time</u> to speak with the Associations Team
In person	Customer Service Centre 95 Grenfell Street Adelaide SA 5000

Translating & Interpreting Service Phone: 131 450

