



Government of South Australia
Consumer and Business Services

Dealing with Suspected Breaches



*of the Associations
Incorporation Act 1985*

www.cbs.sa.gov.au

WHAT TO REPORT TO CBS

Dealing with
Suspected Breaches

 Department of Justice
Business and
Occupational Services
A Guide
Associations
Incorporation
Act 1985
Business and
Occupational Services



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 the Consumer and Business Services (CBS). Please note that the Act refers to the Corporate Affairs Commission. The Corporate Affairs Commission is a part of CBS.

This pamphlet provides guidance in relation to the following topics:

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

Please note: The information provided in this brochure 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 under the Act that may be exercised to ascertain whether the provisions of the Act have been or are being complied 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 Act 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.

- **Disputes between a member and another member or a member and the association.**

CBS does not get involved in matters concerning the rights of members. 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.

what CBS does not investigate (cont)

- **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.

- **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.

dispute resolution and other remedies

In cases where it is inappropriate for CBS to investigate a matter, there exist various options to resolving 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.



other remedies (cont)

- 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.
- 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 CBS or our website.
- 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.

breach

what to include in a report to CBS

Written reports of suspected breaches of the Act should be made to CBS and should include:

- the name of the association, and its registration number, if known
- the names of the persons suspected of wrongdoing
- full details of the misconduct, including the actions, dates and places in sequential order
- if known, the provisions of the Act that may be relevant
- any relevant documentary material that may be used as evidence, such as letters 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. 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.

what to include in a report to CBS (cont)

Reports should be sent to CBS. See back cover for details.

what to expect when a report is made

CBS will acknowledge receipt of the report in writing within seven days and will provide the name and telephone number of the officer assigned to the matter.

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

investigation priorities

CBS gives priority to complaints according to the seriousness of the conduct identified. 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
- conduct a formal investigation under the Act
- take no further action and write to the complainant informing the person why no further action will be taken.

Where the matter is not one that CBS investigates, (e.g. in relation to a dispute between a member and the association) a response is usually provided within 28 days of receipt of the complaint. Consideration of matters that involve a potential offence under the Act may take longer.

how to contact CBS

For more information about reporting misconduct you should contact CBS's Occupational Licensing and Registration section on the telephone number below.

ph 131 882



www.cbs.sa.gov.au

**Consumer and
Business Services**

**Occupational Licensing
and Registration**

Chesser House
91-97 Grenfell Street
Adelaide SA 5000
Telephone 131 882
Facsimile (08) 8204 9771
www.cbs.sa.gov.au

**Translating & Interpreting
Service (TIS)**

Telephone 131 450



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