

Making a complaint about an incorporated association

This factsheet explains members' rights and provides guidance about what complaints can be investigated under the Associations Incorporation Act 1985

Who regulates incorporated associations in SA?

Consumer and Business Services is the agency within the Attorney-General's Department responsible for the *Associations Incorporation Act 1985 (the Act)*. The Act gives powers to the Corporate Affairs Commissioner, known as the Commissioner, Consumer and Business Services (CBS), and authorised officers appointed under the Act to investigate complaints.

Contact the association first

Before making a complaint with CBS about an incorporated association, you may be able to resolve the matter by speaking directly with the association. Most associations welcome feedback and are prepared to consider issues raised without CBS becoming involved. You should also check your association's rules for any grievance procedures and follow those steps first.

Rights of members

Under the Act members can:

- inspect minutes of general meetings free of charge (s 51(6) of the Act)
- apply for a court order to inspect the association's books (s 39D of the Act)
- apply to inspect the association's register for a copy of the rules or financial report that has been lodged (if the association is prescribed)
- apply to the court for an order if the association has engaged, or proposes to engage, in oppressive or unreasonable conduct (s 61 of the Act) – former members can also do this.
- If the association is registered with the Australia Charities and Not-for-Profits Commission (ACNC) you can view annual financial reports on the [ACNC website](#).

Breaches of the Act

CBS's powers to investigate or take action in response to a complaint are limited to breaches of the Act or the association's rules.

It is not just committee members who can be liable for breaches of the Act. An "officer" of an association also includes someone who takes part in the management of the association whether or not they have been validly appointed to occupy that position.

The duties of officers are similar to company directors' duties. Maximum penalties of \$20,000 or imprisonment for four years apply to section 39A offences which include where an officer:

- has committed an act with intent to deceive or defraud the association, members or creditors

- has made improper use of information obtained in their position to advantage themselves or another, or to cause detriment to the association
- has made improper use of their position to gain a benefit for themselves or another.

It is also an offence for:

- a committee of a prescribed association to fail to take all reasonable steps to ensure that the audited accounts and auditor's report are presented to members at the annual general meeting
- a member of a committee to fail to disclose an interest they have in a contract, or proposed contract, with the association to the committee and at the next AGM
- a member of the committee to vote on a contract that they have a direct or indirect pecuniary interest in.

Breaches of the association's rules

The rules of an incorporated association bind the association and all members of the association (section 23 of the Act).

If an association is unable to comply with its rules, it may apply to CBS for an exemption from the obligation to comply (section 49A of the Act).

Associations are self-governing organisations and CBS has limited powers to intervene when an association is not following its rules, however CBS can issue directions for compliance with the rules or the Act and take steps to wind up the association if it fails to comply with the directions given.

When CBS will investigate

CBS will assess all complaints received as to whether an investigation is warranted, however we may prioritise complaints where:

- the concerns relate to an association's compliance with the **requirements of the Act**
- the objects and activities of an association are directly linked to **providing essential services** to a particular community
- an association has a large impact on the **ongoing viability of a particular industry**
- we consider the members of the association affected by the alleged conduct are particularly **vulnerable**
- the association is **in receipt of grant funding**.

Areas for which CBS does not have responsibility

CBS does not have the power to review or investigate complaints which fall outside of its jurisdiction in administering the Act.

Examples of some of these include:

Internal disputes

CBS cannot intervene in or investigate disagreements between committee members within an association, which do not breach the Act. The association should follow its dispute resolution procedure set out in the rules, or if it does not have one, the committee could propose amendments to the rules.

Contracts an association has with other organisations or individuals (including members)

This includes funding, tenders and purchases. Other government

departments and agencies may have responsibility regarding these matters. You should contact the responsible department or agency.

Quality of services an association may provide

The appropriate agency to contact to raise a concern will be different, depending on the services being provided. For example, if you have concerns about how an association provides health services you may contact SA Health.

Employment issues such as employment contracts and unfair dismissal

Often you can raise these kinds of matters with the Fair Work Commission.

How to lodge a complaint

- Submit the [online associations complaint form](#)
- Email associations@sa.gov.au
- **Book a phone or in-person appointment** online via this [link](#)

Please note that there is no specific protection for whistleblowers under the Act. However, if you wish to make a complaint, you are entitled to do this anonymously or using a pseudonym, where reasonable.

CBS cannot provide legal advice. If you require legal advice, CBS will refer you to the Legal Services Commission (<https://lsc.sa.gov.au>), which provides a free advisory service regarding many matters.

