

Compliance & Enforcement Policy

2023-24



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Introduction

Consumer and Business Services (CBS), a division of the South Australian Attorney-General's Department, facilitates business, protects consumers and records life events.

CBS' strategic goals include **delivering effective regulation** and **looking after its customers and community**.

CBS supports the Minister for Consumer and Business Affairs and the Commissioner, to administer a wide range of legislation (see Attachment 1).

CBS' legislative responsibilities include more than 35 Acts of the Parliament of South Australia, as well as Regulations made under those Acts. In addition, CBS issues and administers various industry codes.

This Compliance and Enforcement Policy sets out the framework adopted by CBS to achieve compliance with the law. A key function of this policy is to set the strategic compliance and enforcement priorities for the year ahead.

This policy is only a guide and does not limit CBS' discretion to take any action it considers necessary or appropriate.

Where there is a reference to CBS in this policy it includes the:

- Commissioner for Consumer Affairs
- Commissioner for Corporate Affairs
- Liquor and Gambling Commissioner
- Commissioner for Prices
- Registrar of Births, Deaths and Marriages.

Principles

The following principles guide CBS' approach to compliance and enforcement:

Risk-based	CBS adopts a risk-based approach to its compliance and enforcement activities, seeking to direct resources towards conduct that causes consumer detriment or is of significant public interest or concern.
Professional	CBS will act professionally and courteously when receiving, assessing and investigating complaints about breaches of legislation.
Transparent	CBS will acknowledge receipt of complaints in a timely manner and will keep complainants informed about the progress of the complaint and the outcome.
Consistent	CBS will weigh all of the relevant factors to reach consistent decisions in comparable situations.
Proportionate	CBS will take action which is proportionate to the alleged offending, including the seriousness of the breach and the level of detriment.
Targeted	CBS will have regard to intelligence to undertake targeted compliance activities.
Accountable	CBS will be accountable for the decisions it makes and the action it takes in relation to complaints about breaches of legislation.
Timely	CBS will register, assess and, if appropriate, take action in respect of a breach of legislation as efficiently as possible.

Compliance and enforcement priorities 2023-24

Through intelligence gathering relating to a wide range of industries, CBS identifies annual priority areas for its compliance and enforcement work. This approach allows CBS to allocate its resources having regard to emerging trends, risks and opportunities.

The priorities for 2023-24 are set out below. These priorities will remain in place until 30 June 2024 when new priorities will be set for the next financial year.

Our 2023-24 priorities focus on the protection of consumers and the community more broadly, particularly in areas of high risk of detriment or harm, vulnerability and imbalance of power.

CBS acknowledges that in some cases the most appropriate outcome for the consumer is a conciliated outcome with a trader, facilitated by CBS. In those cases, often no further compliance or enforcement action is required and CBS resources can be directed to other matters. CBS also acknowledges that in some cases where entities and individuals are operating without a licence or out of scope of their licence, the best outcome for the community can be:

- ensuring that those entities or individuals become registered or licensed
- educating entities and individuals about their obligations.

In some of these cases, no additional compliance or enforcement action is required.

Builders



CBS is responsible for the administration of the *Building Work Contractors Act 1995*.

The building industry is under significant pressure and remains a key focus for CBS as it impacts a great number of South Australian consumers; disputes can be complex; the money invested by consumers is often significant; and substandard work or work done outside of the scope of licences can be a safety risk.

The strategic priority areas for CBS relating to the building industry in 2023-24 are:

- individuals or companies performing unlicensed building work, including operating outside the scope of licence conditions
- individuals or companies who take payment from consumers but do not complete the work.

Second-hand vehicle dealers



CBS is responsible for the administration of the *Second-hand Vehicle Dealers Act 1995*.

CBS is committed to ensuring that consumers are protected when making a significant purchase. Those who do the wrong thing in selling or tampering with second-hand vehicles, can cause significant financial detriment to consumers, and can expose the community to safety risk.

The strategic priority areas for CBS relating to the second-hand vehicle industry in 2023-24 are:

- licensed and unlicensed sellers operating from home
- odometer tampering.

Real estate



CBS is responsible for the administration of the *Land Agents Act 1994*, the *Land and Business (Sale and Conveyancing) Act 1994*, the *Conveyancers Act 1994*, the *Residential Tenancies Act 1995* and the *Residential Parks Act 2007*.

CBS is committed to ensuring that all consumers have fair and honest dealings with those working in the South Australian real estate industry. It is therefore important that individuals and agencies working in this industry are properly licensed or registered. This includes property managers, land agents, sales representatives, auctioneers, and conveyancers.

In 2023 reforms to the *Residential Tenancies Act* commenced, to improve rental affordability and security for tenants.

The strategic priority areas for CBS relating to the real estate industry in 2023-24 are:

- unlicensed activities in real estate
- compliance with *Residential Tenancy Act* reforms.

Australian Consumer Law



CBS is responsible for the administration of the *Australian Consumer Law* in South Australia.

CBS works closely with other State and Commonwealth *Australian Consumer Law* regulators on a range of issues to encourage and enforce compliance with the law.

In 2023-24, CBS remains focused on consumers who are vulnerable to practices of traders who do the wrong thing. This includes selling unsafe products.

CBS will also be focusing on compliance with the law regarding 'unsolicited consumer agreements'. These agreements can arise when salespersons target consumers by phone, in public places, or at home, seeking to sell a product or service when they have not been invited there by the consumer for that purpose.

The strategic priority areas for CBS relating to the *Australian Consumer Law* in 2023-24 are:

- product safety
- unsolicited consumer agreements.

Casino and gambling



CBS is responsible for the regulation of the entity which holds the licence for the Adelaide Casino. The relevant legislation is the *Casino Act 1997*.

CBS is also responsible for the administration of the *Authorised Betting Operations Act 2000*, the *Gambling Administration Act 2019*, the *Gaming Machines Act 1992* and the *Lotteries Act 2019*.

The regulation of the casino and gambling in South Australia is a key focus for CBS in 2023-24.

The strategic priority areas for CBS relating to the casino and gambling industries in 2023-24 are:

- reducing gambling related harm
- minimising the influence of organised criminal activity in the industries
- maximising industry staff training compliance.

Compliance and enforcement strategy

The legislation administered by CBS provides a range of investigative tools and **enforcement options**, including court-based outcomes and court enforceable assurances and undertakings.

Investigative tools include compulsory information gathering powers and the ability to conduct search warrants in appropriate circumstances. When using statutory powers to obtain evidence, CBS ensures that it does so in accordance with its obligations as set out in the applicable legislation, and that it does not abuse or misuse its investigative powers.

CBS also achieves compliance by using a range of tools to prevent breaches of the legislation including **education, monitoring and surveillance**.

Further, CBS works closely with industry and other stakeholders where compliance outcomes can be achieved through self-regulation and co-regulation, or through targeted **industry specific initiatives**.

The compliance and enforcement options available to CBS are considered in more detail below.

In deciding which compliance or enforcement option to pursue, CBS exercises its discretion to choose a course of action appropriate to the conduct in question.

CBS strives to ensure that its compliance and enforcement activity is:

- without fear or favour
- fair, proportionate and appropriate to the conduct
- dealt with in a timely manner
- in the public interest
- conducted to best utilise its resources
- undertaken as a model litigant
- publicly accountable.

Ultimately, CBS aims to regulate the environment for consumers and businesses by focusing its resources on issues where there is the greatest harm or risk and by ensuring any enforcement action is proportionate to the level of harm and seriousness of the breach.

While CBS treats all complaints and issues raised by both businesses and consumers seriously, it cannot pursue all complaints it receives or issues that come to its attention about the conduct of traders or businesses.

To make the best use of resources and maximise public benefit, CBS' compliance and enforcement activity primarily targets strategic priorities and incidents with evidence or likelihood of broader consumer detriment.

However, CBS does not have the resources to take action in relation to every matter even if it falls within a strategic priority area.

In determining whether any of the compliance or enforcement options should be used to deal with an alleged breach of legislation, the factors considered by CBS include whether:

- the conduct falls within one of CBS' strategic priority areas for 2023-24
- the conduct is of significant public interest or concern
- the conduct has resulted or could result in substantial harm or detriment to consumers or an industry
- the conduct has affected or is likely to affect vulnerable or disadvantaged consumers
- the conduct occurred over a long period
- the conduct demonstrates blatant or systemic misconduct
- the matter involves parties who have previously had enforcement action taken against them for the alleged or similar conduct
- CBS has sufficient evidence to warrant commencing or proceeding with enforcement action
- the conduct resulted in a profit for the individual or entity and, if so, the extent of the profit.

CBS will not take compliance or enforcement action in relation to alleged breaches of legislation that are not administered by CBS.

CBS is unlikely to take action in relation to alleged breaches of legislation which:

- are more suitable to be resolved by private action between the parties
- are not supported by sufficient evidence
- are one-off incidents resulting in low detriment
- are better suited to action by another agency
- raise systemic issues that require a strategic response rather than dealing with individual matters
- have low prospects of success
- are trivial
- have already been the subject of consideration or action by CBS, another agency or a court or tribunal
- would require a disproportionate amount of resources to investigate or to take the appropriate compliance or enforcement action.

Compliance and enforcement options

Education and engagement

CBS views prevention of a breach as preferable to taking action after a breach has occurred.

We engage with industry bodies and key stakeholders to assist in ensuring traders understand their obligations, and consumers are aware of their rights and are empowered to take action. In engaging and partnering with industry bodies and other regulators, CBS is able to better understand and target its compliance and regulatory initiatives to identify risk, and proactively address areas of harm.

CBS also works closely with the media to help raise public awareness about particular issues or significant changes affecting industry and the public.

We have an obligation to the public and will, where appropriate, publicise our enforcement outcomes to ensure consumers and businesses are aware of their rights and obligations.

CBS empowers consumers to understand their rights and informs business and industry of their obligations and changes to legislation through information available on our website (www.cbs.sa.gov.au) and the Government of South Australia's website (www.sa.gov.au), as well as by providing advice via telephone ([131 882](tel:131882)).

Monitoring and surveillance

CBS initiates proactive checks and conducts surveillance to protect consumers. We will often target resources and undertake strategic surveillance and inspection operations in our priority areas, or in response to emerging issues.

CBS also responds to reports from members of the public, industry associations and other government agencies about alleged breaches of the legislation we administer by undertaking targeted monitoring.

Conciliation

The Advice and Conciliation Branch provides advice to consumers on fair trading matters to educate and give tools to consumers so that they may try and resolve the matter with the trader directly.

Our conciliation service is generally only offered when consumers have used reasonable attempts to resolve their disputes with traders, and where the matter has been assessed as suitable for conciliation. This includes an assessment of the level of detriment involved. More serious matters may be assessed as suitable for a compulsory conciliation conference, which is usually undertaken face to face with all parties, including the CBS conciliator, in the same room. A trader who is asked by the Commissioner to attend a compulsory conciliation conference, must attend or risk being penalised.

CBS also undertakes voluntary conciliation conferences in person or by telephone.

A very large number of matters are resolved using CBS' advice and conciliation services each year.

Written warnings

Depending on the severity of the breach, CBS may choose to issue a written warning to the business or individual trader about instances of illegal or inappropriate conduct.

Public assurances and undertakings

As an alternative to taking legal action, CBS may accept a written assurance or undertaking that states that the business or individual will refrain from engaging in specified unlawful conduct.

Factors that may result in CBS accepting an assurance from a business or individual, if it appears that they have breached the legislation administered by CBS, include whether the person is:

- prepared to take responsibility for and acknowledge the conduct may have breached the law
- co-operative with CBS' investigation
- prepared to provide redress to affected consumers or some other remedy to undo the harm
- prepared to put in place measures to achieve future compliance.

If CBS accepts the assurance or undertaking, CBS will not bring court proceedings against the business or individual concerned. However, if the business or individual fails to comply with an assurance or undertaking, they are guilty of an offence and are liable for prosecution.

Where a business or individual enters into an assurance or undertaking with CBS, it may be referred to in public or media statements and may be placed on CBS' website.

Public naming

CBS is empowered under the *Australian Consumer Law* and section 48 of the *Fair Trading Act 1987* to publicly name a trader in order to protect the public. CBS may do this where unsatisfactory or dangerous goods are being sold, the services being supplied by a trader are unsatisfactory, or business practices are unsafe.

Expiations

As an alternative to prosecution, CBS may issue an expiation notice in accordance with the *Expiation of Offences Act 1996* or under the *Australian Consumer Law*.

Specific breaches of legislation are expiable with a fee (like an upfront fine) set at a much lower level than the maximum penalty that may be imposed by a court. A business or individual may choose to pay the expiation fee or elect to be prosecuted in court.

Disciplinary action

CBS may take disciplinary action against an individual, in some cases without the involvement of a court or tribunal.

CBS may also seek orders from a court or tribunal in a disciplinary action for pecuniary penalties, cancellation or suspension of a licence or registration, variation to the licence or registration, disqualification from being licensed or prohibition from participating in an industry.

Civil remedies

Civil action may be taken to stop illegal conduct or to obtain redress (like a make good) for consumers or both. An application can be made by the person who suffered the loss or by CBS in appropriate circumstances.

The court may make an order that the person who broke the law compensate the victim by paying money as loss or damage. A court order may also avoid whole or parts of a contract, vary a contract, direct a refund or return of property or direct repair or parts of a good or the provision of specified services.

Civil pecuniary penalties may also apply. For example, under the *Australian Consumer Law*, a court may impose significant penalties.

Prosecution

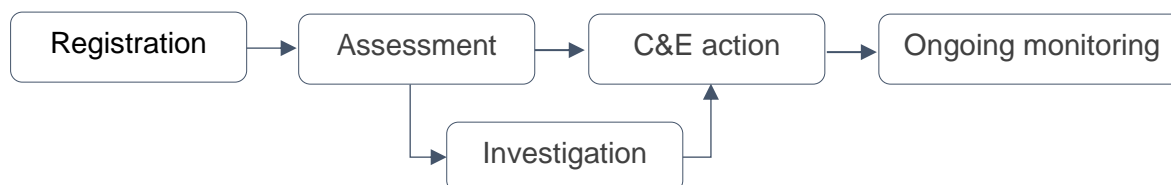
Criminal prosecution aims to stop illegal conduct and to act as a strong deterrent to further breaches of legislation. The penalties can include fines or imprisonment and other remedies are available, such as orders providing redress or compensation.

Intervention

A formal intervention is a compliance tool used by CBS, where serious issues of concern have been brought to the attention of the Commissioner that have the potential to be addressed through corrective action by the trader or licensee. It allows for issues to be addressed, and the risk of harm or detriment minimised, without the need to escalate to more serious enforcement action such as prosecution or disciplinary action. The application of the intervention policy does not prevent such action being taken later.

Compliance and enforcement process

The cycle of a potential breach



Registration

CBS obtains information about potential breaches of legislation through:

- complaints from consumers
- proactive monitoring of the market through inspections and online surveillance
- referrals from other agencies and interstate counterparts
- review of intelligence information
- monitoring the media.

Each potential breach of legislation is registered in CBS' case management system and checked whether it relates to legislation administered by CBS, if there is evidence available to support the alleged breach and whether it requires urgent attention. Where the complaint has originated from a consumer, CBS promptly acknowledges receipt of the complaint and provides advice about CBS processes.

Assessment

Matters falling within CBS' jurisdiction, that are supported by evidence, are allocated for assessment to consider whether any of the compliance or enforcement options should be used to deal with the alleged breach of legislation.

CBS determines to either:

- take compliance or enforcement action
- refer the matter to another team in CBS' Compliance and Enforcement branch for further assessment, to educate the business, licensee or industry body, to conduct an inspection or to initiate an investigation
- refer the matter to another more relevant branch of CBS
- refer the matter to another agency
- take no further action.

Where no further action is taken, the information is retained for intelligence purposes. The information may inform future compliance or enforcement actions.

CBS will endeavour to notify a complainant of the outcome of the assessment.

Investigation

Some matters require investigation before CBS is able to determine whether any compliance or enforcement action should be taken, and if so, what that action should be. Such matters are referred to the Investigation and Compliance Team.

Compliance and enforcement action

CBS will take the compliance and enforcement action, if any, which has been determined during the registration, assessment and investigation process.

Ongoing monitoring

CBS monitors the conduct of businesses or licensees that have been the subject of compliance or enforcement action to ensure their practices have changed and that they are now compliant.

Other services provided by CBS to assist consumers and traders

The Advice and Conciliation branch of CBS provides advice to consumers and traders who are involved in a dispute to assist those parties to understand their rights and responsibilities.

It provides practical advice to consumers on how to resolve their fair trading disputes without CBS' assistance.

Where consumers request further assistance, CBS may attempt to resolve the dispute by conciliation.

Some matters that originate in the Advice and Conciliation branch are referred to the Compliance and Enforcement branch of CBS.

The assessment and investigation of matters by the Compliance and Enforcement branch can occur independently of the progression of the matters through the Advice and Conciliation branch. Accordingly, the two processes do not necessarily occur simultaneously or sequentially.

It is important to note that even if a dispute is resolved between the consumer and trader, CBS may still take compliance and enforcement action in relation to any breach of legislation.

Attachment 1 - Legislation

Consumer and Business Services supports the Minister for Consumer and Business Affairs and the Commissioner to administer the following legislation:

- *Associations Incorporation Act 1985*
- *Australian Consumer Law*
- *Authorised Betting Operations Act 2000*
- *Births, Deaths and Marriages Registration Act 1996*
- *Building and Construction Industry Security of Payment Act 2009*
- *Building Work Contractors Act 1995*
- *Burial and Cremation Act 2013*
- *Casino Act 1997*
- *Collections for Charitable Purposes Act 1939*
- *Community Titles Act 1996*
- *Companies (Administration) Act 1982*
- *Conveyancers Act 1994*
- *Co-operatives National Law (SA) 2013*
- *Fair Trading Act 1987*
- *Gambling Administration Act 2019*
- *Gaming Machines Act 1992*
- *Hairdressers Act 1988*
- *Justices of the Peace Act 2005*
- *Labour Hire Licensing Act 2017*
- *Land Agents Act 1994*
- *Land and Business (Sale and Conveyancing) Act 1994*
- *Land Valuers Act 1994*
- *Liquor Licensing Act 1997*
- *Lotteries Act 2019*
- *Misrepresentation Act 1972*
- *Partnership Act 1891*
- *Plumbers, Gas Fitters and Electricians Act 1995*
- *Prices Act 1948*
- *Problem Gambling Family Protection Orders Act 2004*
- *Relationships Register Act 2016*
- *Residential Parks Act 2007*
- *Residential Tenancies Act 1995*
- *Second-hand Vehicle Dealers Act 1995*
- *Security and Investigation Industry Act 1995*
- *Sexual Reassignment Act 1988*
- *Strata Titles Act 1988*
- *Tattooing Industry Control Act 2015*

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