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Compliance & Enforcement Policy 2022-23



Table of Contents

.....	1
Introduction	3
Principles	3
Compliance and Enforcement Priorities 2022-23	4
Builders	4
Second-hand Vehicle Dealers	4
Real Estate.....	4
Australian Consumer Law.....	5
Casino and Gambling	5
Fuel Pricing Information Scheme.....	5
Compliance and Enforcement Strategy	6
Compliance and Enforcement Options.....	9
Education and engagement.....	9
Monitoring and surveillance	9
Written warnings.....	9
Public assurances and undertakings	9
Public naming.....	10
Expiations.....	10
Disciplinary action	10
Civil remedies.....	11
Prosecution	11
Compliance and Enforcement Process	12
Registration	12
Assessment.....	12
Investigation	13
Compliance and Enforcement Action.....	13
Ongoing Monitoring	13
Other services provided by CBS to assist consumers and traders	13
Attachment 1 – Legislation.....	14

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.

CBS supports the Attorney-General and the Commissioner, Consumer and Business Services to administer a wide range of legislation (see Attachment 1).

This Compliance and Enforcement Policy sets out the framework adopted by CBS to achieve compliance with the law.

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:

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 2022-23

Having regard to intelligence information 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 2022-23 are set out below. These priorities will remain in place until 30 June 2023 when new priorities will be set for the new financial year.

Builders

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

The building industry is 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 can be a safety risk.

The strategic priority areas for CBS relating to this industry in 2022-23 are:

- individuals or companies performing unlicensed building work, including operating outside of 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.

This is particularly important with the price of second-hand vehicles continuing to rise.

The strategic priority areas for CBS relating to this industry in 2022-23 are:

- unlicensed sellers of second-hand vehicles
- 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.

CBS wants to ensure that registered agencies and individuals who are engaging in unlawful behaviour are identified.

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The strategic priority areas for CBS relating to this industry in 2022-23 are:

- misrepresentations about the price of properties
- trust account issues.

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.

The strategic priority areas for CBS relating to the *Australian Consumer Law* in 2022-23 are:

- product safety
- unconscionable conduct, particularly in relation to pricing.

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 *Lottery and Gaming Act 1936*.

The regulation of the casino and gambling in South Australia is a key focus for CBS in 2022-23.

The strategic priority areas for CBS relating to these industries in 2022-23 are:

- reducing gambling related harm
- minimising the influence of organised criminal activity in the industries.

Fuel Pricing Information Scheme

CBS is responsible for administering the Fuel Pricing Information Scheme (the scheme), which was established under the *Fair Trading Act 1987*. The scheme involves the dissemination of real-time information relating to fuel pricing.

CBS is committed to ensuring the public can make informed decisions about where to buy petrol in South Australia.

The strategic priority areas for CBS relating to the scheme in 2022-23 are:

- reporting changes to fuel prices within 30 minutes
- reporting when fuel is unavailable

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.

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To make the best use of resources and maximise public benefit, CBS' compliance and enforcement activity will primarily target areas of strategic priority 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 for 2022-23.

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 2022-23
- whether the conduct is of significant public interest or concern
- whether the conduct has resulted or could result in substantial harm or detriment to consumers or an industry
- whether the consumers affected or likely to be affected by the conduct in question are vulnerable
- whether the conduct occurred over a long period
- whether the conduct demonstrates blatant or systemic misconduct
- whether the matter involves parties who have previously had enforcement action taken against them for the alleged or similar conduct
- whether there is sufficient evidence to warrant commencing or proceeding with enforcement action
- whether a profit was obtained by the individual or body corporate as a result of the conduct and, if so, the extent of the profit.

CBS will not take compliance or enforcement action in relation to alleged breaches of legislation which 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

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- 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.

CBS engages 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.

CBS has an obligation to the public and will publicise its 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 its website (www.cbs.sa.gov.au) and the Government of South Australia's website (www.sa.gov.au), and by providing advice via telephone (131 882).

Monitoring and surveillance

CBS initiates proactive checks and conducts surveillance to protect consumers.

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

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 the business or individual has breached the legislation administered by CBS, include whether the person is:

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- 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 will be placed on the public register located 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. For example, CBS may do so 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 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.

CBS may seek orders from a court 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 for consumers or both. An application can be made by the person who suffered the loss or by CBS in appropriate circumstances.

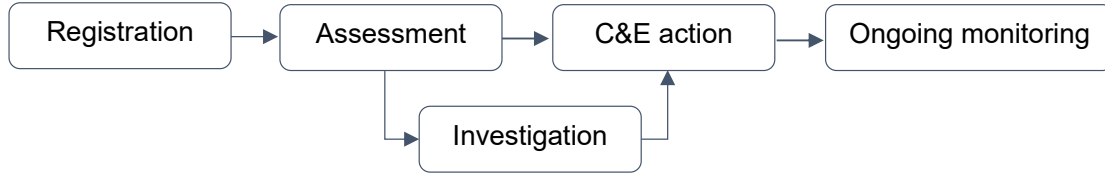
The court may make an order against the person who breached the legislation compensating the person who suffered the loss for the payment of money as loss or damage, avoiding whole or parts of a contract, varying a contract, directing a refund or return of property or directing repair or parts of a good or the provision of specified services.

Civil pecuniary penalties may also apply. For example, under the *Australian Consumer Law*, a court may impose penalties of up to \$500,000 for individuals or the greater of \$10 million, three times the value of the benefit received, or where the benefit cannot be calculated, 10 per cent of annual turnover in the preceding 12 months.

Prosecution

Criminal prosecution aims to stop illegal conduct and to act as a strong deterrent to further breaches of legislation administered by CBS. The penalties can include fines or incarceration and other remedies such as orders providing redress or compensation may be made.

Compliance and Enforcement Process



Registration

CBS obtains information about potential breaches of legislation from multiple sources:

- by receiving complaints from consumers
- by proactively monitoring the market through inspections and online surveillance
- through referrals from other agencies and interstate counterparts
- by reviewing intelligence information
- by monitoring the media.

Each potential breach of legislation is registered in CBS' case management system and considered to ascertain whether it relates to legislation administered by CBS, whether there is evidence available to support the alleged breach and whether it requires urgent attention.

Assessment

The matters falling within CBS' jurisdiction which 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 will determine whether:

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

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. 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 assessment and investigation process.

Ongoing Monitoring

CBS monitors the conduct of businesses or licensees who 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.

The Advice and Conciliation branch provides practical advice to consumers on how to resolve their disputes without CBS' assistance.

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

Some matters which 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 occurs 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 Attorney-General 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*
- *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*
- *Lottery and Gaming Act 1936*
- *Marriage Act 1961*
- *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*
- *Tattooing Industry Control Act 2015*

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