

Publicising CBS enforcement activity

Policy

Purpose

This policy sets out the principles Consumer and Business Services (CBS) applies when deciding whether, when and how to publish information about its operations.

Background

CBS is South Australia's consumer affairs regulator and is the regulator of key licensed industries, including building and trade services, real estate and conveyancers, and the liquor, tobacco and gambling sectors.¹ CBS performs these functions by administering and exercising powers under key pieces of South Australian consumer protection and regulatory legislation.²

CBS' functions include:

- advising and educating consumers, renters, landlords, businesses, traders and organisations on their rights and responsibilities, including when changes are made to the law
- helping consumers and traders resolve disputes through conciliation
- publishing reports and guidelines relating to the interests of consumers and to assist traders and businesses to comply with their legal obligations

¹ CBS's functions are formally performed by the Commissioner for Consumer Affairs, the Liquor and Gaming Commissioner, the Commissioner for Prices and the Commissioner for Corporate Affairs. CBS assists the Commissioner to administer those functions.

² This includes the *Fair Trading Act 1987* (SA), the *Australian Consumer Law* (SA) the *Residential Tenancies Act 1995* (SA), the *Building Work Contractors Act 1995* (SA), the *Plumbers, Gas Fitters and Electricians Act 1995* (SA), the *Land Agents Act 1994* (SA), the *Conveyancers Act 1994* (SA), the *Gambling Administration Act 2019* (SA), the *Casino Act 1997* (SA) and the *Liquor Licensing Act 1997* (SA)

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- monitoring, investigating and enforcing compliance with the consumer and other laws CBS regulates, including by taking civil and criminal proceedings
- issuing licences to individuals or companies who want to participate in regulated industries or sell regulated goods and services, monitoring compliance with licence conditions and relevant laws and taking disciplinary action where necessary to protect the public and uphold industry standards.

Policy Statement

CBS uses communication with the public as a regulatory tool to prevent harm, promote compliance and maintain confidence and integrity in the markets and industries we regulate.

When deciding whether and how to publish information about its enforcement and other activity, CBS has regard to the following matters.

1. As a public sector organisation, CBS has an obligation to operate as openly and transparently as possible, including by explaining what action we take and the reasons for that action. Informing the market, industry and the public about our enforcement activity is an important means by which CBS promotes and maintains industry standards, deters non-compliant conduct and protects consumers.
2. Publicising our activities promotes awareness of, and confidence in, CBS as a regulator. This assists us to perform our functions and to identify and prevent consumer harm.
3. Fairness to individuals, companies and businesses who are involved in our compliance and other operations.
4. The right of individuals not to be subject to unreasonable or unjustified invasions of their privacy.
5. The impact any disclosure has on ongoing investigations or other operational activity.

When applying this policy, CBS will usually favour disclosure when it promotes the transparency of its operations and the public purposes it is established to achieve and will give particular weight to publication where doing so is likely to:

- reduce or prevent significant consumer harm
- promote general or specific deterrence
- address systemic or emerging risks in the industries we regulate
- protect vulnerable consumers
- clarify expected standards of conduct in the market.

How we publish information

CBS raises awareness of its work through:

- media releases or statements published on our website and provided to media outlets
- publishing news items on our website and in newsletters distributed to stakeholders
- providing comment in response to enquiries from media and stakeholders
- publishing media releases, articles and other content on social media

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- making and publishing public warnings or statements under section 223 of the *Australian Consumer Law* (SA) or sections 48 and 49 of the *Fair Trading Act 1987* (SA)
- publishing on our website assurances made under section 79 of the *Fair Trading Act 1987* (SA) or section 218 of the *Australian Consumer Law* (SA).

When publishing information about our enforcement activities, CBS will explain both the action taken and the reasons for that decision. This is to promote public and industry understanding, support deterrence, and strengthen confidence in CBS and the regulatory system.

Public comment on CBS activity

This section sets out how CBS publicises information about specific operational and enforcement activity.

Operational matters (including complaints and investigations)

CBS does not comment on or publicise information about active or past operational activity unless it is in the public interest to do so.

Operational matters include:

- complaints or other information we have received about traders or other entities we regulate
- investigations that have not resulted in, or have not yet resulted in, criminal, civil or disciplinary proceedings
- information about licensing applications or decisions that is not required to be published or disclosed under legislation or not otherwise already publicly available.

CBS will carefully consider whether it is in the public interest to publish or disclose information about an operational matter on a case-by-case basis.

Factors that may weigh in favour of disclosure or publication being in the public interest include where disclosure or publication could:

- promote compliance with the law by raising awareness of applicable standards and laws and the consequences of failing to comply with them
- prevent consumer harm, widespread misconduct or allay a public concern
- promote confidence in the market, the industries CBS regulates or CBS as a regulator by raising awareness of the consumer protection system and demonstrating its operation
- improve understanding within the community, the market and the industries we regulate of CBS's role and how it operates
- assist a current investigation or operational activity, for example, by encouraging witnesses or other persons with relevant information to contact CBS
- help us be accountable for the performance of CBS functions.

Factors that may prevent or weigh against the disclosure or publication of information about an operational matter include whether the disclosure or publication could:

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- prejudice current or prospective CBS investigations or enforcement activities
- improperly interfere with a current or future court or tribunal proceeding
- unreasonably interfere with the privacy of individuals, including complainants, witnesses or persons who are the subject of a CBS investigation
- cause unfairness or undue reputational harm to a person or organisation involved in a CBS investigation.

From time to time, CBS may publish statistical and other information about its operational activities. Because such information does not identify any person, the factors weighing against disclosure are less likely to apply.

Court and tribunal proceedings (including disciplinary proceedings)

The start of proceedings

If CBS initiates criminal, civil or disciplinary proceedings in a court or tribunal, CBS may announce this by media release or news item on our website.

The announcement will generally be limited to a description of what the proceedings are about and what CBS is alleging.

CBS will usually not make an announcement relating to proceedings until:

- in the case of criminal proceedings - shortly after the first court appearance by the accused
- in the case of civil proceedings - originating documents have been filed and served
- in the case of disciplinary proceedings – shortly after any complaint or other initiating process has been filed and served.

CBS may make an announcement earlier if CBS' investigation or the allegations it is examining are already a matter of public record.

Where CBS makes a statement at the start of proceedings, a further statement will be published at the conclusion of proceedings which describes the outcome.

During proceedings

Once proceedings are commenced, CBS will not make any comment beyond a description of what it is alleging in those proceedings and the parties involved. This information is likely to have been included in a statement made by CBS when the proceedings commenced (which will be available on the CBS website).

Media representatives or members of the public who wish to follow a trial can attend court or a tribunal and apply to the relevant court or tribunal for access to documents filed or admitted into evidence in the proceedings.³

The end of proceedings

CBS may publish the outcome of proceedings by media release or news item on the CBS website. When doing so, CBS will publish any verdict or determination made by the court or tribunal and any sentencing, penalty or other orders made.

³ For further information see [For the media - CAA](#) & [Requesting transcripts, audio or other documents | South Australian Civil and Administrative Tribunal](#)

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If a matter has resolved by way of settlement, CBS will usually make a statement publicising that settlement. Because of the public interest in the proceedings brought by CBS, and the need to operate openly and transparently, CBS will not agree to any settlement that prevents it from publicising the outcome.

When CBS publishes information about the outcome of court or tribunal proceedings, CBS will also explain why it decided to take the enforcement action. CBS will also name the parties involved in the proceedings (noting that this will usually be a matter of public record).

Notwithstanding the above, CBS will not publish any of the above information if to do so would contravene an order of a court or tribunal.

Appeals

If CBS is notified that a court or tribunal decision has been appealed, CBS will record that fact, and the outcome of any appeal, on its website and in any public statement made after receiving that advice.

If an appeal is successful, CBS will add a note to this effect to any previous public statement it has made about the outcome of earlier proceedings or remove the statements.

Expiations

CBS is empowered to issue expiation notices under the *Expiation of Offences Act 1995* (SA) for certain offences under the legislation it administers.

An expiation notice gives a person the opportunity to pay an expiation fee to avoid prosecution for an alleged offence. The expiation of an alleged offence does not constitute an admission of guilt or civil liability.

CBS may publicise the issue of an expiation notice when it considers it is in the public interest to do so.

Factors that may indicate there is a public interest in publicising an expiation notice include:

- the seriousness of the alleged conduct and whether it has or could cause significant harm to consumers
- the alleged conduct involves a systemic or serious matter that CBS considers may adversely affect the interests of consumers or undermine industry standards or public confidence in the industries it regulates
- raising awareness of the alleged conduct and CBS' response to it is otherwise in the public interest and advances CBS functions.

A public statement about an expiation notice will include:

- the name of the person or entity that received the notice
- the alleged offence the subject of the expiation notice and information
- the alleged conduct the subject of that offence
- why CBS decided to issue the expiation notice
- the nature of an expiation, including that the notice relates to an alleged or suspected offence and payment of a notice is not an admission of guilt or any civil liability.

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Decisions to suspend, cancel or impose conditions on a licence

If a decision is made to suspend, cancel or impose conditions on a person's licence, CBS may make a public statement about the decision once the person subject to it has received notice of it.

Any such statement will:

- identify the person
- describe the action taken
- explain why the action was taken
- explain any rights the person has to review or appeal the decision.

If CBS receives notice that a person has appealed or sought a review of the decision, it will update the statement to include reference to that fact.

CBS will also update the statement to include the outcome of any such review or appeal.

Information about whether a person holds a licence, whether that licence is subject to any conditions, whether the licence is or has been suspended and whether the licence holder is or has been subject to disciplinary action is made available as a matter of course by CBS on its website.⁴

Disciplinary and other action under the *Gambling Administration Act 2019 (SA)*

CBS can take disciplinary action and issue default and compliance notices under the *Gambling Administration Act 2019 (SA)*.

CBS will publish a statement recording the outcome of any such disciplinary action it takes under this Act.

It may also publish a statement containing information about any default or compliance notices it issues. A statement about a default or compliance notice will not be made until the recipient has had a reasonable opportunity to respond to it.

Any statement about disciplinary action or a default or compliance notice will:

- identify the person or entity to which the action or notice relates.
- describe the grounds for disciplinary action to which the action or notice relates.
- explain why CBS took the disciplinary action or issued the notice (including, in the case of disciplinary action, by the publication of reasons).
- note any response the person or entity has made to the action or notice.
- explain any rights the person has to review or appeal CBS' decision.

Undertakings and assurances

If CBS accepts an enforceable undertaking or assurance, it will publish that undertaking or assurance on its website.

Where appropriate, CBS may seek to publicise any undertaking or assurance through either social media channels, a media release or by publishing a news item on the CBS website.

⁴ [Find a licence holder | Consumer and Business Services](#)

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Public warnings

CBS may give public warnings and other statements under section 48 of the *Fair Trading Act 1987* (SA) and section 223 of the *Australian Consumer Law* (SA).

Public warnings will be published on the CBS website. They will be retained on the website permanently.

CBS may issue a public warning in respect of a person notwithstanding the fact that it has also published information about the person under other parts of this policy.

Advance notice

CBS may, at its discretion, provide a person with an advance copy of a proposed public statement so that they may make submissions about:

- the factual accuracy of the statement.
- whether the statement should be made and, if so, in what form.

The decision whether to publish a statement, and its final content, is ultimately a matter for CBS.

Advance notice of this kind will usually only be provided where enforcement action has occurred following a negotiated outcome (for example, an undertaking or assurance).

CBS does not consider it necessary to provide advance notice where the statement recites or repeats information that is already a matter of public record or made public as a matter of course (for example, as a result of court or tribunal proceedings, or information made available by CBS as part of its licensing functions).

Coordination with other regulators and public authorities

Where appropriate, CBS may coordinate public communications with other regulators, law enforcement agencies or government bodies to ensure consistency, avoid prejudice to joint operations, and maximise regulatory impact.

Seeking public comment

Only the Commissioner or authorised spokespeople are permitted to speak on behalf of CBS. A member of the media or other person seeking comment should contact AGD Media Relations on 0422 007 069 or by emailing mediarelations@sa.gov.au.

Policy Approval

Approver

Brett Humphrey
Commissioner