

Legislative Council—No 9A

As reported with amendments and an amendment to the Long Title, report adopted,
Standing Orders suspended and passed remaining stages, 3 April 2012

South Australia

Statutes Amendment (Criminal Intelligence) Bill 2010

A BILL FOR

An Act to amend the *Casino Act 1997*; the *Evidence Act 1929*; the *Firearms Act 1977*; the *Freedom of Information Act 1991*; the *Gaming Machines Act 1992*; the *Hydroponics Industry Control Act 2009*; the *Liquor Licensing Act 1997*; the *Police Act 1998*; the *Security and Investigation Agents Act 1995*; the *Serious and Organised Crime (Control) Act 2008*; the *Serious and Organised Crime (Unexplained Wealth) Act 2009*; and the *Summary Offences Act 1953*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Criminal Intelligence) Act 2010*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Casino Act 1997*

3A—Amendment of section 3—Interpretation

(1) Section 3(1)—after the definition of *child* insert:

classified criminal intelligence means information determined by the Commissioner of Police to be classified criminal intelligence under Part 9A of the *Police Act 1998*;

(2) Section 3(1), definition of *criminal intelligence*—delete the definition

3B—Amendment of section 45A—Commissioner of Police's power to bar

Section 45A(3)—delete "information that is classified by the Commissioner of Police as" and substitute:

classified

4—Substitution of section 66A

Section 66A—delete the section and substitute:

66A—Procedure in relation to criminal intelligence

In any proceedings before the Authority under this Part—

- (a) must, on the application of the Commissioner of Police, take steps to maintain the confidentiality of classified criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and
- (b) may take evidence consisting of or relating to classified criminal intelligence by way of affidavit of a police officer of or above the rank of superintendent.

5—Amendment of section 69—Confidentiality of criminal intelligence and other information provided by Commissioner of Police

Section 69(2), (3) and (4)—delete subsections (2), (3) and (4) and substitute:

- (2) Classified criminal intelligence provided by the Commissioner of Police for the purposes of this Act may not be disclosed to any person other than the Authority, the Commissioner, the Minister, a court or a person to whom the Commissioner of Police authorises its disclosure.

Part 2A—Amendment of *Evidence Act 1929*

5A—Insertion of Part 7 Division 11

After section 67J insert:

Division 11—Classified criminal intelligence

67K—Interpretation

In this Division—

classified criminal intelligence means information determined by the Commissioner of Police to be classified criminal intelligence under Part 9A of the *Police Act 1998*;

Crown authority means—

- (a) in the case of criminal proceedings—the Director of Public Prosecutions, a delegate of the Director of Public Prosecutions, a police officer, or any other person acting in a public official capacity, who is responsible for commencing or conducting a prosecution; and
- (b) in the case of any other proceedings—a person who holds an office or position in the employment of the State, or an instrumentality or agency of the State, who is acting in a public official capacity in the proceedings.

67L—Procedure where classified criminal intelligence to be relied on

- (1) If, in any proceedings before a court, a Crown authority intends to adduce, or otherwise rely on, classified criminal intelligence, the Crown authority must give notice of that intention to the court at the earliest opportunity (and in accordance with any relevant rules of court).
- (2) If notice is given to a court under subsection (1), the court must, in such manner as the court thinks fit, undertake an inquiry to determine—
 - (a) whether the information is properly determined by the Commissioner of Police to be classified criminal intelligence; and
 - (b) if the court finds that the information is properly determined by the Commissioner of Police to be classified criminal intelligence—whether the information is sufficiently reliable and of such probative value that it is in the interests of justice to allow the Crown authority to adduce or rely on it; and

- (c) if the court finds that the Crown authority should be able to adduce or rely on the information—the steps that should be taken to maintain the confidentiality of the information whilst ensuring, as far as reasonably possible, that other parties to the proceedings are not unduly prejudiced by the lack of disclosure.

67M—Powers of court in dealing with classified criminal intelligence

- (1) Without limiting the powers of a court in dealing with classified criminal intelligence, a court (whether in the course of an inquiry under section 67L(2) or in any proceedings to which such inquiry relates) may do any of the following in relation to classified criminal intelligence:
- (a) receive any evidence or request submissions from any parties to the proceedings;
 - (b) consider, and endorse or reject, any agreement between the parties to the proceedings in relation to the disclosure or management of the classified criminal intelligence;
 - (c) exclude persons from the court while any evidence is received or submissions made;
 - (d) make orders suppressing any evidence or submissions from publication;
 - (e) make orders providing for any evidence or submissions to be deleted from a version of the official record of the proceedings provided to a party to the proceedings or to a member of the public.
- (2) Subsection (1) has effect despite any other provision of this, or any other, Act.

67N—Withdrawal of information from proceedings

If, on an inquiry under section 67L(2) or in any proceedings to which such inquiry relates, the court determines that the confidentiality of classified criminal intelligence is not to be maintained (whether because, in the opinion of the court, the Commissioner of Police erred in so classifying the information or for any other reason), the Crown authority must be informed of the proposed determination and given the opportunity to withdraw the information from the proceedings.

Part 3—Amendment of *Firearms Act 1977*

6—Amendment of section 5—Interpretation

- (1) Section 5(1)—after the definition of *class H firearms* insert:

classified criminal intelligence means information determined by the Commissioner of Police to be classified criminal intelligence under Part 9A of the *Police Act 1998*;

- (2) Section 5(1), definition of *criminal intelligence*—delete the definition

7—Amendment of section 6—The Registrar

Section 6(4)—delete subsection (4)

7A—Amendment of section 10—Procedure

Section 10(3)—delete "information provided to the committee by the Registrar that is classified by the Registrar as" and substitute:

classified

7B—Amendment of section 10B—Firearms prohibition order issued by Registrar

Section 10B(5)—delete "information that is classified by the Registrar as" and substitute:

classified

7C—Amendment of section 12—Application for firearms licence

Section 12(7a)(b)—delete "information that is classified by the Registrar as" and substitute:

classified

7D—Amendment of section 20—Cancellation, variation and suspension of licence

Section 20(3a)—delete "information that is classified by the Registrar as" and substitute:

classified

7E—Amendment of section 26B—Review by Firearms Review Committee

Section 26B(3)—delete "information that is classified by the Registrar as" and substitute:

classified

7F—Amendment of section 26C—Right of appeal to District Court

- (1) Section 26C(3)—delete "information that is classified by the Registrar as" and substitute:

classified

- (2) Section 26C(5) to (10)—delete subsections (5) to (10) (inclusive)

Part 3A—Amendment of *Freedom of Information Act 1991*

7G—Amendment of Schedule 1—Exempt documents

- (1) Schedule 1, clause 4(3a)—delete "information classified by the Commissioner of Police, in accordance with the provisions of any other Act, as" and substitute:

classified

- (2) Schedule 1, clause 4—after subclause (4) insert:

- (5) In this clause—

classified criminal intelligence means information determined by the Commissioner of Police to be classified criminal intelligence under Part 9A of the *Police Act 1998*.

Part 4—Amendment of *Gaming Machines Act 1992*

8—Amendment of section 3—Interpretation

- (1) Section 3(1)—after the definition of *certificate* insert:

classified criminal intelligence means information determined by the Commissioner of Police to be classified criminal intelligence under Part 9A of the *Police Act 1998*;

- (2) Section 3(1), definition of *criminal intelligence*—delete the definition

8A—Amendment of heading to Part 2 Division 4

Heading to Part 2 Division 4—delete "Criminal" and substitute:

Classified criminal

8B—Amendment of section 12—Classified criminal intelligence

- (1) Section 12(1)—delete "by the Commissioner of Police as"

- (2) Section 12(2)(b)—delete "information that is classified by the Commissioner of Police as" and substitute:

classified

- (3) Section 12(3)(a) and (b)—delete "information classified by the Commissioner of Police as" wherever occurring and substitute in each case:

classified

- (4) Section 12(4)—delete "information that is classified by the Commissioner of Police as" and substitute:

classified

- (5) Section 12(5)—delete subsection (5)

8C—Amendment of section 70A—Procedure in relation to classified criminal intelligence

- (1) Section 70A—delete "under this Part, the Court or the Authority" and substitute:

before the Authority under this Part

- (2) Section 70A(a) and (b)—delete "information classified by the Commissioner of Police as" wherever occurring and substitute in each case:

classified

Part 4A—Amendment of *Hydroponics Industry Control Act 2009*

8D—Amendment of section 3—Interpretation

- (1) Section 3—after the definition of *authorised officer* insert:

classified criminal intelligence means information determined by the Commissioner of Police to be classified criminal intelligence under Part 9A of the *Police Act 1998*;

- (2) Section 3, definition of *criminal intelligence*—delete the definition

8E—Substitution of sections 6 and 7

Sections 6 and 7—delete the sections and substitute:

6—Delegation

Despite section 19 of the *Police Act 1998*, the Commissioner may not delegate a function or power of the Commissioner under this Act except to a senior police officer.

7—Classified criminal intelligence

If the Commissioner—

- (a) refuses an application for a licence or an approval or for a renewal of a licence, or varies or revokes a condition, or imposes a new condition, of a licence or approval, or revokes or proposes to revoke a licence or approval under this Act; and

- (b) the decision to do so is made because of classified criminal intelligence,

the Commissioner is not required to provide any grounds or reasons for the decision other than that to grant the application would be contrary to the public interest, or that it would be contrary to the public interest if the licence or approval were to continue in force without variation or new condition imposed, or that it would be contrary to the public interest if the person were to be or continue to be licensed or approved.

8F—Amendment of section 37—Review of operation of Act

Section 37(2)—delete "by the Commissioner as"

Part 5—Amendment of *Liquor Licensing Act 1997*

8G—Amendment of section 4—Interpretation

- (1) Section 4—after the definition of *beneficiary* insert:

classified criminal intelligence means information determined by the Commissioner of Police to be classified criminal intelligence under Part 9A of the *Police Act 1998*;

- (2) Section 4, definition of *criminal intelligence*—delete the definition

9—Substitution of Part 2 Division 6

Part 2 Division 6—delete the Division and substitute:

Division 6—Classified criminal intelligence

28A—Classified criminal intelligence

- (1) Classified criminal intelligence provided by the Commissioner of Police for the purposes of this Act may not be disclosed to any person other than the Commissioner, the Minister, a court or a person to whom the Commissioner of Police authorises its disclosure.

- (2) If a licensing authority—

- (a) refuses an application for a licence, the transfer of a licence or an approval, or takes disciplinary action against a person, or revokes or proposes to revoke an approval under Part 4 Division 10A; and

- (b) the decision to do so is made because of classified criminal intelligence,

the licensing authority is not required to provide any grounds or reasons for the decision other than that to grant the application would be contrary to the public interest, or that it would be contrary to the public interest if the person were to be or continue to be licensed or approved, or that it would be contrary to the public interest if the approval were to continue in force.

- (3) If the Commissioner proposes to impose a licence condition to improve public order and safety or to issue a public order and safety notice in respect of a licence and the decision to do so is made because of classified criminal intelligence, the Commissioner is not required to provide any grounds or reasons for the decision other than that it would be contrary to the public interest if the condition were not imposed or the notice were not issued.

- (4) If the Commissioner of Police lodges an objection to an application under Part 4 because of classified criminal intelligence—

- (a) the Commissioner of Police is not required to serve a copy of the notice of objection on the applicant; and

- (b) the licensing authority must, at least 7 days before the day appointed for the hearing of the application, advise the applicant in writing that the Commissioner of Police has objected to the application on the ground that to grant the application would be contrary to the public interest.

- (5) If the Commissioner or the Commissioner of Police lodges a complaint under Part 8 in respect of a person because of classified criminal intelligence, the complaint need only state that it would be contrary to the public interest if the person were to be or continue to be licensed or approved.

- (6) If the Commissioner of Police bars a person from entering or remaining on licensed premises by order under Part 9 Division 3 because of classified criminal intelligence, the order need only state that it would be contrary to the public interest if the person were not so barred.

9A—Amendment of section 128A—Report to Minister on barring orders

Section 128A(1)(b)—delete "information classified by the Commissioner of Police as" and substitute:

classified

Part 5A—Amendment of *Police Act 1998*

9B—Amendment of section 19—Delegation

Section 19—after subsection (1) insert:

- (1a) The Commissioner may not, however, delegate the function of determining whether information is classified criminal intelligence under Part 9A except to a Deputy Commissioner or Assistant Commissioner of Police.

9C—Insertion of Part 9A

After section 63 insert:

Part 9A—Classified criminal intelligence

63A—Interpretation

In this Part—

classified criminal intelligence means information determined by the Commissioner of Police to be classified criminal intelligence under section 63B;

judicial officer means a person appointed as a judge of the Supreme Court or the District Court or a person appointed as judge of another State or Territory or of the Commonwealth.

**63B—Commissioner may determine that information is
classified criminal intelligence**

The Commissioner may determine that information relating to actual or suspected criminal activity (whether in this State or elsewhere) is classified criminal intelligence if—

- (a) disclosure of the information could reasonably be expected to—
 - (i) prejudice criminal investigations; or
 - (ii) enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement; or
 - (iii) endanger a person's life or physical safety; and
- (b) having assessed the information (including, where relevant, against appropriate internationally recognised police intelligence classification systems), the Commissioner is satisfied that the information is sufficiently reliable.

63C—Record keeping requirements

- (1) The Commissioner must ensure that records are kept in relation to the use of classified criminal intelligence.
- (2) The Commissioner must ensure that records kept under this section would enable the following information to be determined for each period in relation to which a review is conducted under section 63D:
 - (a) the number of occasions on which classified criminal intelligence was used for the purposes of an Act during the period and, for each such occasion, the Act in relation to which it was so used;
 - (b) the number of occasions on which classified criminal intelligence was used in the course of proceedings in a court during the period;
 - (c) the number of persons directly affected by the uses referred to in paragraphs (a) and (b) (for example, as persons subject to decisions under Acts or as parties to proceedings in a court).

63D—Independent review

- (1) The Minister must, before 1 July in each year, appoint a retired judicial officer to conduct a review on the use and management of classified criminal intelligence during the period of 12 months preceding that 1 July.

- (2) Without limiting the matters to be addressed by the review, the review must include an examination of—
- (a) the processes used by S.A. Police during the relevant period to ensure that information found to be unreliable is recorded as such by S.A. Police; and
- (b) audit systems used by S.A. Police in relation to such record keeping.
- (3) The Commissioner must ensure that a person appointed to conduct a review is provided with such information as he or she may require for the purpose of conducting the review.
- (4) A person conducting a review has, in so doing, the powers of a commission of inquiry under the *Royal Commissions Act 1917* (and any obligations under an Act to maintain the confidentiality of information do not apply with respect to the provision of such information to the person conducting the review).
- (5) A person conducting a review must maintain the confidentiality of information provided to the person that is classified criminal intelligence.
- (6) A report on a review must be presented to the Minister on or before 30 September in each year.
- (7) The Minister must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

Part 6—Amendment of *Security and Investigation Agents Act 1995*

10—Amendment of section 3—Interpretation

- (1) Section 3—after the definition of *approved psychological assessment* insert:
- classified criminal intelligence* means information determined by the Commissioner of Police to be classified criminal intelligence under Part 9A of the *Police Act 1998*;
- (2) Section 3, definition of *criminal intelligence*—delete the definition

10A—Amendment of section 5B—Classified criminal intelligence

- (1) Section 5B(1)—delete "by the Commissioner of Police as"
- (2) Section 5B(2)(b)—delete "information that is classified by the Commissioner of Police as" and substitute:
- classified
- (3) Section 5B(3)—delete "information that is classified by the Commissioner of Police as" and substitute:
- classified

- (4) Section 5B(4)—delete "information that is classified by the Commissioner of Police as" and substitute:

classified

- (5) Section 5B(5) and (6)—delete subsections (5) and (6)

Part 6A—Amendment of *Serious and Organised Crime (Control) Act 2008*

10B—Amendment of section 3—Interpretation

- (1) Section 3—after the definition of *authorisation order* insert:

classified criminal intelligence means information determined by the Commissioner of Police to be classified criminal intelligence under Part 9A of the *Police Act 1998*;

- (2) Section 3, definition of *criminal intelligence*—delete the definition

10C—Substitution of section 7

Section 7—delete the section and substitute:

7—Delegation

The Commissioner may not delegate any function or power of the Commissioner under this Act except to a senior police officer.

10D—Amendment of section 13—Disclosure of reasons and classified criminal intelligence

Section 13(2)—delete "by the Commissioner as"

10E—Amendment of section 15—Form of control order

- (1) Section 15(1)(d)—delete "subject to subsection (2)—"
(2) Section 15(2), (3) and (4)—delete subsections (2), (3) and (4)

10F—Repeal of section 21

Section 21—delete the section

10G—Amendment of section 29—Disclosure of reasons and classified criminal intelligence

- (1) Section 29(2)—delete "properly classified by the Commissioner as criminal intelligence (whether or not the information was so classified" and substitute:
classified criminal intelligence (whether or not the information was classified criminal intelligence
(2) Section 29(3) and (4)—delete subsections (3) and (4)

10H—Amendment of section 37—Annual review and report as to exercise of powers

Section 37(3)—delete "by the Commissioner as"

10I—Amendment of section 38—Review of operation of Act

Section 38(2)—delete "by the Commissioner as"

Part 6B—Amendment of *Serious and Organised Crime (Unexplained Wealth) Act 2009*

10J—Amendment of section 3—Interpretation

(1) Section 3(1)—after the definition of *benefit* insert:

classified criminal intelligence means information determined by the Commissioner of Police to be classified criminal intelligence under Part 9A of the *Police Act 1998*;

(2) Section 3(1), definition of *criminal intelligence*—delete the definition

10K—Amendment of section 6—Classified criminal intelligence

(1) Section 6(1)—delete "by the Commissioner of Police as"

(2) Section 6(2) and (3)—delete subsections (2) and (3)

10L—Amendment of section 34—Annual review and report as to exercise of powers

Section 34(3)—delete "by the Commissioner of Police as"

10M—Amendment of section 35—Review of operation of Act

Section 35(2)—delete "by the Commissioner of Police as"

Part 7—Amendment of *Summary Offences Act 1953*

12—Amendment of section 74BB—Fortification removal order

Section 74BB(5), (6), (7) and (8)—delete subsections (5), (6), (7) and (8)

13—Amendment of section 74BC—Content of fortification removal order

(1) Section 74BC(1)(b)—delete "subject to subsection (2)—"

(2) Section 74BC(2), (3) and (4)—delete subsections (2), (3) and (4)

14—Amendment of section 74BM—Application of Part

Section 74BM—after subsection (1) insert:

(1a) Nothing in subsection (1) affects the power of a court determining any proceedings under this Part to deal with classified criminal intelligence in accordance with Part 7 Division 11 of the *Evidence Act 1929*.