

# House of Assembly

As passed all stages and awaiting assent.

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South Australia

## Statutes Amendment (Criminal Intelligence) Bill 2012

A BILL FOR

An Act to amend the *Casino Act 1997*; the *Firearms Act 1977*; the *Gaming Machines Act 1992*; the *Liquor Licensing Act 1997*; the *Police Act 1998*; the *Security and Investigation Agents Act 1995*; 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 2012*.

### **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***

### **4—Substitution of section 66A**

Section 66A—delete the section and substitute:

#### **66A—Procedure in relation to criminal intelligence**

In any proceedings under this Part, the Authority or the Supreme Court—

- (a) must, on the application of the Commissioner of Police, take steps to maintain the confidentiality of information classified by the Commissioner of Police as 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 information that is so classified by the Commissioner of Police 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(4)—delete subsection (4)

## **Part 3—Amendment of *Firearms Act 1977***

### **6—Amendment of section 5—Interpretation**

Section 5(1), definition of *criminal intelligence*—delete "or to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement" and substitute:

to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or to endanger a person's life or physical safety

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

Section 26C(5) to (10)—delete subsections (5) to (10) (inclusive) and substitute:

- (5) On an appeal under this section, the Court—
  - (a) must, on the application of the Registrar, take steps to maintain the confidentiality of information classified by the Registrar as 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 information so classified by the Registrar by way of affidavit of a police officer of or above the rank of superintendent.

## **Part 4—Amendment of *Gaming Machines Act 1992***

### **8—Amendment of section 3—Interpretation**

Section 3(1), definition of *criminal intelligence*—delete "or to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement" and substitute:

to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or to endanger a person's life or physical safety

## **Part 5—Amendment of *Liquor Licensing Act 1997***

### **9—Amendment of section 28A—Criminal intelligence**

- (1) Section 28A(5a) to (5h)—delete subsections (5a) to (5h) (inclusive) and substitute:
  - (5a) In any proceedings under this Act, the Commissioner, the Court or the Supreme Court—
    - (a) must, on the application of the Commissioner of Police, take steps to maintain the confidentiality of information classified by the Commissioner of Police as 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 information so classified by the Commissioner of Police by way of affidavit of a police officer of or above the rank of superintendent.
- (2) Section 28A(7)—delete subsection (7)

## **Part 6—Amendment of *Police Act 1998***

### **10—Insertion of section 74A**

After section 74 insert:

#### **74A—Special provisions relating to criminal intelligence**

- (1) The Commissioner must establish guidelines in relation to the assessment of information that is being considered for classification as criminal intelligence and the management of criminal intelligence.
- (2) The Commissioner must ensure that records are kept in relation to the use of criminal intelligence.
- (3) The Commissioner must ensure that records referred to in subsection (2) would enable the following information to be determined for each period in relation to which a review is conducted under this section:
  - (a) the number of matters in relation to which criminal intelligence was used during the period;
  - (b) the number of individual pieces of criminal intelligence used in relation to each such matter;
  - (c) the relevant statutory provision for each such matter.
- (4) The Attorney-General must, before 1 July in each year (other than the calendar year in which this section comes into operation), appoint a retired judicial officer to conduct a review on—
  - (a) the effectiveness of the guidelines established under subsection (1); and

- (b) the use of criminal intelligence,  
during the period of 12 months preceding that 1 July.
- (5) 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.
- (6) 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).
- (7) A person conducting a review must maintain the confidentiality of criminal intelligence provided to the person.
- (8) A report on a review must be presented to the Attorney-General on or before 30 September in each year.
- (9) The Attorney-General 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.
- (10) In this section—  
*criminal intelligence* means information classified by the Commissioner, in accordance with the provisions of any other Act, as criminal intelligence;  
*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.

## Part 7—Amendment of *Security and Investigation Agents Act 1995*

### 11—Amendment of section 3—Interpretation

Section 3, definition of *criminal intelligence*—delete "or to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement" and substitute:

to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or to endanger a person's life or physical safety

## Part 8—Amendment of *Summary Offences Act 1953*

### 12—Amendment of section 74BA—Interpretation

Section 74BA—after the definition of *Court* insert:

*criminal intelligence* means information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or to endanger a person's life or physical safety;

### 13—Amendment of section 74BB—Fortification removal order

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

### 14—Amendment of section 74BC—Content of fortification removal order

- (1) Section 74BC(2)—delete "in respect of which an order has been made by the Court under section 74BB(5)" and substitute:

the disclosure of which would be inconsistent with a decision of the Court under section 74BGA

- (2) Section 74BC(3)—delete "in breach of an order of the Court under section 74BB(5)" and substitute:

inconsistent with a decision of the Court under section 74BGA

- (3) Section 74BC(4)—delete subsection (4) and substitute:

- (4) If disclosure of information included in the affidavit would be inconsistent with a decision of the Court under section 74BGA, an edited copy of the affidavit, from which the information that cannot be disclosed has been removed or erased, may be attached to the fortification removal order.

### 15—Insertion of section 74BGA

After section 74BG insert:

#### **74BGA—Criminal intelligence**

In any proceedings under this Part, the court determining the proceedings—

- (a) must, on the application of the Commissioner, take steps to maintain the confidentiality of information classified by the Commissioner as 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, information that is so classified by the Commissioner by way of affidavit of a police officer of or above the rank of superintendent.