

South Australia

**Liquor Licensing (Power to Bar) Amendment
Bill 2008**

A BILL FOR

An Act to amend the *Liquor Licensing Act 1997*.

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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 *Liquor Licensing (Power to Bar) Amendment Act 2008*.

2—Commencement

- 5 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 *Liquor Licensing Act 1997*

4—Amendment of section 4—Interpretation

Section 4, 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:

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

5—Amendment of section 28A—Criminal intelligence

(1) Section 28A(1)—delete subsection (1) and substitute:

(1) Information that is classified by the Commissioner of Police as criminal intelligence 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) Section 28A(5)—delete subsection (5) and substitute:

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

(5a) In any proceedings under this Act to be determined by the Commissioner, the Commissioner must maintain the confidentiality of information classified by the Commissioner of Police as criminal intelligence.

(5b) In any proceedings under this Act to be determined by the Court or the Supreme Court, the Commissioner or the Commissioner of Police may apply to the court for a determination that information classified by the Commissioner of Police as criminal intelligence is criminal intelligence.

(5c) The court must maintain the confidentiality of information that is the subject of an application under subsection (5b).

(5d) If, on an application under subsection (5b), the court proposes to determine that the information is not criminal intelligence, the applicant must be informed of the proposed determination and given the opportunity to withdraw the information from the proceedings.

(5e) If the court determines that the information is criminal intelligence or the information is withdrawn, the court must continue to maintain the confidentiality of the information.

- (5f) The confidentiality of information is maintained only if—
- (a) the information is not used except for the purposes of the proceedings; and
 - (b) the information is not disclosed to any parties to the proceedings (other than the Commissioner or the Commissioner of Police), the representatives of such parties or any member of the public; and
 - (c) evidence and submissions about the information are received and heard in private in the absence of any parties to the proceedings (other than the Commissioner or the Commissioner of Police) and the representatives of such parties and are not disclosed to any member of the public; and
 - (d) the information is not disclosed in any reasons for decision.

(5g) The Commissioner or the court may take any steps it considers appropriate to maintain the confidentiality of the information.

(5h) The duties imposed by this section on the Court and the Supreme Court apply to any court dealing (on appeal or otherwise) with information that has been determined to be criminal intelligence or with the question of whether information classified by the Commissioner of Police as criminal intelligence is criminal intelligence.

(3) Section 28A—after subsection (6) insert:

- (7) A delegation by the Commissioner of Police under subsection (6)—
- (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the power of the Commissioner of Police to act in any matter; and
 - (d) is revocable at will by the Commissioner of Police.

6—Insertion of Part 9 Division 3 Subdivision 1 and heading to Subdivision 2

Before section 125 insert:

Subdivision 1—Interpretation

124A—Interpretation

In this Division, a reference to *licensed premises* or *premises* includes a reference to areas adjacent to the licensed premises that are under the control of the licensee for the licensed premises.

Subdivision 2—Licensee barring orders

7—Amendment of section 125—Licensee barring orders

- (1) Section 125(1)—delete "(including areas adjacent to the licensed premises that are under the licensee's control)"
- 5 (2) Section 125—after subsection (1) insert:
- (1a) A police officer may provide a licensee or responsible person for licensed premises with information about a person (including photographic and other information that may identify the person) for either or both of the following purposes:
- 10 (a) for the purposes of subsection (1);
- (b) to identify a person who has been barred from premises under that subsection.
- (3) Section 125(2)—delete "in a place" and substitute:
on licensed premises
- 15 (4) Section 125(4)—delete "in a place" and substitute:
on licensed premises
- (5) Section 125(5)(b)(i)—after "3 months" insert:
or such longer period as may be approved by the Commissioner
- (6) Section 125(5)(b)(ii)—after "6 months" insert:
20 or such longer period as may be approved by the Commissioner

8—Insertion of Part 9 Division 3 Subdivisions 3 and 4

After section 125 insert:

Subdivision 3—Police barring orders

125A—Police barring orders—criminal intelligence

- 25 (1) The Commissioner of Police may, by order served on a person, bar the person from entering or remaining on—
- (a) specified licensed premises; or
- (b) licensed premises of a specified class; or
- 30 (c) licensed premises of a specified class within a specified area; or
- (d) all licensed premises within a specified area,
- for an indefinite period or a period specified in the order if the Commissioner of Police is satisfied, based on criminal intelligence, that it is in the public interest to do so.
- 35 (2) The Commissioner of Police may revoke an order under this section barring a person from premises by subsequent order served on the person.

(3) The Commissioner of Police may delegate his or her power under this section to a Deputy Commissioner or an Assistant Commissioner of Police.

(4) A delegation under this section—

- (a) must be by instrument in writing; and
- (b) may be absolute or conditional; and
- (c) does not derogate from the power of the Commissioner of Police to act in any matter; and
- (d) is revocable at will by the Commissioner of Police.

125B—Police barring orders—general

(1) Subject to this section, a police officer may, on the authorisation of a senior police officer, by order (a **barring order**) served on a person, bar the person from entering or remaining on—

- (a) specified licensed premises; or
- (b) licensed premises of a specified class; or
- (c) licensed premises of a specified class within a specified area; or
- (d) all licensed premises within a specified area,

for a specified period not exceeding any applicable limit fixed by this section—

- (e) if the police officer is satisfied that the welfare of the person, or the welfare of a person residing with the person, is seriously at risk as a result of the consumption of alcohol by the person; or
- (f) if the person commits an offence, or behaves in an offensive or disorderly manner, on, or in an area adjacent to, the licensed premises; or
- (g) on any other reasonable ground.

(2) A police officer may, on the authorisation of a senior police officer, vary or revoke an order under this section barring a person from premises by subsequent order served on the person.

(3) The following provisions apply in relation to an order under this section:

- (a) in the case of a barring order made on the grounds referred to in subsection (1)(e)—the order remains in force for an indefinite period, or the period specified in the order;
- (b) in the case of a barring order made on the grounds referred to in subsection (1)(f) or (g) and authorised by a senior police officer of or above the rank of Inspector—the order remains in force—

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- (i) if the person has not previously been barred under this section—for the period specified in the order (which may not exceed 3 months); or
 - (ii) if the person has on 1 previous occasion been barred under this section—for the period specified in the order (which may not exceed 6 months); or
 - (iii) if the person has on at least 2 previous occasions been barred under this section—for an indefinite period or the period specified in the order;
- (c) in the case of a barring order made on the grounds referred to in subsection (1)(f) or (g) and authorised by a senior police officer of or above the rank of Sergeant or in charge for the time being of a police station—the order remains in force for a period specified in the order (which may not exceed 72 hours).
- (4) An authorisation to issue a barring order under this section may be granted orally or in writing but a written record must be kept—
- (a) the name, rank and identification number of the senior police officer giving the authorisation; and
 - (b) the name, rank and identification number of the police officer requesting the authorisation; and
 - (c) details of the conduct giving rise to the request; and
 - (d) the following details relating to the barring order:
 - (i) the name of the person barred under the order; and
 - (ii) the licensed premises from which the person has been barred under the order; and
 - (iii) the grounds on which the issuing of the order is authorised; and
 - (iv) the period for which the order remains in force.
- (5) For the purposes of subsection (2), a condition or limitation under this section in relation to the making of a particular barring order extends to a variation or revocation of the order under that subsection.
- (6) In this section—
- senior police officer*** means—
- (a) in the case of a barring order that is to be made on the grounds referred to in subsection (1)(e)—a police officer of or above the rank of Inspector;
 - (b) in the case of a barring order that is to be made on the grounds referred to in subsection (1)(f) or (g)—

- (i) if the order is to be made for a period exceeding 72 hours—a police officer of or above the rank of Inspector; or
- (ii) in any other case—a police officer of or above the rank of Sergeant or in charge for the time being of a police station.

125C—Offences

- (1) A person who enters or remains on licensed premises from which he or she is barred under this Subdivision is guilty of an offence.

Maximum penalty: \$1 250.

- (2) A licensee, a responsible person for licensed premises, or an employee of the licensee, who knows or ought reasonably to know that a person has been barred from licensed premises under this Subdivision and who allows a person to enter or remain on those premises, is guilty of an offence.

Maximum penalty: \$1 250.

125D—Evidence

- (1) In proceedings for an offence against this Subdivision, a certificate apparently signed by a police officer of or above the rank of Inspector stating that a person was barred from licensed premises under this Subdivision for the period specified in the certificate will be accepted, in the absence of proof to the contrary, as proof of the matters stated in the certificate.

- (2) In proceedings for an offence against this Subdivision, a certificate apparently signed by a police officer of or above the rank of Inspector stating—

- (a) that an authorisation under this section was given; and
- (b) that the authorisation authorised the making of an order under this Subdivision; and
- (c) the grounds on which the authorisation was given,

will be accepted, in the absence of proof to the contrary, as proof of the matters stated in the certificate.

Subdivision 4—Miscellaneous

125E—Power to require personal details

- (1) A police officer may, for the purposes of this Division, require a person to state all or any of the person's personal details.
- (2) If a police officer has reasonable cause to suspect that a personal detail as stated in response to a requirement under subsection (1) is false, the officer may require the person making the statement to produce evidence of the correctness of the personal detail as stated.

- (3) A person who—
- (a) refuses or fails, without reasonable excuse, to comply with a requirement under subsection (1) or (2); or
 - (b) in response to a requirement under subsection (1) or (2)—
 - (i) states a personal detail that is false; or
 - (ii) produces false evidence of a personal detail,

is guilty of an offence.

Maximum penalty: \$1 250.

- (4) A police officer who has required a person to state all or any of the person's personal details under this section is required to comply with a request to identify himself or herself, by—
- (a) producing his or her police identification; or
 - (b) stating orally or in writing his or her surname, rank and identification number.

- (5) In this section—

personal details, in relation to a person, means—

- (a) the person's full name; and
- (b) the person's date of birth; and
- (c) the person's residential address; and
- (d) the person's business address.

9—Amendment of section 126—Orders

Section 126—after subsection (1) insert:

- (1a) If a person has been barred from premises by order under Subdivision 3, the relevant licensee must, within 14 days of the service of the order, be provided with—

- (a) a copy of the order; and
- (b) information that identifies the person,

(but a failure to comply with this subsection does not affect the operation of the order).

10—Amendment of section 128—Review of orders

- (1) Section 128(1)—delete "Commissioner" and substitute:

licensing authority

- (2) Section 128(1a)—delete "Commissioner" and substitute:

licensing authority

- (3) Section 128(2)—delete subsection (2) and substitute:

- (2) The licensing authority may, on the hearing of an application under this section, confirm, vary or revoke the order.

5 (2a) If, on the hearing of an application under this section in relation to an order under which the applicant has been barred from premises for an indefinite period or a period exceeding 6 months, the licensing authority is of the opinion that it is appropriate to vary the order so that the person is barred from entering or remaining on the premises until further order of the Commissioner, the licensing authority may so vary the order.

10 (2b) When the Commissioner is determining whether to make an order under subsection (2a), the Commissioner must have regard to whether the person has undertaken a behaviour management course, obtained medical assistance or taken other action to address the problem.

(4) Section 128(4)—delete subsection (4) and substitute:

15 (4) The licensing authority has an absolute discretion to suspend an order pending determination of an application for review of the order.

(5) In this section—

licensing authority means—

- 20 (a) if the order was made barring the person from premises for an extended period approved by the Commissioner under section 125(5)(b)(i) or (ii)—the Court;
- (b) in any other case—the Commissioner.