

Legislative Council—No 27A

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South Australia

Statutes Amendment (Power to Bar) Bill 2008

A BILL FOR

An Act to amend the *Liquor Licensing Act 1997*; and the *Casino 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 *Statutes Amendment (Power to Bar) 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*

5 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:

10 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:

15 (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:

20 (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.

25 (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.

30 (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.

35 (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.

40 (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—Commissioner of Police barring orders

- 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 on any reasonable ground.
- 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 officer barring orders

- (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—

- 5
- (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;
- 10
- (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).
- 15
- (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 of—
- (a) the name, rank and identification number of the senior police officer giving the authorisation; and
- 20
- (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
- 25
- (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.
- 30
- (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—
- 35
- 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)—
- 40

- 5
- (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

- 10
- (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.

- 15
- (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

- 20
- (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.

- 25
- (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—

30

- (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

- 35
- (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
- 40
- 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.

11—Insertion of section 128A

After section 128 insert:

25 128A—Report to Minister on barring orders

(1) The Commissioner must, on or before 30 September in each year (other than the calendar year in which this section comes into operation), provide a report to the Minister specifying the following information in relation to the financial year ending on the preceding 30 June:

(a) in relation to an order made under Subdivision 2 barring a person from licensed premises for an indefinite period or a period exceeding 6 months—

35 (i) in the case of orders made under section 125(1)(aa) (a *welfare order*)—

(A) the number of welfare orders made; and

(B) the location of the licensed premises from which the persons were barred;

(ii) in any other case—

40 (A) the number of orders made; and

(B) statistical information about the type of conduct giving rise to the orders; and

- (C) the location of the licensed premises from which the persons were barred;
- (b) in relation to an order made under Subdivision 3 because of information classified by the Commissioner of Police as criminal intelligence—
- (i) the number of orders made; and
- (ii) the location of the licensed premises from which the persons were barred; and
- (iii) statistical information about—
- (A) the period for which the orders have effect; and
- (B) the age, gender, race and residential postcode of the persons barred;
- (c) the number of reviews of orders conducted under section 128 and the outcome of any such review.
- (2) 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 3—Amendment of *Casino Act 1997*

12—Amendment of section 3—Interpretation

Section 3(1)—after the definition of *compliance notice* 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, 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;

13—Insertion of section 45A

After section 45 insert:

45A—Commissioner of Police's power to bar

- (1) The Commissioner of Police may, by written order, bar a person (the *excluded person*) from the casino for a period specified in the order or for an unlimited period on any reasonable ground.
- (2) The order must—
- (a) subject to subsection (3), state the grounds on which the order is made; and
- (b) set out the rights of the excluded person to have the order reviewed by the Authority; and

- (c) be given to the person against whom it is made personally or by sending it by post addressed to the person at the last known postal address.
- 5 (3) If a person is barred from the casino by order under this section 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.
- 10 (4) If a person has been barred from the casino by order under this section, the 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).
- 15 (5) An excluded person who enters or remains in the casino while an order remains in force under this section is guilty of an offence.
Maximum penalty: \$2 500.
- 20 (6) If an excluded person is allowed to enter or remain in the casino while an order remains in force under this section, the licensee is guilty of an offence.
Maximum penalty: \$10 000.
- (7) An agent or employee of the licensee or a police officer may exercise reasonable force—
- 25 (a) to prevent a person from entering the casino contrary to an order under this section; or
- (b) to remove a person who is in the casino contrary to an order under this section.
- (8) The Commissioner of Police may at any time revoke an order under this section.
- 30 (9) The Commissioner of Police may not delegate his or her power under this section except to a Deputy Commissioner or Assistant Commissioner of Police.
- (10) A delegation under this section—
- 35 (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.

14—Amendment of section 65—Review of decisions

- (1) Section 65(2)—delete subsection (2) and substitute:
- 5 (2) A person aggrieved by a decision of the Commissioner of Police to bar the person from the casino by order under section 45A may, within 14 days after being given a copy of the order, apply to the Authority for a review of the decision.
- (2) Section 65—after subsection (3) insert:
- (4) In this section—
- 10 *decision* of the Commissioner includes, for example, the refusal of an application or the revocation of an approval.

15—Insertion of section 66A

After section 66 insert:

66A—Procedure in relation to criminal intelligence

- 15 (1) In any proceedings under this Part to be determined by the Authority, the Authority must maintain the confidentiality of information classified by the Commissioner of Police as criminal intelligence.
- (2) In any proceedings under this Part to be determined by the Supreme Court, 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.
- 20 (3) The Supreme Court must maintain the confidentiality of information that is the subject of an application under subsection (2).
- (4) If, on an application under subsection (2), the Supreme 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.
- 25 (5) If the Supreme Court determines that the information is criminal intelligence or the information is withdrawn, the Court must continue to maintain the confidentiality of the information.
- 30 (6) The confidentiality of information is maintained only if—
- (a) the information is not used except for the purposes of the proceedings; and
- 35 (b) the information is not disclosed to any parties to the proceedings or their representatives (other than the Commissioner of Police and representatives of the Commissioner of Police) or to 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 and their representatives (other than the Commissioner of Police and representatives of the Commissioner of Police) and are not disclosed to any member of the public; and

(d) the information is not disclosed in any reasons for decision.

(7) The Authority or the Supreme Court may take any steps it considers appropriate to maintain the confidentiality of the information.

(8) The duties imposed by this section on the Supreme Court apply to any court dealing 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.

16—Substitution of section 69

Section 69—delete the section and substitute:

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

(1) Information provided by the Commissioner of Police under this Act to the Authority or the Commissioner may not be disclosed to any person other than the Minister, a court or a person to whom the Commissioner of Police authorises its disclosure, if the Commissioner of Police asks for the information to be kept confidential on the ground that its disclosure might create a risk of loss, harm or undue distress.

(2) 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 Authority, the Commissioner, the Minister, a court or a person to whom the Commissioner of Police authorises its disclosure.

(3) The Commissioner of Police may not delegate the function of classifying information as criminal intelligence for the purposes of this Act except to a Deputy Commissioner or 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.