

South Australia

# Problem Gambling Family Protection Orders Act 2004

An Act to allow orders to be made for the protection of family members from serious harm resulting from problem gambling; and for other purposes.

---

## Contents

1	Short title
3	Interpretation
4	Grounds for making problem gambling family protection order
5	Terms of problem gambling family protection order
6	Attachment order
7	Complaints
8	Complaints or applications by or on behalf of child
9	Making problem gambling family protection order in respondent's absence
10	Variation or revocation of problem gambling family protection order by Commissioner
11	Conduct of proceedings
12	Service
13	Notification of orders by Commissioner
14	Enforcement of problem gambling family protection orders
15	Removal of respondent barred from certain premises
16	Court may review decision of Commissioner
17	Priority of problem gambling family protection order proceedings
18	Regulations

## Legislative history

---

### The Parliament of South Australia enacts as follows:

#### 1—Short title

This Act may be cited as the *Problem Gambling Family Protection Orders Act 2004*.

#### 3—Interpretation

- (1) In this Act, unless the contrary intention appears—
- attachment order*—see section 6;
  - child* means a person who is under the age of 18 years;

**close personal relationship** means the relationship between 2 adult persons (whether or not related by family and irrespective of their gender) who live together as a couple on a genuine domestic basis, but does not include—

- (a) the relationship between a legally married couple; or
- (b) a relationship where 1 of the persons provides the other with domestic support or personal care (or both) for fee or reward, or on behalf of some other person or an organisation of whatever kind;

**Note—**

Two persons may live together as a couple on a genuine domestic basis whether or not a sexual relationship exists, or has ever existed, between them.

**Commissioner** has the same meaning as in the *Gambling Administration Act 2019*;

**Court** means the Magistrates Court;

**Department** means the administrative unit of the public service declared by the Governor by proclamation to be the Department for the purposes of this Act;

**domestic partner**—a person is the domestic partner of a respondent if he or she lives with the respondent in a close personal relationship;

**family member** in relation to a respondent means—

- (a) a spouse or former spouse of the respondent;
- (b) a domestic partner or former domestic partner of the respondent;
- (c) a child of whom—
  - (i) the respondent; or
  - (ii) a spouse or former spouse of the respondent; or
  - (iii) a domestic partner or former domestic partner of the respondent, has care and control;
- (d) a child who normally or regularly resides with—
  - (i) the respondent; or
  - (ii) a spouse or former spouse of the respondent; or
  - (iii) a domestic partner or former domestic partner of the respondent;

**problem gambling family protection order** means a problem gambling family protection order made under this Act;

**respondent** means a person against whom a problem gambling family protection order is sought or made;

**spouse**—a person is the spouse of a respondent if the person is legally married to the respondent.

- (2) The Governor may, by proclamation—
  - (a) declare an administrative unit of the public service to be the Department for the purposes of this Act; and
  - (b) vary or revoke a proclamation under paragraph (a).

#### **4—Grounds for making problem gambling family protection order**

- (1) On a complaint under this Act, the Commissioner may make a problem gambling family protection order against the respondent if—
  - (a) there is a reasonable apprehension that the respondent may cause serious harm to family members because of problem gambling; and
  - (b) the Commissioner is satisfied that the making of the order is appropriate in the circumstances.
- (2) For the purposes of this Act, the respondent is to be regarded as having caused serious harm to family members because of problem gambling if the respondent—
  - (a) has engaged in gambling activities irresponsibly having regard to the needs and welfare of the respondent's family members; and
  - (b) has done so repeatedly over a period of not less than 3 months or in a particularly irresponsible manner over a lesser period.
- (3) The Commissioner may decide that there is a reasonable apprehension that the respondent may cause serious harm to family members because of problem gambling if the Commissioner is satisfied that—
  - (a) the respondent has caused such harm prior to the complaint, according to the test set out in subsection (2); and
  - (b) there is reason to believe that the respondent's irresponsible gambling behaviour will continue or recur.
- (4) The Commissioner may, in determining whether there is a reasonable apprehension that the respondent may cause serious harm to family members because of problem gambling, take into account events that have taken place outside this State.
- (5) If a respondent disputes some or all of the grounds on which a problem gambling family protection order is sought or made but consents to the order, the Commissioner may make or confirm the order without receiving any further submissions or evidence as to the grounds.
- (6) The Commissioner must consider whether the Commissioner should and may in an appropriate case refer the parties into family conferencing or mediation before hearing evidence in support of a complaint.
- (7) The Commissioner may, at any stage, dismiss a complaint if the Commissioner is satisfied that the complaint is frivolous, vexatious, without substance or has no reasonable prospect of success.
- (8) If the Commissioner becomes aware that an application has been made under the *Intervention Orders (Prevention of Abuse) Act 2009* against a person against whom a complaint has been made under this Act, the Commissioner—
  - (a) must adjourn proceedings on the complaint under this Act pending determination of the proceedings on the application under that Act; and
  - (b) may not make a problem gambling family protection order against the respondent if the Court, in the proceedings on the application under that Act, makes an order of the kind that the Commissioner is empowered to make on a complaint under this Act or determines that the making of such an order is not appropriate in the circumstances.

## **5—Terms of problem gambling family protection order**

- (1) A problem gambling family protection order—
  - (a) may impose such requirements on the respondent as are necessary or desirable to prevent the respondent acting in the apprehended manner; and
  - (b) may apply for the benefit of all of the respondent's family members or specified family members.
- (2) Without limiting the matters that may be the subject of a problem gambling family protection order, an order may do one or more of the following:
  - (a) require the respondent's participation in a program of counselling, rehabilitation or special education or any combination of these;
  - (b) bar the respondent from taking part in gambling activities;
  - (c) bar the respondent from attending at premises where gambling activities may be undertaken;
  - (d) bar the respondent from a locality;
  - (e) require the respondent to close gambling accounts;
  - (f) require the respondent to refrain from contacting, harassing, threatening or intimidating a family member, or any other person at a place where the family member resides or works, to demand or request money for the purposes of gambling activities;
  - (g) bar the respondent from taking possession of personal property (including money) reasonably needed by the family member;
  - (h) require the respondent to refrain from causing or allowing another person to engage in the conduct referred to in paragraph (f) or (g) on behalf of the respondent;
  - (i) specify conditions subject to which the respondent may—
    - (i) be on specified premises or in a specified locality; or
    - (ii) approach or contact a family member or any other person at a place where a family member resides or works;
  - (j) require the respondent to return specified personal property (including money) to a family member or to allow a family member to recover or have access to or make use of specified personal property;
  - (k) require the respondent to make arrangements for specified family members to be paid or have access to—
    - (i) money owing or accruing to the respondent from a third person; or
    - (ii) money of the respondent in the hands of a third person (including money in an ADI account).
- (3) A problem gambling family protection order may be made against the respondent in relation to premises or property despite the fact that the respondent has a legal or equitable interest in the premises or property.

## 6—Attachment order

- (1) A problem gambling family protection order may include an order (an *attachment order*)—
  - (a) that money owing or accruing to the respondent from a third person; or
  - (b) that money of the respondent in the hands of a third person (including money in an ADI account),  
be paid to satisfy a debt owed by the respondent, or be otherwise applied in a specified manner, for the benefit of all of the respondent's family members or specified family members (the *beneficiaries*).
- (2) If an attachment order is made without notice to the respondent or a specified third person (or both), the following provisions apply:
  - (a) the order will operate to restrain the third person specified in the order from dealing with money to which the order relates until both the respondent and the third person have had an opportunity to be heard in the proceedings;
  - (b) the Commissioner will adjourn the proceedings to give the respondent and the third person an opportunity to be heard;
  - (c) at the adjourned hearing the Commissioner will allow the beneficiaries, the respondent and the third person to give evidence and make representations (or both);
  - (d) after consideration of the evidence and representations (if any), the Commissioner will confirm, vary or revoke the attachment order.
- (3) An attachment order may authorise the third person specified in the order to retain from the money subject to the order a reasonable sum, fixed in the order, as compensation for his or her expenses in complying with the order.
- (4) If the third person specified in the order does not comply with the order, the person becomes personally liable for payment to the beneficiaries of the amount unpaid in breach of the order.
- (5) If, because an order has been made under this section in relation to an employee, the employer—
  - (a) dismisses the employee; or
  - (b) injures the employee in employment; or
  - (c) alters the employee's position to the employee's prejudice,the employer is guilty of an offence.  
Maximum penalty: \$10 000.

## 7—Complaints

- (1) A complaint may be made to the Commissioner.
- (2) A complaint must be made in writing in the form approved from time to time by the Commissioner.

- (3) A complaint may be made by—
  - (a) a family member of the respondent affected by the respondent’s problem gambling behaviour; or
  - (b) an officer of the Department; or
  - (c) the person holding or acting in the office of Public Advocate under the *Guardianship and Administration Act 1993*; or
  - (d) a person who satisfies the Commissioner that he or she has a proper interest.
- (4) The complainant must inform the Commissioner of any other proceedings brought by the complainant against the respondent that are either determined or pending.
- (5) On the making of a complaint, the Commissioner may exercise any powers vested in the Commissioner under the *Gambling Administration Act 2019*.

### **8—Complaints or applications by or on behalf of child**

A complaint or application that could otherwise be made by a person under this Act may, if the person is a child, be made—

- (a) by the child with the permission of the Commissioner, if the child is at least 14 years of age; or
- (b) on behalf of the child by—
  - (i) a parent or guardian of the child; or
  - (ii) a person with whom the child normally or regularly resides; or
  - (iii) an officer of the Department; or
  - (iv) the person holding or acting in the office of Public Advocate under the *Guardianship and Administration Act 1993*; or
  - (v) a person who satisfies the Commissioner that he or she has a proper interest in the welfare of the child.

### **9—Making problem gambling family protection order in respondent's absence**

- (1) A problem gambling family protection order may be made in the absence of the respondent—
  - (a) if the respondent was required by summons to appear at the hearing of the complaint and failed to appear at the time and place appointed for the purpose; or
  - (b) if the respondent was not, in fact, summoned to appear at the hearing (but, in that case, the Commissioner must summon the respondent to appear before the Commissioner to show cause why the order should not be confirmed).
- (2) The Commissioner may make an order under this section on the basis of evidence received in the form of an affidavit but, in that case—
  - (a) the deponent must, if the respondent so requires, appear personally at the proceedings for confirmation of the order to give oral evidence of the matters referred to in the affidavit; and
  - (b) if the deponent does not so appear, the Commissioner may not rely on the evidence contained in the affidavit for the purpose of confirming the order.

- (3) The Commissioner may from time to time, without requiring the attendance of any party, adjourn the hearing to which a respondent is summoned to a later date if satisfied that the summons has not been served or that there is other adequate reason for the adjournment.
- (4) The date fixed in the first instance for the hearing to which the respondent is summoned must be within 7 days of the date of the order.
- (5) The date fixed for an adjourned hearing must be within 7 days of the date on which the adjournment is ordered unless the Commissioner is satisfied that—
  - (a) a later date is required to enable the summons to be served; or
  - (b) there is other adequate reason for fixing a later date.
- (6) An order made under this section—
  - (a) continues in force until the conclusion of the hearing to which the respondent is summoned or, if the hearing is adjourned, until the conclusion of the adjourned hearing; but
  - (b) will not be effective after the conclusion of the hearing to which the respondent is summoned or the adjourned hearing unless the Commissioner confirms the order—
    - (i) on the failure of the respondent to appear at the hearing in obedience to the summons; or
    - (ii) having considered any evidence given by or on behalf of the respondent; or
    - (iii) with the consent of the respondent.
- (7) The Commissioner may confirm a problem gambling family protection order in an amended form.

## **10—Variation or revocation of problem gambling family protection order by Commissioner**

- (1) The Commissioner may vary or revoke a problem gambling family protection order on application by—
  - (a) a person for whose benefit the order was made; or
  - (b) the respondent.
- (2) An application for variation or revocation of an order may only be made by the respondent with the permission of the Commissioner and permission is only to be granted if the Commissioner is satisfied there has been a substantial change in the relevant circumstances since the order was made or last varied.
- (3) The Commissioner must, before varying or revoking an order under this section, allow all parties a reasonable opportunity to be heard on the matter.

## **11—Conduct of proceedings**

- (1) In proceedings under this Act the Commissioner may exercise any powers vested in the Commissioner under the *Gambling Administration Act 2019*.
- (2) The Commissioner may refer a question of law arising in proceedings under this Act to the Court.

- (3) In proceedings under this Act, the Commissioner is to decide questions of fact on the balance of probabilities.
- (4) The Commissioner is not bound by rules of evidence but may inform himself or herself in such manner as the Commissioner thinks fit.
- (5) If, as a result of proceedings under this Act, the Commissioner is satisfied that it would be appropriate to make an order under Part 6 of the *Gambling Administration Act 2019* instead of, or in addition to, an order under this Act, the Commissioner may make such an order.

## **12—Service**

- (1) A problem gambling family protection order must be served on the respondent personally and is not binding on the respondent until it has been so served.
- (2) If a problem gambling family protection order is confirmed in an amended form or is varied at any time, the order in its amended form must be served on the respondent personally and until so served—
  - (a) the variation is not binding on the respondent; and
  - (b) the order as in force prior to the variation continues to be binding on the respondent.
- (3) An attachment order must be served personally on the third person specified in the order and is not binding on the third person until so served.
- (4) If an attachment order is confirmed in an amended form or is varied at any time, the order in its amended form must be served personally on the third person specified in the order and until so served—
  - (a) the variation is not binding on the third person; and
  - (b) the order as in force prior to the variation continues to be binding on the third person.

## **13—Notification of orders by Commissioner**

- (1) If a problem gambling family protection order is made by the Commissioner, the Commissioner must provide a copy of the order to the complainant, the Chief Executive of the Department and the proprietor or licensee of any premises specified in the order.
- (2) If a problem gambling family protection order is varied or revoked by the Commissioner, the Commissioner must notify the complainant, the Chief Executive of the Department and the proprietor or licensee of any premises specified in the order.
- (3) If a problem gambling family protection order (whether made under this Act or the *Intervention Orders (Prevention of Abuse) Act 2009*) includes prohibitions of a kind that could be included in a barring order under Part 6 of the *Gambling Administration Act 2019*, the Commissioner must ensure that the prescribed particulars of those prohibitions are included in the register maintained under that Part of that Act (and if the prohibitions are subsequently varied or revoked, the Commissioner must ensure that the details included in the register are altered or deleted as the case may require).

#### **14—Enforcement of problem gambling family protection orders**

A problem gambling family protection order made by the Commissioner may be registered in the Court and enforced as an order of the Court.

#### **15—Removal of respondent barred from certain premises**

The powers under Part 6 of the *Gambling Administration Act 2019* relating to requiring a person to leave, or removing a person from, a place from which the person has been barred under that Part, extend to a person barred from such a place by an order under this Act, as if the order were an order under that Part.

#### **16—Court may review decision of Commissioner**

- (1) The Court may review a decision of the Commissioner in proceedings under this Act on application by the complainant, the respondent or a member of the respondent's family affected by the decision.
- (2) Subject to subsection (4), an application for review must be instituted within 1 month of the making of the decision appealed against.
- (3) The Commissioner must, if required by the applicant for the review, state in writing the reasons for the decision.
- (4) If the reasons of the Commissioner are not given to the applicant for the review in writing at the time of making the decision and that person (within 1 month of the making of the decision) requires the Commissioner to state the reasons in writing, the time for instituting an appeal runs from the time at which that person receives the written statement of those reasons.
- (5) The Court may, in its discretion, extend the time for the making of an application for review even if the time for making the application has ended.
- (6) The making of an application for a review of a decision does not affect the operation of the decision.
- (7) However, on the making of an application for review of the decision, the Court or the Commissioner may, on application or at its own initiative, make an order staying or varying the operation of the whole or a part of the decision pending the determination of the application if the Court or the Commissioner is satisfied that it is just and reasonable in the circumstances to make the order.
- (8) An order by the Court or the Commissioner under subsection (7) may be varied or revoked—
  - (a) in any case—by the Court; or
  - (b) if the order was made by the Commissioner—by the Commissioner.
- (9) On a review under this section, the Court may—
  - (a) affirm the decision of the Commissioner;
  - (b) rescind the decision and substitute a decision that the Court considers appropriate;
  - (c) make any ancillary or consequential order that the Court considers appropriate.

- (10) However, no order for costs is to be made unless the Court considers such an order to be necessary in the interests of justice.

### **17—Priority of problem gambling family protection order proceedings**

The Commissioner and the Court must, as far as practicable, deal with proceedings for or relating to problem gambling family protection orders as a matter of priority.

### **18—Regulations**

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) The regulations may—
- (a) be of general or limited application; and
  - (b) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
  - (c) make provisions of a saving or transitional nature consequent on the enactment of any amendments to this Act or on the commencement of specified provisions of this Act or on the making of regulations under this Act; and
  - (d) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the Commissioner or another person.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation amended by principal Act

The *Problem Gambling Family Protection Orders Act 2004* amended the following:

*Domestic Violence Act 1994*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2004	10	<i>Problem Gambling Family Protection Orders Act 2004</i>	15.4.2004	1.7.2004 ( <i>Gazette</i> 3.6.2004 p1717)
2006	43	<i>Statutes Amendment (Domestic Partners) Act 2006</i>	14.12.2006	Pt 68 (s 178)—1.6.2007 ( <i>Gazette</i> 26.4.2007 p1352)
2009	85	<i>Intervention Orders (Prevention of Abuse) Act 2009</i>	10.12.2009	Sch 1 (cl 18)—9.12.2011 ( <i>Gazette</i> 20.10.2011 p4269)
2013	37	<i>Statutes Amendment (Gambling Reform) Act 2013</i>	8.8.2013	Pt 6 (ss 141—143)—1.7.2014 ( <i>Gazette</i> 29.8.2013 p3648)
2015	22	<i>Statutes Amendment (Gambling Measures) Act 2015</i>	1.10.2015	Pt 5 (ss 20—22)—1.1.2016 ( <i>Gazette</i> 17.12.2015 p5266)
2018	35	<i>Statutes Amendment and Repeal (Budget Measures) Act 2018</i>	22.11.2018	Pt 13 (ss 121 to 129)—1.12.2018 ( <i>Gazette</i> 29.11.2018 p4058)
<b>2019</b>	<b>44</b>	<b><i>Statutes Amendment (Gambling Regulation) Act 2019</i></b>	<b>12.12.2019</b>	<b>Pt 6 (ss 138 to 142)—3.12.2020 (<i>Gazette</i> 30.7.2020 p4103)</b>

### Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	1.6.2007
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	1.6.2007
s 3		

**Problem Gambling Family Protection Orders Act 2004—3.12.2020**Legislative history

---

s 3(1)		
Authority	<i>deleted by 35/2018 s 121(1)</i>	1.12.2018
close personal relationship	inserted by 43/2006 s 178(1)	1.6.2007
Commissioner	inserted by 35/2018 s 121(2) <b>amended by 44/2019 s 138</b>	1.12.2018 <b>3.12.2020</b>
domestic partner	inserted by 43/2006 s 178(2)	1.6.2007
family member	amended by 43/2006 s 178(3)	1.6.2007
Secretary	<i>deleted by 22/2015 s 20</i>	1.1.2016
spouse	substituted by 43/2006 s 178(4)	1.6.2007
s 4		
s 4(1)	amended by 35/2018 s 128	1.12.2018
s 4(3)—(7)	amended by 35/2018 s 128	1.12.2018
s 4(8)	amended by 85/2009 Sch 1 cl 18(1)—(3) amended by 35/2018 s 128	9.12.2011 1.12.2018
s 6		
s 6(2)	amended by 35/2018 s 128	1.12.2018
s 7		
s 7(1)—(4)	amended by 35/2018 s 128	1.12.2018
s 7(5)	substituted by 35/2018 s 122 <b>amended by 44/2019 s 139</b>	1.12.2018 <b>3.12.2020</b>
s 8	amended by 35/2018 s 128	1.12.2018
s 9		
s 9(1)—(3)	amended by 35/2018 s 128	1.12.2018
s 9(5)—(7)	amended by 35/2018 s 128	1.12.2018
s 9(8)	<i>deleted by 35/2018 s 123</i>	1.12.2018
s 10		
s 10(1)—(3)	amended by 35/2018 s 128	1.12.2018
s 11 before substitution by 35/2018		
s 11(7)	<i>inserted by 37/2013 s 141</i>	1.7.2014
s 11	substituted by 35/2018 s 124	1.12.2018
s 11(1)	<b>amended by 44/2019 s 140(1)</b>	<b>3.12.2020</b>
s 11(5)	<b>amended by 44/2019 s 140(2)</b>	<b>3.12.2020</b>
s 13		
s 13(1) and (2)	amended by 22/2015 s 21 amended by 35/2018 s 128	1.1.2016 1.12.2018
s 13(3)	inserted by 37/2013 s 142 amended by 22/2015 s 21 amended by 35/2018 ss 125, 128 <b>amended by 44/2019 s 141</b>	1.7.2014 1.1.2016 1.12.2018 <b>3.12.2020</b>
s 14	amended by 35/2018 s 128	1.12.2018
s 15	substituted by 37/2013 s 143	1.7.2014

	amended by 35/2018 s 126	1.12.2018
	<b>amended by 44/2019 s 142</b>	<b>3.12.2020</b>
s 16		
s 16(1), (3) and (4)	amended by 35/2018 s 128	1.12.2018
s 16(7)—(9)	amended by 35/2018 s 128	1.12.2018
s 17	amended by 35/2018 s 128	1.12.2018
<i>s 18 before substitution by 35/2018</i>		
s 18(2)	<i>amended by 22/2015 s 22</i>	<i>1.1.2016</i>
s 18	substituted by 35/2018 s 127	1.12.2018
<i>Sch 1</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.6.2007</i>

## Transitional etc provisions associated with Act or amendments

### *Statutes Amendment and Repeal (Budget Measures) Act 2018, Pt 13*

#### 129—Transitional provisions

- (1) An order made by the Independent Gambling Authority and in force under the *Problem Gambling Family Protection Orders Act 2004* immediately before the commencement of this Part continues in force as if it had been made under that Act as in force after the commencement of this Part.
- (2) If any proceedings have been commenced but not finally determined by the Independent Gambling Authority under the *Problem Gambling Family Protection Orders Act 2004* before the commencement of this Part, the proceedings may be continued and completed by the Commissioner as if it they had been commenced under that Act as in force after the commencement of this Part.
- (3) The provisions of this section are subject to any regulations made under section 18(2)(c) of the *Problem Gambling Family Protection Orders Act 2004* (as in force after the commencement of section 127).

## Historical versions

1.6.2007  
9.12.2011  
1.7.2014  
1.1.2016  
1.12.2018