

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; to make a related amendment to the *Domestic Violence Act 1994*; and for other purposes.

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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*.

2—Commencement

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

3—Interpretation

- (1) In this Act, unless the contrary intention appears—

attachment order—see section 6;

Authority means the Independent Gambling Authority established under the *Independent Gambling Authority Act 1995*;

child means a person who is under the age of 18 years;

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;

family member in relation to a respondent means—

- (a) a spouse or former spouse of the respondent;
- (b) a child of whom the respondent, a spouse or former spouse of the respondent has care and control;
- (c) a child who normally or regularly resides with the respondent or a spouse or former spouse 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;

Secretary means the person holding or acting in the position of Secretary to the Authority;

spouse of a respondent includes a person of the opposite sex who is cohabitating with the respondent as the husband or wife *de facto* of 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 Authority 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 Authority 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 Authority may decide that there is a reasonable apprehension that the respondent may cause serious harm to family members because of problem gambling if the Authority 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 Authority 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 Authority may make or confirm the order without receiving any further submissions or evidence as to the grounds.
- (6) The Authority must consider whether it 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 Authority may, at any stage, dismiss a complaint if the Authority is satisfied that the complaint is frivolous, vexatious, without substance or has no reasonable prospect of success.
- (8) If the Authority becomes aware that a complaint has been made under the *Domestic Violence Act 1994* against a person against whom a complaint has been made under this Act, the Authority—
 - (a) must adjourn proceedings on the complaint under this Act pending determination of the proceedings on the complaint 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 complaint under that Act, makes an order of the kind that the Authority 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 Authority will adjourn the proceedings to give the respondent and the third person an opportunity to be heard;
 - (c) at the adjourned hearing the Authority 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 Authority 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 Authority.
- (2) A complaint must be made in writing in the form approved from time to time by the Authority.
- (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 Authority that he or she has a proper interest.
- (4) The complainant must inform the Authority 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 Authority may exercise any powers vested in the Authority for the purposes of proceedings before the Authority.

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 Authority, 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 Authority 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 Authority must summon the respondent to appear before the Authority to show cause why the order should not be confirmed).
- (2) The Authority 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 Authority may not rely on the evidence contained in the affidavit for the purpose of confirming the order.
- (3) The Authority 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 Authority 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 Authority 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 Authority may confirm a problem gambling family protection order in an amended form.
- (8) If a hearing is adjourned, the Authority need not be constituted at the adjourned hearing of the same members as constituted the Authority when it ordered the adjournment.

10—Variation or revocation of problem gambling family protection order by Authority

- (1) The Authority 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 Authority and permission is only to be granted if the Authority is satisfied there has been a substantial change in the relevant circumstances since the order was made or last varied.
- (3) The Authority 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) Proceedings under this Act are proceedings for the purposes of the *Independent Gambling Authority Act 1995*.
- (2) The Authority must be constituted of the presiding member of the Authority (or his or her deputy) and at least one other member of the Authority for the purposes of the conduct of proceedings under this Act.
- (3) The presiding member (or his or her deputy) is to decide questions of law arising in proceedings under this Act.

- (4) In proceedings under this Act, the Authority is to decide questions of fact on the balance of probabilities.
- (5) The Authority is not bound by rules of evidence but may inform itself in such manner as it thinks fit.
- (6) The Authority may not delegate the conduct of proceedings under this Act.

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 making, variation or revocation of problem gambling family protection orders by Authority

- (1) If a problem gambling family protection order is made by the Authority, the Secretary 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 Authority, the Secretary must notify the complainant, the Chief Executive of the Department and the proprietor or licensee of any premises specified in the order.

14—Enforcement of problem gambling family protection orders

A problem gambling family protection order made by the Authority 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 the *Casino Act 1997* or the *Gaming Machines Act 1992* relating to requiring a person to leave, or removing a person from, a place from which the person has been barred under either of those Acts, extend to a person barred from such a place by an order under this Act, as if the order were an order under the relevant Act.

16—Court may review decision of Authority

- (1) The Court may review a decision of the Authority 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 Authority must, if required by the applicant for the review, state in writing the reasons for the decision.
- (4) If the reasons of the Authority 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 Authority 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 Authority 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 Authority is satisfied that it is just and reasonable in the circumstances to make the order.
- (8) An order by the Court or the Authority under subsection (7) may be varied or revoked—
 - (a) in any case—by the Court; or
 - (b) if the order was made by the Authority—by the Authority.
- (9) On a review under this section, the Court may—
 - (a) affirm the decision of the Authority;
 - (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 Authority 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—Report to Parliament

- (1) The Minister must, at least annually, cause a report to be laid before each House of Parliament on the operation and effectiveness of this Act.
- (2) The Secretary must assist the Minister in the preparation of each report.

Schedule 1—Related amendments

Part 1—Preliminary

1—Amendment provisions

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

Part 2—Amendment of *Domestic Violence Act 1994*

2—Insertion of section 10A

After section 10 insert:

10A—Problem gambling family protection orders

- (1) When the Court makes a domestic violence restraining order, it may, if satisfied that it is appropriate to do so in the circumstances, make any order of the kind that the Independent Gambling Authority is empowered to make on a complaint under the *Problem Gambling Family Protection Orders Act 2004*.
- (2) If the Court makes an order under subsection (1), the order will be taken for all purposes to form part of the domestic violence restraining order.

Legislative history

Notes

- 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.

Principal Act

| Year | No | Title | Assent | Commencement |
|------|----|---|-----------|--------------|
| 2004 | 10 | <i>Problem Gambling Family Protection Orders Act 2004</i> | 15.4.2004 | uncommenced |