

TASMANIA

REMOVAL OF FORTIFICATIONS BILL 2017

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SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS

REMOVAL OF FORTIFICATIONS BILL 2017

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
11 April 2017

(Brought in by the Minister for Police, Fire and Emergency Management, the Honourable Marinus Theodoor Hidding)

A BILL FOR

An Act to provide for the removal or modification of fortifications on premises that are connected to certain criminal offences and to consequentially amend the *Police Offences Act 1935*

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Removal of Fortifications Act 2017*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

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3. Definitions

In this Act –

Commissioner means Commissioner of Police;

compliance period, for a fortification removal order, means the period that applies to that order under section 14;

exercise a power includes perform a function;

fortification – see section 4;

fortification removal order means an order made under section 10(1);

fortified premises means the premises specified in a fortification removal order in accordance with section 11(a);

inspection order means an order made under section 26(1);

occupier, in relation to premises, means a person who has, or is entitled to, possession or control of the premises;

owner, in relation to premises, includes every person who jointly and severally, whether at law or in equity –

- (a) is entitled to the building or land for any estate of freehold in possession; or

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- (b) has contracted to buy the building or land; or
- (c) is entitled to receive or is in receipt of the rents and profits of the building or land, whether as beneficial owner, trustee, mortgagee in possession or otherwise;

premises includes –

- (a) land and a structure, building, caravan, vehicle and vessel, whether –
 - (i) temporary or not; and
 - (ii) under construction or not; and
 - (iii) used for residential purposes or not; and
- (b) a place, whether enclosed or built on or not and whether on, within, over or under land or water; and
- (c) a part of premises, including premises referred to in paragraph (a) or (b);

proceeds has the same meaning as in the *Crime (Confiscation of Profits) Act 1993*;

specified offence means –

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- (a) an indictable offence under the laws of Tasmania or the Commonwealth, including an indictable offence triable summarily; or
- (b) an offence under the *Firearms Act 1996*; or
- (c) an offence under the *Misuse of Drugs Act 2001*; or
- (d) an offence under the *Sex Industry Offences Act 2005*; or
- (e) a prescribed offence.

4. Meaning of *fortification*

- (1) For the purposes of this Act, a fortification is a structure or device, or a combination of structures and devices, that –
 - (a) forms part of, or is attached to, premises; and
 - (b) is beyond what is reasonably necessary to provide security for the ordinary lawful use of that kind of premises; and
 - (c) either –
 - (i) has, or could have, the effect of preventing uninvited entry to the premises or part of the premises; or

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- (ii) would be considered by a reasonable person to be intended or designed to prevent uninvited entry to the premises or to part of the premises.
- (2) For the purposes of subsection (1), an electronic surveillance device (such as closed-circuit television equipment, a night-vision camera or motion sensor) is a device that may be a fortification.
- (3) For the avoidance of doubt, this Act applies in relation to a fortification in place on premises, whether or not the fortification was in place before or after the commencement of this Act.

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Part 2 – Fortifications Generally

PART 2 – FORTIFICATIONS GENERALLY

5. Constructing or installing fortification on certain premises

- (1) A person must not construct or install a fortification on premises that the person knows, or ought reasonably to know, are being used, or are likely to be used –
- (a) for or in connection with the commission of a specified offence; or
 - (b) to conceal evidence of a specified offence; or
 - (c) to keep the proceeds of a specified offence.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 50 penalty units or imprisonment for a term not exceeding 1 year, or both; or
 - (b) a body corporate, a fine not exceeding 300 penalty units.
- (2) Subsection (1) does not apply if the person proves that he or she constructed or installed the fortification before the commencement of this Act.

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6. Constructing or installing fortification on certain premises if fortification removal order previously made

A person must not construct or install a fortification on premises if –

- (a) the premises are or have been subject to a fortification removal order; and
- (b) the person knows, or ought reasonably to know, that the premises are or have been subject to a fortification removal order; and
- (c) the person knows, or ought reasonably to know, that the premises are being used, or are likely to be used –
 - (i) for or in connection with the commission of a specified offence; or
 - (ii) to conceal evidence of a specified offence; or
 - (iii) to keep the proceeds of a specified offence.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both; or
- (b) a body corporate, a fine not exceeding 600 penalty units.

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Part 3 – Fortification Removal Orders

PART 3 – FORTIFICATION REMOVAL ORDERS

Division 1 – Applications for fortification removal orders

7. Commissioner may apply for fortification removal order

- (1) The Commissioner may apply to a court of petty sessions for an order that a fortification on premises must be removed or modified, if the Commissioner reasonably believes that the premises are being used, or have been used or are likely to be used –
 - (a) for or in connection with the commission of a specified offence; or
 - (b) to conceal evidence of a specified offence; or
 - (c) to keep the proceeds of a specified offence.
- (2) An application under subsection (1) is to –
 - (a) be in writing; and
 - (b) state the grounds on which the order is sought; and
 - (c) specify the premises from or at which a fortification is sought to be removed or modified under the order; and
 - (d) identify the fortification that is sought to be removed or modified under the order; and

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- (e) if a modification of a fortification is sought – specify details of the modification sought; and
 - (f) state that an owner or occupier of the premises in respect of which the application is made may object to the application.
- (3) An application must be accompanied by at least one affidavit that addresses the facts, matters and circumstances on which the application relies.

8. Serving application and affixing notice of application

- (1) As soon as practicable after an application under section 7 is made, the Commissioner must –
- (a) ensure that all reasonable efforts are made to serve a copy of the application on the owner or, if there is more than one owner, on at least one owner, of the premises in respect of which the application is made; and
 - (b) cause a notice to be affixed –
 - (i) to the entrance of the premises in respect of which the application is made; or
 - (ii) in a conspicuous place near that entrance.
- (2) An application under section 7 is not invalid if, after making all reasonable efforts, the

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Commissioner is unable to serve a copy of the application on an owner of the premises in accordance with subsection (1)(a).

- (3) A notice under subsection (1)(b) is to –
- (a) include the information specified in section 7(2)(c), (d), (e) and (f); and
 - (b) state that it is an offence to remove, obscure, damage or destroy the notice before the day after the application to which the notice relates is finally determined.

9. Owner or occupier may object to application

- (1) An owner, or an occupier, of premises in respect of which an application under section 7 is made may object to the application on the basis that the application is unreasonable in the circumstances.
- (2) An objection made under subsection (1) must be –
- (a) accompanied by at least one affidavit addressing the facts, matters and circumstances on which the objection relies; and
 - (b) filed with a court of petty sessions at least 7 days before the day on which the application is listed to be heard; and

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- (c) served on the Commissioner at least 5 days before the day on which the application is listed to be heard.
- (3) If an objection is made under subsection (1), a court of petty sessions may, in hearing an application made under section 7 –
 - (a) take into account any information accompanying the objection; and
 - (b) receive further evidence in respect of that information.
- (4) A person who makes an objection under subsection (1), at the hearing of the application to which the objection relates, may –
 - (a) appear and adduce evidence; and
 - (b) be represented.
- (5) A court of petty sessions may accept an objection under subsection (1) made outside one or both of the time limitations specified in subsection (2)(b) and (c) if satisfied that it is reasonable in the circumstances to do so.

Division 2 – Determination of applications

10. Court may make fortification removal order

- (1) On receipt of an application under section 7, a court of petty sessions may order the removal or modification of a fortification in place at the premises in respect of which the application is made.

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- (2) A court of petty sessions may make an order under subsection (1) if the court is satisfied that –
- (a) there is a fortification in place at the premises in respect of which the application is made; and
 - (b) there are reasonable grounds to believe that the premises are being used, have been used, or are likely to be used –
 - (i) for or in connection with the commission of a specified offence; or
 - (ii) to conceal evidence of a specified offence; or
 - (iii) to keep the proceeds of a specified offence.
- (3) For the purposes of subsection (2), a court of petty sessions may be satisfied of the matters specified in paragraph (b) of that subsection without having to determine whether the relevant specified offence has been committed.
- (4) A court of petty sessions may hear and determine an application under section 7 whether or not a person, who has made an objection under section 9 in respect of the application, appears at the hearing of the application.

11. Form of fortification removal order

A fortification removal order is to specify –

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-
- (a) the premises from, or at which, the fortification is to be removed or modified; and
 - (b) that a court of petty sessions is satisfied that there is a fortification in place at those premises; and
 - (c) that a court of petty sessions is satisfied that there are reasonable grounds to believe those premises are being used, have been used, or are likely to be used –
 - (i) for or in connection with the commission of a specified offence; or
 - (ii) to conceal evidence of a specified offence; or
 - (iii) to keep the proceeds of a specified offence; and
 - (d) the fortification to which the order relates; and
 - (e) if the fortification is to be modified –
 - (i) the manner in which the fortification is to be modified; and
 - (ii) that the modification must not be removed or undone; and
 - (f) if the fortification is to be removed, that the fortification must be removed, and not be replaced or restored; and

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- (g) that a police officer may enter and inspect the premises in accordance with Part 4 –
 - (i) while the order is in effect; or
 - (ii) under an inspection order after the order has ceased to have effect; and
- (h) that, if the fortification is not removed or modified as required under the order during the compliance period, a police officer may remove or modify that fortification in accordance with Part 5; and
- (i) that an owner or occupier of the fortified premises may –
 - (i) request that the Commissioner extend the compliance period in accordance with section 16; or
 - (ii) apply to a court of petty sessions for an order extending the compliance period in accordance with section 17; and
- (j) that until the fortification removal order ceases to have effect, it is an offence to remove, obscure, damage or destroy the copy of the order affixed to the premises under section 15(1)(b).

12. When fortification removal order takes effect

A fortification removal order takes effect on –

- (a) if a court of petty sessions makes the order in the presence of an owner or occupier of the fortified premises, the day on which the order is made; or
- (b) in any other case, the day on which a copy of the order is affixed to or near the entrance of the fortified premises under section 15.

13. Duration of fortification removal order

- (1) A fortification removal order remains in effect until –
 - (a) the expiry of a 12-month period, commencing on the day on which the compliance period for the order ends in accordance with section 14; or
 - (b) if the order is withdrawn before the expiry of the period referred to in paragraph (a), the day on which the order is withdrawn.
- (2) A fortification removal order does not have effect for any period during which its operation is stayed by a court of competent jurisdiction.
- (3) A period during which a fortification removal order does not have effect because it is stayed by a court of competent jurisdiction does not form part of the period specified under subsection (1).

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14. Compliance period

- (1) The compliance period for a fortification removal order is the period beginning on the day on which the order takes effect and ending on –
 - (a) the day that is 90 days after the day on which the order takes effect; or
 - (b) if the order is extended under section 16 or 19, such day as is specified by –
 - (i) the Commissioner under section 16; or
 - (ii) a court of petty sessions by order under section 19.
- (2) For the purposes of calculating the compliance period for a fortification removal order under subsection (1)(a), the compliance period is not inclusive of any period during which its operation is stayed by a court of competent jurisdiction.

15. Serving and affixing fortification removal order

- (1) As soon as practicable after a fortification removal order is made, the Commissioner must –
 - (a) subject to subsection (2), ensure that all reasonable efforts are made to serve a copy of the order on the owner or, if there is more than one owner, on at least one owner, of the premises in respect of which the order is made; and

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- (b) cause a copy of the order to be affixed –
 - (i) to the entrance of the fortified premises; or
 - (ii) in a conspicuous place near that entrance.
- (2) Subsection (1)(a) does not apply if –
 - (a) a copy of the application in respect of the fortification removal order has been served on an owner of the premises; or
 - (b) a court of petty sessions made the order in the presence of an owner of the premises; or
 - (c) a court of petty sessions determines that there is no requirement to serve a copy of the order as specified in subsection (1)(a).
- (3) An order under section 10(1) does not fail if, after making all reasonable efforts, the Commissioner is unable to serve a copy of the order on an owner of the premises under subsection (1)(a).

Division 3 – Extension of compliance period

16. Commissioner may extend compliance period

- (1) An owner or occupier of fortified premises may any time during the compliance period for a fortification removal order, make a written

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request for the Commissioner to extend the compliance period in relation to those premises.

- (2) The Commissioner is to, no later than 7 days after the day on which a request under subsection (1) is received by the Commissioner –
 - (a) agree to extend the compliance period; or
 - (b) refuse to extend the compliance period; or
 - (c) request further information in relation to the request to extend the compliance period and within 7 days after receiving the further information –
 - (i) agree to extend the compliance period; or
 - (ii) refuse to extend the compliance period.
- (3) Despite subsections (1) and (2), the Commissioner must not agree to extend a compliance period if an application has been made to a court of petty sessions under section 17 in respect of the compliance period and that application has not been finally determined.
- (4) If the Commissioner agrees to extend the compliance period under subsection (2), the compliance period is taken to be extended until the day decided by the Commissioner.

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- (5) If the Commissioner agrees to extend the compliance period, the Commissioner must give the person requesting the extension of the compliance period a written notice of the extension that specifies the day until which the compliance period has been extended.
- (6) A compliance period may be extended –
 - (a) more than once under this section; and
 - (b) even if an extension to that compliance period has previously been made by a court of petty sessions under section 19.

17. Owner or occupier may apply to court for extension of compliance period

- (1) An owner or occupier of fortified premises may apply to a court of petty sessions for an extension of the compliance period if the Commissioner has refused a request for that extension.
- (2) An application under subsection (1) may be made before or after the compliance period ends.
- (3) An application under subsection (1) must –
 - (a) be in writing; and
 - (b) state the grounds on which the order extending the compliance period is sought.
- (4) An application under subsection (1) must be accompanied by at least one affidavit that

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addresses the facts, matters and circumstances on which the application relies.

18. Service of application on Commissioner

An application under section 17(1) must be served on the Commissioner at least 5 days before the day on which the application is listed to be heard by a court of petty sessions.

19. Court may extend compliance period

- (1) On receipt of an application under section 17(1), a court of petty sessions may make an order extending the compliance period for a fortification removal order if the court is satisfied that it is appropriate to do so in the circumstances.
- (2) A court of petty sessions may extend the compliance period even if the compliance period has ended before the court makes its determination on the application.
- (3) If a compliance period for a fortification removal order has ended before the court of petty sessions makes an order extending the compliance period under subsection (2) –
 - (a) the extension of the compliance period for that order is taken to have had effect from the day after the day on which the compliance period initially ended; and
 - (b) the extension of the compliance period does not affect the validity of an action

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by a person, including a police officer, undertaken in accordance with this Act between the expiry of the initial compliance period and the making of the order.

Division 4 – Withdrawal of fortification removal order

20. Withdrawal of fortification removal order

- (1) The Commissioner may withdraw a fortification removal order by filing a notice of withdrawal with a court of petty sessions.
- (2) The notice of withdrawal must –
 - (a) identify the fortification removal order to be withdrawn; and
 - (b) specify the fortified premises to which the order relates; and
 - (c) state that the Commissioner is satisfied that the order is no longer necessary.
- (3) On the notice of withdrawal being filed with a court of petty sessions, the fortification removal order ceases to have effect.

21. Serving and affixing notice of withdrawal

As soon as practicable after a fortification removal order is withdrawn under section 20, the Commissioner must –

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- (a) ensure that all reasonable efforts are made to serve a copy of the notice of withdrawal on the owner or, if there is more than one owner, on at least one owner, of the premises in respect of which the notice is given; and
- (b) cause a copy of the notice of withdrawal to be affixed –
 - (i) to the entrance of the premises to which the order applied; or
 - (ii) in a conspicuous place near that entrance.

PART 4 – INSPECTIONS

Division 1 – Authority to inspect while fortification removal order is in effect

22. Inspecting fortified premises while fortification removal order is in effect

While a fortification removal order is in effect in respect of premises, a police officer is authorised to –

- (a) enter and inspect fortified premises in accordance with Division 3 to determine whether –
 - (i) a fortification has been removed or modified as required under the order; or
 - (ii) a fortification that was removed as required under the order has been replaced or restored; or
 - (iii) a fortification that was modified as required under the order has had the modification removed or undone; or
 - (iv) another fortification has been constructed or installed on the premises; and
- (b) while at the premises, do anything that is reasonably necessary to make a determination referred to in paragraph (a).

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Part 4 – Inspections

***Division 2 – Inspection orders after fortification removal
order ceases to have effect***

23. Commissioner may apply for inspection order after fortification removal order ceases to have effect

- (1) If a fortification removal order has ceased to have effect in respect of premises, the Commissioner may apply to a court of petty sessions for an order authorising a police officer to enter and inspect those premises.
- (2) An application under subsection (1) must –
 - (a) be in writing; and
 - (b) state the grounds on which the inspection order is sought; and
 - (c) specify the premises that are sought to be inspected.
- (3) An application must be accompanied by –
 - (a) at least one affidavit that addresses the facts, matters and circumstances on which the application relies; and
 - (b) a copy of the most recent fortification removal order that previously applied in respect of the premises.
- (4) An application under subsection (1) may not be made in respect of a fortification removal order if 3 years or more have passed since the fortification removal order has ceased to have effect.

24. Serving application and affixing notice of application

- (1) As soon as practicable after an application under section 23 is made, the Commissioner must –
- (a) ensure that all reasonable efforts are made to serve a copy of the application on the owner or, if there is more than one owner, on at least one owner, of the premises in respect of which the application is made; and
 - (b) cause a notice to be affixed –
 - (i) to the entrance of the premises in respect of which the application is made; or
 - (ii) in a conspicuous place near that entrance.
- (2) A notice under subsection (1)(b) is to state that –
- (a) an owner or occupier of the premises in respect of which the application is made may object to the application; and
 - (b) it is an offence to remove, obscure, damage or destroy the notice before the day after the day on which the application is finally determined.

25. Owner or occupier may object to application

- (1) An owner, or an occupier, of the premises in respect of which the application under section 23

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is made, may object to the application on the basis that the application is unreasonable in the circumstances.

- (2) An objection under subsection (1) must be –
 - (a) accompanied by at least one affidavit addressing the facts, matters and circumstances on which the objection relies; and
 - (b) filed with a court of petty sessions at least 7 days before the day on which the application is listed to be heard; and
 - (c) served on the Commissioner at least 5 days before the day on which the application is listed to be heard.
- (3) If an objection is made under subsection (1), a court of petty sessions may, in hearing an application made under section 23 –
 - (a) take into account any information accompanying the objection; and
 - (b) receive further evidence in respect of that information.
- (4) A person who makes an objection under subsection (1), at the hearing of the application to which the objection relates, may –
 - (a) appear and adduce evidence; and
 - (b) be represented.

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- (5) A court of petty sessions may accept an objection filed or served outside one or both of the time limitations specified in subsection (2)(b) and (c) if satisfied that it is reasonable to do so.

26. Court may make inspection order

- (1) On receipt of an application under section 23, a court of petty sessions may order that a police officer is authorised to –
- (a) enter and inspect premises in accordance with Division 3 to determine whether –
 - (i) a fortification that was removed as required under the order has been replaced or restored; or
 - (ii) a fortification that was modified as required under the order has had the modification removed or undone; or
 - (iii) another fortification has been constructed or installed on the premises; and
 - (b) while at the premises, do anything that is reasonably necessary to make a determination referred to in paragraph (a).
- (2) A court of petty sessions may make an order under subsection (1) if the court is satisfied that it is appropriate to do so in all the circumstances.

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- (3) A court of petty sessions may hear and determine an application under section 23 whether or not a person, who has made an objection under section 25 in respect of the application, appears at the hearing of the application.

27. Form of inspection order

- (1) An inspection order must specify –
- (a) the premises to be entered and inspected; and
 - (b) subject to subsection (2), the period during which a police officer is authorised to inspect the premises; and
 - (c) that it is an offence to remove, obscure, damage or destroy a copy of an inspection order that is affixed in accordance with section 28 before the day after the last day of the period specified under paragraph (b).
- (2) The period specified under subsection (1)(b) must not end after the day that is 3 years after the day on which the fortification removal order ceased to have effect.

28. Serving and affixing inspection order

As soon as practicable after an inspection order is made, the Commissioner must –

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- (a) ensure that all reasonable efforts are made to serve a copy of the inspection order on the owner or, if there is more than one owner, on at least one owner, of the premises in respect of which the order is made; and
- (b) cause a copy of the inspection order to be affixed –
 - (i) to the entrance of the premises to which the order applies; or
 - (ii) in a conspicuous place near that entrance.

Division 3 – Conduct of inspections

29. Power to inspect and enter premises

- (1) This section applies if a police officer is authorised to enter and inspect premises to which the authorisation relates under –
 - (a) section 22; or
 - (b) an inspection order made under section 26.
- (2) A police officer may, without warrant, enter and inspect premises to which the authorisation relates on –
 - (a) if the inspection is authorised under section 22, any day on which the fortification removal order is in effect; or

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- (b) if the inspection is authorised under an inspection order made under section 26, any day that is within the period specified in the order.
- (3) Before any police officer enters the premises to which the authorisation relates, at least one police officer must –
 - (a) announce that police officers are authorised to enter and inspect the premises; and
 - (b) state that he or she is a police officer; and
 - (c) give anyone at the premises a reasonable opportunity to permit entry to the premises.
- (4) A police officer may use reasonable force to –
 - (a) gain entry to premises, if permission to enter the premises is not given; and
 - (b) exercise any other power under subsection (2).

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**PART 5 – ENFORCEMENT OF FORTIFICATION
REMOVAL ORDERS**

30. Enforcement notice

- (1) This section applies if –
 - (a) a fortification removal order is in effect;
and
 - (b) the compliance period for that order has
ended; and
 - (c) the fortification has not been removed or
modified as required under the order.
- (2) At least 7 days before a police officer intends to
enforce a fortification removal order in relation
to a fortified premises by exercising powers
under section 31, a police officer must cause a
notice of enforcement of the order to be
affixed –
 - (a) to the entrance of the fortified premises;
or
 - (b) in a conspicuous place near that entrance.
- (3) The notice must –
 - (a) specify the day, or days, on which a
police officer intends to exercise powers
under section 31; and
 - (b) state that it is an offence to remove,
obscure, damage or destroy the notice

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before the day after the last day specified
under paragraph (a).

31. Enforcement powers

- (1) On a day specified in the notice under section 30(3)(a), a police officer may do any one or more of the following to enforce a fortification removal order that is in effect in respect of a fortified premises:
 - (a) enter the fortified premises without a warrant;
 - (b) bring onto the premises any person, equipment or materials that are reasonably required to remove or modify the fortifications that the order requires to be removed or modified;
 - (c) do anything reasonably necessary, with or without the assistance of a person who is brought onto the premises under paragraph (b), to –
 - (i) remove the fortifications that the order requires to be removed; and
 - (ii) modify, in the manner specified in the order, the fortifications that the order requires to be modified;
 - (d) leave and re-enter to the premises.
- (2) Before any police officer enters the fortified premises, at least one police officer must –

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- (a) announce that police officers are authorised to enter the premises and to enforce the fortification removal order; and
 - (b) state that he or she is a police officer; and
 - (c) state that it is an offence to obstruct or hinder the enforcement of the fortification removal order; and
 - (d) give anyone at the premises an opportunity to permit entry to the premises.
- (3) A police officer may use reasonable force –
- (a) to gain entry in accordance with subsection (1), if permission to enter the premises is not given; and
 - (b) to exercise any other power under subsection (1).
- (4) A person who is brought onto the fortified premises by a police officer under subsection (1)(b) may also bring onto the premises any equipment or materials that are reasonably required to remove or modify the fortifications that the order requires to be removed or modified.
- (5) A police officer must not exercise a power under this section in respect of fortified premises unless the fortification removal order is in effect in respect of those premises.

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32. Power to direct obstructive person to leave fortified premises

- (1) This section applies if, on a day specified in the notice under section 30(3)(a), a police officer believes on reasonable grounds that a person at fortified premises is hindering or obstructing –
 - (a) a police officer in the exercise of a power under section 31; or
 - (b) a person who is assisting a police officer to remove or modify a fortification under section 31(1)(c).
- (2) The police officer may direct the person who is hindering, or obstructing, to leave the fortified premises in the manner directed.
- (3) A direction under subsection (2) –
 - (a) may be given orally or in writing; and
 - (b) must be reasonable in all the circumstances.

33. Power to use reasonable force to remove person from fortified premises

- (1) In addition to any penalty imposed under section 39, if a person has refused to comply with a direction under section 32, a police officer may use reasonable force to remove the person from fortified premises.

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- (2) Nothing in this section limits any powers, including the power of arrest, that a police officer has under any other law.

34. Commissioner may recover cost of removing or modifying fortifications

The reasonable costs of removing or modifying a fortification under section 31 may be recovered by the Commissioner in a court of competent jurisdiction as a debt from an owner or occupier of the premises who caused or allowed the fortification to be constructed or installed on those premises.

35. Removed material forfeited to Crown

- (1) The following are forfeited to the Crown:
- (a) a fortification that is removed from fortified premises under section 31;
 - (b) material that is removed from a fortification in the course of modifying that fortification under section 31.
- (2) The Commissioner may sell, destroy or otherwise dispose of a fortification or material that is forfeited to the Crown under subsection (1).

36. Exemption from certain laws

- (1) Nothing in the *Environmental Management and Pollution Control Act 1994* applies in respect of

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noise resulting from the removal or modification of a fortification under section 31.

- (2) Nothing in the *Building Act 2016*, the *Land Use Planning and Approvals Act 1993*, the *Historic Cultural Heritage Act 1995* or a planning scheme requiring an authority, licence or permit for the carrying out of works applies to the removal or modification of a fortification under section 31.

PART 6 – OFFENCES

37. Obstructing a police officer

A person must not, without reasonable excuse, hinder or obstruct a police officer who is exercising a power under this Act.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both.

38. Obstructing enforcement of fortification removal order

A person must not, without reasonable excuse, hinder or obstruct a person who is assisting a police officer to remove or modify a fortification under section 31(1)(c).

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both.

39. Failure to comply with direction to leave fortified premises

A person must not, without reasonable excuse, refuse or fail to comply with a direction given to the person under section 32.

Penalty: Fine not exceeding 20 penalty units.

40. Interfering with affixed documents

- (1) A person must not, without reasonable excuse, remove, obscure, damage or destroy an affixed document before the applicable day.

Penalty: Fine not exceeding 20 penalty units.

- (2) An affixed document referred to in subsection (1) means one of the following documents affixed to premises:

- (a) a notice of application that is affixed in accordance with section 8(1)(b);
- (b) a copy of a fortification removal order that is affixed under section 15(1)(b);
- (c) a notice of application that is affixed in accordance with section 24(1);
- (d) a copy of an inspection order that is affixed in accordance with section 28;
- (e) a notice of enforcement that is affixed in accordance with section 30(2).

- (3) For the purposes of subsection (1) –

applicable day, for an affixed document, means the day after –

- (a) in the case of a notice of application that is affixed in accordance with section 8(1)(b) – the day on which the application is finally determined; or

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- (b) in the case of a copy of a fortification removal order that is affixed under section 15(1)(b) – the day on which the order ceases to have effect; or
- (c) in the case of a notice of application that is affixed in accordance with section 24(1) – the day on which the application is finally determined; or
- (d) in the case of a copy of an inspection order that is affixed in accordance with section 28 – the last day of the period specified in the order under section 27(1)(b); or
- (e) in the case of a notice of enforcement that is affixed in accordance with section 30(2) –
 - (i) the last day specified in the notice under section 30(3)(a); or
 - (ii) if the fortification removal order to which the notice of enforcement relates ceases to have effect before that day – the day on which that order ceases to have effect.

PART 7 – POLICE POWERS

41. Power to require information

- (1) In the course of exercising a power under this Act, a police officer may require any person to provide his or her name, address and date of birth.
- (2) A person must comply with a requirement made under subsection (1).

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 6 months, or both.

- (3) In complying with a requirement made under subsection (1), a person must not provide information or an answer that the person knows to be false or misleading in a material particular.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 6 months, or both.

42. Power to detain persons

- (1) A police officer may at any time stop or detain a person if there are reasonable grounds for suspecting that the person is committing, or has committed, an offence under this Act.
- (2) When exercising his or her powers under this section, a police officer may use any reasonable force and any assistance the police officer thinks reasonable.

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- (3) In this section, a power to stop or detain includes the power to stop and detain.

43. Power to arrest without warrant

A police officer may arrest, without warrant, a person who the police officer reasonably believes is committing, or has committed, an offence under this Act.

PART 8 – MISCELLANEOUS

44. Proceedings under this Act

- (1) Proceedings on an application under this Act are taken to be civil proceedings for all purposes.
- (2) A court of competent jurisdiction dealing with proceedings under this Act may do one or more of the following:
 - (a) order that the whole or any part of the proceedings is to be heard in closed court;
 - (b) order that only persons, or classes of persons, specified by the court may be present during the whole or any part of the proceedings;
 - (c) order that the publication of a report of the whole or any part of the proceedings, or of any information derived from the proceedings, is prohibited.
- (3) Except in relation to proceedings for an offence under this Act –
 - (a) a rule of construction that is applicable only in relation to the criminal law does not apply in the interpretation of this Act; and
 - (b) the rules of evidence applicable in civil proceedings apply in proceedings under this Act; and

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- (c) the rules of evidence applicable only in criminal proceedings do not apply in proceedings under this Act; and
 - (d) a question of fact to be decided by a court of competent jurisdiction in proceedings on an application under this Act is to be decided on the balance of probabilities.
- (4) A decision under this Act about the existence of grounds for doing or suspecting anything may be based on hearsay evidence or hearsay information.
- (5) An order or decision of a court of competent jurisdiction made under this Act in relation to property is not invalid only because the value of the property exceeds the maximum value permitted to be dealt with by the court that made the order or decision.

45. Appeals

- (1) A person who has an interest in premises that are subject to a fortification removal order may appeal against the order.
- (2) The Commissioner may appeal against –
 - (a) a fortification removal order; or
 - (b) the refusal of a court of competent jurisdiction to make such an order.
- (3) Appeals are to be conducted in accordance with Part XI of the *Justices Act 1959* as if an order

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under this Act were an order to which that Part applies as defined for the purposes of that Part.

46. Delegation

The Commissioner may only delegate a function or power under this Act, in accordance with section 8 of the *Police Service Act 2003*, to a member of the Police Service of or above the rank of Commander.

47. Immunity

- (1) A police officer is not liable for anything done or omitted to be done in good faith in the course of exercising his or her functions and powers under this Act.
- (2) A person assisting a police officer to remove or modify fortifications under section 31(1)(c) is not liable for anything done or omitted to be done in good faith –
 - (a) in the course of assisting the police officer; or
 - (b) in the reasonable belief that the act or omission was in the course of assisting the police officer.
- (3) A person bringing equipment or materials onto fortified premises under section 31(4) is not liable for anything done or omitted to be done in good faith in the course of bringing the equipment or materials onto the premises.

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- (4) Any liability resulting from an act or omission that, but for this section, would attach to a person, attaches instead to the State.

48. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Regulations made under this Act may –
- (a) be of general or limited application; and
 - (b) differ according to differences in time, place or circumstance; and
 - (c) confer a discretionary authority or impose a duty on a specified person or body or a specified class of persons or bodies; and
 - (d) provide that a contravention of any of the regulations is an offence.

49. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Police, Fire and Emergency Management; and
- (b) the department responsible to the Minister for Police, Fire and Emergency

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Management in relation to the administration of this Act is the Department of Police, Fire and Emergency Management.

50. Consequential amendments

The legislation specified in Schedule 1 is amended as specified in that Schedule.

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SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS

Section 50

Police Offences Act 1935

1. Division III of Part II is repealed.