

## CLAUSE NOTES

### *Removal of Fortifications Bill 2017*

#### PART I – PRELIMINARY

- Clause 1: **Short title**  
Specifies the name of the proposed Act.
- Clause 2: **Commencement**  
Specifies that the Act commences on the day it receives the Royal Assent.
- Clause 3: **Definitions**  
Provides a range of definitions for terms used throughout the Bill.
- Clause 4: **Meaning of *fortification***  
Defines the term fortification for the purposes of the Bill, and includes that to be a fortification, the device or structure must be beyond what is reasonably necessary to provide security for the ordinary lawful use of that kind of premises. It further provides that electronic surveillance devices may be fortifications, and clarifies that the Bill applies to fortifications constructed prior to the commencement of the Act.

#### PART 2 – FORTIFICATIONS GENERALLY

- Clause 5: **Constructing or installing fortification on certain premises**  
Provides an offence, following the commencement of the Act, for the construction of fortifications on premises that are known, or ought reasonably to be known, to be connected with a specified offence.
- Clause 6: **Constructing or installing fortification on certain premises if fortification removal order previously made**  
Provides a similar offence to that in clause 5, but with a higher penalty, for when fortifications are constructed or installed on premises that have previously been subject to a fortification removal order.

#### PART 3 – FORTIFICATION REMOVAL ORDERS

- Clause 7: **Commissioner may apply for fortification removal order**  
Provides that the Commissioner of Police may apply to a court of petty sessions for an order requiring that fortifications on premises must be removed or modified. A prerequisite to an application is a reasonable belief of a connection between the premises and a specified offence.

**Clause 8: Serving application and affixing notice of application**

Requires that as soon as practicable after an application is made to a court of petty sessions under the previous clause, that a copy of the application must be served on an owner of the premises and a notice as to the application must be affixed to the premises.

**Clause 9: Owner or occupier may object to application**

Provides that an owner or occupier of a premises subject to an application for a fortification removal order may object to the application, and sets out the form and service requirements in regard to that objection. The clause also provides that the objector may appear at the hearing of the application and be represented.

**Clause 10: Court may make fortification removal order**

Provides authority for a court of petty sessions to order the removal or modification of fortifications if satisfied there are fortifications at the premises and there are reasonable grounds to believe the premises are connected with a specified offence.

**Clause 11: Form of fortification removal order**

Specifies the information that must be included in a fortification removal order made by a court of petty sessions.

**Clause 12: When fortification removal order takes effect**

Specifies a fortification removal order takes effect from when it was made, if an owner or occupier was present, or alternatively that it takes effect following a copy of the order being affixed to the premises.

**Clause 13: Duration of fortification removal order**

Specifies a fortification removal order remains in effect for 12 months following the compliance period in relation to the order, unless the order is earlier withdrawn.

**Clause 14: Compliance period**

Provides a compliance period of 90 days following the commencement of a fortification removal order, which is the time in which the owner or occupier is to remove or modify fortifications in accordance with the order made by the court.

**Clause 15: Serving and affixing fortification removal order**

Requires that as soon as practicable after a fortification removal order is made that the Commissioner of Police must cause a copy of the order to be served on an owner and cause a copy of the order to be affixed to the premises.

The clause also provides that an owner does not need to be served with a copy if they were previously served with the application for the order, were present in court when the order was made, or the court determines service is not required.

- Clause 16: Commissioner may extend compliance period**  
Provides that the Commissioner of Police may extend the compliance period on the application of an owner or occupier, and that the compliance period may be extended more than once.
- Clause 17: Owner or occupier may apply to court for extension of compliance period**  
Provides that an owner or occupier may apply to a court of petty sessions for an extension to the compliance period if an application for extension is refused by the Commissioner of Police.
- Clause 18: Owner or occupier may apply to court for extension of compliance period**  
Requires a copy of the application to a court to extend the compliance period be served on the Commissioner of Police at least 5 days before the application is heard.
- Clause 19: Court may extend compliance period**  
Provides that a court of petty sessions may extend the compliance period in regard to a fortification removal order, following the hearing of an application from an owner or occupier.
- Clause 20: Withdrawal of fortification removal order**  
Provides that the Commissioner of Police may withdraw a fortification removal order before it otherwise expires.
- Clause 21: Serving and affixing notice of withdrawal**  
Requires that when a fortification removal order is withdrawn, that the Commissioner of Police must cause an owner to be served with notice of the withdrawal, and that notice of the withdrawal must also be affixed to the premises.

#### **PART 4 – INSPECTIONS**

- Clause 22: Inspecting fortified premises while fortification removal order is in effect**  
Authorises a police officer to enter and inspect a premises subject to a fortification removal order to determine whether a fortification has been removed or modified as required, or whether a removed fortification has been reinstated or substituted with another.
- Clause 23: Commissioner may apply for inspection order after fortification removal order ceases to have effect**  
Provides that in the three year period following the expiration of a fortification removal order that the Commissioner of Police may apply to a court of petty sessions for an order allowing a police officer to enter and inspect those premises.
- Clause 24: Serving application and affixing notice of application**  
Requires that as soon as practicable after an application is made to a court of petty sessions under the previous clause, that a copy of the application must be

served on an owner of the premises and a notice as to the application must be affixed to the premises.

**Clause 25: Owner or occupier may object to application**

Provides that an owner or occupier of a premises subject to an application for an inspection order may object to the application, and sets out the form and service requirements in regard to that objection. The clause also provides that the objector may appear at the hearing of the application and be represented.

**Clause 26: Court may make inspection order**

Provides authority for a court of petty sessions to grant an inspection order.

**Clause 27: Form of inspection order**

Specifies the information that must be contained in an inspection order issued by a court.

**Clause 28: Serving and affixing inspection order**

Requires that as soon as practicable after an inspection order is made that the Commissioner of Police must cause a copy of the order to be served on an owner and cause a copy of the order to be affixed to the premises.

**Clause 29: Power to inspect and enter premises**

Authorises a police officer to enter and inspect a premises that is subject to either a fortification removal order or an inspection order. The clause also empowers police to use reasonable force in exercising the power, and requires that before entry is effected that police must announce their presence and provide reasonable opportunity for entry to be permitted.

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

**Clause 30: Enforcement notice**

As a prerequisite to police removing or modifying fortifications that an owner or occupier has not removed or modified during the compliance period, as required by a fortification removal order, that a police officer give notice that police intend to exercise their enforcement powers under clause 31.

**Clause 31: Enforcement powers**

Provides, that following the notice requirements in clause 30, that a police officer may enter the fortified premises, with reasonable assistance, and take any reasonably necessary actions to remove or modify the fortifications as required by a fortification removal order.

The clause also contains requirements that police must announce their presence and provide reasonable opportunity for entry to be permitted before using force to enter.

- Clause 32: Power to direct obstructive person to leave fortified premises**  
Authorises a police officer to direct a person who is hindering or obstructing the removal or modification of fortifications under the above provision to leave the premises.
- Clause 33: Power to use reasonable force to remove person from fortified premises**  
Authorises a police officer remove a person from premises where the person refuses to comply with a direction under the previous clause.
- Clause 34: Commissioner may recover cost of removing or modifying fortifications**  
Provides that the Commissioner of Police may recover costs in the removal or modification of fortifications as a debt against an owner or occupier.
- Clause 35: Removed material forfeited to Crown**  
Provides that materials removed from premises in the course of police removing or modifying fortifications are forfeit to the Crown.
- Clause 36: Exemption from certain laws**  
Exempts police from various building approvals in regard to actions taken to remove or modify fortifications in accordance with clause 31.

## PART 6 – OFFENCES

- Clause 37: Obstructing a police officer**  
Creates an offence of obstructing police in regard to the execution of their powers under the Bill.
- Clause 38: Obstructing enforcement of fortification removal order**  
Creates an offence of obstructing a person who is assisting police to remove or modify fortifications in accordance with clause 31.
- Clause 39: Failure to comply with direction to leave fortified premises**  
Creates an offence in respect of a person who fails to comply with a direction to leave premises in accordance with direction given under clause 32.
- Clause 40: Interfering with affixed documents**  
Creates an offence for interfering with documents affixed to premises in accordance with the requirements of the Bill during the periods relevant to the various documents.

## PART 7 – POLICE POWERS

- Clause 41: Power to require information**  
Provides police the power to require a person's name, address, and date of birth, while exercising duties under the Bill, and creates an offence for a person who refuses to comply or who provides false information.

**Clause 42: Power to detain persons**

Authorises police to stop and detain a person where the police officer has reasonable grounds for suspecting the person has committed an offence under the Bill.

**Clause 43: Power to arrest without warrant**

Authorises police to arrest a person where the police officer reasonable believes the person has committed an offence under the Bill.

**PART 8 – MISCELLANEOUS**

**Clause 44: Proceedings under this Act**

Provides that proceedings on applications under the Bill are taken to be civil proceedings, and provides courts powers in regard to the conduct of proceedings.

**Clause 45: Appeals**

Provides for appeals under the Bill, utilising the motion to review provisions of Part XI of the *Justices Act 1959*.

**Clause 46: Delegation**

Provides the Commissioner of Police may delegate his or her functions and powers under the Act to a police officer of or above the rank of Commander.

**Clause 47: Immunity**

Provides that a police officer, or person assisting, is not liable for anything done in good faith in the course of exercising functions and powers under the Bill, and that any liability that would otherwise result attaches to the State.

**Clause 48: Regulations**

Provides for the making of Regulations under the Act.

**Clause 49: Administration of Act**

Provides the Bill will be administered by the Minister for Police, Fire and Emergency Management until an order is otherwise made under the *Administrative Arrangements Act 1990*.

**Clause 50: Consequential amendments**

Repeals the current fortification provisions contained in Division III of Part II of the *Police Offences Act 1935*, that are being replaced by this Bill.