



Australian Capital Territory

Crimes (Fortification Removal) Amendment Act 2018

A2018-5

An Act to amend the *Crimes Act 1900*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Crimes (Fortification Removal) Amendment Act 2018*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see [Legislation Act](#), s 79).

3 Legislation amended

This Act amends the *Crimes Act 1900*.

4 Offences against Act—application of Criminal Code etc Section 7A, note 1

insert

- s 252ZA (Premises must not be fortified)
- s 252ZB (Fortification must not be replaced or restored)

5 New division 10.9

insert

Division 10.9 Fortification of premises**252M Definitions—div 10.9**

In this division:

compliance period means the period under section 252Q for compliance with a fortification removal order.

fortification, of premises, means a structure, device or other thing, or a combination of structures, devices or other things, that form part of, or are attached to, the premises if the thing or combination of things—

- (a) exceeds what is reasonably necessary to provide security for the ordinary lawful use of the premises; and
- (b) either—
 - (i) prevents uninvited entry to the premises or part of the premises; or
 - (ii) would be considered by a reasonable person to be intended or designed to prevent uninvited entry to the premises or part of the premises.

Examples—devices

- closed-circuit television equipment
- electronic surveillance device
- motion sensor
- night-vision camera

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

fortification inspection order—see section 252U.

fortification offence—

- (a) means an offence punishable by imprisonment for 5 years or longer; and
- (b) includes an offence in another jurisdiction that would be punishable by imprisonment for 5 years or longer if committed in the ACT.

fortification removal order—see section 252N.

occupier, of premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

252N Fortification removal order—application for order or variation

- (1) The chief police officer may apply to the Magistrates Court for an order directing an occupier of premises to remove a fortification of the premises (a *fortification removal order*).
- (2) If a fortification removal order is already in effect for premises—
 - (a) the chief police officer may make an application to vary the fortification removal order to direct the occupier of the premises to—
 - (i) remove a fortification of the premises in a different way or within a different compliance period; or
 - (ii) remove a different fortification of the premises; and
 - (b) the occupier of the premises may make an application to vary the fortification removal order to—
 - (i) describe the fortification in a different way; or

- (ii) direct the occupier of the premises to remove a fortification of the premises in a different way.
- (3) An application must—
 - (a) be in writing; and
 - (b) be supported by evidence by affidavit dealing with the matters mentioned in—
 - (i) for a fortification removal order—section 252O (1); or
 - (ii) for variation of a fortification removal order—section 252O (2).

252O Fortification removal order

- (1) On application under section 252N (1), the Magistrates Court may make a fortification removal order in relation to premises if satisfied that—
 - (a) the premises are fortified; and
 - (b) there are reasonable grounds to believe the premises are, have been or will be used in relation to a fortification offence; and
 - (c) it is necessary for the chief police officer to have uninvited access to the premises in relation to the offence.
- (2) On application under section 252N (2), the Magistrates Court may vary a fortification removal order if satisfied that the variation sought is necessary or otherwise appropriate.
- (3) A fortification removal order, including an order as varied, must—
 - (a) identify the premises; and
 - (b) describe the fortification; and

- (c) set out whether the fortification is to be removed by 1 or both of the following:
 - (i) removing a structure or device that forms all or part of the fortification;
 - (ii) modifying a structure or device that forms all or part of the fortification; and
- (d) state the compliance period for removal of the fortification; and
- (e) state that the fortification must not be replaced or restored; and
- (f) set out the powers of the police to—
 - (i) inspect a fortification under section 252R; and
 - (ii) remove a fortification under section 252S.

252P Fortification removal order—length

- (1) A fortification removal order in relation to premises takes effect on—
 - (a) if the occupier of the premises is before the Magistrates Court when the order is made—the day the order is made; or
 - (b) if the occupier of the premises is not before the Magistrates Court when the order is made—the day the order is served on the occupier.
- (2) A fortification removal order remains in force for 12 months.
- (3) However, if the chief police officer gives the Magistrates Court written notice that the fortification removal order is no longer required, the fortification removal order ceases to have effect.

252Q Fortification removal order—compliance period

An occupier must comply with a fortification removal order—

- (a) within 3 months after the day the order takes effect; or
- (b) if the order states another day—by the stated day.

252R Fortification removal order—inspection

- (1) This section applies if—
 - (a) the compliance period for a fortification removal order has ended; and
 - (b) the fortification removal order is still in force; and
 - (c) the chief police officer believes on reasonable grounds—
 - (i) the fortification has not been removed in accordance with the order; or
 - (ii) a fortification that has been removed in accordance with the order has been restored or replaced.
- (2) A police officer may, at any time and without a warrant, enter the premises to inspect the premises for compliance with the fortification removal order.

252S Fortification removal order—removal by police

- (1) This section applies if—
 - (a) the compliance period for a fortification removal order has ended; and
 - (b) the fortification removal order is still in force; and
 - (c) the chief police officer believes on reasonable grounds that the fortification has not been removed in accordance with the fortification removal order.

- (2) A police officer may, at any time and without a warrant, enter the premises for the purpose of—
- (a) removing the fortification in accordance with the fortification removal order; or
 - (b) doing something reasonably necessary to remove the fortification in accordance with the fortification removal order.

Examples—par (b)

- 1 bringing equipment that will be used for carrying out fortification removal to the premises
- 2 escorting a person who has been engaged to assist with fortification removal to the premises

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (3) The Territory may recover from the person required to remove the fortification under the fortification removal order any costs reasonably incurred by the Territory for removing the fortification.

Note An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

252T Fortification inspection order—application for order or variation

- (1) This section applies if a fortification removal order in relation to premises has ended within the previous 3 years.
- (2) The chief police officer may apply to the Magistrates Court for an order to inspect the premises (a *fortification inspection order*).
- (3) If a fortification inspection order is already in effect for premises, the chief police officer or the occupier of the premises may make an application to vary the length of the order.
- (4) An application must be—
 - (a) in writing; and

- (b) supported by evidence by affidavit dealing with the matters mentioned in section 252U.

252U Fortification inspection order

- (1) On application, the Magistrates Court may make a fortification inspection order if satisfied that—
 - (a) a fortification removal order was in effect for the premises within the previous 3 years; and
 - (b) the chief police officer has reasonable grounds to believe the premises are fortified.
- (2) A fortification inspection order must—
 - (a) identify the premises; and
 - (b) set out the powers of the police to inspect a fortification under section 252W.

252V Fortification inspection order—length

- (1) A fortification inspection order in relation to premises takes effect on—
 - (a) if the occupier of the premises is before the Magistrates Court when the order is made—the day the order is made; or
 - (b) if the occupier of the premises is not before the Magistrates Court when the order is made—the day the order is served on the occupier.
- (2) A fortification inspection order remains in force until the earlier of the following:
 - (a) the day stated in the order;
 - (b) the day 3 years after the day the fortification removal order in relation to the premises ended.

- (3) However, if the chief police officer gives the Magistrates Court written notice that the fortification inspection order is no longer required the fortification inspection order ceases to have effect.

252W Fortification inspection order—inspection

- (1) If a fortification inspection order in relation to premises is in force, a police officer may, at any time and without a warrant, enter the premises to inspect the premises to assess whether the premises are fortified.

Note If a law gives a function to an entity (including a person), the function may be exercised from time to time (see [Legislation Act](#), s 196 and dict, pt 1, def *entity*).

- (2) However, the police officer must not enter the premises unless the chief police officer has reasonable grounds to believe the premises are fortified.

252X Exercising powers—announce entry and explain purpose

- (1) Before anyone enters premises under an order under this division, a police officer must—
 - (a) announce that the police officer is authorised to enter the premises; and
 - (b) give anyone at the premises the opportunity to allow entry to the premises; and
 - (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify themselves to the person.
- (2) If the occupier of the premises, or someone who apparently represents the occupier, is present at the premises while a police officer is on the premises under an order, the police officer must—
 - (a) tell the person the purpose of the entry; and
 - (b) make available to the person a copy of the order.

252Y Exercising powers—occupier entitled to be present during inspection

- (1) If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while an inspection is conducted, the person is entitled to observe the inspection being conducted.
- (2) However, the person is not entitled to observe the inspection if—
 - (a) to do so would impede the inspection; or
 - (b) the person is under arrest, and allowing the person to observe the inspection being conducted would interfere with the objectives of the inspection.

252Z Exercising powers—use reasonable force

If a police officer believes that a person who is present at the premises is hindering or obstructing the officer from entering the premises or removing the fortification, the officer may—

- (a) give a reasonable direction that the person must leave the premises; and
- (b) if the person refuses to leave the premises in accordance with the direction—use reasonable force to remove the person from the premises; and
- (c) do anything that is reasonably necessary to enter the premises and remove the fortification.

Note It is an offence to obstruct a territory public official, including a police officer or a contractor performing work for the Territory (see [Criminal Code](#), s 361).

252ZA Premises must not be fortified

A person commits an offence if—

- (a) the person fortifies premises; and

- (b) the person—
 - (i) knows the premises are, have been or will be used in relation to a fortification offence; or
 - (ii) is reckless about whether the premises are, have been or will be used in relation to a fortification offence; and
- (c) the person intends that the fortification will prevent the uninvited entry to the premises or part of the premises.

Examples—par (b)

- 1 a fortification offence has been carried out on the premises
- 2 evidence of a fortification offence is being concealed on the premises
- 3 proceeds of a fortification offence are likely to be kept on the premises

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

252ZB Fortification must not be replaced or restored

A person commits an offence if—

- (a) the person fortifies premises; and
- (b) the premises have previously been the subject of a fortification removal order; and
- (c) the person—
 - (i) knows the premises have previously been the subject of a fortification removal order; or
 - (ii) is reckless about whether the premises have previously been the subject of a fortification removal order; and

- (d) the person—
 - (i) knows the premises are, have been or will be used in relation to a fortification offence; or
 - (ii) is reckless about whether the premises are, have been or will be used in relation to a fortification offence; and
- (e) the person intends that the fortification will prevent the uninvited entry to the premises or part of the premises.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

252ZC Protection from liability

- (1) A protected person is not civilly liable for conduct engaged in honestly and without recklessness—
 - (a) in the exercise of a function under this division; or
 - (b) in the reasonable belief that the conduct was in the exercise of a function under this division.
- (2) Any civil liability that would, apart from this section, attach to the protected person attaches instead to the Territory.
- (3) In this section:

conduct means an act or omission to do an act.

protected person means—

- (a) a police officer or other official exercising a function under this division; or
- (b) a person accompanying a police officer exercising a function under this division.

252ZD Chief police officer delegations

The chief police officer may delegate any of the chief police officer's functions under this division to a police officer at or above the level of superintendent.

Note For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

6 Dictionary, new definitions

insert

compliance period, for division 10.9 (Fortification of premises)—see section 252M.

fortification, of premises, for division 10.9 (Fortification of premises)—see section 252M.

fortification inspection order, for division 10.9 (Fortification of premises)—see section 252U.

fortification offence, for division 10.9 (Fortification of premises)—see section 252M.

fortification removal order, for division 10.9 (Fortification of premises)—see section 252N.

occupier, of premises, for division 10.9 (Fortification of premises)—see section 252M.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 30 November 2017.

2 Notification

Notified under the [Legislation Act](#) on 1 March 2018.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Crimes (Fortification Removal) Amendment Bill 2018, which originated in the Legislative Assembly as the Crimes (Fortification Removal) Amendment Bill 2017 and was passed by the Assembly on 20 February 2018.

Clerk of the Legislative Assembly

© Australian Capital Territory 2018