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**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**CRIMES (FORTIFICATION REMOVAL)
AMENDMENT BILL 2017**

REVISED EXPLANATORY STATEMENT

Presented by
Gordon Ramsay MLA
Attorney-General

Crimes (Fortification Removal) Amendment Bill 2017

Outline

This explanatory statement relates to the Crimes (Fortification Removal) Amendment Bill 2017 (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on the Bill. This explanatory statement does not form part of the Bill and has not been endorsed by the Assembly.

This explanatory statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said in the statement about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Purpose of the Bill

The Bill makes amendments to the *Crimes Act 1900* to introduce a fortification removal scheme in the ACT. A fortification is a structure designed to stop or hinder uninvited entry to premises. Where police obtain a warrant to enter and search premises for evidence of a crime, fortifications may provide the occupier with time to vacate the premises, delay police entry and destroy evidence.¹ The Bill provides the Chief Police Officer (CPO) with the power to apply to the Magistrates Court for an order that the occupier of the premises remove fortifications on the premises. The Bill also prohibits the establishment of fortifications on certain premises.

The need for a fortification removal scheme in the ACT

Law enforcement agencies have reported the use of fortifications by Outlaw Motorcycle Gangs (OMCGs) to frustrate police execution of search warrants.² The ACT does not have laws which prohibit the establishment of fortifications or require them to be removed. Fortification removal laws have been developed in all other Australian jurisdictions and differ in each jurisdiction. The models of other jurisdictions have been considered in developing an appropriate model of fortification scheme for the ACT.

In March 2016 ACT Policing identified a fortified OMCG clubhouse in the ACT. The clubhouse was fortified with heavy steel doors, preventing access to the premises using traditional methods of forced entry. As the property was rented by a member of the OMCG from a private owner, ACT Policing resolved the issue by assisting the private owner to initiate eviction proceedings in the Magistrates Court. However, in circumstances where the occupier of the premises is also the owner, this approach could not be taken.

The introduction of a fortification removal scheme in the ACT will align the ACT's statute book with the laws of the states and the Northern Territory and provide additional tools for police to target serious and organised criminal activity, including OMCG activity in the ACT.

¹Andreas Schloenhardt, 'Banning the Bikers: Queensland's *Criminal Organisation Act 2009*' (Paper presented at Bar Association of Queensland Annual Conference, Gold Coast, 5 March 2011).

²NSW Parliamentary Research Service, *Issues Background: Anti-Gang Laws in Australia* (2013).

OMCGs are involved in criminal activities across Australia such as drug production and trafficking, vehicle rebirthing, firearms offences, money laundering, extortion and serious assaults. ACT Policing has seen an increase in OMCG criminal activity in recent years.

In mid-2017 ACT Policing investigated a number of OMCG-related incidents. At least eight violent incidents occurring in mid-late 2017 appeared to be OMCG-related, including three shooting incidents which occurred in a two week timeframe. The incidents are related to a rivalry between two OMCGs established in the ACT. ACT Policing has executed search warrants at premises across Canberra to obtain evidence relating to these incidents and other OMCG criminal activities. ACT Policing seized firearms, prohibited weapons, drugs, and money during the searches.

OMCG activity poses a risk to public safety and creates fear in the community. A Queensland review of fortification laws suggested that fortifications send a message to the community that the occupier of the premises is able to act with impunity to further their criminal activity.³ The removal of fortifications may therefore have reduced concerns about general community safety, as fortification removal orders ‘help reduce the obvious presence of clubhouses’.⁴ While there is no available data on the number of fortified OMCG premises across Australia, police forces have reported that fortification removal laws dissuade OMCGs from fortifying their premises in the first place.⁵

Following the introduction of the Victorian fortification removal provisions, Victoria Police has relied on fortification removal orders to successfully remove fortifications from five OMCG clubhouses.⁶

The Bill strengthens traditional law enforcement mechanisms by increasing ACT Policing’s capacity to execute search warrants at premises across the Territory. This reform is required to assist ACT Policing to investigate crime in the ACT. It provides a preventative measure that will assist ACT Policing to access premises in relation to any future criminal investigations.

Human rights considerations

This section provides an overview of the human rights which may be engaged by the Bill, together with a discussion on reasonable limits.

Section 28 (1) of the *Human Rights Act 2004* (the HR Act) provides that human rights may be subject to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28 (2) provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including the following:

- a) the nature of the right affected

³ Alan Wilson SC, *Review of the Criminal Organisation Act 2009* (2015).

⁴ Ibid.

⁵ Ibid.

⁶ Tasmania, *Parliamentary Debates*, House of Assembly, 11 April 2017, (Rene Hidding).

- b) the importance of the purpose of the limitation
- c) the nature and extent of the limitation
- d) the relationship between the limitation and its purpose and
- e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

The proposed amendments to the Crimes Act have been carefully considered in the context of the objects of the HR Act.

The right to privacy and reputation

Section 12 of the HR Act provides that everyone has a right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily.

Any fortification removal order or inspection order made will provide for ACT Policing to lawfully interfere with the privacy of the occupier by entering the premises named on the order. The Bill was developed to limit any interference with a person's privacy to circumstances where the interference is necessary.

The nature of the right affected

The Bill allows the Magistrates Court to make an order which requires the occupier of a premises to remove or modify a fortification on the premises. The premises named on the order can be commercial or residential. Any order requiring an occupier to remove a fortification attached to their home interferes with their home. The occupier is required to remove the fortification within the compliance period stated on the order.

A fortification removal order is in effect for 12 months. This timeframe includes the compliance period. If the compliance period has ended but the fortification removal order is still in force, a police officer may, at any time and without a warrant, enter the premises to inspect the premises for compliance with the order. The power to enter at any time without a warrant for the duration of the order impacts the privacy of an occupier. Entry is not limited to one occasion.

If the compliance period for a fortification removal order has ended and the order is still in force, a police officer may at any time and without a warrant, enter the premises for the purpose of removing the fortification in accordance with the order. A police officer entering the premises to remove the fortification impacts the ability of the occupier to enjoy privacy inside the premises.

The Bill also allows the Magistrates Court to make an order which permits ACT Policing to inspect a property which was previously subject to a fortification removal order. While a fortification inspection order is in effect, a police officer may, at any time and without a warrant, enter the premises to assess whether the premises are fortified. Entry is not limited to one occasion.

The importance of the purpose of the limitation

Police officers who are denied access to a fortified property may find it difficult to enter the property to execute a search warrant using traditional methods of forced entry. Where police attempt to enter premises without notice in order to execute a search warrant, fortifications may delay police entry, providing the occupier with additional time to vacate the premises and destroy evidence. Prior removal of fortifications at premises that are linked to criminal activity may increase the likelihood that police can access the premises to execute any search warrant obtained in relation to the property. Entry into the premises will allow police to identify evidence of any crimes relating to the premises and lay appropriate charges. The ability to access premises across the ACT will assist police to investigate crime to maintain community safety.

Fortifications may impact the safety of police officers who attend fortified premises to carry out searches. Heavily fortified premises increase the level of force that needs to be applied by police in execution of a search warrant. Prior removal of fortifications may therefore enhance police safety.

It is important that police have the opportunity to inspect premises subject to a fortification removal order, or previously subject to a fortification removal order, to ensure that the fortification has been removed or modified in compliance with the order. It is also important that police have the power to enter the premises to remove any fortifications that have not been removed within the compliance period specified in the order. The inclusion of inspection and removal powers ensures that the premises can be accessed by police at a later date if a search warrant is obtained.

The nature and extent of the limitation

The provisions relating to entry and inspection of premises subject to a fortification removal order or an inspection order were drafted to ensure that any interference with an occupier's privacy is not arbitrary.

A fortification removal order can only be made where the fortification exceeds what is reasonably necessary to provide security for the lawful use of the premises. This safeguard prevents the court from making a fortification removal order where an occupier has taken reasonable steps to protect their home or workplace from uninvited entry. The intention of this Bill is not to prevent occupiers from protecting their safety by installing reasonable security measures.

Where the court is satisfied that the fortification does exceed what is reasonably necessary, an order can only be made if the fortification prevents uninvited entry to the premises or part of the premises, or would be considered by a reasonable person to be intended or designed to prevent uninvited entry to the premises or part of the premises. This provision ensures that fortification removal orders are only made in relation to fortifications which prevent police access to the premises. If the fortification does not prevent police access it is not necessary that an order be made requiring a person to remove a fortification.

The right to privacy is a fundamental right, providing an occupier with space for autonomous development, dignity and freedom from unreasonable interference. To

ensure that occupiers are protected from unnecessary interference with their privacy, the Bill only allows for the making of a fortification removal order:

- a) if there are reasonable grounds to believe the premises are, have been or will be used in relation to a serious offence and
- b) it is necessary for the CPO to have uninvited access to the premises.

These safeguards ensure fortification removal orders are limited to circumstances where police require access to the premises to investigate a fortification offence. A fortification offence is defined as an offence that is punishable by imprisonment for five years or more. The Bill does not directly target OMCG activity or OMCG members, as the court is authorised to make an order in relation to any fortification offence.

If the compliance period on the fortification removal order has ended, police can enter to inspect the premises at any time, without a warrant, while the order remains in effect. However, to ensure an occupier's privacy is not limited unnecessarily, a police officer can only enter to inspect the premises if the CPO believes on reasonable grounds that the order has not been complied with. This provision ensures that police cannot enter the premises on an ongoing basis, without purpose, to disrupt the occupier's privacy. The provision is broad enough however that it allows for police entry when a legitimate inspection is required.

The Bill allows the Magistrates Court to make an order permitting ACT Policing to enter a property which was previously subject to a fortification removal order to conduct an inspection. An inspection order can be issued if there was a fortification removal order made in relation to that premises, which has expired no more than three years ago. The Bill establishes a criminal offence, punishable by up to two years imprisonment, where a person fortifies premises that have previously been the subject of a fortification removal order. The inspection order allows police to enter the premises to determine whether an offence has been committed. However, to ensure that the limitation on privacy is not arbitrary, entry is limited to circumstances where the CPO has reasonable grounds to believe the premises are fortified. To ensure a fortification inspection order is not made for a substantial period of time, the Bill provides that the timeframe specified on the order must not be later than three years after the initial fortification removal order ceased to have effect.

The Bill requires police officers who are inspecting premises under a fortification removal order or an inspection order to announce that they are authorised to enter the premises before entering. This assures the occupier that the limit on their privacy is lawful.

If the compliance period for a fortification removal order has ended and the order is still in force, a police officer may at any time and without a warrant, enter the premises for the purpose of removing the fortification. This impacts the occupier's privacy as a police officer, and any person assisting the police officer, may enter the premises to remove the fortification at any time during the remainder of the order. However, the compliance period provides the owner with the opportunity to comply with the order without police access to the premises, at a time convenient for the occupier. An occupier who complies with the fortification removal order within the

compliance period will not be impacted by police officers entering at any time after the compliance period to remove the fortification.

This provision is designed to provide an occupier with the opportunity to comply with the order in the specified time period, and recognises that it is not appropriate that a police officer enter the premises to determine whether the order has been complied with until the occupier has had the opportunity to comply. The Bill provides that the occupier must comply with a fortification removal order within three months after the day the order starts, or if the order states another day, by the stated day. This provides flexibility for the court to determine an appropriate compliance period, having regard to evidence presented by ACT Policing and the occupier. Police cannot rely on the fortification removal order to enter the premises during the compliance period.

The relationship between the limitation and its purpose

The limitation on the right to privacy achieves the purpose of assisting police to access premises related to criminal activity to investigate crime in the ACT, and ultimately protect public safety. The purpose of protecting public safety is achieved in this instance through the opportunity for police to disrupt the commission of a serious offence or identify evidence of a serious offence and lay charges appropriately.

The limitation on the right to privacy also enhances police safety. Heavily fortified premises increase the level of force that needs to be applied by police in the execution of a search warrant. Fortification removal orders and inspection orders provide for the removal of fortifications and assurance that they have been removed. As premises subject to fortification removal orders are linked to criminal activity, the removal of fortifications will assist police to access the premises to execute any search warrants obtained to search the premises for evidence of a serious offence, without having to use a greater level of force than usual.

Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve

The purpose the limitation on privacy seeks to achieve is to assist police to access any premises connected to a serious criminal offence, where a search warrant is obtained. Options to achieve police access to the premises without limiting the right to privacy were considered in the development of the Bill.

One option considered was to amend search and entry provisions in the ACT statute book to allow police to remove fortifications while executing a search warrant, and limiting police liability for any property damage caused. This option would fail to adequately protect the safety of police who may be required to use a greater level of force than usual to gain entry to the premises. This option is also likely to result in an increased amount of property damage as police officers would have to attempt to remove the fortifications as quickly as possible to limit the time available for an occupier to remove any evidence of criminal conduct or leave the premises. Fortification removal orders provide adequate time for the occupier to arrange for a professional to remove fortifications safely without damage to the property.

The right to liberty and security of person

Section 18 of the HRA provides that everyone has the right to liberty and security of person. New section 252Z of the Bill states that 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 a 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.

Consideration has been given to whether the right to liberty and security of person is engaged by the use of reasonable force. It is considered that this right is not engaged by the Bill. The International Covenant on Civil and Political Rights (ICCPR) sets out civil and political rights adopted by the member states of the United Nations. Commentary on the ICCPR suggests that the right to liberty and security of a person relates only to a very specific aspect of human liberty; the forceful detention of a person at a certain narrowly bounded location, such as a prison or other detention facility, and does not relate to the use of reasonable force to remove a person from premises.⁷

The right to fair trial

Section 21 of the HRA provides that everyone has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing. The Bill creates new types of applications to the Court by establishing fortification removal orders and inspection orders. Appropriate procedural requirements required to uphold the right to fair trial, such as mechanisms for service of applications, appeal rights and opportunity to respond to an application, are set out in the *Court Procedures Rules 2006*, which apply to the Bill. These procedural rules are the established and accepted rules for all originating applications to the Court and are uphold the right to fair trial for all parties to an originating application.

⁷ J L Murdoch (ed), *Article 5 of the European Convention on Human Rights: The Protection of Liberty and Security of Person* (2005).

Crimes (Fortification Removal) Amendment Act 2017

Detail

Clause 1 Name of Act

This is a technical clause that names the short title of the Act. The name of the Act is the *Crimes (Fortification Removal) Amendment Act 2017*.

Clause 2 Commencement

This clause provides that the Act will commence on a day fixed by the Minister by written notice. The naming and commencement provisions will automatically commence on the notification day. Under the provisions of the *Legislation Act 2001*, if a provision has not commenced within six months beginning on the notification day, it automatically commences on the first day after that period.

Clause 3 Legislation amended

This clause identifies the *Crimes Act 1900* as the legislation amended by the Act.

Clause 4 New division 10.9

This clause includes the offences in new section 252ZA and 252ZB of the Crimes Act in note 1 of section 7A of the Crimes Act, which sets out offences to which the Criminal Code applies.

Clause 5 New division 10.9

This clause inserts new division 10.9 ‘Fortification of premises’ into the Crimes Act comprising new sections 252M to 252ZD.

New section 252M Definitions—div 10.9

New section 252M provides the definitions relevant for the division.

This section provides a definition of **compliance period**. **Compliance period** means the period under new section 252Q for compliance with a fortification removal order.

New section 252M also defines a **fortification** of premises as 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.

For example, an electronic surveillance device that is attached to a premises may be considered a fortification.

New section 252M inserts a signpost definition of the terms *fortification inspection order* and *fortification removal order* into new division 10.9 of the Crimes Act.

This section also defines an *occupier* of premises to include—

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

New section 252M provides a definition of a *fortification offence*. A *fortification offence* means—

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

This definition is consistent with the definition of a ‘serious offence’ in division 10.4A of the Crimes Act and aligns with the definition of a ‘specified offence’ for the purpose of fortification removal orders in Victoria.

This threshold – offences punishable by five years’ imprisonment or more - allows the court to make a fortification removal order in relation to premises connected to serious criminal offences. For example, the offence established by section 171 of the Crimes Act of prescribing or supplying anabolic steroids, is covered by this definition as the penalty for this offence is 500 penalty units, imprisonment for 5 years or both. The definition of *fortification offence* will allow the CPO to apply to the Magistrates Court for a fortification removal order where the CPO has reasonable grounds to believe that the premises are, have been or will be used in relation to the prescription or supply of anabolic steroids. For example, the CPO may have reason to believe that the occupier of the premises has supplied anabolic steroids to someone else in the ACT, and a supply of anabolic steroids is located on the premises which could be used as evidence of the offence.

The definition also captures drug related offences, such as the offence established by section 614 of the *Criminal Code 2002* of possessing any substance, equipment or instructions for manufacturing a controlled drug. The penalty for this offence is 500 penalty units, imprisonment for 5 years or both. The fortification removal scheme applies to offences punishable by imprisonment for 5 years or longer to ensure that police can access premises to investigate organised crime, such as the possession of equipment with the intention of using it to manufacture a controlled drug to sell to another person.

New section 252N Fortification removal order—application for order or variation

New section 252N allows the CPO to apply to the Magistrates Court for a fortification removal order. A fortification removal order is an order directing an occupier of premises to remove a fortification of the premises. This section also allows the CPO to apply to the Magistrates Court for a variation of a fortification removal order that is already in effect. The CPO may ask the court to vary the order to require the occupier to remove a different fortification than the fortification identified on the fortification

removal order, require the fortification to be removed in a different way than required by the fortification removal order, or vary the period of time the occupier has to comply with the order.

The occupier may also apply to the Magistrates Court for a variation of a fortification removal order to describe the fortification identified on the order in a different way, or direct the occupier to remove the fortification in a different way.

An application under new section 252N must be supported by evidence by affidavit.

New section 252O Fortification removal order

New section 252O (1) allows the Magistrates Court to make a fortification removal order 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 CPO to have uninvited access to the premises in relation to the offence.

The grounds for making an order under new section 252O (1) are linked to the definition of a fortification offence in new section 252M to ensure that fortification removal orders are only made for the purpose of assisting police to investigate serious criminal activity.

New section 252O (2) allows the Magistrates Court to vary a fortification removal order on application by the CPO or the occupier under new section 252N if satisfied that the variation is necessary or otherwise appropriate.

New section 252O (3) includes a list of information the fortification removal order must contain, including a description of the fortification and the powers police have to enter the premises under the order.

New section 252P Fortification removal order—length

New section 252P (1) provides for the commencement of a fortification removal order. If the occupier of the premises is before the Magistrates Court when the order is made, the order commences the day it is made. If the occupier is not before the court when the order is made it commences on the day it is served on the occupier. The order remains in force for 12 months from the day it commences.

New section 252P (3) provides that a fortification removal order ceases to have effect if the CPO gives the Magistrates Court written notice that it is no longer required.

New section 252Q Fortification removal order—compliance period

New section 252Q provides that the occupier must comply with the fortification removal order within the compliance period listed on the order, which is either within 3 months after the day the order takes effect, or if the order states another day, the occupier must comply by the stated day.

New section 252Q allows the Magistrates Court to take into account any evidence presented by the CPO or the occupier before setting a period of time for compliance with the order.

New section 252R Fortification removal order—inspection

New section 252R describes the entry and inspection powers available to police where a fortification removal order is in effect. 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.

A police officer can rely on this inspection power to enter the premises if:

- a) the compliance period for the fortification removal order has ended and
- b) the fortification removal order is still in force and
- c) the CPO believes on reasonable grounds that
 - (i) the fortification has not been removed in accordance with the fortification removal order or
 - (ii) a fortification that was removed in accordance with the fortification removal order has been restored or replaced.

This section limits police entry to circumstances where police are seeking to establish whether a fortification removal order has been complied with.

New section 252S Fortification removal order—removal by police

New section 252S allows a police officer to enter a premises subject to a fortification removal order at any time and without a warrant to remove a fortification in accordance with the fortification removal order, or do something reasonably necessary to remove the fortification in accordance with the fortification removal order.

A police officer can enter the premises 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 CPO believes on reasonable grounds that the fortification has not been removed in accordance with the fortification removal order.

The examples included in new section 252S (2) assist with the interpretation of what is reasonably necessary to remove a fortification. For example, a police officer may engage a person to assist with fortification removal and escort them onto the premises.

New section 252S (3) allows the Territory to recover from the occupier any costs reasonably incurred when removing a fortification.

New section 252T Fortification inspection order—application for order or variation

New section 252T allows the CPO to apply to the Magistrates Court for a fortification inspection order. A fortification inspection order allows police to inspect premises which were subject to a fortification removal order within the previous three years. This section also allows the CPO and the occupier subject to the fortification inspection order to apply to the court for a variation to the length of the order.

New section 252U Fortification inspection order

New section 252U allows the Magistrates Court to make a fortification inspection order if satisfied that:

- a) a fortification removal order was in effect for the premises within the previous three years and
- b) the CPO has reasonable grounds to believe the premises are fortified.

A fortification inspection order provides police with the power to inspect premises that were previously subject to a fortification removal order to determine whether the fortification has been replaced or restored, in contravention of the offence outlined in new section 252ZB.

New section 252V Fortification inspection order—length

New section 252V (1) provides for the commencement of a fortification inspection order. If the occupier subject to the order is before the court when the order is made, the order takes effect on the day it is made. If the occupier is not before the court when the order is made, the order takes effect the day it is served on the occupier.

New section 252V (2) provides that a fortification inspection order remains in force until the day stated on the order. However, the order cannot remain in force beyond 3 years from the day the fortification removal order made in relation to the premises ceased to have effect.

New section 252V (3) provides the CPO with the power to end a fortification inspection order by giving written notice to the Magistrates Court that the order is no longer required.

New section 252W Fortification inspection order—inspection

New section 252W describes the entry and inspection powers available to police where a fortification inspection order is in force.

If a fortification inspection order 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.

The CPO must satisfy the court that there are reasonable grounds to believe the premises are fortified to be granted a fortification inspection order under new section 252U. New section 252W provides that a police officer must not enter the premises to inspect the premises unless the CPO has reasonable grounds to believe the premises

are fortified. Although the court cannot make an order unless satisfied of this reasonable belief, new section 252W requires a police officer to determine whether this reasonable belief is still valid prior to entering the premises under the order. This limits the opportunity for arbitrary entry to the premises without purpose.

New section 252X Exercising powers—announce entry and explain purpose

New section 252X provides that before a police officer or a person assisting a police officer to remove a fortification enters a premises under a fortification removal order or a fortification inspection order, the 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, the police officer must tell the person the purpose of the entry and make available to the person a copy of the fortification removal order or fortification inspection order.

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

New section 252Y entitles the occupier or someone else who apparently represents the occupier to be present while police are inspecting premises under a fortification removal order or fortification inspection order unless the person would impede the inspection or the person is under arrest and allowing them to observe the inspection being conducted would interfere with the objectives of the inspection.

New section 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 under a fortification removal order or fortification inspection order, or from removing a fortification under a fortification removal order, new section 252Z allows a police officer to:

- a) give a reasonable direction that the person must leave the premises
- b) use reasonable force to remove the person from the premises if they refuse to leave the premises and
- c) do anything reasonably necessary to enter the premises and remove the fortification.

New section 252ZA Premises must not be fortified

New section 252ZA creates an offence for a person to fortify a premises if the person knows or is reckless about whether the premises are, have been or will be used in relation to a fortification offence, and the person intends that the fortification will prevent uninvited entry to the premises or part of the premises.

It is intended that a person commits an offence if a person engages another person to install the fortification.

The maximum penalty for the offence is 200 penalty units or imprisonment for 2 years or both.

New section 252ZB Fortification must not be replaced or restored

New section 252ZB creates an offence to replace or restore a fortification that was previously subject to a fortification removal order. A person commits an offence if they know or are reckless about whether the premises have been the subject of a fortification removal order, and they know or are reckless about whether the premises are, have been or will be used in relation to a fortification offence. A person commits an offence if they intend that the fortification will prevent uninvited entry to the premises or part of the premises.

It is intended that a person commits an offence if a person engages another person to install the fortification.

The maximum penalty for the offence is 200 penalty units or imprisonment for 2 years or both.

New section 252ZC Protection from liability

New section 252ZC protects a person exercising a function under new division 10.9 from civil liability. Any civil liability that would attach to the person instead attaches to the Territory. This section protects police officers and any person accompanying a police officer from liability.

New section 252ZD Chief police officer delegations

New section 252ZD authorises the CPO to delegate any of his or her functions under new division 10.9 to a police officer at or above the level of superintendent.

Clause 6 Dictionary, new definitions

Clause 5 inserts signpost definitions of the terms *compliance period*, *fortification*, *fortification inspection order*, *fortification removal order*, *occupier* and *fortification offence* into the dictionary of the Crimes Act.