

Commenced 9 March 2017

FORTIFICATION REMOVAL ORDERS: Glossary of Terms

Part 5 of the *Peace and Good Behaviour Act 1982*

Fortification: a structure or device that alone, or as part of a system, is designed to stop or hinder uninvited entry.

Serious criminal activity: conduct constituting an indictable offence where the maximum penalty is at least 7 years imprisonment

Recognised offender: an adult with a recorded conviction (other than a spent conviction) for an indictable offence punishable by at least 5 years imprisonment or another offence prescribed under section 77 of the Criminal Code (Fact Sheet series 2 lists the prescribed offences).

Associate of a recognised offender: a person to whom an official consorting warning has been given under the *Police Powers and Responsibilities Act 2000*.

Participant in a criminal organisation: as defined under sections 161N (in terms of 'criminal organisation') and 161P (in terms of 'participant') of the *Penalties and Sentences Act 1992*.

Disorderly activity:

- a) drunkenness, disorderly or indecent conduct or entertainment of a demoralising character; or
- b) unlawful supply of liquor or drugs from the premises; or
- c) unlawful possession at or supply from the premises of firearms or explosives; or
- d) the presence of recognised offenders, associates of recognised offenders, or persons subject to control orders on the premises; or
- e) participation of recognised offenders, associates of recognised offenders, or persons subject to control orders in the management or control of the premises.



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Fact Sheet 5A: FORTIFICATION REMOVAL ORDERS

A Magistrate Court can make an order requiring the modification or removal of fortifications at a premises.

WHO CAN APPLY FOR A FORTIFICATION REMOVAL ORDER?
A Senior Police Officer

Police can first issue a stop and desist notice: see Fact Sheet 5B.

WHAT IS THE TEST FOR THE ORDER: The Court may make the order if satisfied that:

- a) the premises have a fortification; and
- b) the fortified premises are either:
 - i. being, have been, or likely to be used for or in connection with serious criminal activity, or to conceal evidence of or to keep proceeds of serious criminal activity; or
 - ii. owned or habitually occupied or used by a criminal organisation (or participants), recognised offenders or associates of recognised offenders; and
- c) the nature of the fortification is excessive for lawful use of that type at the premises; and
- d) making the order is appropriate in the circumstances.

WHAT ARE THE CONDITIONS OF THE ORDER: The order may require the respondent to remove or modify the fortification within a stated period.

CONSEQUENCES OF THE ORDER

What happens if the police are hindered or obstructed while enforcing the order?

It is an indictable offence for a person to intentionally hinder the removal or modification of the fortification/s.
Maximum penalty: 5 years imprisonment.

What powers do the police have?

POLICE CAN ENFORCE THE ORDER:
Police have broad powers to enter a premises and remove or modify the fortifications with force and assistance.
The State may be able to recover compensation for any reasonable costs incurred in taking this enforcement action.

FORFEITURE: The Commissioner of Police may forfeit any removed fortifications to the State.

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Fact Sheet 5B: STOP AND DESIST NOTICES

A stop and desist notice can be issued by Police to stop the installation of excessive fortification at a premises until an application for a Fortification Removal Order is made (see Fact Sheet 5A).

WHO CAN ISSUE THE NOTICE?
A Commissioned Police Officer

WHAT IS THE TEST FOR THE NOTICE?

A Commissioned Police Officer can issue a stop and desist notice if they reasonable believe that:

- a) Steps are being taken to install excessive fortification at the premises; and
- b) The premises are either:
 - i. being, have been, or likely to be used for or in connection with serious criminal activity, or to conceal evidence of or to keep proceeds of serious criminal activity; or
 - ii. owned or habitually occupied or used by a criminal organisation (or participants), recognised offenders or associates of recognised offenders.

WHAT ARE THE CONSEQUENCES OF THE NOTICE?

Police can make a fortification removal order application.

The commissioned police officer has 14 days to lodge an application for a fortification removal order. Once an application is made, the stop and desist notice remains on foot until the hearing of the fortification removal order application.

If no application is lodged the notice will lapse.

NON-COMPLIANCE WITH THE NOTICE

If the respondent does not stop and desist from installing the fortification this will be evidence that the grounds for a fortification removal order are made out (unless proven otherwise) and an order will follow.

The breach of the stop and desist notice will be evidence of 'disorderly activities' in an application for a restricted premises order (see Fact Sheets 3A-C).

HOW LONG DOES THE NOTICE LAST? 14 days unless an application for a Fortification Removal Order is made to the Magistrates Court (see Fact Sheet 5A).