

South Australia

Statutes Amendment (Anti-Fortification) Act 2003

An Act to amend the *Development Act 1993* and the *Summary Offences Act 1953*.

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Schedule 1—Statute law revision amendments of *Summary Offences Act 1953*

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Anti-Fortification) Act 2003*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Development Act 1993*

4—Amendment of section 4—Definitions

(1) Section 4(1), definition of *development*—after paragraph (d) insert:

(da) the creation of fortifications; or

(2) Section 4(1)—after the definition of *fire authority* insert:

fortification has the same meaning as in Part 16 of the *Summary Offences Act 1953*;

5—Amendment of section 35—Special provisions relating to assessment against a Development Plan

Section 35(1a)—after "section 37" insert:

, or required to be referred to the Commissioner of Police under section 37A,

6—Amendment of section 37—Consultation with other authorities or agencies

Section 37(1)—delete "the consent or approval of" and insert:

consent to, or approval of,

7—Insertion of section 37A

After section 37 insert:

37A—Proposed development involving creation of fortifications

- (1) If a relevant authority has reason to believe that a proposed development may involve the creation of fortifications, the authority must refer the application for consent to, or approval of, the proposed development to the Commissioner of Police (the *Commissioner*).

- (2) Subject to subsection (3), the Commissioner must, as soon as possible after receipt of a referral under subsection (1)—
 - (a) assess the application to determine whether or not the proposed development involves the creation of fortifications; and
 - (b) advise the relevant authority in writing of the Commissioner's determination.
- (3) The Commissioner may, before making a determination under this section, request the applicant to provide such additional documents or information (including calculations and technical details) as the Commissioner may reasonably require to assess the application.
- (4) If a request is made under subsection (3)—
 - (a) the Commissioner may specify a time within which the request must be complied with; and
 - (b) the Commissioner may, if he or she thinks fit, grant an extension of the time specified under paragraph (a).
- (5) If the Commissioner determines that the proposed development involves the creation of fortifications, the relevant authority must—
 - (a) if the proposed development consists only of the creation of fortifications—refuse the application; or
 - (b) in any other case—impose conditions in respect of any consent to or approval of the proposed development prohibiting the creation of the fortifications.
- (6) If a relevant authority acting on the basis of a determination of the Commissioner under subsection (2) refuses an application or imposes conditions in respect of a development authorisation, the relevant authority must notify the applicant that the application was refused, or the conditions imposed, on the basis of a determination of the Commissioner under this section.
- (7) If a refusal or condition referred to in subsection (5) is the subject of an appeal under this Act—
 - (a) the Commissioner will be the respondent to the appeal; and
 - (b) the relevant authority may, if the Court permits, be joined as a party to the appeal.

Part 3—Amendment of *Summary Offences Act 1953*

8—Insertion of Part 16

After section 74B insert:

Part 16—Fortifications

74BA—Interpretation

In this Part, unless the contrary intention appears—

Court means the Magistrates Court of South Australia;

fortification means any security measure that involves a structure or device forming part of, or attached to, premises that—

- (a) is intended or designed to prevent or impede police access to the premises; or
- (b) has, or could have, the effect of preventing or impeding police access to the premises and is excessive for the particular type of premises,

and *fortified* has a corresponding meaning;

fortification removal order means an order under section 74BB;

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

premises includes—

- (a) land; and
- (b) a building or structure on land; and
- (c) a part of premises;

serious criminal offence means—

- (a) an indictable offence; or
- (b) an offence prescribed by regulation for the purposes of this definition.

74BB—Fortification removal order

- (1) If, on the application of the Commissioner, the Court is satisfied that—
 - (a) premises named in the application are fortified; and
 - (b) —
 - (i) the fortifications have been created in contravention of the *Development Act 1993*; or
 - (ii) there are reasonable grounds to believe the premises are being, have been, or are likely to be, used—

- (A) for or in connection with the commission of a serious criminal offence; or
- (B) to conceal evidence of a serious criminal offence; or
- (C) to keep the proceeds of a serious criminal offence,

the Court may issue a ***fortification removal order*** in respect of the premises.

- (2) A fortification removal order is directed to the occupier of the premises or, if there is more than one occupier, any one or more of the occupiers of the premises, and requires the named occupier or occupiers to remove or modify the fortifications, as specified in the order.
- (3) A fortification removal order may be issued on an *ex parte* application.
- (4) The grounds of an application for a fortification removal order must be verified by affidavit.
- (5) The Commissioner may identify any information provided to the Court for the purposes of the application as confidential if its disclosure might—
 - (a) prejudice the investigation of a contravention or possible contravention of the law; or
 - (b) enable the existence or identity of a confidential source of information to be ascertained; or
 - (c) endanger a person's life or physical safety,

and if the Court is satisfied (having regard to the principle of public interest immunity) that the information should be protected from disclosure, the Court must order that the information is not to be disclosed to any other person, whether or not a party to the proceedings.

- (6) A person must not disclose information in respect of which an order has been made by the Court under subsection (5) unless—
 - (a) the disclosure is made by or with the consent of the Commissioner; or
 - (b) the disclosure is authorised or required by a court.

Maximum penalty: \$60 000 or imprisonment for 3 years.

- (7) A court must not authorise or require disclosure of information under subsection (6) without first having regard to the principle of public interest immunity.
- (8) Proceedings in relation to an application under this section may, if the Court directs, be heard in a room closed to the public.

74BC—Content of fortification removal order

- (1) A fortification removal order must include—
 - (a) a statement to the effect that specified fortifications at the premises must be removed or modified, as directed by the Court, within a period of time fixed by the order (which may not be less than 14 days after service of the order); and
 - (b) subject to subsection (2)—a statement of the grounds on which the order has been issued; and
 - (c) an explanation of the right of objection under section 74BE; and
 - (d) an explanation of the Commissioner's power to enforce the order under section 74BI.
- (2) A statement of the grounds on which a fortification removal order has been issued must not contain information in respect of which an order has been made by the Court under section 74BB(5).
- (3) A copy of the affidavit verifying the grounds on which the application was made must be attached to the fortification removal order unless disclosure of information included in the affidavit would be in breach of an order of the Court under section 74BB(5).
- (4) If disclosure of information included in the affidavit would be in breach of an order of the Court under section 74BB(5), an edited copy of the affidavit, from which the information that cannot be disclosed has been removed or erased, may be attached to the fortification removal order.

74BD—Service of fortification removal order

- (1) A fortification removal order must be served on the occupier or occupiers named in the order.
- (2) If the owner of the premises in relation to which a fortification removal order has been made is not named in the order, a copy of the order must be served on the owner.
- (3) Subject to subsection (4), service of a fortification removal order must be effected personally or by registered post.
- (4) If service cannot be promptly effected, it will be sufficient service for the Commissioner to affix a copy of the fortification removal order to the premises at a prominent place at or near to the entrance to the premises.

74BE—Right of objection

- (1) Subject to subsection (2), a person on whom a fortification removal order has been served may, within 14 days of service of the order, lodge a notice of objection with the Court.

- (2) A notice of objection cannot be lodged if a notice has previously been lodged in relation to the fortification removal order (unless proceedings in relation to the earlier notice have been discontinued).
- (3) The grounds of the objection must be stated fully and in detail in the notice of objection.
- (4) A copy of the notice of objection must be served by the objector on the Commissioner personally or by registered post at least 7 days before the day appointed for hearing of the notice.

74BF—Procedure on hearing of notice of objection

- (1) In any proceedings in relation to a notice of objection, the Court must, if convenient to the Court, be constituted of the Magistrate who issued the fortification removal order to which the notice of objection relates.
- (2) The Court must, when determining a notice of objection, consider whether, in the light of the evidence presented by both the Commissioner and the objector, sufficient grounds exist to satisfy the Court as to the requirements of section 74BB(1).
- (3) The Court may, on hearing a notice of objection, confirm, vary or withdraw the fortification removal order.
- (4) If, on the hearing of a notice of objection, the fortification removal order is confirmed or varied, the period of time allowed for compliance with the order, as fixed by the order, is (unless the Court specifies otherwise) taken to commence on the day of the Court's determination.

74BG—Appeal

- (1) The Commissioner or an objector may appeal to the Supreme Court against a decision of the Court on a notice of objection.
- (2) An appeal lies as of right on a question of law and with permission on a question of fact.
- (3) An appeal must be commenced within the time, and in accordance with the procedure, prescribed by rules of the Supreme Court.
- (4) If an appeal is commenced under this section, enforcement of the fortification removal order is stayed until proceedings in relation to the appeal are finalised.
- (5) If an appeal under this section results in confirmation or variation of the fortification removal order, the period of time allowed for compliance with the order, as fixed by the order, is (unless the Supreme Court specifies otherwise) taken to commence on the day of the Supreme Court's decision.

74BH—Withdrawal notice

- (1) If the Commissioner determines that a fortification removal order will not be enforced, the Commissioner must lodge a withdrawal notice with the Court.

- (2) The withdrawal notice must identify the premises, refer to the fortification removal order and state that the Commissioner has decided not to enforce the order.
- (3) The withdrawal notice must be served on the occupier or occupiers named in the order and all persons on whom a copy of the fortification removal order was served.
- (4) The withdrawal notice may be served in any way that section 74BD would enable a fortification removal order to be served.

74BI—Enforcement

- (1) If, in relation to a fortification removal order—
 - (a) a withdrawal notice is not lodged; and
 - (b) —
 - (i) a notice of objection is not lodged; or
 - (ii) the fortification removal order is confirmed or varied by the Court under section 74BF and an appeal in relation to the decision of the Court is not commenced; or
 - (iii) an appeal under section 74BG results in confirmation or variation of the fortification removal order; and
 - (c) the fortifications at the premises are not, within the period of time specified in the fortification removal order or any further time allowed by the Commissioner under subsection (2), removed or modified to the extent necessary to satisfy the Commissioner that there has been compliance with the order,

the Commissioner may cause the fortifications to be removed or modified to the extent required by the order.

- (2) The Commissioner may extend the time allowed by the order if, before the time allowed elapses, application is made to the Commissioner for it to be extended.
- (3) For the purposes of causing fortifications to be removed or modified, the Commissioner, or any police officer authorised by the Commissioner for the purposes of this section, may do one or more of the following:
 - (a) enter the premises without warrant;
 - (b) obtain expert or technical advice;
 - (c) make use of any person or equipment he or she considers necessary.

- (4) The Commissioner may seize anything that can be salvaged in the course of removing or modifying fortifications under this section, and may sell or dispose of it as the Commissioner considers appropriate.
- (5) The proceeds of any sale under subsection (4) are forfeited to the State and, to the extent that they are insufficient to meet the costs incurred by the Commissioner under this section, the Commissioner may recover those costs as a debt from any person who caused the fortifications to be created.

74BJ—Hindering removal or modification of fortifications

- (1) A person must not do anything with the intention of preventing, obstructing, interfering with or delaying the removal or modification of fortifications in accordance with a fortification removal order.
Maximum penalty: \$2 500 or imprisonment for 6 months.
- (2) Subsection (1) applies to the removal or modification of fortifications by a person who—
 - (a) is, or is acting for or on the instructions of, an occupier or owner of the premises; or
 - (b) is acting under section 74BI.

74BK—Liability for damage

- (1) Subject to subsection (2), no action lies against the Crown or any person for damage to property resulting from enforcement of a fortification removal order.
- (2) However, an owner of premises may recover the reasonable costs associated with repair or replacement of property damaged as a result of creation of fortifications or enforcement of a fortification removal order as a debt from any person who caused the fortifications to be created.

74BL—Delegation

The Commissioner may delegate any of the Commissioner's functions or powers under this Part to any police officer holding a rank not lower than that of inspector, subject to any limitations or conditions that the Commissioner thinks it proper to impose.

74BM—Application of Part

- (1) If the provisions of this Part are inconsistent with any other Act or law, the provisions of this Part prevail.
- (2) No application for approval is required under the *Development Act 1993* for work required by a fortification removal order.

Schedule 1—Statute law revision amendments of *Summary Offences Act 1953*

Provision amended	How amended
Long title	Delete the long title and substitute: An Act to make provision for certain offences against public order and for other summary offences; to make provision for powers of police officers in relation to investigation of offences; and for other purposes.
Immediately before section 1	Insert: Part 1—Preliminary
Section 4(1) definition of <i>senior police officer</i>	Delete "member of the police force" and substitute: police officer
Heading appearing immediately before section 6	Delete the heading and substitute: Part 2—Assaulting and hindering police
Section 6(1)	Delete "any member of the police force in the execution of the member's" and substitute: a police officer in the execution of the officer's
Section 6(2)	Delete "any member of the police force in the execution of the member's" and substitute: a police officer in the execution of the officer's
Section 6(3)	Delete "member of the police force" and substitute: police officer
Section 6(3)(a)	Delete "member" and substitute: officer
Section 6(3)(b)	Delete "member" and substitute: officer
Section 6(4)	Delete "member of the police force" and substitute: police officer
Section 6(5) definition of <i>member of the police force</i>	Delete <i>member of the police force</i> and substitute: <i>police officer</i>
Heading appearing immediately before section 7	Delete the heading and substitute: Part 3—Offences against public order
Section 7(3) paragraph (b) of definition of <i>public place</i>	Delete "or permit" Delete " <i>Liquor Licensing Act 1985</i> " and substitute: <i>Liquor Licensing Act 1997</i>

Provision amended	How amended
Section 15(2a)(b)	Delete "member of South Australia Police" and substitute: police officer Delete "a member" second occurring and substitute: an officer
Section 17(1a)	Delete "Notwithstanding" and substitute: Despite
Section 17(2)	Delete "member of the police force" and substitute: police officer Delete "member" second occurring and substitute: officer
Section 18(1)	Delete "member of the police force" first occurring and substitute: police officer Delete "member of the police force" second occurring and substitute: officer
Section 18A(2)	Delete "member of the police force" and substitute: police officer
Section 18A(3)	Delete "member of the police force" and substitute: police officer
Heading appearing immediately after section 21	Delete the heading and substitute: Part 4—Tattooing etc
Heading appearing immediately before section 22	Delete the heading and substitute: Part 5—Offences against decency and morality
Heading appearing immediately before section 27	Delete the heading and substitute: Part 6—Brothels
Section 27	Delete "sections 28 to 32" and substitute: this Part
Section 30(1)	Delete "section 28 or 29" and substitute: this Part Delete "superintendent or inspector of police" and substitute: senior police officer

Provision amended	How amended
Section 30(2)	Delete "section 28 or 29" and substitute: this Part Delete "superintendent or inspector of police" and substitute: senior police officer Delete ", superintendent or inspector" and substitute: or senior police officer
Section 32	Delete "any superintendent or inspector of police" and substitute: a senior police officer Delete "member of the police force" and substitute: other police officer Delete "a superintendent or inspector of police" and substitute: a senior police officer
Heading appearing immediately before section 33	Delete the heading and substitute: Part 7—Indecent or offensive material
Section 33(5)	Delete "Notwithstanding the foregoing" and substitute: Despite the preceding
Section 33(7)	Delete "Classification of Publications Board" and substitute: South Australian Classification Council
Section 33(10)	Delete " <i>Classification of Publications Act 1974</i> or the <i>Classification of Film for Public Exhibition Act 1971</i> " and substitute: <i>Classification (Publications, Films and Computer Games) Act 1995</i>
Section 33A	Delete the section
Heading appearing immediately before section 38A	Delete the heading and substitute: Part 8—Fraud, unlawful possession, etc
Section 38A(1)	Delete "Minister of Education or the Education Department" and substitute: Minister responsible for administration of the <i>Education Act 1972</i> , an administrative unit of the Public Service responsible to that Minister for the administration of that Act
Section 41(1)	Delete "whatsoever"
Heading appearing immediately before section 43	Delete the heading and substitute: Part 9—Offences with respect to property
Heading appearing immediately before section 50	Delete the heading and substitute: Part 10—Nuisances and annoyances

Provision amended	How amended
Section 58A(1)	Delete "member of the police force" and substitute: police officer
Section 58A(3)	Delete "member of the police force" and substitute: police officer Delete "member" second occurring and substitute: officer
Section 58A(4)	Delete "member of the police force" and substitute: police officer
Section 58A(5)	Delete "member of the police force" and substitute: police officer Delete "member" second occurring and substitute: officer
Heading appearing immediately before section 59	Delete the heading and substitute: Part 11—Control of traffic on special occasions
Section 59(5)	Delete "any member of the police force holding a rank not lower than that of inspector" and substitute: a senior police officer
Section 59(7)	Delete "member of the police force" and substitute: police officer
Heading appearing immediately before section 61	Delete the heading and substitute: Part 12—Bribery of police
Section 61(1)	Delete "member of the police force" and substitute: police officer Delete "member" second occurring and substitute: officer Delete "members of the police force" and substitute: police officers
Heading appearing immediately before section 62	Delete the heading and substitute the following heading: Part 13—False reports to police
Section 62(1)(a)	Delete "member of the police force" wherever occurring and substitute in each case: police officer
Section 62(2)	Delete "member of the police force" and substitute: police officer
Section 62A(1)	Delete "In this subsection—" belief "includes suspicion."

Provision amended	How amended
Section 62A(2)	Delete "member of the police force" and substitute: police officer
Section 62A	After subsection (3) insert: (4) In this section— <i>belief</i> includes suspicion.
Heading appearing immediately before section 65	Delete the heading and substitute: Part 14—Proceedings by councils for certain offences
Section 65(a)	Delete "member of the police force" and substitute: police officer
Section 65	Delete "notwithstanding" and substitute: despite
Two headings appearing immediately before section 67	Delete the headings and substitute: Part 15—Police powers of entry, search, etc
Section 67(1)	Delete "Notwithstanding" and substitute: Despite Delete "members of the police force" and substitute: police officers
Section 67(4)	Delete "member of the police force" and substitute: police officer
Section 67(4)(a)	Delete "member" and substitute: officer
Section 67(4)(b)	Delete "member" and substitute: officer
Section 67(4)(c)	Delete "member" and substitute: officer
Section 68(1)	Delete "member of the police force" and substitute: police officer
Section 69	Delete "member of the police force" and substitute: police officer
Section 70	Delete "member of the police force" first occurring and substitute: police officer Delete "that member of the police force" and substitute: the officer

Provision amended	How amended
Section 70(c)	Delete "member" and substitute: officer
Section 70(d)	Delete "member" and substitute: officer
Section 70(e)	Delete "member" and substitute: officer
Section 70(f)	Delete "member" and substitute: officer
Section 70(g)	Delete "member" and substitute: officer
Section 71	Delete "member of the police force" wherever occurring and substitute in each case: police officer
Section 73(1)	Delete "member of the police force" and substitute: police officer
Section 74(1)	Delete "member of the police force" and substitute: police officer Delete "or permit" Delete " <i>Liquor Licensing Act 1985</i> " and substitute: <i>Liquor Licensing Act 1997</i>
Section 74(1)(a)	Delete "or permit"
Section 74(1)(b)	Delete "member" wherever occurring and substitute in each case: officer
Section 74(2)	Delete "member of the police force" and substitute: police officer
Section 74A(1)	Delete "member of the police force" and substitute: police officer Delete "member" second occurring and substitute: officer
Section 74A(2)	Delete "member of the police force" and substitute: police officer Delete "member" second occurring and substitute: officer
Section 74A(4)	Delete "member of the police force" and substitute: police officer
Section 74B(5)	Delete "member of the police force" and substitute: police officer

Provision amended	How amended
Section 74B(5)(e)	Delete "member" and substitute: officer
Section 74B(6)	Delete "member of the police force" and substitute: police officer
Heading appearing immediately before section 74C	Delete the heading and substitute: Part 17—Recording of interviews
Section 74C	Delete "Division (sections 74C to 74G)" and substitute: Part
Section 74C definition of <i>investigating officer</i>	Delete "member of the police force" and substitute: police officer
Section 74D(4)	Delete "Division" and substitute: Part
Section 74D(6)	Delete "Division" wherever occurring and substitute in each case: Part
Section 74E(1)(a)	Delete "Division" and substitute: Part
Section 74F	Delete "Division" and substitute: Part
Section 74G	Delete "Division" and substitute: Part
Heading appearing immediately before section 75	Delete the heading and substitute: Part 18—Arrest
Section 75	Delete "member of the police force" and substitute: police officer Delete "member" second occurring and substitute: officer
Section 76(1)	Delete "member of the police force" and substitute: police officer
Section 77	Delete "member of the police force" wherever occurring and substitute in each case: police officer
Section 78	Delete "member of the police force" wherever occurring and substitute in each case: police officer

Provision amended	How amended
Section 78A(2)	Delete "member of the police force" and substitute: police officer Delete "member" second occurring and substitute: officer
Section 78A(3)	Delete "a court of summary jurisdiction and the court" and substitute: the Magistrates Court and the Court
Section 78(3)(b)(i)	Delete "recognizances as the court" and substitute: guarantees as the Court
Section 78A(4)	Delete "thereafter" Delete "court" and substitute: Court
Section 78A(5)	Delete " <i>Justices Act 1921</i> " and substitute: <i>Summary Procedure Act 1921</i> Delete "before a court of summary jurisdiction"
Section 79(1)	Delete "member of the police force" and substitute: police officer Delete "member" second occurring and substitute: officer
Section 79(2)	Delete "member of the police force" wherever occurring and substitute in each case: police officer Delete "member" second occurring and substitute: officer Delete "that member" and substitute: the officer Delete "whereupon that person must be" and substitute: and the person must then be
Section 79A(1)	Delete "member of the police force" wherever occurring and substitute in each case: police officer
Section 79A(1a)	Delete "member of the police force" wherever occurring and substitute in each case: police officer
Section 79A(1a)(c)	Delete "Director General of Community Welfare" and substitute: Chief Executive Officer within the meaning of the <i>Family and Community Services Act 1972</i>
Section 79A(1b)	Delete "notwithstanding" and substitute: despite

Provision amended	How amended
Section 79A(2)	Delete "member of the police force" first occurring and substitute: police officer Delete "member of the police force" second occurring and substitute: officer
Section 79A(3)	Delete "member of the police force" and substitute: police officer
Section 79B(1)	Delete "member of the police force" and substitute: police officer Delete "member" second occurring and substitute: officer
Section 79B(2)	Delete "member of the police force" and substitute: police officer
Section 79B(3)	Delete "member of the police force" and substitute: police officer
Section 79B(4)	Delete "member of the police force" and substitute: police officer
Section 79B(5)	Delete "member of the police force" and substitute: police officer
Section 79B(8)	Delete "42 days" and substitute: 2 months Delete " <i>Police Act 1952</i> " and substitute: <i>Police Act 1998</i>
Section 80	Delete "member of the police force" and substitute: police officer
Section 81	Delete "member of the police force" wherever occurring and substitute in each case: police officer
Section 81(3)(g)(vi)	Delete "member" second, third and fourth occurring and substitute in each case: officer
Section 81(4)	Delete "member" second occurring and substitute: officer
Section 81(5)	Delete "members of the police force" and substitute: police officers
Section 82	Delete "member of the police force" and substitute: police officer

Provision amended	How amended
Heading appearing immediately before section 83A	Delete the heading and substitute: Part 19—Right to an interpreter
Section 83A(4) definition of <i>investigating officer</i>	Delete "member of the police force" and substitute: police officer
Heading appearing immediately before section 83B	Delete the heading and substitute: Part 20—Miscellaneous
Section 83B(3)	Delete "member of the police force" and substitute: police officer
Section 83B(6)	Delete "member of the police force" and substitute: police officer
Section 83BA(1)	Delete "member of the police force" and substitute: police officer
Section 83BA(7)	Delete "member of the police force" wherever occurring and substitute in each case: police officer
Section 83BA(8)	Delete "member of the police force" and substitute: police officer
Section 83BA(9)	Delete " <i>Police Act 1952</i> " and substitute: <i>Police Act 1998</i>
Section 83C(1)	Delete "member of the police force" and substitute: police officer
Section 83C(3)	Delete "member of the police force" and substitute: police officer Delete "member" second occurring and substitute: officer
Section 83C(4)	Delete "member of the police force" and substitute: police officer