



## Gordon Ramsay MLA

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Member for Ginninderra

Attorney-General

Minister for Regulatory Services

Minister for the Arts and Community Events

Minister for Veterans and Seniors

Mrs Giulia Jones MLA

Chair

Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)

ACT Legislative Assembly

GPO Box 1020

CANBERRA ACT 2601

Dear Mrs Jones

I write in response to the Standing Committee on Justice and Community Safety's Scrutiny Report No 13 of 6 February 2018 which comments on the *Crimes (Fortification Removal) Amendment Bill 2017* (the Bill).

I refer to the Committee's request for a response in relation to comments on the Bill in relation to the right to fair trial, section 21 of the *Human Rights Act 2004*. The comments concern notification to an occupier of a premises that an application, or order, for a fortification removal or inspection order has been made. I can advise that the right to fair trial has been carefully considered in this context and the appropriate procedural protections are set out in the *Court Procedures Rules 2006* (the Rules).

An application for an order made under the provisions of the Bill will be made as an originating application under rule 34(2) of the Rules. Division 2.3.3 of the Rules sets out the procedure for filing an originating application, and requires service on all respondents to the application. The occupier of the premises would be a respondent.

The Court sets a return date for the application and generally will not proceed with the application on the return date unless there is proof that the application has been served. Service of the application is dealt with under Part 6.8 of the Rules and in particular, Division 6.8.3 (Service—Magistrates Court).

On the return date, the Court may make directions about the filing of affidavits by all parties, and the future conduct of the proceedings. While a respondent to an originating application does not file a

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defence, the respondent usually files affidavit evidence in opposition to the orders sought, and has the opportunity to respond to the application at the hearing.

Part 5.3 of the Rules (Appeals to Supreme Court) sets out the procedure for appealing from an order of the Magistrates Court. Part 5.3 will be applied in relation to an appeal from a fortification removal order or fortification inspection order.

To clarify this matter, I intend to make an amendment to the Explanatory Statement for the Bill to ensure the procedural aspects of the new legislation are plainly made out.

I thank the Committee for its report and careful consideration of the Bill.

Yours sincerely

Gordon Ramsay MLA  
Attorney-General