

# Fair Trading Inspectors Bill 2011

## Explanatory Notes

### Short Title

The short title of the Bill is the Fair Trading Inspectors Bill 2011.

### Objectives of the Bill

The Objectives of the Bill are to:

1. address inconsistencies, harmonise, and consolidate inspectorate provisions contained in fair trading legislation by providing common inspectorate provisions for the enforcement of certain fair trading legislation;
2. improve the enforcement and compliance activities of the Office of Fair Trading through harmonised and consolidated inspectorate provisions; and
3. repeal the inspectorate provisions contained in certain fair trading legislation and make consequential amendments.

### Reasons for the Bill

The Office of Fair Trading (OFT), Department of Employment, Economic Development and Innovation, administers 17 Acts which contain inspectorate provisions. These provisions relate to the appointment, powers and responsibilities of inspectors (also referred to as authorised officers), and offences relating to their exercise of power.

A number of reviews have identified a need to address the inconsistencies in the inspectorate provisions contained in fair trading legislation. The first of these reviews was the 2002 internal review of the *Fair Trading Act 1989* which recommended, among other things, that generic processes such as inspectors' powers be consolidated and inserted into standardised provisions in the Fair Trading Act which would apply generically to other Acts.

In 2007, the former Service Delivery and Performance Commission (SDPC) conducted a review of the then Department of Tourism, Fair Trading and Wine Industry Development and recommended, among other things, that a single Act be introduced to consolidate and standardise enforcement powers. The SDPC report was tabled in Parliament on 15 January 2008.

Both reviews identified that inconsistencies arose largely as a result of legislation being drafted and amended at different times and that drafting styles changed over time. Additionally, there was often no substantive reason for the inconsistencies. This can result in difficulty enforcing legislation and inconsistent enforcement practices. Additionally, business and consumers may have difficulty understanding the enforcement powers that may be exercised by Office of Fair Trading inspectors.

### **Achievement of the Objectives**

The Bill establishes a law that provides common inspectorate provisions for the enforcement of certain fair trading legislation (referred to in the Bill as ‘primary Acts’). The common provisions represent a harmonisation and consolidation of the inspectorate provisions contained in the primary Acts. They have largely been drafted using the precedent provisions developed by the Office of the Queensland Parliamentary Counsel (OQPC) which have sufficient regard to fundamental legislative principles.

The inspectorate provisions in the following Acts will be harmonised in the Bill:

- *Funeral Benefit Business Act 1982*
- *Introduction Agents Act 2001*
- *Land Sales Act 1984*
- *Manufactured Homes (Residential Parks) Act 2003*
- *Property Agents and Motor Dealers Act 2000*
- *Residential Services (Accreditation) Act 2002*
- *Retirement Villages Act 1999*
- *Second-hand Dealers and Pawnbrokers Act 2003*
- *Security Providers Act 1993*
- *Tourism Services Act 2003*

- *Travel Agents Act 1988*

While the inspectorate provisions contained in the *Property Agents and Motor Dealers Act 2000* (PAMD Act) form part of the harmonisation and consolidation process, the PAMD Act will not be a primary Act in the Bill as introduced. This is because the PAMD Act is proposed to be repealed and split into industry-specific Acts as a result of a separate SDPC recommendation. It is anticipated that the prospective Acts arising from the split of the PAMD Act will be primary Acts for the Bill.

In order to achieve a balance between generic enforcement provisions and specialisation, a schedule to the Bill contains provisions that add to, vary, or exclude the common provisions in the body of the Bill in relation to certain primary Acts (referred to in the Bill as ‘modifying provisions’).

Finally, the Bill repeals the inspectorate provisions in the primary Acts and makes the necessary consequential amendments.

### **Alternatives to the Bill**

An alternative to the Bill, as recommended in the 2002 review of the Fair Trading Act, is to insert common inspectorate provisions in the Fair Trading Act itself. This option was not implemented due to substantial amendments to the Fair Trading Act to apply the Australian Consumer Law in Queensland. While the amendments have now come into effect through the enactment of the *Fair Trading (Australian Consumer Law) Amendment Act 2010*, at the time of drafting this Bill, the extent of the amendments were unknown. Consequently, the Fair Trading Act was not included for harmonisation in the Bill, but may be considered for inclusion at a later stage.

Another alternative to the Bill is to amend each Act separately to ensure the inspectorate provisions in each Act are consistent. This option was not implemented as it is not consistent with the recommendations of the reviews. That is, common inspectorate provisions should be contained in one Act to ensure long-term consistency and to avoid amending a large number of Acts should future amendments be necessary.

### **Estimated Cost for Government Implementation**

Minimal administrative costs such as the possible re-issue of identity cards for existing inspectors and training are to be absorbed within the normal operating budget.

## Consistency with Fundamental Legislative Principles

Questions about consistency with fundamental legislative principles contained in section 4 of the *Legislative Standards Act 1992* and those that are generally recognised will invariably arise given the subject matter of the Bill. However, investigative and enforcement powers are necessary to achieve the overarching consumer protection objects of the primary Acts. Moreover, consumer protection legislation would be ineffective without the ability of the Office of Fair Trading to investigate potential breaches and take enforcement action.

As indicated earlier, the Bill has largely been drafted using the precedent provisions developed by the Office of the Queensland Parliamentary Counsel which have sufficient regard to fundamental legislative principles. The powers contained in the Bill are a spectrum of powers from least to most intrusive. It is entirely appropriate, as well as intrinsic to the nature of their job, for inspectors to have at their disposal a range of powers to be used depending on the seriousness of the situation in question. For example, it would not be contemplated to use search and entry powers in a simple dispute between a consumer and trader over a refund. There are, however, instances in fair trading legislation involving health and safety and significant financial detriment and in such cases, the ability of inspectors to use more forceful powers to protect affected parties is vital. The Bill is structured in such a way that these variances are accounted for, with sufficient regard also for fundamental legislative principles. However, a more detailed discussion of fundamental legislative principles is provided below.

Does the Bill confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer? (*Legislative Standards Act 1992*, s 4(3)(e))

Clause 17 of the Bill confers power on inspectors to enter places under a number of circumstances, including where no warrant is issued. An inspector may enter a place if—

- (a) an occupier of the place consents under division 2 to the entry and clause 20 has been complied with; or
- (b) it is a public place and the entry is made when it is open to the public;  
or

- (c) the entry is authorised under a warrant and, if there is an occupier at the place, division 3, subdivision 2 has been complied with for the occupier; or
- (d) the entry is to a place of business that is regulated by a primary Act and is—
  - (i) open for carrying on business; or
  - (ii) otherwise open for entry; or
  - (iii) required to be open for inspection under the primary Act.

While inspectors may enter a place without a warrant, the circumstances they may do so under clause 17 are sufficiently limited. Additionally, the Bill provides appropriate safeguards. For instance, clauses 20 and 21 prescribe procedures that inspectors must follow when entering a place with consent while clause 27 prescribes the procedure for entering a place under a warrant.

The Bill also restricts an inspector's ability to enter a place of residence (including a vehicle) only with consent of the occupier or a warrant. One primary Act where an inspector will invariably need to lawfully enter a place of residence is the *Residential Services (Accreditation) Act 2002*. In order to provide an additional safeguard to protect the personal privacy of a person living at the residence, a modifying provision in schedule 1 of the Bill requires an inspector to preserve, as far as practicable, the privacy of anyone living at the residence. This modifying provision continues the position currently in section 120 of the Residential Services (Accreditation) Act, which will be repealed as a consequence of this Bill.

Clause 29 confers power on inspectors to stop or move vehicles in order to exercise their powers. While this may appear to be an excessive power, the power may only be exercised if an inspector reasonably suspects, or is aware, that a thing in or on a vehicle may provide evidence of the commission of an offence against the Bill or a primary Act. It should also be noted that the power in the Bill is unlike the power available to police in that it is much more limited. For instance, inspectors do not have the power establish road blocks or conduct pursuits. The power is justified on the grounds that a vehicle is just as likely to contain evidence of the commission of an offence as a place, particularly in relation to itinerant traders. It therefore follows that inspectors should have the power to stop vehicles so that they can be searched. The Office of Fair Trading will also

develop the appropriate policies, procedures and training to ensure that the power can be exercised safely and lawfully.

Once an inspector has entered a place, the Bill confers a number of powers that may be exercised. Clause 33 lists the general powers that an inspector may exercise after entering a place. The powers in clause 33, having been drafted using the OQPC precedent provisions, are the usual powers available to inspectors in legislation and do not include any expanded or additional powers. In respect to seizing items, the Bill provides safeguards in that the decision to seize the item can be appealed against to the Magistrates Court; the person entitled to the seized item may have access to it; and the seized item must be returned (clauses 44-46). The chief executive's decision to forfeit a seized item to the State can also be appealed against to the Magistrates Court (clause 72).

Clause 37 confers powers on inspectors to seize evidence at a place that may be entered only with consent or warrant. An inspector may also seize anything else at the place on the reasonable belief that the thing is evidence of an offence against a primary Act or has just been used in committing an offence against a primary Act. While concerns may be raised that seizing evidence of an offence unrelated to the investigation or warrant may adversely affect the rights and liberties of individuals, clause 37 enshrines the established common law power referred to as the 'chance discovery' principle. The chance discovery principle is also currently enshrined in the primary Acts to be harmonised in the Bill, as well as other Queensland laws and laws of the Commonwealth, States and Territories.

Does the Bill provide appropriate protection against self-incrimination? (Legislative Standards Act 1992, s 4(3)(f))

Clause 35 makes it an offence for a person to contravene a requirement to help an inspector made under clause 34. While self-incrimination is a reasonable excuse, it does not apply if a document or information the subject of the help requirement is required to be held or kept under a primary Act. It is considered appropriate to abrogate the privilege against self-incrimination in this instance as the person is specifically required under a primary Act to keep certain documents or information. Accordingly, such documents or information would be peculiarly within the possession or knowledge of the person and would otherwise be difficult to obtain or establish.

Clause 58 makes it an offence for a person to contravene a document production requirement made under clause 57. It is not a reasonable

excuse for a person to fail to comply with the requirement if it might tend to incriminate the person. Again, it is considered appropriate to abrogate the privilege in this instance as the documents required to be produced are those which are issued to a person or required to be kept by a person under a primary Act.

In order to balance the abrogation of the privilege against self-incrimination, evidential immunity is provided in clause 71. Clause 71(2) provides that evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible against the individual in any proceeding to the extent it tends to incriminate the person, or expose the person to a penalty, in the proceeding. However, this does not apply to a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the information or document is relevant evidence.

Does the Bill confer immunity from proceeding or prosecution without adequate justification? (*Legislative Standards Act 1992*, s 4(3)(h))

Clause 90 provides protection from liability for a designated person (i.e. the chief executive, an inspector, or a person acting under the authority or direction of an inspector). However, the immunity only applies to an act done, or omission made, honestly and without negligence under the Bill. The conferral of the immunity is balanced by the fact that any civil liability that would otherwise attach to a designated person instead attaches to the State.

Does the Bill in all other respects have sufficient regard to the rights and liberties of individuals?

*Privacy and confidentiality rights*

Clause 63 allows the chief executive to obtain a criminal history of a person if an inspector reasonably suspects the person may be present at a place when the inspector enters the place, and may create an unacceptable level of risk to the inspector's safety. While there may be a concern that this can lead to an unnecessary collection of private information, the provision is necessary to determine whether an inspector's unaccompanied entry of a place would create an unacceptable level of risk to the inspector's safety. However, the clause is sufficiently limited so as to prevent 'blanket' criminal histories being obtained for any and all persons at a place. Additionally, clause 64 provides a further safeguard as it makes provision for the confidentiality and destruction of criminal history reports.

### *Appropriateness of penalties*

The Bill contains a number of offences and prescribes maximum penalties for the offences. The approach taken in the Bill in determining maximum penalties was to identify the range of penalties currently in the primary Acts, as well as other Queensland Acts, and to adopt the higher penalty. Accordingly, the penalties for offences currently provided in most primary Acts which now exist in the Bill will increase.

The penalties in the Bill, however, are still considered to be proportionate to the seriousness of the offence. For instance, a maximum penalty of 20 penalty units is prescribed under clause 14 if a person who ceases to be an inspector fails to return their identity card to the chief executive within 21 days. The more serious offences, such as those which go directly to an inspector's ability to exercise their powers and undertake an investigation, attract higher penalties. For instance, a maximum penalty of 200 penalty units or 2 years imprisonment is prescribed under clause 68 for the offence of giving an inspector false or misleading information.

Clause 59 makes it an offence for a person to contravene a document certification requirement made under clause 57(5). While this offence does not exist in the primary Acts, it does form part of the precedent provisions and also exists in a number of other Acts. The maximum penalties for the offence in the legislation do differ, with the higher penalty being 200 penalty units. Accordingly, the Bill has adopted the maximum penalty of 200 penalty units.

### *Usual safeguards*

As indicated, the Bill has been drafted using the OQPC precedent provisions that have been developed to have sufficient regard to fundamental legislative principles. Indeed, the Bill contains the usual safeguards which include:

- issuing inspectors with identification cards and requiring the cards to be produced or displayed before or when exercising a power;
- limiting the power to enter a place of residence with consent of the occupier or warrant only;
- requiring an inspector to give appropriate warnings before exercising a power;
- providing for the seizure of things only with justification (i.e. by warrant or reasonable belief);

- requiring an inspector to give a receipt for a seized thing;
- allowing the owner of a seized thing to have access to it;
- providing for the return of the seized thing, unless there are reasonable grounds that it should be forfeited;
- requiring an inspector to give notice of any damage to the owner of the property, and allowing the owner to make a claim for compensation; and
- providing evidential immunity to balance the abrogation of the privilege against self-incrimination.

Does the Bill have sufficient regard to the institution of Parliament?

The regulation-making power in the Bill is limited to administrative matters only (for example matters relating to the appointment of inspectors) and more importantly does not allow a regulation to create any new powers. Additionally, there are no ‘Henry VIII’ clauses in the Bill which would allow a regulation to amend any prospective Fair Trading Inspectors Act, and it is envisaged that any regulation would be subject to the scrutiny of the Legislative Assembly.

## **Consultation**

The SDPC conducted extensive consultation during its review. The SDPC’s recommendations were subsequently borne from this consultation process. Queensland Government agencies were also consulted in the development of the Bill. This government consultation clarified with agencies that the Bill provides a range of inspectorate provisions to apply according to the circumstances, rather than a homogenous set of powers which would clearly not be appropriate in some cases.

# Notes on Provisions

## Chapter 1 Preliminary

### 1 Short title

Clause 1 provides that the short title of the Bill is the *Fair Trading Inspectors Act 2011*.

### 2 Commencement

Clause 2 provides that the Bill commences on a day to be fixed by proclamation.

### 3 Act binds all persons

Clause 3 provides that the Bill binds all persons, including the State, and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States. The clause also provides that nothing in the Bill makes the State, the Commonwealth or another State liable to be prosecuted for an offence.

### 4 Operation of Act

Clause 4 makes provision for the operation of the Bill. Subclause (1) provides that the Bill enacts common provisions for the following Acts (each a 'primary Act')—

- (a) *Funeral Benefit Business Act 1982*;
- (b) *Introduction Agents Act 2001*;
- (c) *Land Sales Act 1984*;
- (d) *Manufactured Homes (Residential Parks) Act 2003*;
- (e) *Residential Services (Accreditation) Act 2002*;
- (f) *Retirement Villages Act 1999*;
- (g) *Second-hand Dealers and Pawnbrokers Act 2003*;

- (h) *Security Providers Act 1993*;
- (i) *Tourism Services Act 2003*;
- (j) *Travel Agents Act 1988*.

Subclause (2) provides that the common provisions mostly concern the appointment and powers of inspectors for primary Acts and the procedures relating to the exercise of powers.

## **5 Modifying operation of Act**

Clause 5 introduces the concept of ‘modifying provisions’ in order to strike a balance between generic provisions and specialisation. Subclause (1) provides that the common provisions are modified, for the following primary Acts, by the provisions (the ‘modifying provisions’) stated in schedule 1 for the primary Act—

- (a) *Manufactured Homes (Residential Parks) Act 2003*;
- (b) *Residential Services (Accreditation) Act 2002*;
- (c) *Retirement Villages Act 1999*;
- (d) *Tourism Services Act 2003*;
- (e) *Travel Agents Act 1988*.

Subclause (2) provides that a word defined in a primary Act and used in a modifying provision for that Act has the same meaning in the modifying provisions as it has in the primary Act.

## **6 Definitions**

Clause 6 provides that the dictionary in schedule 2 defines particular words used in the Bill.

## **Chapter 2     Inspectors**

### **Part 1             General matters about inspectors**

#### **Division 1         Functions**

##### **7 Functions of inspectors**

Clause 7 makes provision for the functions of inspectors under the Bill in relation to the Bill and a primary Act. Subclause (1) provides that for the Bill or a primary Act, an inspector has the following functions—

- (a) to investigate, monitor and enforce compliance with the Bill or the primary Act;
- (b) to investigate or monitor whether an occasion has arisen for the exercise of powers under the Bill or the primary Act;
- (c) to facilitate the exercise of powers under the Bill or the primary Act.

Subclause (2) provides that subject to the Bill, an inspector may exercise the powers under the Bill for the purpose of these functions. Subclause (3) provides that subject to the modifying provisions for a primary Act and any provisions of the primary Act, the functions are in addition to and do not limit any functions the inspector has under that Act. Subclause (4) provides that it is unnecessary for the inspector to hold a separate appointment for the Bill.

#### **Division 2         Appointment**

##### **8 Appointment and qualifications**

Clause 8 provides for the appointment and qualifications of inspectors. Subclause (1) allows the chief executive to, by instrument in writing, appoint any of the following persons as an inspector for a primary Act—

- (a) a public service employee;
- (b) a person prescribed by the primary Act;
- (c) a person prescribed under a regulation.

However, subclause (2) provides that the chief executive may appoint a person as an inspector only if the chief executive is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

Subclause (3) requires that the instrument of appointment must state the primary Act for which the individual is appointed as an inspector and subclause (4) provides that an individual may be appointed as an inspector for more than 1 primary Act.

## **9 Appointment conditions and limit on powers**

Clause 9 provides for the appointment conditions and limits on inspectors' powers. Subclause (1) provides that an inspector holds office on any conditions stated in—

- (a) the inspector's instrument of appointment; or
- (b) a signed notice given to the inspector; or
- (c) a regulation.

Subclause (2) provides that the instrument of appointment, a signed notice given to the inspector or a regulation may limit the inspector's powers. 'Signed notice' is defined in subclause (3) to mean a notice signed by the chief executive.

## **10 When office ends**

Clause 10 provides for when an inspector ceases to hold office. Subclause (1) provides that the office of a person as an inspector ends if any of the following happens—

- (a) the term of office stated in a condition of office ends;
- (b) under another condition of office, the inspector ceases to hold office;
- (c) the inspector's resignation under clause 11 takes effect.

Subclause (2) provides that subclause (1) does not limit the ways the office of a person as an inspector ends. ‘Condition of office’ is defined in subclause (3) to mean a condition under which the inspector holds office.

## **11 Resignation**

Clause 11 makes provision for the resignation of inspectors. Subclause (1) provides that an inspector may resign by signed notice given to the chief executive. However, subclause (2) provides that if holding office as an inspector is a condition of the inspector holding another office, the inspector may not resign as an inspector without resigning from the other office.

## **Division 3            Identity cards**

### **12 Issue of identity card**

Clause 12 makes provision for the issue of identity cards to inspectors. Subclause (1) requires the chief executive to issue an identity card to each inspector. Subclause (2) provides that the identity card must—

- (a) contain a recent photo of the inspector;
- (b) contain a copy of the inspector’s signature; and
- (c) identify the person as an inspector under the Bill or a primary Act; and
- (d) state an expiry date for the card.

Subclause (3) provides that the clause does not prevent the issue of a single identity card to a person for the Bill, or a primary Act, and other purposes.

### **13 Production or display of identity card**

Clause 13 places a requirement on inspectors to produce or display their identity card. Subclause (1) provides that in exercising a power in relation to a person in the person’s presence, an inspector must—

- (a) produce the inspector’s identity card for the person’s inspection before exercising the power; or

- (b) have the identity card displayed so it is clearly visible to the person when exercising the power.

However, subclause (2) provides that if it is not practicable to comply with subclause (1), the inspector must produce the identity card for the person's inspection at the first reasonable opportunity.

Subclause (3) provides that for subclause (1), an inspector does not exercise a power in relation to a person only because the inspector has entered a place as mentioned in clause 17(1)(b) or (d).

#### **14 Return of identity card**

Clause 14 requires a person who ceases to be an inspector to return their identity card to the chief executive within 21 days after ceasing to hold office as an inspector unless the person has a reasonable excuse. A maximum penalty of 20 penalty units applies for a contravention.

### **Division 4            Miscellaneous provisions**

#### **15 References to exercise of powers**

Clause 15 clarifies the position in relation to references to the exercise of powers under the chapter. If a provision of the chapter refers to the exercise of a power by an inspector and there is no reference to a specific power, the reference is to the exercise of all or any inspectors' powers under this chapter or a warrant, to the extent the powers are relevant.

#### **16 Reference to document includes reference to reproductions from electronic document**

Clause 16 clarifies the position in relation to references to a document. A reference in the chapter to a document includes a reference to an image or writing produced from an electronic document; or not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

## **Part 2                      Entry to places by inspectors**

### **Division 1                Power to enter**

#### **17 General power to enter places**

Clause 17 makes provision for an inspector's general power to enter places. Under subclause (1), an inspector may enter a place if—

- (a) an occupier of the place consents under division 2 to the entry and clause 20 has been complied with for the occupier; or
- (b) it is a public place and the entry is made when it is open to the public; or
- (c) the entry is authorised under a warrant and, if there is an occupier of the place, division 3, subdivision 2 has been complied with for the occupier; or
- (d) it is a place of business that is regulated under a primary Act and is—
  - (i) open for carrying on the business; or
  - (ii) otherwise open for entry; or
  - (iii) required to be open for inspection under the primary Act.

Subclause (2) provides that for subclause (1)(d), a 'place of business' does not include a part of the place where a person resides.

Subclause (3) provides that if the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn. Subclause (4) provides that if the power to enter is under a warrant, the power is subject to the terms of the warrant.

Subclause (5) provides that the consent may provide consent for re-entry and is subject to the conditions of consent, while subclause (6) provides that if the power to enter is under a warrant, the re-entry is subject to the terms of the warrant.

Subclause (7) provides definitions of 'authority' and 'regulated under a primary Act'.

## **Division 2            Entry by consent**

### **18 Application of div 2**

Clause 18 provides that the division applies if an inspector intends to ask an occupier of a place for consent to the inspector or another inspector entering the place under clause 17(1)(a).

### **19 Incidental entry to ask for access**

Clause 19 provides that for the purpose of asking the occupier for the consent, the inspector may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

### **20 Matters inspector must tell occupier**

Clause 20 provides that before asking for the consent, the inspector must give a reasonable explanation to the occupier—

- (a) about the purpose of the entry, including the powers intended to be exercised; and
- (b) that the occupier is not required to consent; and
- (c) that the consent may be subject to conditions and may be withdrawn at any time;

### **21 Consent acknowledgement**

Clause 21 makes provision for the giving of a consent acknowledgment. Subclause (1) provides that if the consent is given, the inspector may ask the occupier to sign an acknowledgement of the consent. Subclause (2) then lists the matters the acknowledgement must state.

Subclause (3) provides that if the occupier signs the acknowledgement, the inspector must immediately give a copy to the occupier. However, subclause (4) provides that if it is impractical for the inspector to give the occupier a copy of the acknowledgement immediately, the inspector must

give the occupier the copy as soon as practicable. There may be instances where it is impracticable to give a copy immediately, such as where a carbon copy or access to a photocopier may not be readily available.

Subclause (5) provides that if an issue arises in a proceeding about whether the occupier consented to the entry, and an acknowledgement complying with subclause (2) for the entry is not produced in evidence, the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

## **Division 3            Entry under warrant**

### **Subdivision 1    Obtaining warrant**

#### **22 Application for warrant**

Clause 22 makes provision for the application for a warrant. Subclause (1) provides that an inspector may apply to a magistrate for a warrant for a place. Subclause (2) requires an inspector to prepare a written application that states the grounds on which the warrant is sought and subclause (3) requires the application to be sworn.

Subclause (4) provides that the magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

#### **23 Issue of warrant**

Clause 23 makes provision for the issue of a warrant. Subclause (1) provides that the magistrate may issue a warrant for the place only under subclause (2) or (3).

Subclause (2) provides that the magistrate may issue a warrant for the place if the magistrate is satisfied there are reasonable grounds for suspecting that there is at the place, or will be at the place within the next 7 days, a particular thing or activity that may provide evidence of an offence against the Bill or a primary Act. This allows offence-related warrants to be issued.

Subclause (3) allows monitoring warrants to be issued. The proactive monitoring of compliance with fair trading legislation is a key function of

the Office of Fair Trading. The subclause provides that the magistrate may issue a warrant for the place for the purpose of the inspector's performance of the function mentioned in clause 7(1)(a) at the place if—

- (a) the place is a place mentioned in clause 17(1)(b) or (d); and
- (b) the magistrate is satisfied it is reasonably necessary that the inspector should have access to the place for the purpose of effectively performing the function at the place.

Subclause (4) lists the matters the warrant must state, while subclause (5) provides that subclause (3) does not limit the powers that an inspector can exercise in the absence of a warrant.

## **24 Electronic application**

Clause 24 makes provision for the application of a warrant by electronic communication.

## **25 Additional procedure if electronic application**

Clause 25 provides the additional procedures for an application made by electronic communication.

## **26 Defect in relation to warrant**

Clause 26 provides that a warrant is not invalidated by a defect in the warrant or in compliance with the subdivision unless the defect affects the substance of the warrant in a material particular. Subclause (2) defines 'warrant' to include a duplicate warrant mentioned in clause 25(3).

## **Subdivision 2 Entry procedure**

### **27 Procedure**

Clause 27 sets out the procedure for entering a place and subclause (1) provides that the clause applies if an inspector is intending to enter a place under a warrant issued under the division. Subclause (2) provides that before entering the place, the inspector must do or make a reasonable attempt to do the following things—

- (a) identify himself or herself to a person present at the place who is an occupier of the place by producing the inspector's identity card or another document evidencing the inspector's appointment;
- (b) give the person a copy of the warrant;
- (c) tell the person the inspector is permitted by the warrant to enter the place;
- (d) give the person an opportunity to allow the inspector immediate entry to the place without using force.

However, subclause (3) provides that the inspector need not comply with subclause (2) if the inspector believes on reasonable grounds that entry to the place is required to ensure the execution of the warrant is not frustrated.

Subclause (4) defines 'warrant' to include a duplicate warrant mentioned in clause 25(3).

## **Part 3                      Other inspectors' powers and related matters**

### **Division 1                      Stopping or moving vehicles**

#### **28 Application of div 1**

Clause 28 provides that the division applies if an inspector reasonably suspects, or is aware, that a thing in or on a vehicle may provide evidence of the commission of an offence against the Bill or a primary Act.

#### **29 Power to stop or move**

Clause 29 makes provision for the power to stop or move a vehicle. Subclause (1) provides that if the vehicle is moving, the inspector may, to exercise his or her powers, signal or otherwise direct the person in control of the vehicle to stop the vehicle and to bring the vehicle to, and keep it at, a convenient place within a reasonable distance to allow the inspector to exercise the powers.

Subclause (2) provides that if the vehicle is stopped, the inspector may direct the person in control of the vehicle to—

- (a) not to move it until the inspector has exercised the inspector's powers; or
- (b) to move the vehicle to, and keep it at, a stated reasonable place to allow the inspector to exercise the powers.

Subclause (3) provides that when giving the direction under subclause (2), the inspector must give the person in control an offence warning for the direction.

### **30 Identification requirements if vehicle moving**

Clause 30 makes provision for identification requirements if a vehicle is moving. Subclause (1) provides that the clause applies if the inspector proposes to give a direction under clause 29(1) and the vehicle is moving. Subclause (2) requires the inspector to clearly identify himself or herself as an inspector in exercising the inspector's powers.

Subclause (3) provides that when the vehicle stops, the inspector must have with him or her the inspector's identity card, and immediately produce the identity card for the inspector of the person in control of the vehicle. Subclause (4) provides that subclause (3) applies despite clause 13.

### **31 Failure to comply with direction**

Clause 31 makes it an offence for a failure to comply with a request, signal or direction. Subclause (1) provides that the person in control of the vehicle must comply with a request, signal or direction under clause 29 unless the person has a reasonable excuse. A maximum penalty of 165 penalty units applies for a contravention.

Subclause (2) provides that it is a reasonable excuse for the person not to comply with a direction if—

- (a) the vehicle was moving and the inspector did not comply with clause 30; or
- (b) to comply immediately would have endangered someone else or caused loss or damage to property, and the person complies as soon as it is practicable to do so.

However, subclause (3) provides that subclause (2) does not limit subclause (1). Subclause (4) provides that a person does not commit an offence against subclause (1) if the direction the person fails to comply with is given under clause 29(2); and the person is not given an offence warning for the direction.

## **Division 2            General powers after entering places**

### **32 Application of div 2**

Clause 32 makes provision for the application of division 2. Subclause (1) provides that the powers under the division may be exercised if an inspector enters a place under—

- (a) clause 17(1)(a); or
- (b) clause 17(1)(c); or
- (c) clause 17(1)(d).

However, subclause (2) provides that if an inspector enters under clause 17(1)(a) or (c), the powers under the division are subject to any conditions of the consent or terms of the warrant.

### **33 General powers**

Clause 33 makes provision for an inspector's general powers after entering a place. Subclause (1) provides that the inspector may do any of the following (each a 'general power')—

- (a) search any part of the place;
- (b) inspect, examine or film any part of the place or anything at the place;
- (c) take for examination a thing, or a sample of or from a thing, at the place;
- (d) place an identifying mark in or on anything at the place;
- (e) take an extract from, or copy, a document at the place, or take the document to another place to copy;
- (f) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing

containing an electronic document to another place to produce an image or writing;

- (g) take into or onto the place and use any person, equipment and materials the inspector reasonably requires for exercising the inspector's powers under the division;
- (h) remain at the place for the time necessary to achieve the purpose of the entry.

Subclause (2) provides that the inspector may take a necessary step to allow the exercise of a general power. Subclause (3) provides that if an inspector takes a document from the place to copy it, the inspector must copy and return the document to the place as soon as practicable.

Subclause (4) provides that if the inspector takes from the place an article or device reasonable capable of producing a document from an electronic document to produce the document, the inspector must produce the document and return the article or device to the place as soon as practicable.

Subclause (5) provides definitions of 'examine', 'film' and 'inspect'.

### **34 Power to require reasonable help**

Clause 34 makes provision for an inspector to require reasonable help from a person. Subclause (1) provides that the inspector may make a requirement (a 'help requirement') of an occupier of the place or a person at the place to give the inspector reasonable help to exercise a general power, including, for example, to produce a document or to give information.

Subclause (2) provides that when making a help requirement, the inspector must give the person an offence warning for the requirement. That is, the inspector must warn the person that, without reasonable excuse, it is an offence not to comply with the help requirement.

### **35 Offence to contravene help requirement**

Clause 35 makes it an offence to contravene a help requirement. Subclause (1) provides that a person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse. A maximum penalty of 200 penalty units or 1 year's imprisonment applies for a contravention.

Subclause (2) provides that it is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty. However, subclause (3) provides that subclause (2) does not apply if a document or information the subject of the help requirement (the ‘subject’) is required to be held or kept by the defendant under the Bill or a primary Act. The note after subclause (3) directs the reader to clause 71, which deals with evidential immunity.

## **Division 3            Seizure and forfeiture**

### **Subdivision 1    Power to seize**

#### **36 Seizing evidence at a place that may be entered without consent or warrant**

Clause 36 makes provision for an inspector’s power to seize evidence at a place that may be entered without consent or warrant. Subclause (1) provides that an inspector who enters a place the inspector may enter under the Bill without the consent of an occupier of the place and without a warrant under clause 23(2) may seize a thing at the place if the inspector reasonably believes the thing is evidence of an offence against the Bill or a primary Act.

Subclause (2) provides that subclause (1) applies even if the entry is under a warrant issued under clause 23(3).

#### **37 Seizing evidence at a place that may be entered only with consent or warrant**

Clause 37 makes provision for an inspector’s power to seize evidence and subclause (1) provides that the clause applies if—

- (a) an inspector is authorised to enter a place only with the consent of an occupier of the place or a warrant; and
- (b) the inspector enters the place after obtaining the consent or under a warrant issued under clause 23(2).

Subclause (2) provides that if the inspector enters the place with the occupier’s consent, the inspector may seize a thing at the place only if—

- (a) the inspector reasonably believes the thing is evidence of an offence against the Bill or a primary Act; and
- (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.

Subclause (3) provides that if the inspector enters the place under a warrant issued under clause 23(2), the inspector may seize the evidence for which the warrant was issued.

Subclause (4) provides that the inspector may also seize anything else at the place if the inspector reasonably believes—

- (a) the thing is evidence of an offence against the Bill or a primary Act; and
- (b) the seizure is necessary to prevent the thing being—
  - (i) hidden, lost or destroyed; or
  - (ii) used to continue, or repeat, the offence.

Subclause (5) provides that the inspector may also seize a thing at the place if the inspector reasonably believes it has just been used in committing an offence against the Bill or a primary Act.

### **38 Seizure of property subject to security**

Clause 38 deals with seizing property subject to security. Subclause (1) provides that an inspector may seize a thing, and exercise powers relating to the thing despite a lien or other security over it claimed by another person. However, subclause (2) provides that the seizure does not affect the other person's claim to the lien or other security against a person other than the inspector or a person acting for the inspector.

## **Subdivision 2 Powers to support seizure**

### **39 Requirement of person in control of thing to be seized**

Clause 39 provides for an inspector's power to give directions to the person in control of the thing to be seized. Subclause (1) provides that to enable a thing to be seized, an inspector may require the person in control of it—

- (a) to take it to a stated reasonable place by a stated reasonable time; and
- (b) if necessary, to remain in control of it at the stated place for a reasonable time.

Subclause (2) provides that the requirement—

- (a) must be made by notice; or
- (b) if for any reason it is not practicable to give a notice, may be made orally and confirmed by notice as soon as practicable.

#### **40 Offence to contravene seizure requirement**

Clause 40 provides that a person of whom a requirement is made under clause 39 must comply with the direction, unless the person has a reasonable excuse. A maximum penalty of 50 penalty units applies for a contravention.

#### **41 Power to secure seized thing**

Clause 41 makes provision for an inspector's power to secure a seized thing. Subclause (1) provides that having seized a thing under the division, an inspector may—

- (a) leave it at the place where it was seized (the 'place of seizure') and take reasonable action to restrict access to it; or
- (b) move it from the place of seizure.

Subclause (2) provides that for subclause (1)(a), the inspector may, for example—

- (a) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or
- (b) for equipment—make it inoperable; or
- (c) require a person the inspector reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or (b) or anything else an inspector could do under subclause (1)(a).

## **42 Offence to contravene other seizure requirement**

Clause 42 provides that a person must comply with a requirement made of the person under clause 41(2)(c), unless the person has a reasonable excuse. A maximum penalty of 50 penalty units applies for a contravention.

## **43 Offence to interfere**

Clause 43 makes it an offence to interfere with a seized thing. Subclause (1) provides that if access to a seized thing is restricted under clause 41, a person must not tamper with the thing or with anything used to restrict access to the thing without an inspector's approval or a reasonable excuse. A maximum penalty of 50 penalty units applies for a contravention.

Subclause (2) provides that if access to a place is restricted under clause 41, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without an inspector's approval or a reasonable excuse. A maximum penalty of 50 penalty units applies for a contravention.

## **Subdivision 3 Safeguards for seized things**

### **44 Receipt and information notice for seized thing**

Clause 44 places a requirement on an inspector to give a receipt and information notice for a seized thing. Subclause (1) provides that the clause applies if an inspector seizes anything under the division unless—

- (a) the inspector reasonably believes there is no-one apparently in possession of the thing or the thing has been abandoned; or
- (b) because of the condition, nature and value of the thing it would be unreasonable to require the inspector to comply with the clause.

Subclause (2) provides that the inspector must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized—

- (a) a receipt for the thing that generally describes the thing and its condition; and

- (b) an information notice about the decision to make the seizure.

However, subclause (3) provides that if an owner or person from whom the thing is seized is not present when it is seized, the receipt and information notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place at which the thing is seized.

Subclause (4) allows the receipt and information notice to be given in the same document and relate to more than 1 seized thing.

Under subclause (5), the inspector may delay giving the receipt and information notice if the inspector reasonably suspects giving them may frustrate or otherwise hinder an investigation by the inspector under the Bill. However, subclause (6) provides that the delay may only be for so long as the inspector continues to have the reasonable suspicion and remains in the vicinity of the place to keep it under observation.

#### **45 Access to seized thing**

Clause 45 allows for access to a seized thing. Subclause (1) provides that until a seized thing is forfeited or returned, the inspector who seized the thing must allow an owner of the thing—

- (a) to inspect it at any reasonable time and from time to time; and
- (b) if it is a document—to copy it.

Subclause (2) provides that subclause (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying. Subclause (3) provides that the inspection or copying must be allowed free of charge.

#### **46 Return of seized thing**

Clause 46 makes provision for the return of seized things and subclause (1) provides that the clause applies if a seized thing has some intrinsic value and is not—

- (a) forfeited or transferred under subdivision 4 or 5; or
- (b) subject to a disposal order under division 4.

Subclause (2) requires the inspector to return the thing to its owner—

- (a) generally—at the end of 1 year after the seizure; or

- (b) if a proceeding for an offence involving the thing is started within the 1 year—at the end of the proceeding and any appeal from the proceeding.

Subclause (3) provides that despite subclause (2), if the thing was seized as evidence, the inspector must return the thing seized to an owner as soon as practicable after the inspector is satisfied—

- (a) its continued retention as evidence is no longer required; and
- (b) its continued retention is not necessary to prevent it being used to continue, or repeat, an offence against the Bill or a primary Act; and
- (c) it is lawful for the person to possess the thing.

Subclause (4) provides that nothing in the clause affects a lien or other security over the thing.

## **Subdivision 4 Forfeiture**

### **47 Forfeiture by chief executive decision**

Clause 47 makes provision for the chief executive's power to forfeit particular seized things to the State. Subclause (1) provides that the chief executive may decide a seized thing is forfeited to the State if an inspector—

- (a) after making reasonable inquiries, can not find an owner; or
- (b) after making reasonable efforts, can not return it to an owner; or
- (c) reasonably believes it is necessary to keep the thing to prevent it being used to commit the offence for which it was seized.

However, subclause (2) provides that the inspector is not required to—

- (a) make inquiries if it would be unreasonable to make inquiries to find an owner; or
- (b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.

Subclause (3) provides that regard must be had to the thing's condition, nature and value in deciding—

- (a) whether it is reasonable to make inquiries or efforts; and
- (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

#### **48 Information notice about forfeiture decision**

Clause 48 places a requirement on the chief executive to give an information notice about a forfeiture decision. Subclause (1) provides that if the chief executive decides under clause 47(1) to forfeit a thing, the chief executive must as soon as practicable give a person who owned the thing immediately before the forfeiture (the ‘former owner’) an information notice about the decision.

Subclause (2) provides that if the decision was made under clause 47(1)(a) or (b), the information notice may be given by leaving it at the place where the thing was seized, in a conspicuous position and in a reasonably secure way.

Subclause (3) provides that the information notice must state that the former owner may apply for a stay of the decision if he or she appeals against the decision.

However, subclause (4) provides that subclauses (1) to (3) do not apply if—

- (a) the decision was made under clause 47(1)(a) or (b); and
- (b) the place where the thing was seized is—
  - (i) a public place; or
  - (ii) a place where the notice is unlikely to be read by the former owner.

#### **49 Dealing with forfeited things**

Clause 49 makes provision for how seized things may be dealt with. Subclause (1) provides that on the forfeiture of a thing to the State, the chief executive may deal with it as the chief executive considers appropriate. This includes, for example, destroying it or giving it away.

However, subclause (2) provides that the chief executive must not deal with the thing in a way that could prejudice the outcome of an appeal under the Bill or a primary Act of which the chief executive is aware.

Subclause (3) provides that if the chief executive sells the thing, the chief executive may, after deducting the costs of the sale, return the proceeds of the sale to the former owner of the thing.

Subclause (4) provides that the clause is subject to any disposal order made for the thing.

## **50 Forfeiture on conviction**

Clause 50 makes provision for the court to order the forfeiture of a thing on conviction. Subclause (1) provides that on the conviction of a person for an offence against the Bill, the court may order the forfeiture to the State of—

- (a) anything used to commit the offence; or
- (b) anything else the subject of the offence.

Subclause (2) provides that the court may make the order—

- (a) whether or not the thing has been seized; and
- (b) if the thing has been seized—whether or not the thing has been returned to the former owner of the thing.

Subclause (3) provides that the court may make any order to enforce the forfeiture it considers appropriate while subclause (4) provides that the clause does not limit the court's powers under another law.

The clause only applies to an offence against the Bill as each primary Act deals with proceedings for offences against the primary Act. The Bill later amends the primary Acts to insert mirroring provisions to achieve consistency with the Bill.

## **51 Procedure and powers for making forfeiture order**

Clause 51 sets out the procedure and powers for making a forfeiture order. Subclause (1) provides that a forfeiture order may be made on a conviction on the court's initiative or on an application by the prosecution. Subclause (2) provides that in deciding whether to make a forfeiture order for a thing, the court—

- (a) may require notice to be given to anyone the court considers appropriate, including, for example, any person who may have any property in the thing; and

- (b) must hear any submissions that any person claiming to have any property in the thing may wish to make.

## **Subdivision 5 Dealing with property forfeited or transferred to State**

### **52 When thing becomes property of the State**

Clause 52 provides that a thing becomes the property of the State if—

- (a) the thing is forfeited to the State under clause 47(1) or 50; or
- (b) the owner of the thing and the State agree, in writing, to the transfer of the ownership of the thing to the State.

### **53 How property may be dealt with**

Clause 53 sets out how property may be dealt with and subclause (1) provides that the clause applies if, under clause 52, a thing becomes the property of the State. Subclause (2) provides that the chief executive may deal with the thing as the chief executive considers appropriate, including, for example, by destroying it or giving it away. Under subclause (3) however, the chief executive must not deal with the thing in a way that could prejudice the outcome of an appeal against the forfeiture under the Bill.

Subclause (4) provides that if the chief executive sells the thing, the chief executive may, after deducting the costs of the sale, return the proceeds of the sale to the former owner of the thing. Subclause (5) provides that the clause is subject to any disposal order made for the thing.

## **Division 4 Disposal orders**

### **54 Disposal order**

Clause 54 makes provision for disposal orders and subclause (1) provides that the clause applies if a person is convicted of an offence against the Bill. Subclause (2) provides that the court may make an order (a ‘disposal order’), on its own initiative or on an application by the prosecution, for the disposal of any of the following things owned by the person—

- 
- (a) anything that was the subject of, or used to commit, the offence;
  - (b) another thing the court considers is likely to be used by the person or another person in committing a further offence against the Bill.

Subclause (3) provides that the court may make a disposal order for a thing—

- (a) whether or not it has been seized under the Bill; and
- (b) if the thing has been seized—whether or not it has been returned to the former owner.

Subclause (4) provides that in deciding whether to make a disposal order for a thing, the court—

- (a) may require notice to be given to anyone the court considers appropriate, including, for example, any person who may have any property in the thing; and
- (b) must hear any submissions that any person claiming to have any property in the thing may wish to make.

Subclause (5) provides that the court may make any order to enforce the disposal order that it considers appropriate, while subclause (6) provides that the clause does not limit the court's powers under another law.

The clause only applies to an offence against the Bill as each primary Act deals with proceedings for offences against the primary Act. The Bill later amends the primary Acts to insert mirroring provisions in order to be consistent with the Bill.

## **Division 5            Other information-obtaining powers**

### **55 Power to require name and address**

Clause 55 makes provision for an inspector's power to require a person's name and address. Subclause (1) provides that the clause applies if an inspector—

- (a) finds a person committing an offence against the Bill or a primary Act; or

- (b) finds a person in circumstances that lead the inspector to reasonably suspect the person has just committed an offence against the Bill or a primary Act; or
- (c) has information that leads the inspector to reasonably suspect a person has just committed an offence against the Bill or a primary Act.

Under subclause (2), the inspector may then require the person to state the person's name and address. Subclause (3) provides that the inspector may also require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to—

- (a) be in possession of evidence of the correctness of the stated name or address; or
- (b) otherwise be able to give the evidence.

Subclause (4) provides that when making a personal details requirement, the inspector must give the person an offence warning for the requirement.

Subclause (5) provides that a requirement under the clause is a 'personal details requirement' while subclause (6) provides a definition of 'address'. An 'address', of a person, includes the person's residential and business address and, for a person temporarily in Queensland, includes the place where the person is living in Queensland.

## **56 Offence to contravene personal details requirement**

Clause 56 makes it an offence to fail to comply with a personal details requirement. Subclause (1) provides that a person of whom a personal details requirement has been made must comply with the requirement unless the person has a reasonable excuse. A maximum penalty of 50 penalty units applies for a contravention.

Subclause (2) provides that a person may not be convicted of an offence under subclause (1) unless the person is found guilty of the offence in relation to which the personal details requirement was made.

## **57 Power to require production of document**

Clause 57 makes provision for an inspector's power to require the production of documents. Subclause (1) provides that an inspector may require a person to make available for inspection by an inspector, or to

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produce to the inspector for inspection, at a reasonable time and place nominated by the inspector—

- (a) a document issued to the person under a primary Act; or
- (b) a document required to be kept by the person under a primary Act; or
- (c) if a document or information required to be kept by the person under a primary Act is stored or recorded by means of a device—a document that is a clear written reproduction of the stored or recorded document or information.

Subclause (2) provides that a requirement under subclause (1) is a ‘document production requirement’. Subclause (3) provides that for an electronic document, compliance with the document production requirement requires the making available or production of a clear written reproduction of the electronic document.

Under subclause (4), the inspector may keep the document to copy it. Subclause (5) provides that if the inspector copies the document, or an entry in the document, the inspector may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry. Subclause (6) provides that a requirement under subclause (5) is a ‘document certification requirement’.

Subclause (7) requires an inspector to return the document to the person as soon as practicable after copying it. However, subclause (8) provides that if a document certification requirement is made of a person, the inspector may keep the document until the person complies with the requirement.

## **58 Offence to contravene document production requirement**

Clause 58 makes it an offence to contravene a document production requirement. Subclause (1) provides that a person of whom a document production requirement has been made must comply with the requirement unless the person has a reasonable excuse. A maximum penalty of 200 penalty units applies for a contravention.

Subclause (2) provides that it is not a reasonable excuse for a person to fail to comply with a document production requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty. The note directs the reader to clause 71, which deals with evidential immunity.

Subclause (3) provides that the inspector must inform the person, in a way that is reasonable in the circumstances—

- (a) that the person must comply with the document production requirement even though complying might tend to incriminate the person or expose the person to a penalty; and
- (b) that, under clause 71, there is a limited immunity against the future use of the information or document given in compliance with the requirement.

Subclause (4) provides that if the person fails to comply with the document production requirement when the inspector has failed to comply with subclause (3), the person can not be convicted of the offence against subclause (1).

Subclause (5) provides that if a court convicts a person of an offence against subclause (1), the court may, as well as imposing a penalty for the offence, order the person to comply with the document production requirement.

## **59 Offence to contravene document certification**

Clause 59 makes it an offence to contravene a document certification requirement. Subclause (1) provides that a person of whom a document certification requirement has been made must comply with the requirement unless the person has a reasonable excuse. A maximum penalty of 200 penalty units applies for a contravention.

Subclause (2) provides that it is not a reasonable excuse for a person to fail to comply with a document certification requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty. The note under subclause (2) directs the reader to clause 71, which deals with evidential immunity.

Subclause (3) provides that the inspector must inform the person, in a way that is reasonable in the circumstances—

- (a) that the person must comply with the document certification requirement even though complying might tend to incriminate the person or expose the person to a penalty; and
- (b) that, under clause 71, there is a limited immunity against the future use of the information or document given in compliance with the requirement.

Subclause (4) provides that if the person fails to comply with the document certification requirement when the inspector has failed to comply with subclause (3), the person can not be convicted of the offence against subclause (1).

## **60 Power to require information**

Clause 60 makes provision for an inspector's power to require information and subclause (1) provides that the clause applies if an inspector reasonably believes an offence against the Bill or a primary Act has been committed and a person may be able to give information about the offence.

Subclause (2) provides that the inspector may, by notice given to the person, require the person to give the inspector information related to the offence at a stated reasonable time and place. Subclause (3) provides that a requirement under subclause (2) is an 'information requirement'.

Subclause (4) provides that for information that is an electronic document, compliance with the information requirement requires the giving of a clear image or written version of the electronic document. Subclause (5) provides that in the clause, 'information' includes a document.

## **61 Offence to contravene information requirement**

Clause 61 makes it an offence to contravene a requirement to give information. Subclause (1) provides that a person of whom an information requirement is made must comply with the requirement unless the person has a reasonable excuse. A maximum penalty of 200 penalty units or 1 year's imprisonment applies for a contravention.

Subclause (2) preserves the privilege against self-incrimination by providing that it is a reasonable excuse for an individual not to give the information if giving the information might tend to incriminate the individual or expose the individual to a penalty.

## **Part 4**                      **Obtaining criminal history reports**

### **62 Purpose of pt 4**

Clause 62 provides that the purpose of the part is to help an inspector to decide whether the inspector's unaccompanied entry of a place under part 2 would create an unacceptable level of risk to the inspector's safety.

### **63 Chief executive's power to obtain criminal history report**

Clause 63 makes provision for the chief executive's power to obtain a criminal history report. Under subclause (1), the chief executive may ask the commissioner of the police service for a written report about the criminal history of a person if an inspector reasonably suspects the person—

- (a) may be present at a place when the inspector enters the place under part 2; and
- (b) may create an unacceptable level of risk to the inspector's safety.

Subclause (2) provides that the commissioner of the police service must give the report to the chief executive. However, subclause (3) provides that the report is required to contain only criminal history that is in the commissioner's possession or to which the commissioner has access.

Subclause (4) provides that the chief executive must examine the report and identify, to the extent it is reasonably practicable to do so, offences involving the use of a weapon or violence against a person. Under subclause (5), the chief executive may give the inspector information in the report about the offences identified under subclause (4).

### **64 Criminal history is confidential document**

Clause 64 provides for the confidentiality and destruction of a criminal history. Subclause (1) provides that a person must not, directly or indirectly, disclose to anyone else a report about a person's criminal history, or information contained in the report, given under clause 63. A maximum penalty of 100 penalty units applies for a contravention.

However, subclause (2) provides that a person does not contravene subclause (1) if—

- (a) the disclosure of the report or information is for the purpose of the other person performing a function in relation to the Bill; or
- (b) the disclosure of the report or information is for the purpose of the other person performing a function in relation to a primary Act and the function is substantially the same as a function under this Act; or
- (c) the disclosure of the report or information is otherwise required or permitted by law.

Subclause (3) provides that the chief executive or an inspector to whom the report or written information in the report is provided must destroy the report as soon as practicable after the inspector considers the risk mentioned in clause 62.

## **Part 5                      Miscellaneous provisions**

### **Division 1                  Damage**

#### **65 Duty to avoid inconvenience and minimise damage**

Clause 65 provides that in exercising a power, an inspector must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible. The note directs the reader to clause 67, which deals with compensation.

#### **66 Notice of damage**

Clause 66 makes provision for the giving of a notice of damage and under subclause (1), the clause applies if—

- (a) an inspector damages something when exercising, or purporting to exercise a power; or
- (b) a person (the ‘assistant’) acting under the direction or authority of an inspector damages something.

However, subclause (2) provides that the clause does not apply to damage the inspector reasonably considers is trivial or if the inspector reasonably believes—

- (a) there is no-one apparently in possession of the thing; or
- (b) the thing has been abandoned.

Subclause (3) requires the inspector to give notice of the damage to the person who appears to the inspector to be the owner, or person in control, of the thing. However, subclause (4) provides that if for any reason it is not practicable to comply with subclause (3), the inspector must—

- (a) leave the notice at the place where the damage happened; and
- (b) ensure it is left in a conspicuous position and in a reasonably secure way.

Subclause (5) provides that the inspector may delay complying with subclause (3) or (4) if the inspector reasonably suspects complying with the subclause may frustrate or otherwise hinder the performance of the inspector's functions. Subclause (6) provides that the delay may be only for so long as the inspector continues to have the reasonable suspicion and remains in the vicinity of the place.

Subclause (7) provides that if the inspector believes the damage was caused by a latent defect in the thing or circumstances beyond the control of the inspector or the assistant the inspector may state the belief in the notice.

Under subclause (8), the notice must state the particulars of the damage and that the person who suffered damage may claim compensation under clause 67, which deals with compensation.

## **Division 2            Compensation**

### **67 Compensation**

Clause 67 makes provision for compensation because of an inspector's exercise of a power. Subclause (1) provides that a person may claim compensation from the State if the person incurs a cost, damage or loss because of the exercise, or purported exercise, of a power by or for an inspector including a loss arising from compliance with a requirement made of the person under the chapter. However, subclause (2) provides that subclause (1) does not include loss arising from a lawful seizure.

Subclause (3) provides that the compensation may be claimed and ordered in a proceeding—

- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
- (b) for an alleged offence against the Bill or a primary Act the investigation of which gave rise to the claim for compensation.

Subclause (4) provides that a court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case. In considering whether it is just to order compensation, subclause (5) provides that the court must have regard to any relevant offence committed by the claimant.

Under subclause (6), a regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.

Subclause (7) provides that clause 65 does not provide for a statutory right of compensation other than is provided by the clause.

Subclause (8) defines 'loss' to include costs and damage.

## **Division 3            Offences relating to inspectors**

### **68 Giving inspector false or misleading information**

Clause 68 makes it an offence to give an inspector false or misleading information. Subclause (1) provides that a person must not give an inspector information, or a document containing information, that the person knows is false or misleading in a material particular. A maximum penalty of 200 penalty units or 2 years imprisonment applies for a contravention.

Subclause (2) provides that subclause (1) applies to information or a document given in relation to the administration of the Bill or a primary Act whether or not the information or document was given in response to a specific power under the Bill or the primary Act.

### **69 Obstructing inspector**

Clause 69 makes it an offence to obstruct an inspector. Subclause (1) provides that a person must not obstruct an inspector, or someone helping an inspector, exercising a power under the Bill or a primary Act unless the

person has a reasonable excuse. A maximum penalty of 200 penalty units or 1 year's imprisonment applies for a contravention.

Subclause (2) provides that if a person has obstructed an inspector, or someone helping an inspector, and the inspector decides to proceed with the exercise of the power, the inspector must warn the person that—

- (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and
- (b) the inspector considers the person's conduct an obstruction.

Subclause (3) defines 'obstruct' to include assault, hinder, resist, attempt to obstruct and threaten to obstruct.

## **70 Impersonating inspector**

Clause 70 provides that a person must not impersonate an inspector and a maximum penalty of 80 penalty units applies for a contravention.

## **Division 4            Other provisions**

### **71 Evidential immunity for individuals complying with particular requirements**

Clause 71 makes provision for evidential immunity for individuals complying with particular requirements. Subclause (1) provides that subclause (2) applies if an individual gives or produces information or a document to an inspector under clause 34 or 60.

Subclause (2) provides that evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.

Subclause (3) provides that subclause (2) does not apply to a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the information or document is relevant evidence.

## **Chapter 3 Appeals, evidence and legal proceedings**

### **Part 1 Reviews and appeals**

#### **Division 1 Right of appeal**

##### **72 Right of appeal**

Clause 72 provides that a person who has a right to be given an information notice about a decision made under the Bill has a right to appeal against the decision.

#### **Division 2 Internal review of decisions**

##### **73 Appeal process starts with internal review**

Clause 73 makes provision for the appeal process. Subclause (1) provides that every appeal against a decision must be, in the first instance, by way of an application for an internal review. Subclause (2) provides that a person who has a right to appeal against a decision may apply to the chief executive for a review of the decision.

##### **74 How to apply for review**

Clause 74 sets out how to apply for review.

##### **75 Stay of operation of decision**

Clause 75 makes provision for an applicant to apply to the Magistrates Court for a stay of the decision.

##### **76 Review decision**

Clause 76 makes provision for the chief executive's review decision and the giving of a review notice to the applicant. Under subclause (1)(b), the chief

executive may either confirm the original decision, amend the original decision, or substitute another decision for the original decision.

If the review decision is not the decision sought by the applicant, the applicant may appeal against the decision to the Magistrates Court within 28 days after the review notice day.

## **Division 3            Appeals**

### **77 Who may appeal**

Clause 77 provides that a person who has applied for review of an original decision and is dissatisfied with the review decision may appeal to the court against the decision.

### **78 Procedure for an appeal to the court**

Clause 78 sets out the procedure for appealing to the court.

### **79 Stay of operation of review decision**

Clause 79 makes provision for the court to grant a stay of the operation of a review decision appealed against to secure the effectiveness of the appeal.

### **80 Powers of court on appeal**

Clause 80 sets out the powers the court has in deciding an appeal.

### **81 Effect of decision of court on appeal**

Clause 81 provides for the effect of the decision of the court on appeal. Subclause (1) provides that if the court acts to set aside the review decision and return the matter to the chief executive with directions the court considers appropriate, and the chief executive makes a new decision, the new decision is not subject to review or appeal under the part.

Subclause (2) provides that if the court substitutes another decision, the substituted decision is taken to be the decision of the chief executive, and the chief executive may give effect to the decision as if the decision was the original decision of the chief executive and no application for review or appeal had been made.

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## **Part 2                    Evidence and legal proceedings**

### **Division 1                Evidentiary provisions**

#### **82 Application of div 1**

Clause 82 provides that the division applies to a proceeding under or in relation to the Bill.

#### **83 Authority**

Clause 83 provides that the power of the chief executive or an inspector to do anything under the Bill must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it.

#### **84 Signatures**

Clause 84 provides that a signature purporting to be the signature of the chief executive or an inspector is evidence of the signature it purports to be.

#### **85 Other evidentiary aids**

Clause 85 provides that a certificate purporting to be signed by the chief executive stating any of the following matters is evidence of the matter—

- (a) that a stated document of any of the following types is a document given, issued, kept or made under the Bill—
  - (i) an appointment, approval or decision;
  - (ii) a direction, notice or requirement;
  - (iii) a notice or other document given under the Bill
- (b) that a stated document is another document kept under the Bill;
- (c) that a stated document is a copy of, or an extract from or part of, a thing mentioned in paragraph (a) or (b);
- (d) that on a stated day—
  - (i) a stated person was given a stated decision, direction or notice under the Bill; or

- (ii) a stated requirement under the Bill was made of a stated person;
- (e) that a stated amount is payable under the Bill by a stated person and has not been paid.

## **Division 2            Offence proceedings**

### **86 Offences under Act are summary**

Clause 86 provides that an offence against the Bill is a summary offence. Subclause (2) provides that a proceeding for an offence against the Bill must start within the later of the following periods to end—

- (a) 1 year after the commission of the offence;
- (b) 6 months after the offence comes to the complainant's knowledge but within 2 years after the commission of the offence.

### **87 Statement of complainant's knowledge**

Clause 87 provides that in a complaint starting a proceeding for an offence against the Bill, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence the matter came to the complainant's knowledge on that day.

## **Chapter 4            Miscellaneous provisions**

### **88 Supervision by inspector**

Clause 88 provides that if a direction or requirement under the Bill allows or requires a person to take action, the direction or requirement may also require the person to take the action under an inspector's supervision

## **89 Reasonable excuse defences**

Clause 89 provides that a provision of the Bill that states what is or is not a reasonable excuse for a provision of the Bill does not limit the reasonable excuses that may be relied on in relation to the provision.

## **90 Protection from liability for particular persons**

Clause 90 provides protection from liability for particular persons. Subclause (1) provides that a person as follows (a ‘designated person’) does not incur civil liability for an act done, or omission made, honestly and without negligence under the Bill—

- (a) the chief executive;
- (b) an inspector;
- (c) a person acting under the authority or direction of an inspector.

Subclause (2) provides that if subclause (1) prevents a civil liability attaching to a designated person, the liability attaches instead to the State. Subclause (3) defines ‘civil liability’ to include liability for the payment of costs ordered to be paid in a proceeding for an offence against the Bill.

## **91 Delegation by chief executive**

Clause 91 allows for the delegation by the chief executive. Under subclause (1), the chief executive may delegate the chief executive’s functions under the Bill to an appropriately qualified public service employee. Subclause (2) defines ‘appropriately qualified’ to include having the qualifications, experience or standing appropriate for the functions.

## **92 Confidentiality of information**

Clause 92 deals with the confidentiality of information. Subclause (1) provides that an inspector must not, whether directly or indirectly, disclose confidential information and a maximum penalty of 100 penalty units applies for a contravention. However, subclause (2) provides that subclause (1) does not apply if—

- (a) the confidential information is disclosed—
  - (i) in the performance of functions under the Bill; or

- (ii) with the written consent of the person to whom the information relates; or
  - (iii) to the person to whom the information relates; or
  - (iv) in a form that could not identify any person; or
- (b) the disclosure of the confidential information is authorised under an Act or another law.

Subclause (3) defines ‘confidential information’ to mean information that has become known to an inspector in the course of performing the inspector’s functions for the Bill.

### **93 Approved forms**

Clause 93 provides that the chief executive may approve forms for use under the Bill.

### **94 Regulation-making power**

Clause 94 makes provision for the making of regulations. Subclause (1) provides that the Governor in Council may make regulations under the Bill while subclause (2) provides that a regulation may impose a penalty of no more than 20 penalty units for a contravention of a regulation.

## **Chapter 5 Transitional provisions**

### **Part 1 Purposes, definitions and general approach**

#### **95 Main purposes of ch 5**

Clause 95 provides that the main purposes of the chapter are—

- (a) to provide for provisions of the Bill that are substantially the same as repealed provisions of a primary Act to be dealt with as replacements of the repealed provisions; and

- (b) without limiting paragraph (a), if matters relating to the appointment and powers of inspectors for a primary Act, and the procedures relating to the exercise of the powers, were dealt with in a primary Act, to provide for the continuation of the matters under the Bill.

## **96 Definitions for ch 5**

Clause 96 provides definitions for chapter 5.

## **97 Document, action, obligation or protection under previous provision of primary Act**

Clause 97 provides for the continuation of a document, action, obligation or protection under a previous provision of a primary Act.

## **98 Terminology in things mentioned in s 97(1)**

Clause 98 provides for the continuation of certain terminology used in a document.

## **99 Period stated in previous provision**

Clause 99 provides for the continuation of a period stated in a previous provision of a primary Act.

## **100 Period or date stated in document given under previous provision**

Clause 100 provides for the continuation of a period stated in a document given under a previous provision of a primary Act.

## **101 Action happening before commencement may be relevant to proceeding for particular acts or omissions**

Clause 101 provides for the continuation of an action happening before commencement.

## **102 Acts Interpretation Act 1954 s 20 not limited**

Clause 102 provides that the chapter does not limit the *Acts Interpretation Act 1954*, section 20.

## **Part 2**                      **Transitional provisions relating to particular provisions of primary Acts**

### **Division 1**                **Examples for chapter 2**

#### **103 Examples for ch 2 documents under s 97**

Clause 103 provides, for the operation of chapter 2, examples of documents as mentioned in clause 97(1)(a) in relation to matters dealt with under a primary Act.

#### **104 Examples for ch 2 of obligations under s 97**

Clause 104 provides, for the operation of chapter 2, examples of an obligation as mentioned in clause 97(1)(c) in relation to matters dealt with under a primary Act.

#### **105 Examples for ch 2 of protections under s 97**

Clause 105 provides, for the operation of chapter 2, examples of a protection as mentioned in clause 97(1)(d) in relation to matters dealt with under a primary Act.

### **Division 2**                **General matters**

#### **106 Existing authorised officers**

Clause 106 provides for the continuation of the appointment of existing authorised officers.

#### **107 Existing inspectors**

Clause 107 provides for the continuation of the appointment of existing inspectors.

## **108 Reviews and appeals**

Clause 108 provides for the continuation of existing reviews and appeals.

## **109 References in Acts and documents**

Clause 109 provides that a reference in an Act or document to a previous provision of a primary Act may, if the context permits, be taken as a reference to the corresponding provision of the previous provision.

# **Chapter 6 Amendment of Acts**

Chapter 6 amends the primary Acts to repeal the inspectorate provisions contained in those Acts as the Bill now provides for such provisions. Consequential amendments are also made to correct terminology and references to inspectors and authorised officers. As indicated previously, mirroring provisions are inserted in relation to the court's power to make forfeiture and disposal orders to achieve consistency with the Bill.

## **Part 1 Amendment of Funeral Benefit Business Act 1982**

### **110 Act amended**

Clause 110 provides that the part amends the *Funeral Benefit Business Act 1982*.

### **111 Insertion of new s 3**

Clause 111 inserts a new section 3 which deals with the relationship with the Bill.

### **112 Amendment of s 5 (Definitions)**

Clause 112 amends section 5 by omitting the definition of 'inspector' and inserting new definitions of 'disposal order', 'FTI Act' and 'inspector'.

### **113 Replacement of pt 2, hdg (Appointment of officers)**

Clause 113 replaces the part 2 heading, ‘Appointment of officers’ with a new heading, ‘The registrar’.

### **114 Omission of s 6B—6D**

Clause 114 omits sections 6B to 6D.

### **115 Amendment of s 52 (Cancellation of registration by QCAT)**

Clause 115 amends section 52 by omitting the reference to an inspector in subsection (14).

### **116 Replacement of s 81 (Powers of inspectors)**

Clause 116 replaces section 81 with a new division 1 which deals with the court’s power to make forfeiture and disposal orders.

### **117 Insertion of new pt 8, div 3 hdg**

Clause 117 inserts a new part 8, division 3 heading after section 85 titled ‘Miscellaneous provisions’.

## **Part 2                      Amendment of Introduction    Agents Act 2001**

### **118 Act amended**

Clause 118 provides that the part amends the *Introduction Agents Act 2001*.

### **119 Insertion of new s 4A**

Clause 119 inserts a new section 4A which deals with the relationship with this Bill.

### **120 Amendment of pt 2, div 1, hdg (Definitions and notes)**

Clause 120 omits the words ‘and notes’ from the part 2, division 1 heading.

### **121 Omission of s 6 (Notes in text)**

Clause 121 omits section 6.

### **122 Replacement of pt 6 (Enforcement)**

Clause 122 replaces part 6 with a new part 6 dealing with the court's power to make forfeiture and disposal orders.

### **123 Amendment of s 91 (Evidence)**

Clause 123 amends section 91 to omit references to an inspector.

### **124 Amendment of s 96 (Protecting officials from liability)**

Clause 124 amends section 96 to omit the reference to an inspector.

### **125 Amendment of sch 2 (Dictionary)**

Clause 125 amends schedule 2 by omitting the definition of 'inspector' and inserting a new definition of 'disposal order'.

## **Part 3                      Amendment of Land Sales Act 1984**

### **126 Act amended**

Clause 126 provides that the part amends the *Land Sales Act 1984*.

### **127 Insertion of new s 5A**

Clause 127 inserts a new section 5A which deals with the relationship with this Bill.

### **128 Amendment of s 6 (Definitions)**

Clause 128 amends section 6 by inserting a new definition of 'disposal order'.

## **129 Replacement of pt 3A (Enforcement)**

Clause 129 replaces part 3A with a new part 3A which deals with the court's power to make forfeiture and disposal orders.

# **Part 4                      Amendment of Manufactured Homes (Residential Parks) Act 2003**

## **130 Act amended**

Clause 130 provides that the part amends the *Manufactured Homes (Residential Parks) Act 2003*.

## **131 Amendment of pt 1, div 2, hdg (Objects)**

Clause 131 amends the part 1, division 2 heading by inserting the words 'of Act and relationship with FTI Act'.

## **132 Insertion of new s 4A**

Clause 132 inserts a new s 4A which deals with the relationship with this Bill.

## **133 Replacement of pts 16 and 17**

Clause 133 replaces parts 16 and 17 with a new part 16 which deals with the court's power to make forfeiture and disposal orders.

## **134 Amendment of s 134 (Appointments and authority)**

Clause 134 amends section 134 to remove the reference to an inspector.

## **135 Amendment of s 143 (Protection from liability)**

Clause 135 amends section 143 to remove the reference to an inspector.

### **136 Amendment of schedule (Dictionary)**

Clause 136 amends the schedule by omitting the definition of ‘inspector’ and inserting new definitions of ‘disposal order’ and ‘FTI Act’.

## **Part 5                      Amendment of Residential Services (Accreditation) Act 2002**

### **137 Act amended**

Clause 137 provides that the part amends the *Residential Services (Accreditation) Act 2002*.

### **138 Insertion of new s 2A**

Clause 138 inserts a new section 2A which deals with the relationship with this Bill.

### **139 Replacement of pt 8 (Investigation and enforcement)**

Clause 139 replaces part 8 with a new part 8 which deals with the court’s power to make forfeiture and disposal orders.

### **140 Relocation and renumbering of s 139 (Alteration of certificates)**

Clause 140 relocates and renumbers section 139 as section 82A.

### **141 Amendment of s 165 (Appointments and authority)**

Clause 141 amends section 165 to omit references to an authorised officer.

### **142 Amendment of s 166 (Signatures)**

Clause 142 amends section 166 to omit the reference to an authorised officer.

### **143 Amendment of s 167 (Other evidentiary aids)**

Clause 143 amends section 167 to omit the reference to an authorised officer.

### **144 Amendment of s 180 (Confidentiality)**

Clause 144 amends section 180 to omit the reference to an authorised officer.

### **145 Amendment of s 182 (Protection from liability)**

Clause 145 amends section 182 to omit the references to an authorised officer.

### **146 Amendment of sch 2 (Dictionary)**

Clause 146 amends schedule 2 by omitting the definition of ‘authorised officer’ and inserting a new definition of ‘disposal order’.

## **Part 6                      Amendment of Retirement Villages Act 1999**

### **147 Act amended**

Clause 147 provides that the part amends the *Retirement Villages Act 1999*.

### **148 Amendment of pt 1, div 2, hdg (Objects)**

Clause 148 amends the part 1, division 2 heading by inserting the words ‘of Act and relationship with FTI Act’.

### **149 Insertion of new s 3A**

Clause 149 inserts a new section 3A which deals with the relationship with this Bill.

### **150 Replacement of pt 8 (Enforcement)**

Clause 150 replaces part 8 with a new part 8 which deals with the court's power to make forfeiture and disposal orders.

### **151 Amendment of s 220 (Appointments and authority)**

Clause 151 amends section 220 to omit references to an inspector.

### **152 Amendment of s 221 (Evidentiary provisions)**

Clause 152 amends section 221 to omit the reference to an inspector.

### **153 Amendment of schedule (Dictionary)**

Clause 153 amends the schedule by inserting definitions of 'disposal order' and 'FTI Act'.

## **Part 7                      Amendment of Second-hand Dealers and Pawnbrokers Act 2003**

### **154 Act amended**

Clause 154 provides that the part amends the *Second-hand Dealers and Pawnbrokers Act 2003*.

### **155 Insertion of new s 3A**

Clause 155 inserts a new section 3A which deals with the relationship with this Bill.

### **156 Replacement of pt 5 (Enforcement)**

Clause 156 replaces part 5 with a new part 5 which deals with the court's power to make forfeiture and disposal orders.

### **157 Amendment of s 96 (False or misleading information)**

Clause 157 amends section 96 by replacing references to an authorised officer with references to an inspector.

### **158 Omission of s 97 (Obstruction of authorised officers)**

Clause 158 omits section 97.

### **159 Amendment of s 103 (Authorised officer may prosecute)**

Clause 159 amends section 103 by replacing references to an authorised officer with references to an inspector.

### **160 Amendment of s 104 (Evidence)**

Clause 160 amends section 104 by replacing the references to an authorised officer with references to an inspector.

### **161 Amendment of s 113 (Officials not civilly liable)**

Clause 161 amends section 113 by replacing the reference to an authorised officer with a reference to an inspector.

### **162 Amendment of sch 3 (Dictionary)**

Clause 162 amends schedule 3 by omitting the definition of ‘authorised officer’ and inserting new definitions of ‘FTI Act’, ‘disposal order’ and ‘inspector’.

## **Part 8                      Amendment of Security Providers Act 1993**

### **163 Act amended**

Clause 163 provides that the part amends the *Security Providers Act 1993*.

### **164 Insertion of new s 2A**

Clause 164 inserts a new section 2A which deals with the relationship with this Bill.

### **165 Replacement of s 25A (Production of licence)**

Clause 165 replaces section 25A with a new section 25A in order to remove the reference to an inspector. Under the new section 25A, the licensee is now only required to produce their licence to a person with whom the licensee is dealing when carrying out the function. An inspector would therefore use their powers under the Bill to request the production of a licence.

### **166 Replacement of pt 3 (Inspectors)**

Clause 166 replaces part 3, other than section 44, with a new part 3 which deals with the court's power to make forfeiture and disposal orders.

### **167 Amendment, relocation and renumbering of s 44 (False or misleading documents)**

Clause 167 amends section 44 to remove the references to inspectors, and relocates and renumbers section 44 as section 49A.

### **168 Amendment of s 48 (Confidentiality of information)**

Clause 168 amends section 48 by omitting subclause (4)(c) thereby removing the reference to an inspector.

### **169 Replacement of s 49 (Protection from liability)**

Clause 169 amends section 49 to remove the references to an inspector and a person acting under the direction of an inspector.

### **170 Amendment of s 51 (Evidentiary provisions)**

Clause 170 amends section 51 to omit the references to an inspector.

### **171 Amendment of sch 2 (Dictionary)**

Clause 171 amends schedule 2 by omitting the definition of inspector and inserting a new definition of ‘disposal order’.

## **Part 9                      Amendment of Tourism Services Act 2003**

### **172 Act amended**

Clause 172 provides that the part amends the *Tourism Services Act 2003*.

### **173 Insertion of new s 6A**

Clause 173 inserts a new section 6A which deals with the relationship with this Bill.

### **174 Amendment of s 13 (Suitability for registration)**

Clause 174 amends section 13 to refer to the Bill, so that the existing suitability requirements continue to apply.

### **175 Replacement of pt 6 (Investigation and enforcement)**

Clause 175 replaces part 6 with a new part 6 which deals with the court’s power to make forfeiture and disposal orders.

### **176 Amendment of s 85 (Review by tribunal)**

Clause 176 omits section 85(3).

### **177 Amendment of s 88 (Evidence)**

Clause 177 amends section 88 to omit references to an inspector.

### **178 Amendment of s 95 (Protecting officials from liability)**

Clause 178 amends section 95 to remove the reference to an inspector.

### **179 Amendment of sch 2 (Dictionary)**

Clause 179 amends schedule 2 by omitting the definition of ‘inspector’ and inserting definitions of ‘disposal order’ and ‘FTI Act’.

## **Part 10                      Amendment of Travel Agents Act 1988**

### **180 Act amended**

Clause 180 provides that the part amends the *Travel Agents Act 1988*.

### **181 Insertion of new s 4**

Clause 181 inserts a new section 4 which deals with the relationship with this Bill.

### **182 Amendment of s 6 (Definitions)**

Clause 182 amends section 6 by omitting the definitions of ‘authorised officer’ and ‘inspector’ and inserting a new definition of ‘disposal order’.

### **183 Insertion of new ss 43A—43E**

Clause 183 inserts new sections 43A-43E which deal with the court’s power to make forfeiture and disposal orders.

### **184 Omission of ss 45—45J**

Clause 184 omits sections 45 to 45J.

### **185 Omission of s 47 (Investigations)**

Clause 185 omits section 47.

### **186 Amendment of s 50 (False or misleading information or documents)**

Clause 186 amends section 50 by omitting the references to an inspector.

### **187 Replacement of s 54 (Proceedings for offences)**

Clause 187 replaces section 54 with a new section 54 in order to remove the reference to an inspector and modernise the provision.

### **188 Amendment of s 56 (Evidence)**

Clause 188 amends section 56 by omitting the reference to an inspector.

## **Schedule 1      Modifying provisions**

### **Manufactured Homes (Residential Parks) Act 2003**

#### **1 References to occupier of a place**

Clause 1 deals with references to an occupier of a place. Subclause (1) provides that the clause modifies schedule 2, definition *occupier*, of a place. Subclause (2) provides that without limiting who may be an occupier under the definition, the park owner for a residential park is an occupier of the residential park, other than any part of the park that is a home owner's manufactured home or the site on which it is positioned.

#### **2 Power to enter particular place**

Clause 2 provides that the power for an inspector to enter a place under clause 17(1)(d) includes the power to enter a place (other than a part of the place where a person resides) that is an office or other place for administering or managing a residential park for which site agreements are in force, and that is—

- (a) open for carrying on the business of the park; or
- (b) otherwise open for entry.

## **Residential Services (Accreditation) Act 2002**

### **1 References to occupier of a place**

Clause 1 deals with references to an occupier of a place. Subclause (1) provides that the clause modifies schedule 2, definition ‘occupier’, of a place. Subclause (2) provides that without limiting who may be an occupier under the definition, the service provider for a residential service is an occupier of premises in which the residential service is being conducted, other than any part of the premises that is occupied by a person as the person’s place of residence.

### **2 Preservation of privacy**

Clause 2 deals with preservation of privacy and continues the position in section 120 of the *Residential Services (Accreditation) Act 2002*. Subclause (1) provides that if an inspector enters a private residence under clause 17(1)(a) or (c), the inspector must preserve, as far as practicable, the privacy of anyone living at the residence. Subclause (2) defines ‘private residence’ to include a room in registered premises occupied by a person as the person’s place of residence.

## **Retirement Villages Act 1999**

### **1 Power to enter particular place**

Clause 1 provides that the power for an inspector to enter a place under clause 17(1)(d) includes the power to enter a place (other than a part of the place where a person resides) that is an office or other place for administering or managing a retirement village and that is—

- (a) open for carrying on the business of the retirement village; or
- (b) otherwise open for entry.

## **Tourism Services Act 2003**

### **1 Power to enter place where business records are located**

Clause 1 provides that clause 17(1) is taken to include a power for an inspector to enter a place if the inspector reasonably believes that records relating to carrying on the business of an inbound tour operator, or business as a tour guide, are kept at the place and the place is open for carrying on business or otherwise open for entry.

### **2 Limitation on power to seize**

Clause 2 limits an inspector's power to seize a thing and subclause (1) provides that the clause applies to a seizure of a thing under clause 36 or 37. Under subclause (2), an inspector must not seize the thing if the inspector knows or suspects it is the property, or in the possession, of a tourist. This continues the position in section 54 of the *Tourism Services Act 2003*.

### **3 Offence includes a relevant contravention in particular circumstances**

Clause 3 provides that in clauses 23, 28, 36, 37, 46, 55 and 67 a reference to an offence against a primary Act is taken to include a reference to a relevant contravention.

## **Travel Agents Act 1988**

### **1 Power to require production of document and statement about document**

Clause 1 deals with an inspector's power to require production of a document and statement about the document. Subclause (1) provides that the clause applies to the power for an inspector to make a document production requirement under clause 57(1) in relation to a document that is not written in the English language or is not decipherable on sight.

Subclause (2) provides that compliance with the document production requirement requires making available for inspection by an inspector, or producing to the inspector for inspection, in addition to the document, a

statement, written in the English language and decipherable on sight, containing the whole of the information in the document.

Subclause (3) provides that clause does not limit clause 57.

## **Schedule 2      Dictionary**

Schedule 2 provides definitions for terms used in the Bill.

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