



Queensland

Fire and Rescue Service Amendment Act 2006

Act No. 49 of 2006



Queensland

Fire and Rescue Service Amendment Act 2006

Contents

		Page
Part 1	Preliminary	
1	Short title	8
2	Commencement	8
Part 2	Amendment of Fire and Rescue Service Act 1990	
3	Act amended in pt 2	8
4	Replacement of s 7 (Extent to which Act binds the Crown)	8
	7 Act binds all persons	8
5	Amendment of s 53 (Powers of authorised officer in dangerous situations)	9
6	Amendment of s 55 (Powers of authorised officer for preventative or investigative purposes)	9
7	Amendment of s 56 (Extent of power of entry)	10
8	Insertion of new ss 56A–56F	10
	56A Power to seize evidence etc.	10
	56B Powers supporting seizure	10
	56C Receipt for seized things	11
	56D Forfeiture of seized things	12
	56E Return of seized things	12
	56F Access to seized things	13
9	Replacement of s 57 (Power to require name and address)	13
	57 Power to require name and address	13
10	Omission of s 58 (Use of answer given under compulsion)	14
11	Amendment of s 58A (Reasonable assistance to be provided)	14
12	Insertion of new ss 58B and 58C	15
	58B Power to inquire into fire or hazardous materials emergency	15
	58C Power to require production of certain documents	16

13	Amendment of s 62 (Offence to light unauthorised fire)	16
14	Amendment of s 67 (Occupier to extinguish fire)	17
15	Amendment of s 69 (Requisition by commissioner to reduce fire risk)	17
16	Amendment of s 72 (Offences re lighting fires)	18
17	Amendment of s 104A (Interpretation)	18
18	Amendment of s 104B (Application to prisons)	19
19	Amendment of s 104C (Occupier of building to maintain means of escape from building)	19
20	Amendment of s 104D (Occupier of building to maintain prescribed fire safety installations)	19
21	Insertion of new s 104DA	20
	104DA Additional requirement for monitored systems	20
22	Amendment of s 104E (Fire and evacuation plan)	21
23	Amendment of s 104FA (Obligation to prepare fire safety management plan)	22
24	Amendment of s 104FB (Other obligations about fire safety management plan)	22
25	Insertion of new pt 9A, div 2, sdiv 3A	23
	Subdivision 3A Matters relating to particular proceedings under this division	
	104FGA Provisions applying for particular proceedings	23
26	Amendment of pt 9A, div 2, sdiv 5 hdg (Chief commissioner's notice about occupier's and owner's obligations)	24
27	Insertion of new pt 9A, div 3A	24
	Division 3A Occupancy limits for particular licensed buildings	
	Subdivision 1 Preliminary	
	104KA Definitions for div 3A	24
	104KB Object of div 3A	25
	104KC Application of div 3A to a part of a licensed building	26
	Subdivision 2 Occupancy notices	
	104KD Deciding if a building is an at risk licensed building	26
	104KE Deciding an occupancy number	27
	104KF Commissioner may give occupancy notice to occupier	27
	104KG Occupancy number applying during particular uses or circumstances	28
	104KH Application and currency of occupancy notice	28
	104KI Re-assessment of risk of overcrowding	28

	Subdivision 3	Obligations of occupiers of at risk licensed buildings	
	104KJ	Application of sdiv 3	30
	104KK	Ensuring the occupancy number is not exceeded . . .	30
	104KL	Ensuring staff are aware of the occupancy number . .	30
	104KM	Implementing a counting system	30
	104KN	Displaying signs stating the occupancy number.	31
	104KO	Including the occupancy number in the fire and evacuation plan	32
	104KP	Notifying the commissioner of relevant changes	32
	104KQ	Action if an officer knows or suspects the occupancy number is being exceeded	32
	Subdivision 4	Miscellaneous	
	104KR	Commissioner may give copies of notices to chief executive (liquor licensing)	33
	104KS	Commissioner may publish occupancy numbers	33
28		Omission of pt 9A, div 4, hdg (Objection to notices)	33
29		Amendment of s 104L (Persons aggrieved by notice may object)	34
30		Amendment of s 104M (Panel of referees to be convened)	34
31		Amendment of s 104N (Membership of panel of referees).	34
32		Amendment of s 104O (Determination of objection)	35
33		Amendment of s 104P (Relief from penalty pending determination of objection)	35
34		Insertion of new s 104PA	36
	104PA	Stay of operation of s 69 notice	36
35		Amendment of s 104Q (Appeal from panel of referees).	36
36		Amendment of s 104R (Injunctions).	37
37		Insertion of new pt 9A, div 5A.	37
	Division 5A	Smoke alarms for domestic dwellings	
	104RA	Definitions for div 5A.	37
	104RB	Owner must install smoke alarm	39
	104RC	Lessor must replace smoke alarm	40
	104RD	Testing smoke alarms.	40
	104RE	Replacing the batteries.	41
	104RF	Tenant must advise lessor if smoke alarm needs replacing	41
	104RG	Cleaning smoke alarms	42
	104RH	Person must not interfere with smoke alarm	42
	104RI	Division applies for all alarms.	43

	104RJ	Agent may act for owner.	43
	104RK	Notice to transferee of residential land about smoke alarms	43
	104RL	Notice to chief executive about smoke alarms and other matters	44
	104RM	Notice to buyer of manufactured home about smoke alarms	45
38		Amendment of s 104S (Regulations relating to this part).	45
39		Insertion of new pt 9B.	46
	104SA	Application of pt 9B to notices under s 69	46
40		Renumbering and relocation of ss 104L–104Q	46
41		Amendment of s 115 (Annual contribution etc. deemed to be rates)	46
42		Amendment of s 137 (Inspection of records of local governments)	46
43		Amendment of s 142A (Confidentiality)	47
44		Amendment of s 144 (Charges for services)	48
45		Amendment of s 147 (Offences).	48
46		Replacement of ss 148 and 149.	49
	148	Indictable and summary offences.	49
	148A	Proceedings for indictable offences	50
	148B	Limitation on who may summarily hear indictable offence proceedings	50
	148C	Proceeding for offences	51
	148D	When proceeding may start	51
	148E	Allegations of false or misleading information or document	51
	148F	Forfeiture on conviction	51
	149	Dealing with forfeited thing	52
47		Omission of s 150 (Continuing offences)	52
48		Amendment of s 153 (Evidentiary).	52
49		Amendment of s 154 (Regulation-making power)	53
50		Amendment of sch 6 (Dictionary).	53
	Part 3	Amendment of Residential Tenancies Act 1994	
51		Act amended in pt 3.	54
52		Amendment of s 109 (Grounds for entry).	55
	Part 4	Amendment of Building Act 1975	
53		Act amended in pt 4.	55
54		Amendment of s 216 (Meaning of budget accommodation building)	55

Part 5	Amendment of Building and Other Legislation Amendment Act 2006	
55	Act amended in pt 5	56
56	Amendment of schedule (Consequential and minor amendments of other Acts)	56



Queensland

Fire and Rescue Service Amendment Act 2006

Act No. 49 of 2006

**An Act to amend the *Fire and Rescue Service Act 1990* and for
other purposes**

[Assented to 10 November 2006]

The Parliament of Queensland enacts—**Part 1 Preliminary****1 Short title**

This Act may be cited as the *Fire and Rescue Service Amendment Act 2006*.

2 Commencement

- (1) Sections 37, 38(1) and 52(1) commence on 1 July 2007.
- (2) The remaining provisions, other than section 49(3) and (4) and parts 4 and 5, commence on a day fixed by proclamation.

Part 2 Amendment of Fire and Rescue Service Act 1990**3 Act amended in pt 2**

This part amends the *Fire and Rescue Service Act 1990*.

4 Replacement of s 7 (Extent to which Act binds the Crown)

Section 7—

omit, insert—

‘7 Act binds all persons

- ‘(1) This Act binds all persons, including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.
- ‘(2) Nothing in this Act makes the Commonwealth or a State liable to be prosecuted for an offence.’.

5 Amendment of s 53 (Powers of authorised officer in dangerous situations)

- (1) Section 53(1)(b), ‘vehicle or building’—
omit, insert—
‘premises’.
- (2) Section 53(2)(a), ‘, vehicle or vessel’—
omit.
- (3) Section 53(2)(e), ‘, vehicle’—
omit.

6 Amendment of s 55 (Powers of authorised officer for preventative or investigative purposes)

- (1) Section 55, heading, after ‘authorised’—
insert—
‘**fire**’.
- (2) Section 55(1), ‘, vehicle or vessel’—
omit.
- (3) Section 55(3)—
omit, insert—
- ‘(3) An authorised fire officer who enters premises under this section may—
 - (a) for subsection (1)(a)—burn, remove or otherwise deal with any vegetation or other material or substance whether flammable or inflammable at the premises; or
 - (b) for subsection (1) generally—
 - (i) search any part of the premises; or
 - (ii) inspect, measure, test, photograph or film any part of the premises or anything at the premises; or
 - (iii) take a thing, or a sample of or from a thing, at the premises for analysis or testing; or
 - (iv) copy a document at the premises; or

- (v) make inquiries or conduct surveys and tests; or
- (vi) take into or onto the premises any persons, equipment and materials the authorised fire officer reasonably requires for exercising a power under this part.’.

7 Amendment of s 56 (Extent of power of entry)

Section 56(a), ‘, vehicle or vessel in respect of’—

omit, insert—

‘for’.

8 Insertion of new ss 56A–56F

After section 56—

insert—

‘56A Power to seize evidence etc.

‘An authorised fire officer who enters premises under section 55 may seize a thing at the premises if the authorised fire officer reasonably believes—

- (a) the thing is evidence of an offence against this Act; or
- (b) the thing has just been used in committing an offence against this Act; or
- (c) the seizure is necessary to prevent the thing being hidden, lost or destroyed; or
- (d) seizure of the thing is necessary for the purposes mentioned in section 55.

‘56B Powers supporting seizure

‘(1) Having seized a thing, an authorised fire officer may—

- (a) move the thing from the premises where it was seized (the *premises of seizure*); or
- (b) leave the thing at the premises of seizure but take reasonable action to restrict access to it.

Examples of restricting access to a thing—

- sealing a thing and marking it to show access to it is restricted
- sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted

‘(2) If an authorised fire officer restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing or something restricting access to the thing without an authorised fire officer’s approval.

Maximum penalty—40 penalty units.

‘(3) To enable a thing to be seized, an authorised fire officer 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.

‘(4) The requirement—

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

‘(5) The person must comply with the requirement unless the person has a reasonable excuse for not complying.

Maximum penalty—40 penalty units.

‘(6) A further requirement may be made under this section in relation to the same thing if it is necessary and reasonable to make the further requirement.

‘56C Receipt for seized things

‘(1) As soon as practicable after an authorised fire officer seizes a thing, the authorised fire officer must give a receipt for it to the person from whom it was seized.

‘(2) However, if for any reason it is not practicable to comply with subsection (1), the authorised fire officer must leave the

receipt in a conspicuous position and in a reasonably secure way at the premises of seizure.

- ‘(3) The receipt must describe generally each thing seized and its condition.
- ‘(4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt required by the section (given the thing’s nature, condition and value).

‘56D Forfeiture of seized things

- ‘(1) A seized thing is forfeited to the State if the authorised fire officer who seized the thing—
 - (a) cannot find its owner after making reasonable inquiries; or
 - (b) cannot return it to its owner, after making reasonable efforts.
- ‘(2) Subsection (1)(a) does not require the authorised fire officer to make inquiries if it would be unreasonable to make inquiries to find the owner, and subsection (1)(b) does not require the authorised fire officer to make efforts if it would be unreasonable to make efforts to return the thing to its owner.
- ‘(3) In deciding whether and, if so, what inquiries and efforts are reasonable about a thing, regard must be had to the thing’s nature, condition and value.

‘56E Return of seized things

- ‘(1) If a seized thing has not been forfeited, the authorised fire officer must return it to its owner at the end of—
 - (a) 6 months; or
 - (b) if a proceeding for an offence involving it is started within 6 months—the proceeding and any appeal from the proceeding.
- ‘(2) Despite subsection (1), unless the thing has been forfeited, the authorised fire officer must immediately return a thing seized as evidence to its owner if the authorised fire officer stops

being satisfied its continued retention as evidence is necessary.

‘56F Access to seized things

- ‘(1) Until a seized thing is forfeited or returned, an authorised fire officer must allow its owner to inspect it and, if it is a document, to copy it.
- ‘(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.’.

9 Replacement of s 57 (Power to require name and address)

Section 57—

omit, insert—

‘57 Power to require name and address

- ‘(1) This section applies if—
 - (a) an authorised fire officer finds a person committing an offence against this Act; or
 - (b) an authorised fire officer finds a person in circumstances that lead, or has information that leads, the authorised fire officer to reasonably suspect the person has just committed an offence against this Act.
- ‘(2) The authorised fire officer may require the person to state the person’s name and residential address.
- ‘(3) When making the requirement, the authorised fire officer must warn the person it is an offence to fail to state the person’s name or residential address, unless the person has a reasonable excuse.
- ‘(4) The authorised fire officer may require the person to give evidence of the correctness of the stated name or address if the authorised fire officer reasonably suspects the stated name or address is false.
- ‘(5) A person must comply with a requirement under subsection (2) or (4), unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

- ‘(6) The person does not commit an offence against subsection (5) if—
- (a) the person was required to state the person’s name and address by an authorised fire officer who suspected the person had just committed an offence against this Act; and
 - (b) the person is not proved to have committed the offence.’.

10 Omission of s 58 (Use of answer given under compulsion)

Section 58—

omit.

11 Amendment of s 58A (Reasonable assistance to be provided)

- (1) Section 58A(2), ‘requisition.’—

omit, insert—

‘requirement unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.’.

- (2) Section 58A—

insert—

- ‘(3) It is not a reasonable excuse for the person to fail to comply with the requirement that complying with it might tend to incriminate the person.

- ‘(4) However, if—

- (a) the person is an individual; and
- (b) the requirement is to give information or produce a document;

evidence of, or evidence directly or indirectly derived from, the information or document that might tend to incriminate the person is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for an offence about the falsity or misleading nature of the information or document.

- ‘(5) If a person is convicted of an offence against subsection (2), the court may, as well as imposing a penalty for the offence, order the person to comply with the requirement.’

12 Insertion of new ss 58B and 58C

After section 58A—

insert—

‘58B Power to inquire into fire or hazardous materials emergency

- ‘(1) This section—
- (a) applies if an authorised fire officer becomes aware, or reasonably suspects, that a fire or hazardous materials emergency (the *emergency*) has happened; and
 - (b) applies for section 55 and for this Act generally.
- ‘(2) The authorised fire officer may inquire into the circumstances and probable causes of the emergency.
- ‘(3) The authorised fire officer may require a person who has knowledge, or whom the authorised fire officer reasonably suspects to have knowledge, of the circumstances of the emergency to give the authorised fire officer reasonable help, as stated in the requirement, to inquire under subsection (2).
- ‘(4) A requirement under subsection (3) may be given orally or in writing.
- ‘(5) A person must comply with a requirement under subsection (3) unless the person has a reasonable excuse for not complying.
- Maximum penalty—10 penalty units.
- ‘(6) If the requirement is to be complied with by a person who is an individual giving information or producing a document, other than a document required to be kept by the person under this Act, it is a reasonable excuse for the person to fail to comply with the requirement if complying with the requirement might tend to incriminate the person.

‘58C Power to require production of certain documents

- ‘(1) An authorised fire officer may require a person to make available for inspection by an authorised fire officer, or produce to the authorised fire officer for inspection, at a reasonable time and place stated by the authorised fire officer—
- (a) a document issued to the person under this Act or required to be kept by the person under this Act; or
 - (b) a document about the person’s obligations under this Act for fire safety, including about the maintenance of fire safety installations in a building.
- ‘(2) The person must comply with a requirement under subsection (1), unless the person has a reasonable excuse for not complying.
- Maximum penalty—10 penalty units.
- ‘(3) If the person is an individual, it is a reasonable excuse for the person not to comply with the requirement under subsection (1) if complying with the requirement might tend to incriminate the person.
- ‘(4) The authorised fire officer may keep the document to copy it.
- ‘(5) If the authorised fire officer copies the document, or an entry in the document, the authorised fire officer may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.
- ‘(6) The person responsible for keeping the document must comply with the requirement, unless the person has a reasonable excuse for not complying.
- Maximum penalty—20 penalty units.
- ‘(7) The authorised fire officer must return the document to the person as soon as practicable after copying it.’.

13 Amendment of s 62 (Offence to light unauthorised fire)

Section 62, at the end—

insert—

‘Maximum penalty—50 penalty units or 6 months imprisonment.’.

14 **Amendment of s 67 (Occupier to extinguish fire)**

Section 67, at the end—

insert—

‘Maximum penalty—50 penalty units or 6 months imprisonment.’.

15 **Amendment of s 69 (Requisition by commissioner to reduce fire risk)**

(1) Section 69(5), ‘subsection (6)’—

omit, insert—

‘subsection (8)’.

(2) Section 69(6), ‘subsection (5)’—

omit, insert—

‘subsection (7)’.

(3) Section 69(7)(a), ‘subsection (4)’—

omit, insert—

‘subsection (6)’.

(4) Section 69(4) to (7)—

renumber as section 69(6) to (9).

(5) Section 69(3)—

renumber as section 69(4).

(6) Section 69—

insert—

‘(3) A person to whom a requisition is given must comply with the requisition.

Maximum penalty—50 penalty units or 6 months imprisonment.’.

(7) Section 69—

insert—

- ‘(5) A notice under subsection (2)(a) must also state—
- (a) the reason for the requisition; and
 - (b) that the occupier may object to the giving of the notice; and
 - (c) how the occupier may make an objection, including the time by which it must be made.’.

16 Amendment of s 72 (Offences re lighting fires)

Section 72(1), at the end—

insert—

‘Maximum penalty—

- (a) if the offence is committed during a state of fire emergency at a place to which the declaration of emergency applies—250 penalty units or 1 year’s imprisonment; or
- (b) otherwise—50 penalty units or 6 months imprisonment.’.

17 Amendment of s 104A (Interpretation)

- (1) Section 104A, after ‘In this part’—

insert—

‘(other than division 5A)’.

- (2) Section 104A, definition *building*, paragraph (c)—

omit.

- (3) Section 104A, definitions *building certifier*, *Building Code of Australia* and *Standard Building Regulation*—

omit.

- (4) Section 104A, definition, *fire safety installation*, ‘Standard Building Regulation’—

omit, insert—

‘*Building Act 1975*’.

18 Amendment of s 104B (Application to prisons)

Section 104B, ‘to 57’—

omit, insert—

‘to 58C’.

19 Amendment of s 104C (Occupier of building to maintain means of escape from building)

Section 104C, at the end—

insert—

‘Maximum penalty—

- (a) if the contravention causes multiple deaths—2000 penalty units or 3 years imprisonment; or
- (b) if the contravention causes death or grievous bodily harm—1000 penalty units or 2 years imprisonment; or
- (c) if the contravention causes bodily harm—750 penalty units or 1 year’s imprisonment; or
- (d) otherwise—100 penalty units.’.

20 Amendment of s 104D (Occupier of building to maintain prescribed fire safety installations)

Section 104D(1), at the end—

insert—

‘Maximum penalty—

- (a) if the contravention causes multiple deaths—2000 penalty units or 3 years imprisonment; or
- (b) if the contravention causes death or grievous bodily harm—1000 penalty units or 2 years imprisonment; or
- (c) if the contravention causes bodily harm—750 penalty units or 1 year’s imprisonment; or
- (d) if the contravention causes substantial property loss—500 penalty units or 6 months imprisonment; or
- (e) otherwise—100 penalty units.’.

21 Insertion of new s 104DA

Part 9A, division 2, subdivision 1—

insert—

‘104DA Additional requirement for monitored systems

- ‘(1) The occupier of a building must maintain each monitored system for the building to ensure an unacceptable number of unwanted alarms are not signalled from the system.
- ‘(2) For subsection (1), the number of unwanted alarms signalled from a monitored system is unacceptable if the number signalled since the end of the last financial year is—
 - (a) more than 4; and
 - (b) more than the average number for the last financial year published under subsection (4).
- ‘(3) However, the commissioner may decide that, despite subsection (2), the number of unwanted alarms signalled from a monitored system is acceptable, having regard to—
 - (a) the size and other characteristics of the building; and
 - (b) how the building is used; and
 - (c) the number of detector heads in the building; and
 - (d) whether the system also relates to other buildings.
- ‘(4) As soon as practicable after 30 June each year, the commissioner must calculate, and notify in the gazette, the average number of unwanted alarms for monitored systems for the last financial year.
- ‘(5) The number must be calculated by dividing the total number of unwanted alarms signalled from all monitored systems during the last financial year by the total number of monitored systems in operation during the last financial year.
- ‘(6) In this section—

detector head means a part of a monitored system that detects smoke or heat and sends a signal to another part of the system.

emergency means a situation in which there is danger of harm to persons or property from a fire or hazardous materials emergency.

emergency alarm means an alarm, from a monitored system for a building, signalled to the service to attend the building.

maintain, a monitored system, includes—

- (a) ensure the system is in good repair; and
- (b) ensure each part of the system is properly installed and appropriately located; and
- (c) ensure the system is able to distinguish between a fire and normal conditions in the building; and
- (d) implement measures for avoiding unwanted alarms from the system.

Examples of implementing measures for paragraph (d)—

- establishing requirements for persons working near the system to isolate the system while using tools that may cause an unwanted alarm
- giving information sheets to guests in the building about the sensitivity of the system and how to avoid causing an unwanted alarm
- for a building used to provide residential accommodation that has a high level of unwanted alarms, installing an alarm acknowledgement facility under AS1670.1—2004

monitored system, for a building, means an automatic smoke detection and alarm system—

- (a) that is a prescribed fire safety installation for the building; and
- (b) that is monitored by the service.

unwanted alarm means an emergency alarm signalled at a time when the commissioner is satisfied there was no emergency requiring the attendance of the service.’.

22 Amendment of s 104E (Fire and evacuation plan)

- (1) Section 104E(a), after ‘safety’—

insert—

‘(a **fire and evacuation plan**)’.

- (2) Section 104E(b), ‘persons working or residing’—

omit, insert—

‘prescribed persons’.

(3) Section 104E, after paragraph (b)—

insert—

‘Maximum penalty—

- (a) if the contravention causes multiple deaths—2000 penalty units or 3 years imprisonment; or
- (b) if the contravention causes death or grievous bodily harm—1000 penalty units or 2 years imprisonment; or
- (c) if the contravention causes bodily harm—750 penalty units or 1 year’s imprisonment; or
- (d) otherwise—100 penalty units.

‘(2) In this section—

prescribed person means a person who works or resides in or visits the building for more than a total time, during a period, prescribed under a regulation.’

23 **Amendment of s 104FA (Obligation to prepare fire safety management plan)**

Section 104FA(2), penalty—

omit, insert—

‘Maximum penalty—

- (a) if the contravention causes multiple deaths—2000 penalty units or 3 years imprisonment; or
- (b) if the contravention causes death or grievous bodily harm—1000 penalty units or 2 years imprisonment; or
- (c) if the contravention causes bodily harm—750 penalty units or 1 year’s imprisonment; or
- (d) otherwise—100 penalty units.’

24 **Amendment of s 104FB (Other obligations about fire safety management plan)**

(1) Section 104FB(1), ‘section 12Q(2)’—

omit, insert—

‘section 27’.

(2) Section 104FB(1), penalty—

omit, insert—

‘Maximum penalty—

- (a) if the contravention causes multiple deaths—2000 penalty units or 3 years imprisonment; or
- (b) if the contravention causes death or grievous bodily harm—1000 penalty units or 2 years imprisonment; or
- (c) if the contravention causes bodily harm—750 penalty units or 1 year’s imprisonment; or
- (d) otherwise—100 penalty units.’.

(3) Section 104FB(3), penalty—

omit, insert—

‘Maximum penalty for subsection (3)—

- (a) if the contravention causes multiple deaths—2000 penalty units or 3 years imprisonment; or
- (b) if the contravention causes death or grievous bodily harm—1000 penalty units or 2 years imprisonment; or
- (c) if the contravention causes bodily harm—750 penalty units or 1 year’s imprisonment; or
- (d) otherwise—100 penalty units.’.

25 Insertion of new pt 9A, div 2, sdiv 3A

Part 9A, after division 2, subdivision 3—

insert—

‘Subdivision 3A Matters relating to particular proceedings under this division

‘104FGA Provisions applying for particular proceedings

- ‘(1) This section applies for sections 104C, 104D, 104E, 104FA and 104FB (each *the section*).

- ‘(2) A person *causes* something mentioned in the section if the person’s act or omission is a substantial or significant cause of the thing or substantially contributes to the thing.
- ‘(3) The section applies despite the Criminal Code, sections 23(1) and 24.
- ‘(4) It is a defence in a proceeding against a person for a contravention of the section for the person to prove the person took reasonable precautions and exercised proper diligence to prevent the contravention.
- ‘(5) Also, it is defence in a proceeding against a person for a contravention of the section for the person to prove the contravention was due to causes over which the person had no control.’.

26 Amendment of pt 9A, div 2, sdiv 5 hdg (Chief commissioner’s notice about occupier’s and owner’s obligations)

Part 9A, division 2, subdivision 5, heading, ‘Chief commissioner’s’—

omit, insert—

‘Commissioner’s’.

27 Insertion of new pt 9A, div 3A

Part 9A, after division 3—

insert—

‘Division 3A Occupancy limits for particular licensed buildings

‘Subdivision 1 Preliminary

‘104KA Definitions for div 3A

‘In this division—

clear floor surface area means an area of floor on or above which there is nothing that would unduly restrict a person in going across the area.

fire safety system, for a building, means the building's features, and procedures established for the building, providing for all or any of the following—

- (a) warning the building's occupants about a fire emergency;
- (b) safe evacuation of the building's occupants;
- (c) extinguishing or restricting the spread of fire in the building.

licensed building means a building, or the part of a building, that comprises particular licensed premises under the *Liquor Act 1992*.

occupancy notice see section 104KF

occupancy number, for a building, means the occupancy number stated in an occupancy notice in force for the building.

risk of overcrowding, for a building, means a risk that not all occupants of the building would be able to safely evacuate if a fire or hazardous materials emergency happened.

'104KB Object of div 3A

- '(1) The object of this division is to help ensure the occupants of licensed buildings can safely evacuate if a fire or hazardous materials emergency happens.
- '(2) The object is to be achieved by—
 - (a) identifying licensed buildings with an unacceptable risk of overcrowding; and
 - (b) for each of the identified buildings, establishing and implementing a safe limit on the number of persons who may be present in the building at any one time.

‘104KC Application of div 3A to a part of a licensed building

‘Except where it states otherwise, this division applies to a part of a licensed building in the same way it applies to a whole licensed building.

Example—

Under section 104KD(1), the commissioner may decide a particular room in a licensed building is an at risk licensed building. In deciding the level of the risk of overcrowding for the room, the commissioner must have regard to the matters stated in section 104KD(2) as if a reference in that subsection to the building were a reference to the room.

‘Subdivision 2 Occupancy notices**‘104KD Deciding if a building is an at risk licensed building**

- ‘(1) The commissioner may decide a licensed building is an at risk licensed building if the commissioner is satisfied there is an unacceptable risk of overcrowding for the building.
- ‘(2) In deciding the level of the risk of overcrowding, the commissioner must have regard to the following matters—
 - (a) the building’s characteristics, including—
 - (i) the number and location of exits in the building; and
 - (ii) the clear floor surface areas in the building; and
 - (iii) the flammability of the fixtures and fittings in the building; and
 - (iv) the prescribed fire safety installations in the building; and
 - (v) whether occupants of the building can exit directly into open space or another place of safety;
 - (b) how the building is used, including its classification under the Building Code of Australia;
 - (c) the number of persons that use, or are likely to use, the building at any given time;

- (d) the mobility and other characteristics of the persons who use, or are likely to use, the building;
- (e) any fire safety system for the building.

‘104KE Deciding an occupancy number

- ‘(1) This section applies to a licensed building that the commissioner has decided is an at risk licensed building.
- ‘(2) In deciding an occupancy number for the building, the commissioner must have regard to the building’s characteristics and other matters stated in section 104KD(2).
- ‘(3) The occupancy number must not be more than—
 - (a) the maximum number that may be accommodated under—
 - (i) for a budget accommodation building to which the *Building Act 1975*, chapter 7, part 3 applies—the Queensland Development Code, part 14, items P3 and A3; or
 - (ii) otherwise—the Building Code of Australia, part D1.13; or
 - (b) the maximum number that allows compliance with the Building Code of Australia, part D1.6.

‘104KF Commissioner may give occupancy notice to occupier

‘If the commissioner decides under section 104KD that a licensed building is an at risk licensed building, the commissioner may give the occupier of the building a notice (an *occupancy notice*) stating the following—

- (a) that the commissioner has decided the building is an at risk licensed building;
- (b) the occupancy number for the building decided under section 104KE;
- (c) the day, not less than 30 days after the occupancy notice is given, on which it takes effect;
- (d) the occupier’s obligations under subdivision 3;

- (e) the reasons for the decisions mentioned in paragraphs (a) and (b);
- (f) that the occupier may object to the giving of the occupancy notice;
- (g) how the occupier may make an objection, including the time by which it must be made.

‘104KG Occupancy number applying during particular uses or circumstances

‘If the commissioner considers the risk of overcrowding for a building varies because of the different ways the building is used from time to time, the commissioner may give the occupier an occupancy notice stating—

- (a) an occupancy number for the building that applies only when the building is used in a stated way or in stated circumstances; or
- (b) 2 or more occupancy numbers for the building, each of which applies only when the building is used in a stated way or in stated circumstances.

Example for paragraph (b)—

A building used occasionally for concerts may be given an occupancy number that applies only for that use and another occupancy number that applies for its usual uses.

‘104KH Application and currency of occupancy notice

‘An occupancy notice applies to the person stated in it, in relation to the licensed building stated in it, until the occupancy notice is revoked or the person stops being the occupier of the building.

‘104KI Re-assessment of risk of overcrowding

- ‘(1) This section applies to a licensed building for which an occupancy notice (the *current occupancy notice*) is in force.
- ‘(2) At any time, on request by the occupier or on the commissioner’s own initiative, the commissioner may carry out a re-assessment for the building.

- ‘(3) The commissioner must carry out a re-assessment for the building if—
- (a) since the current occupancy notice was given, any of the matters stated in section 104KD(2)¹ has changed in a way that is relevant to the risk of overcrowding for the building; and
 - (b) the occupier gives the commissioner a written notice of the change and asks the commissioner to carry out the re-assessment.
- ‘(4) If, on a request mentioned in subsection (3)(b), the commissioner carries out a re-assessment and decides not to revoke the current occupancy notice, the commissioner must give the occupier a notice (a *decision notice*) stating the following—
- (a) the decision not to revoke the current occupancy notice;
 - (b) the reason for the decision;
 - (c) that the occupier may object to the giving of the decision notice;
 - (d) how the occupier may make an objection, including the time by which it must be made.
- ‘(5) In this section—
- carry out a re-assessment**, for the building, means—
- (a) re-assess the level of the risk of overcrowding for the building under this division; and
 - (b) decide whether to revoke the current occupancy notice and, if revoking the notice, whether to give another occupancy notice for the building.

1 Section 104KD (Deciding if a building is an at risk licensed building)

‘Subdivision 3 Obligations of occupiers of at risk licensed buildings

‘104KJ Application of sdiv 3

- ‘(1) This subdivision applies if an occupancy notice is in force for a licensed building.
- ‘(2) A reference in this subdivision to the occupier is a reference to each occupier of the building to whom the occupancy notice states it applies.

‘104KK Ensuring the occupancy number is not exceeded

‘The occupier must ensure the number of persons in the building at any one time is not more than the occupancy number for the building.

Maximum penalty—50 penalty units.

‘104KL Ensuring staff are aware of the occupancy number

- ‘(1) The occupier must ensure each relevant staff member is aware of the occupancy number for the building.

Maximum penalty—50 penalty units.

- ‘(2) In this section—

relevant staff member means an employee of the occupier who is present in the building when members of the public may enter the building.

‘104KM Implementing a counting system

- ‘(1) This section does not apply if—
 - (a) the building is only a part of a licensed building; or
 - (b) the occupancy number for the building is less than 200.
- ‘(2) The occupier must ensure the required counting system is implemented at all times the building is open to the public.

Maximum penalty—50 penalty units.

- ‘(3) The required counting system is—
- (a) if the occupancy number is at least 200 but less than 1000—a manual counting system or an automatic counting system; or
 - (b) if the occupancy number is at least 1000—an automatic counting system.

- ‘(4) In this section—

automatic counting system means a counting system capable of operating without human intervention.

Example—

a machine that counts the number of persons passing through an entrance after detecting them by way of a lightbeam across the doorway or a sensor under the floor

counting system means a system for counting the number of persons entering or leaving a building.

manual counting system means a counting system other than an automatic counting system.

Examples of manual counting systems—

- a staff member issuing a numbered ticket to each person entering the building and a passout to each person leaving the building
- a staff member clicking a counting device once for each person entering or leaving the building

‘104KN Displaying signs stating the occupancy number

- ‘(1) This section does not apply if—
- (a) the building is only a part of a licensed building; or
 - (b) the occupancy number for the building is less than 200.
- ‘(2) The occupier must display conspicuously above each public entrance to the building a sign stating the occupancy number for the building.

Maximum penalty—50 penalty units.

‘104KO Including the occupancy number in the fire and evacuation plan

‘The occupancy number must be stated in the occupier’s fire and evacuation plan.

Maximum penalty—50 penalty units.

‘104KP Notifying the commissioner of relevant changes

‘(1) If any of the matters stated in section 104KD(2)² changes in a way that may increase the risk of overcrowding for the building, the occupier must immediately give written notice to the commissioner.

Maximum penalty—50 penalty units.

‘(2) If a person stops being the occupier of the building, the person must immediately give written notice to the commissioner.

Maximum penalty—50 penalty units.

‘104KQ Action if an officer knows or suspects the occupancy number is being exceeded

‘(1) This section applies if, at any time, an authorised fire officer knows or reasonably suspects the number of persons in the building is more than the occupancy number for the building.

‘(2) The officer may require the occupier to do, or stop doing, a stated thing for the purpose of reducing the number of persons in the building or reducing the risk to the safety of persons in the building.

‘(3) The officer may, for example, ask the occupier to—

- (a) stop anyone else entering the building; or
- (b) stop serving alcohol in the building; or
- (c) turn on the lights in the building; or
- (d) stop music being played or other entertainment happening in the building; or
- (e) ask persons in the building to leave.

2 Section 104KD (Deciding if a building is an at risk licensed building)

- ‘(4) The requirement may be made orally or in writing.
- ‘(5) If the requirement is made orally, the officer must confirm the requirement in writing as soon as practicable.
- ‘(6) The occupier must comply with the requirement unless the occupier has a reasonable excuse.
- Maximum penalty—50 penalty units.
- ‘(7) This section does not limit another power of the officer under this Act.
- ‘(8) In this section—
- occupier* includes a person in charge, or apparently in charge, of the building.

‘Subdivision 4 Miscellaneous

‘104KR Commissioner may give copies of notices to chief executive (liquor licensing)

‘The commissioner may give copies of occupancy notices to the chief executive (liquor licensing).

‘104KS Commissioner may publish occupancy numbers

‘For the performance of the service’s functions, the commissioner may publish the occupancy numbers for buildings to the public.’.

28 Omission of pt 9A, div 4, hdg (Objection to notices)

Part 9A, division 4, heading—

omit.

29 Amendment of s 104L (Persons aggrieved by notice may object)

- (1) Section 104L(1), ‘this part’—
omit, insert—
‘section 69(2)(a) or part 9A’.
- (2) Section 104L(1), ‘regional commander’—
omit, insert—
‘commissioner’.
- (3) Section 104L(2), after ‘fee’—
insert—
‘, if any.’.
- (4) Section 104L(3)—
omit.

30 Amendment of s 104M (Panel of referees to be convened)

- (1) Section 104M, ‘a regional commander’—
omit, insert—
‘the commissioner’.
- (2) Section 104M, ‘division’—
omit, insert—
‘part’.

31 Amendment of s 104N (Membership of panel of referees)

- (1) Section 104N(1)—
insert—
‘(d) for an objection relating to an occupancy notice or to a decision notice under section 104KI, 1 person nominated by the chief executive (liquor licensing).’.

- (2) Section 104N—
insert—
- ‘(4) Subsection (3) does not apply to an objection relating to a notice given under section 69(2)(a) that relates to premises other than a building.’.
- (3) Section 104N(5), ‘the chief executive of the department administering the *Building Act 1975*’—
omit, insert—
‘a chief executive mentioned in subsection (1)(c) or (d)’.
- (4) Section 104N(5), ‘or (c)’—
omit, insert—
‘to (d)’.

32 Amendment of s 104O (Determination of objection)

- (1) Section 104O(1), ‘section 104M’—
omit, insert—
‘section 104SC’.
- (2) Section 104O(6) to (8)—
renumber as section 104O(7) to (9).
- (3) Section 104O—
insert—
- ‘(6) If the panel has 4 members and the votes are equal, the chair referee has a casting vote.’.

33 Amendment of s 104P (Relief from penalty pending determination of objection)

- (1) Section 104P, ‘section 104L’—
omit, insert—
‘section 104SB’.

- (2) Section 104P, ‘this part’—
omit, insert—
 ‘section 104G or 104I(8) or an occupancy notice’.
- (3) Section 104P(a), after ‘section 104G’—
insert—
 ‘or an occupancy notice’.

34 Insertion of new s 104PA

After section 104P—

insert—

‘104PA Stay of operation of s 69 notice

- ‘(1) This section applies if the objection relates to a notice given under section 69(2)(a).
- ‘(2) The objection does not stay the notice.
- ‘(3) However, on application by the objector, the panel may stay the notice to secure the effectiveness of the objection and any later appeal under section 104SH.
- ‘(4) The stay may be granted on conditions the panel considers appropriate and has effect for the period stated by the panel.
- ‘(5) The period of the stay must not extend past the time when the panel decides the objection and any later period the panel allows to enable the objector to appeal under section 104SH.’.

35 Amendment of s 104Q (Appeal from panel of referees)

Section 104Q(1), ‘section 104O’—

omit, insert—

‘section 104SE’.

36 Amendment of s 104R (Injunctions)

Section 104R(1), after ‘event of fire’—

insert—

‘, or in the event of a hazardous materials emergency.’

37 Insertion of new pt 9A, div 5A

After part 9A, division 5—

insert—

‘Division 5A Smoke alarms for domestic dwellings

‘104RA Definitions for div 5A

‘In this division—

chief executive (land) means the chief executive of the department in which the *Land Act 1994* is administered.

class 1a building means a building that, under the 2005 edition of the Building Code of Australia, part A3.2, is classified as a class 1a building.

class 2 building means a building that, under the 2005 edition of the Building Code of Australia, part A3.2, is classified as a class 2 building.

date of possession, for residential land, means the date the transferee of the land enters into possession of the land.

domestic dwelling means—

- (a) a class 1a building; or
- (b) a sole-occupancy unit in a class 2 building.

form of assignment see the *Manufactured Homes (Residential Parks) Act 2003*, section 47(1).

home owner see the *Manufactured Homes (Residential Parks) Act 2003*, section 8.

information statement, in relation to a tenant, means the statement given to the tenant under the *Residential Tenancies Act 1994*, section 43.

lessor means a lessor within the meaning of the *Residential Tenancies Act 1994*, but does not include a tenant who has given, or is to give, the right to occupy residential premises to a subtenant.

manufactured home see the *Manufactured Homes (Residential Parks) Act 2003*, section 10.

manufacturer's instructions, for a smoke alarm, means the instructions from the manufacturer, packaged with the alarm, dealing with the operation, testing and maintenance of the alarm.

property transfer information form means a form that—

- (a) gives smoke alarm information and information about a change of ownership required under other Acts; and
- (b) may be given to the chief executive (land) or the registrar.

registrar see the *Land Title Act 1994*, schedule 2.

residential land means land on which a domestic dwelling is constructed.

residential park see the *Manufactured Homes (Residential Parks) Act 2003*, section 12.

site see the *Manufactured Homes (Residential Parks) Act 2003*, section 13.

site agreement see the *Manufactured Homes (Residential Parks) Act 2003*, section 14.

smoke alarm information see section 104RL.

sole-occupancy unit means a room or other part of a building that, under the 2005 edition of the Building Code of Australia, part A1.1, is defined as a sole-occupancy unit.

tenant means a person to whom the right to occupy residential premises is given under a residential tenancy agreement to which the *Residential Tenancies Act 1994* applies, and includes the subtenant of a tenant.

transfer date, for residential land, means the date the transferee of the land is entitled to possession of the land.

transferee, of residential land, means the person who, on becoming entitled to possession of the land, may lodge an application for registration—

- (a) under the *Land Act 1994*, as a lessee, or personal representative of a deceased lessee, of the land; or
- (b) under the *Land Title Act 1994*, as an owner, or personal representative of a deceased owner, of the land.

transferor, of residential land, means—

- (a) if, immediately before the transfer date for the residential land, a mortgagee in possession under the *Property Law Act 1974* is in possession of the land—the mortgagee in possession; or
- (b) otherwise—the person registered, immediately before the transfer date for the land—
 - (i) under the *Land Act 1994*, as a lessee, or personal representative of a deceased lessee, of the land; or
 - (ii) under the *Land Title Act 1994*, as an owner, or the personal representative of a deceased owner, of the land.

‘104RB Owner must install smoke alarm

- ‘(1) The owner of a domestic dwelling must install smoke alarms in the dwelling in compliance with this section.

Maximum penalty—5 penalty units.

- ‘(2) Each smoke alarm must comply with AS 3786-1993 and must be installed in accordance with—
 - (a) for a sole-occupancy unit in a class 2 building—specification E 2.2a, clause 3(c)(i) of the Building Code of Australia; or
 - (b) for a class 1a building—specification 3.7.2.3 of the Building Code of Australia.
- ‘(3) An owner of a sole-occupancy unit complies with this section if the owner installs a heat alarm or an alarm

acknowledgement facility in accordance with specification E 2.2a, clause 3(b) of the Building Code of Australia.

- ‘(4) If it is impracticable for an owner of a domestic dwelling to put a smoke alarm at the location required under subsection (2), the owner may put the alarm at another location that will provide a warning to occupants of the dwelling.

Example for subsection (4)—

A smoke alarm that is regularly activated by steam from a bathroom or smoke or fumes from a kitchen may be moved to another appropriate location.

‘104RC Lessor must replace smoke alarm

- ‘(1) This section applies during a tenancy in a domestic dwelling.
- ‘(2) The lessor must replace a smoke alarm in the dwelling before it reaches the end of its service life.

Maximum penalty—5 penalty units.

- ‘(3) If a smoke alarm in the dwelling reaches the end of its service life before it is replaced, the lessor must replace it immediately.

Maximum penalty—5 penalty units.

‘104RD Testing smoke alarms

- ‘(1) Within 30 days before the start of a tenancy in a domestic dwelling, the lessor must test each smoke alarm in the dwelling in compliance with this section.

Maximum penalty—5 penalty units.

- ‘(2) During a tenancy in a domestic dwelling, the tenant must test each smoke alarm in the dwelling, in compliance with this section, at least once every 12 months.

Maximum penalty—5 penalty units.

- ‘(3) An alarm must be tested as follows—

- (a) for an alarm that can be tested by pressing a button or other device to indicate whether the alarm is capable of detecting smoke—by pressing the button or other device;

- (b) otherwise—
 - (i) for the lessor—by testing the alarm in the way stated in the manufacturer’s instructions; or
 - (ii) for the tenant—by testing the alarm in the way stated in the information statement.

‘104RE Replacing the batteries

- ‘(1) This section applies to batteries in smoke alarms installed in a domestic dwelling.
- ‘(2) Within 30 days before the start of a tenancy in the dwelling, the lessor must replace, in accordance with the manufacturer’s instructions, each battery that is spent or that the lessor is aware is almost spent.

Maximum penalty—5 penalty units.

- ‘(3) During a tenancy in the dwelling, the tenant must replace, in accordance with the information statement, each battery that is spent or that the tenant is aware is almost spent.

Maximum penalty—5 penalty units.

Note—

A smoke alarm may emit a warning signal (for example, a chirping sound) when its battery is almost spent.

‘104RF Tenant must advise lessor if smoke alarm needs replacing

- ‘(1) This section applies during a tenancy in a domestic dwelling.
- ‘(2) If the tenant is aware a smoke alarm in the dwelling has failed or is about to fail, other than because the battery is spent or almost spent, the tenant must advise the lessor as soon as practicable.

Maximum penalty—5 penalty units.

‘104RG Cleaning smoke alarms

- ‘(1) Within 30 days before the start of a tenancy in a domestic dwelling, the lessor must clean each smoke alarm in the dwelling in the way stated in the manufacturer’s instructions.

Maximum penalty—5 penalty units.

- ‘(2) During a tenancy in a domestic dwelling, the tenant must clean each smoke alarm in the dwelling, in the way stated in the information statement, at least once every 12 months.

Maximum penalty—5 penalty units.

Example—

The manufacturer’s instructions or information statement may require cleaning with a vacuum cleaner to remove dust and other materials that may hinder smoke alarm performance.

‘104RH Person must not interfere with smoke alarm

- ‘(1) A person must not—
- (a) remove a smoke alarm installed in a domestic dwelling; or
 - (b) remove the battery from a smoke alarm installed in a domestic dwelling; or
 - (c) do anything that would reduce the effectiveness of the warning provided by a smoke alarm installed in a domestic dwelling.

Maximum penalty—5 penalty units.

- ‘(2) However, nothing in this section stops a person from doing any of the following—
- (a) removing a smoke alarm to comply with section 104RC;
 - (b) removing a smoke alarm to put it in a location that complies with this division;
 - (c) removing the battery from a smoke alarm to comply with section 104RE.

‘104RI Division applies for all alarms

- ‘(1) This division, other than section 104RB, applies in relation to a smoke alarm installed in a domestic dwelling even though the smoke alarm is not required to be installed under section 104RB.
- ‘(2) However, nothing in this division stops the owner of a domestic dwelling from removing a smoke alarm that is not required to be installed under section 104RB.

‘104RJ Agent may act for owner

- ‘(1) A requirement imposed on an owner to comply with this division in relation to a smoke alarm at a domestic dwelling may be complied with for the owner by the owner’s agent.
- ‘(2) However, if the owner is a lessor, subsection (1) does not permit the lessor’s tenant to be, and the lessor’s tenant must not be, the lessor’s agent for the purpose of complying with this division.

‘104RK Notice to transferee of residential land about smoke alarms

- ‘(1) The transferor of residential land must, on or before the date of possession for the land, give the transferee of the land written notice of whether smoke alarms complying with this division are installed in the domestic dwelling on the land.

Maximum penalty—5 penalty units.

- ‘(2) However, subsection (1) does not apply if—
 - (a) the transferor became transferor of the residential land under an agreement to transfer the land; and
 - (b) the date of the agreement is before 1 July 2007.
- ‘(3) The transferor must not state anything in the notice that the transferor knows is false or misleading in a material particular.

Maximum penalty for subsection (3)—5 penalty units.

‘104RL Notice to chief executive about smoke alarms and other matters

- ‘(1) The transferor of residential land must, within 90 days after the date of possession for the land, give the chief executive a written notice stating the following information (*smoke alarm information*)—
- (a) the full names of the transferor and transferee;
 - (b) the addresses of the transferor and transferee immediately after the date of possession for the land;
 - (c) the property details of the land;
 - (d) the current use of the land;
 - (e) if there was an agreement for the transfer of the land—the date of the agreement;
 - (f) the date of possession for the land;
 - (g) whether smoke alarms complying with section 104RB were installed in the domestic dwelling on the land at the date of possession;
 - (h) whether the transferor has given the transferee written notice of whether smoke alarms complying with section 104RB were installed in the domestic dwelling on the land at the date of possession.

Maximum penalty—5 penalty units.

- ‘(2) However, subsection (1) does not apply if—
- (a) the transferor became transferor of the residential land under an agreement to transfer the land; and
 - (b) the date of the agreement is before 1 July 2007.
- ‘(3) Also, the transferor is not required to comply with subsection (1) if a properly completed property transfer information form, together with an application for registration, is given to—
- (a) for an application for registration under the *Land Act 1994*—the chief executive (land); or
 - (b) for an application for registration under the *Land Title Act 1994*—the registrar.

- ‘(4) If a property transfer information form is given under subsection (3), the chief executive may be given access to the form but may use only the smoke alarm information on the form.

‘104RM Notice to buyer of manufactured home about smoke alarms

- ‘(1) This section applies if the home owner for a site in a residential park (the *seller*) on which a manufactured home is positioned proposes—
- (a) to sell the home to a person (the *buyer*); and
 - (b) to assign the seller’s interest in the site agreement for the site to the buyer.

- ‘(2) The seller must give the buyer a written notice in the form of assignment of whether smoke alarms complying with this division are installed in the manufactured home.

Maximum penalty—5 penalty units.

- ‘(3) However, the seller does not have to give written notice if the form of assignment is signed by the seller and the buyer before 1 July 2007.

- ‘(4) The seller must not state anything in the notice that the seller knows is false or misleading in a material particular.

Maximum penalty for subsection (4)—5 penalty units.’.

38 Amendment of s 104S (Regulations relating to this part)

- (1) Section 104S—

insert—

‘(ba) regulating the installation and maintenance of smoke alarms;’.

- (2) Section 104S(k)—

omit, insert—

‘(k) matters necessary to protect persons, property and the environment from fire and hazardous materials emergencies;’.

39 Insertion of new pt 9B

After part 9A—

insert—

‘Part 9B Objections to notices**‘104SA Application of pt 9B to notices under s 69**

‘This part applies to an objection relating to a notice given under section 69(2)(a) as if a reference in this part to a building were a reference to premises.’.

40 Renumbering and relocation of ss 104L–104Q

Sections 104L to 104Q—

relocate and *renumber*, in part 9B as sections 104SB to 104SH.

41 Amendment of s 115 (Annual contribution etc. deemed to be rates)

(1) Section 115(2), ‘subsection’—

omit, insert—

‘section’.

(2) Section 115(2), definition *relevant provisions*, paragraph (a), second dot point, ‘997’—

omit, insert—

‘1051A’.

42 Amendment of s 137 (Inspection of records of local governments)

(1) Section 137, heading, after ‘governments’—

insert—

‘and building certifiers’.

(2) Section 137(1)(a), after ‘government’—

insert—

‘or building certifier’.

- (3) Section 137(1)(b), all words after ‘relating to’—

omit, insert—

‘—

(i) for a local government’s premises—a function of the local government under this Act or a function of the commissioner; or

(ii) for a building certifier’s premises—something done by the building certifier under the following Acts, if the document or record is not available from a local government—

(A) *Building Act 1975*;

(B) *Integrated Planning Act 1997*;’.

- (4) Section 137(3), at the end—

insert—

‘Maximum penalty—10 penalty units.’.

- (5) Section 137—

insert—

- ‘(4) Nothing in this section authorises an authorised fire officer to enter any part of premises that are a dwelling if the part is not also a workplace within the *Workplace Health and Safety Act 1995*.’.

43 Amendment of s 142A (Confidentiality)

Section 142A(1), after paragraph (a)—

insert—

‘(aa) the disclosure relates to fire safety at premises and is made to 1 or more of the following—

(i) the owner of the premises;

(ii) a person with an interest in the premises;

(iii) an occupier of the premises; or

- (ab) the disclosure is reasonably necessary for enforcement of the criminal law; or’.

44 Amendment of s 144 (Charges for services)

- (1) Section 144(1), ‘by the chief executive’—

omit, insert—

‘under this Act’.

- (2) Section 144(7), after ‘endangering that property’—

insert—

‘, other than an unwanted alarm charge’.

- (3) Section 144(11A), definition *unauthorised*—

relocate to section 144(12).

- (4) Section 144(11A), as amended—

omit.

- (5) Section 144(12)—

insert—

‘*prescribed property* see section 105.

unwanted alarm see section 104DA.

unwanted alarm charge means a charge for a service of attending a property in response to an unwanted alarm.’.

- (6) Section 144(12), as amended—

relocate and *renumber* as section 144(14).

- (7) Section 144—

insert—

- ‘(12) The chief executive may waive all or part of a charge for which a person is liable under this section if satisfied it would be reasonable in all the circumstances to do so.’.

45 Amendment of s 147 (Offences)

- (1) Section 147(1), at the end—

insert—

‘Maximum penalty—

- (a) for paragraphs (a) and (b)—50 penalty units or 6 months imprisonment; or
 - (b) for paragraph (c)—30 penalty units; or
 - (c) for paragraphs (d), (e) and (g)—
 - (i) if the offence is committed during a state of fire emergency at a place to which the declaration of emergency applies—250 penalty units or 1 year’s imprisonment; or
 - (ii) otherwise—50 penalty units or 6 months imprisonment; or
 - (d) for paragraph (f)—
 - (i) if the offence is committed during a state of fire emergency at a place to which the declaration of emergency applies—250 penalty units or 1 year’s imprisonment; or
 - (ii) otherwise—100 penalty units or 6 months imprisonment.’.
- (2) Section 147(2)—
omit.

46 Replacement of ss 148 and 149

Sections 148 and 149—

omit, insert—

‘148 Indictable and summary offences

- ‘(1) Subject to subsection (2), an offence against this Act for which the maximum penalty of imprisonment is 2 years or more is an indictable offence that is a misdemeanour.
- ‘(2) An offence against section 146 is a crime.
- ‘(3) Otherwise, an offence against this Act is a summary offence.

‘148A Proceedings for indictable offences

- ‘(1) A proceeding for an indictable offence against this Act may be taken, at the election of the prosecution—
- (a) by way of summary proceedings under the *Justices Act 1886*; or
 - (b) on indictment.
- ‘(2) A magistrate must not hear an indictable offence summarily if—
- (a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or
 - (b) the magistrate considers the charge should be prosecuted on indictment.
- ‘(3) If subsection (2) applies—
- (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
 - (b) a plea of the person charged at the start of the proceeding must be disregarded; and
 - (c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
 - (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).³
- ‘(4) The maximum penalty that may be summarily imposed for an indictable offence is 150 penalty units or 2 years imprisonment.

‘148B Limitation on who may summarily hear indictable offence proceedings

- ‘(1) A proceeding must be before a magistrate if it is a proceeding—

3 *Justices Act 1886*, section 104 (Proceedings upon an examination of witnesses in relation to an indictable offence)

- (a) for the summary conviction of a person on a charge for an indictable offence; or
 - (b) for an examination of witnesses for a charge for an indictable offence.
- ‘(2) However, if a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

‘148C Proceeding for offences

‘A proceeding for an offence against this Act, other than an indictable offence, must be taken in a summary way under the *Justices Act 1886*.

‘148D When proceeding may start

‘A proceeding for a summary offence against this Act 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 offence is committed.

‘148E Allegations of false or misleading information or document

‘In any proceeding for an offence against this Act defined as involving false or misleading information, or a false or misleading document, it is enough for a charge to state that the information or document was, without specifying which, ‘false or misleading’.

‘148F Forfeiture on conviction

- ‘(1) On conviction of a person for an offence against this Act, a 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.
- ‘(2) 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 its owner.
- ‘(3) The court may make any order to enforce the forfeiture it considers appropriate.
- ‘(4) This section does not limit the court’s powers under the *Penalties and Sentences Act 1992* or another law.

‘149 Dealing with forfeited thing

- ‘(1) On the forfeiture of a thing to the State, the thing becomes the State’s property and may be dealt with by the State as the State considers appropriate.
- ‘(2) Without limiting subsection (1), the State may destroy the thing.’.

47 Omission of s 150 (Continuing offences)

Section 150—

omit.

48 Amendment of s 153 (Evidentiary)

- (1) Section 153(1)(a), ‘the commissioner or chief commissioner’—

omit, insert—

‘the chief executive or the commissioner’.

- (2) Section 153(1)—

insert—

‘(h) a certificate purporting to be signed by the chief executive and stating any of the following matters is evidence of the matter—

- (i) that a stated service was provided under this Act to a stated person on a stated day;

- (ii) that a stated person was charged a stated amount for a stated service;
- (iii) that a stated amount mentioned in subparagraph (ii) has not been paid.’.

49 Amendment of s 154 (Regulation-making power)

- (1) Section 154(2)(d)—
renumber as section 154(2)(f).
- (2) Section 154(2)—
insert—
‘(d) the institution and determination of objections under part 9B and appeals from determinations;
(e) fees and charges payable under this Act and the matters for which fees and charges are payable;’.
- (3) Section 154(3)—
renumber as section 154(4).
- (4) Section 154—
insert—
‘(3) A regulation may, and it is declared always could, prescribe fees payable to the service for—
(a) the assessment and inspection of special fire services within the meaning of the *Building Act 1975*; or
(b) the assessment of proposed alternative solutions within the meaning of the Building Code of Australia.’.

50 Amendment of sch 6 (Dictionary)

- (1) Schedule 6, definition *premises*—
omit.
- (2) Schedule 6—
insert—
‘***bodily harm*** see the Criminal Code, section 1.

building certifier see the *Building Act 1975*, section 8.

Building Code of Australia see the *Building Act 1975*, section 12.

chief executive (liquor licensing) means the chief executive of the department in which the *Liquor Act 1992* is administered.

clear floor surface area, for part 9A, division 3A, see section 104KA.

fire and evacuation plan see section 104E(1)(a).

fire safety system, for part 9A, division 3A, see section 104KA.

grievous bodily harm see the Criminal Code, section 1.

licensed building, for part 9A, division 3A, see section 104KA.

occupancy notice see section 104KF.

occupancy number, for part 9A, division 3A, see section 104KA.

premises—

- (a) means any land or building; and
- (b) for part 6, includes a vehicle or vessel.

premises of seizure see section 56B.

risk of overcrowding, for part 9A, division 3A, see section 104KA.?

Part 3

Amendment of Residential Tenancies Act 1994

51 Act amended in pt 3

This part amends the *Residential Tenancies Act 1994*.

52 Amendment of s 109 (Grounds for entry)

(1) Section 109—

insert—

‘(ba) to comply with the *Fire and Rescue Service Act 1990* in relation to smoke alarms; or’.

(2) Section 109—

insert—

‘(bb) to comply with the *Electrical Safety Act 2002* in relation to approved safety switches; or’.

Part 4 Amendment of Building Act 1975**53 Act amended in pt 4**

This part amends the *Building Act 1975*.

54 Amendment of s 216 (Meaning of *budget accommodation building*)

(1) Section 216(1), ‘building that’—

omit, insert—

‘building’.

(2) Section 216(1)(a)—

omit, insert—

‘(a) whose occupants have shared access to a bathroom or sanitary facilities, other than a laundry; and’.

(3) Section 216(1)(b), before ‘provides accommodation’—

insert—

‘that’.

- (4) Section 216(3)—
renumber as section 216(4).
- (5) Section 216—
insert—
- ‘(3) For subsection (1)(b), evidence that the building has beds available for use by persons is evidence that it provides accommodation to persons, whether or not the persons are present at the building.’.

Part 5

Amendment of Building and Other Legislation Amendment Act 2006

55 Act amended in pt 5

This part amends the *Building and Other Legislation Amendment Act 2006*.

56 Amendment of schedule (Consequential and minor amendments of other Acts)

Schedule, amendments 1 to 3 of the *Fire and Rescue Service Act 1990*—

omit.