Fire and Rescue Service Amendment Bill 2006

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the Fire and Rescue Service Amendment Bill 2006.

The Bill also amends section 109 of the *Residential Tenancies Act 1994.*

The Bill also amends section 216 of the *Building Act 1975.*

Policy Objectives of the Bill

The objective of the Bill is to improve:

- personal safety in domestic dwellings by requiring smoke alarms to be installed in all dwellings thereby reducing the loss of life, injury and, to some extent, property loss caused by fires in the home;
- public safety in licensed premises that have an unacceptable risk of overcrowding;
- public safety by reducing the number of unwanted alarms in buildings with automatic alarm systems monitored by the Queensland Fire and Rescue Service; and
- other aspects of the fire safety regulatory framework.

Reasons for the Bill

In 2004/2005, the Department of Emergency Services conducted a review of the *Fire and Rescue Service Act 1990*. The review included consultation with stakeholders via the release of a Cabinet endorsed Discussion Paper, direct consultation with stakeholders and focus group research. The review identified a range of improvements for fire safety arrangements in Queensland.

Smoke Alarms in domestic dwellings

Homes built since 1 July 1997 are required by the Building Code of Australia (BCA) to have mains-wired smoke alarms installed. Residences built prior to this date may also, if required by a building certifier, be required to install smoke alarms when renovating more than 50% of the original building. There is currently no legal requirement for most pre-1997 houses and units to have smoke alarms installed.

The primary benefit of a domestic smoke alarm is in saving the lives of occupants and in reducing the incidence and severity of fire related injuries. This is most evident in the event of a fire while people are sleeping. In Queensland, almost half (47.7%) of home fire deaths occur between 12am-8am when most people are sleeping. The installation of a smoke alarm also provides the additional benefit of moderating property damage in residential buildings by providing early warning of fire.

The risk of death from fire in a home is up to three times higher in homes without smoke alarms when compared to homes with smoke alarms. In Queensland for the eight year period from 1997 to 2005, 78.1% of all home fire deaths occurred in homes without smoke alarms.

Cost benefit studies conducted by the Department of Emergency Services, with the assistance of the Queensland Treasury Corporation, indicate that if Queensland were able to achieve 100% coverage of working smoke alarms in domestic residences, there could be a potential saving of 106 lives over 20 years with a net saving to householders of approximately $70M in reduced property losses and injury costs over the same period.

Queensland's experience with the promotion of smoke alarms and the introduction in 1997 of mandatory mains connected smoke alarms in new or significantly renovated housing has seen coverage increase from 38.7% of homes in 1996 to 84.2% in 2005. However, the level of alarmed homes in Queensland has remained relatively static since 2001, rising by only 4.9% over this period. By contrast, Victoria and South Australia, which have had compulsory smoke alarm legislation for seven and eight years respectively, are achieving higher smoke alarm coverage levels. As at 2004, Victoria had achieved smoke alarm coverage of 95.5% of all homes and South Australia had achieved 95% coverage.

It is considered unlikely that Queensland would be able to significantly increase the coverage of smoke alarms without making smoke alarms compulsory.

Maximum occupancy numbers for at risk licensed premises

Overcrowding in licensed premises such as nightclubs can pose a serious fire safety risk to occupants. Overcrowding reduces the likelihood that occupants can safely evacuate to a place of safety if a fire or other emergency happens. Experience in Australia and internationally indicates that fires in nightclubs can cause multiple fatalities.

The *Building Fire Safety Regulation 1991* administered by the Department of Emergency Services contains the current controls on overcrowding. Occupiers are required to take into account a range of factors (building use, floor area, the number, location and size of exits and paths of travel to exits and whether occupants can exit directly into open space) and having regard to these factors to ensure that the building is not overcrowded. However, there is no requirement for occupiers to establish and maintain any particular occupancy number.

The lack of a specific safe occupancy limit, and obligations to establish management arrangements to comply with that limit, has made it difficult for the Queensland Fire and Rescue Service to effectively monitor safe occupancy limits in licensed premises.

Reducing unwanted alarm activations

The Queensland Fire and Rescue Service attends a large number of callouts by automatic smoke detection and alarm systems. Callouts from monitored automatic alarm systems account for approximately one third of all Queensland Fire and Rescue Service callouts. The vast majority (96.6% in 2005/2006) of such callouts are false in that, upon investigation, the cause of the alarm activation is not an emergency that requires the intervention of the fire service.

It is likely that the lack of alarm system suitability to the environment of the building, occupier activities, inappropriate location and type of detectors, system malfunctions, the lack of ability of detectors and alarms to distinguish between fires and normal conditions in the building and the lack of appropriate design features and management procedures account for the majority of unwanted alarms.

The most serious consequences of unwanted alarms are:

- Complacency- the main reason for an alarm system is to provide a warning to occupants to evacuate a building to a place of safety when a fire or other relevant emergency happens. The prevalence of unwanted alarms means that building occupants may become

complacent about alarms and delay evacuation in response to an alarm. In a real fire or emergency situation this may delay evacuation and put lives at risk; and

- Cost - Queensland Fire and Rescue Service resources responded to unwanted alarms could be more effectively utilised for other public safety purposes.

In common with fire services in other Australian jurisdictions and also many international jurisdictions, the Queensland Fire and Rescue Service levies a charge for attending in response to alarms that are ultimately identified as being unwanted alarms. The purpose of the charge is to provide an incentive to building occupiers to take steps to rectify the problems causing unwanted alarms, thereby reducing the number of unwanted alarms.

The Queensland Fire and Rescue Service charges for such callouts under section 144 of the current Act. Under section 144 (7) of the Act the owner of a prescribed property is not liable for any charge where the fire service attends a fire on or endangering that property. This leads to difficulties in relation to the unwanted alarm charging arrangements. For instance it could be argued that smoke from a toaster could come within the ambit of " fire" thereby precluding the fire service from charging and undermining the incentive of the building occupier to take measures to reduce the likelihood of future unwanted alarm activations.

Other fire safety regulatory framework matters

The review of the *Fire and Rescue Service Act 1990* identified a number of areas where the fire safety regulatory arrangements could be improved.

Achieving the Objectives

The objectives of the Bill are achieved in the ways stated below.

Smoke Alarms in domestic dwellings

The Bill:

- requires that smoke alarms complying with Australian Standard 3786-1993 be installed in domestic dwellings. The obligation applies to domestic dwellings which are classed as class 1a (essentially houses) and sole occupancy units in class 2 buildings (essentially units) under the Building Code of Australia;

- requires that smoke alarms be installed in the locations in the home that are currently specified for new homes under the Building Code of Australia;
- contains ongoing smoke alarm maintenance requirements for lessors and tenants;
- prohibits a person from interfering with smoke alarms except for legitimate purposes (e.g. cleaning the smoke alarm, testing the smoke alarm, replacing the battery or otherwise maintaining the alarm); and
- requires that the seller of a home give written notice to the purchaser of whether smoke alarms required by the Bill are installed in the home. The purchaser is also required to give a notice to this effect to the chief executive of the Department administering the *Land Act 1994* and the *Land Title Act 1994.*

Maximum occupancy numbers for at risk licensed premises

The Bill empowers the Commissioner of the Queensland Fire and Rescue Service to require occupiers of identified at risk licensed premises to establish and implement a safe limit on the number of persons that may be in the premises at any one time.

Reducing unwanted alarm activations

The Bill imposes an obligation on the occupiers of buildings that have an automatic alarm system that is monitored by the Queensland Fire and Rescue Service to ensure that the alarm system does not signal an unacceptable number of unwanted alarms.

Contravention of the obligation is not itself an offence but would enable the commissioner to give a notice to the occupier under section 104G of the *Fire and Rescue Service Act 1990* to take steps to remedy a breach of the obligation.

Other fire safety regulatory framework matters

There are a range of improvements to the fire safety regulatory framework that:

- improve fire safety by filling gaps in the current building fire safety regulatory framework;

- create new offences to provide for increased penalties where the breach of a fire safety obligation causes death, injury or significant property damage;
- update the prevention and investigation powers of fire officers to better equip officers to carry out their duties in a modern and professional fire service; and
- implement legislative improvements suggested by the Office of the Queensland Parliamentary Counsel.

Administrative Costs

Implementation costs associated with the Bill will be funded from existing budgetary provisions.

Fundamental Legislative Principles

Fire officers have had a long-standing statutory right to enter any premises, vehicle or vessel for preventative or investigative purposes. Currently the rights and obligations of authorised fire officers and the public in relation to prevention and investigative powers are defined in sections 55 and 56 of the *Fire and Rescue Service Act 1990*. Section 55 confers upon authorised fire officers' extensive powers of entry without a warrant and without the occupier's consent. Once entry has been obtained, section 55 confers on authorised officers significant powers to prevent and investigate fires and hazardous materials emergencies and to investigate compliance with the legislation. The powers conferred are unconfined and reflect the serious nature of the risks against which they are directed.

The investigation and prevention powers created by section 55 of the *Fire and Rescue Service Act 1990* are conferred in broad terms to " investigate", "prevent" or "ascertain the cause of" a fire or hazardous materials emergency. The Bill will amend the current provision to particularise the powers conferred to the extent possible to include power to test, survey, photograph, film, take things or samples as evidence and take equipment or experts onto premises. The amendments will provide a more secure basis for the exercise of fire safety powers and are justified as preventing loss of life and property in a fire or hazardous materials emergency or facilitating the proper investigation of such incidents.

Sections 104C, 104D and 104E of the *Fire and Rescue Service Act 1990* impose fire safety obligations on building occupiers to maintain adequate means of escape, fire safety equipment and evacuation plans and procedures to ensure the safety of building occupants in the event of fire.

Sections 104FA and 104FB impose obligations on owners of budget accommodation buildings to prepare and update fire safety management plans for budget accommodation buildings. These provisions are critical to maintaining adequate standards of fire safety in buildings in Queensland. Contravention of these obligations could potentially result in very serious consequences, including loss of life, injury and property loss. The Bill imposes a sliding scale of significant penalties for contraventions that result in adverse consequences, ranging from 2000 penalty units or 3 years imprisonment for a contravention that results in multiple deaths down to 100 penalty units where there is a contravention with no adverse consequence.

The Bill provides that ss.23 (1) and 24 of the Criminal Code do not apply in relation to the contravention of the fire safety obligations referred to in the previous paragraph. Section 23(1) of the Criminal Code incorporates a general requirement that an offending act or omission must have been performed with intent, and s 24 excuses acts done in an honest and reasonable, but mistaken, belief in the existence of facts. The removal of these protections is balanced by the inclusion of defences that the contravention was due to causes over which the person had no control and that a person took reasonable precautions and exercised proper diligence to avoid the contravention. The exclusion of ss23(1) and 24 of the Criminal Code is consistent with the approach taken by other public safety legislation, including the *Workplace Health and Safety Act 1995, Dangerous Goods Safety Management Act 2001* and the *Electrical Safety Act 2002.*

The Office of the Queensland Parliamentary Counsel has indicated that the Queensland Fire and Rescue Service may not have had clear powers to charge fees for its services for the provision of fire safety advice as part of the development approval process. The Queensland Fire and Rescue Service is therefore potentially liable for costs incurred by developers due to Queensland Fire and Safety Service advice. To put the validity of the fees beyond doubt the Bill contains a provision to validate the fees charged. This is an unavoidable retrospective provision.

Consultation

Community

There has been extensive community consultation including: the public release of a Cabinet endorsed Discussion Paper, “A review of fire safety arrangements in Queensland” on 6 December 2004, liaison with key stakeholder groups and the community directly through publicly advertised

workshops and focus group research in relation to the smoke alarm proposals.

Government

An interdepartmental working group provided advice and assistance in the development of the proposals contained in this submission. The working group contained representatives of the following departments:

- Department of the Premier and Cabinet
- Queensland Treasury
- Department of Housing
- Department of Public Works
- Department of Tourism, Fair Trading and Wine Industry Development
- Department of Local Government, Planning, Sport and Recreation.

The Residential Tenancies Authority was consulted in relation to the impact of the domestic smoke alarm provisions on the private rental sector.

Notes on Provisions

Part 1 Preliminary

Short Title

Clause 1 states the short title of the Bill.

Commencement

Clause 2 states that clause 37, 38 (1) and 52 (1) commence 1 July 2007. These provisions relate to smoke alarms for domestic dwellings. The smoke alarm provisions commence on 1 July 2007.

Clause 2 also states that the other provisions of the Bill apart from clause 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

Act Amended

Clause 3 states that this Part amends the *Fire and Rescue Service Act 1990.*

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

Clause 4 amends section 7 of the Act by omitting the current section 7 that states the extent to which the Act binds the Crown and replacing it with a new provision to the same effect that reflects current drafting practice.

Amendment of s 53 (Powers of authorized officer in dangerous situation)

Clause 5 amends section 53 of the Act to remove an inconsistency and clarify the provision.

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

Clause 6 amends section 55 to clarify the existing investigative and preventative powers that may be exercised by authorised fire officers upon entry to premises, vehicles and vessels. The powers currently enjoyed by authorised fire officers are general in nature and permit officers to: prevent or reduce the likelihood of fires or hazardous materials emergencies, investigate whether fire safety measures have been taken, ascertain the causes of fires or hazardous materials emergencies, ascertain whether fire safety requirements have been met or whether enforcement powers should be exercised. The amendment makes clear that the general powers already conferred include powers to:

- search, inspect, measure, test, photograph or film a premises;
- take things or samples, copy documents, make enquiries, conduct surveys and tests at a premises; and
- take required persons, equipment and materials onto a premises.

Amendment of s 56 (Extent of power of entry)

Clause 7 amends section 56 of the Act to remove an inconsistency and clarify the provision.

Insertion of new ss 56A—56F

Clause 8 inserts new sections 56A to 56F into the Act.

56A Power to seize evidence etc.

This new provision permits an authorised fire officer who enters premises under the existing entry power to seize things at a premises if the officer reasonably believes that the thing is: evidence of an offence against the Act, just been used in committing an offence against the Act, necessary to prevent the thing being hidden lost or destroyed, or seizure is necessary for the fire safety and preventative purposes stated in section 55 of the Act.

56B Powers supporting seizure

This new provision describes the powers authorised fire officers may exercise in relation to a thing that the officer has seized, including the power to move the thing from the place where it was seized or to, leave the thing at the place but take reasonable action to restrict access to it.

If an authorised officer restricts access to a seized thing, a person may not tamper or attempt to tamper with the thing or something restricting access to the thing without the authorised officer's approval.

To enable a thing to be seized, an authorised officer may require a person in control of a thing to take the thing to a stated reasonable place by a stated reasonable time. The person to whom the request is made is required to comply unless the person has a reasonable excuse for not complying.

The maximum penalty for contravention of subclauses (2) and (5) is 40 penalty units.

56C Receipt for seized things

This new provision states that an authorised fire officer who has seized thing must give a receipt. If it is not practicable to give a receipt to the person the officer must leave the receipt in a conspicuous position and in a reasonably secure way at the premises from which the thing was seized.

The clause states what must be included in the receipt and describes the circumstances where a receipt does not have to be given.

56D Forfeiture of seized things

This new provision describes the circumstances in which a seized thing is forfeited to the State, and the action that an authorised fire officer must take if the officer decides to forfeit the thing to the State.

56E Return of seized things

This new provision states the circumstances in which an authorised fire officer must return a seized thing to its owner when it has not been forfeited. The officer must return the seized thing immediately if the officer stops being satisfied that the things retention as evidence is necessary.

56F Access to seized things

This new provision requires an authorised officer to allow the owner of a seized thing to inspect and, if it is a document, copy it. The clause does not apply in circumstances in which it is impracticable or would be unreasonable to allow inspection or copying.

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

Clause 9 omits section 57 that describes the circumstances in which an authorised officer may require a person to provide their name and address to the officer and inserts in its stead a new provision to the same effect that reflects current drafting practice.

57 Power to require name and address

Clause 57 describes the circumstances in which an authorised officer may require a person to provide their name and address. When making the request, the authorised officer must warn the person to whom the request is made that failure to comply with the request without a reasonable excuse is an offence.

Omission of Section 58

Clause 10 omits section 58.

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

Clause 11 amends section 58A to state that a person does not have to comply with a requirement for reasonable assistance by an authorised fire officer who enters premises where the person has a reasonable excuse for not complying. It is not a reasonable excuse for not complying that complying might tend to incriminate the person to whom the request is made. However, if the person is an individual, incriminating evidence is not admissible in any civil or criminal proceeding apart from a proceeding for an offence about the falsity or misleading nature of the information or evidence provided.

58B Power to inquire into fire or hazardous materials emergency

This new provision permits an authorised fire officer to enquire into the circumstances and probable causes of a fire or hazardous materials emergency. The authorised fire officer may require a person that has knowledge, or that the officer reasonable suspects to have knowledge, of the circumstances of the fire or hazardous materials emergency to give reasonable help to the officer. Failure to comply with a request for reasonable help is an offence unless the person to whom the request is made has a reasonable excuse not to comply.

Also, it is a reasonable excuse for an individual to fail to give reasonable help if that help consists in giving information or producing documents, except documents required to be produced under the Act, that tend to incriminate that individual.

58C Power to require production of certain documents

This new provision describes the documents that an authorised fire officer may require a person to produce for the purposes of monitoring or enforcing compliance with the Act.

Also, it is a reasonable excuse for an individual to fail to produce documents that tend to incriminate that individual.

Amendment of s 62 (Offence to light unauthorised fire)

Clause 13 inserts a penalty of 50 penalty units or six months imprisonment. This is the same penalty as formerly applied by virtue of the general penalty provision, section 149, repealed by clause 45. The former section 149 was omitted on the advice of the Office of the Queensland

Parliamentary Counsel as not reflecting current drafting practice regarding penalty provisions. Current drafting practice is to allocate the requisite penalty for each individual offence rather than allocating penalties for a number of offences by way of a general penalty offence.

Amendment of s 67 (Occupier to extinguish fire)

Clause 14 inserts a penalty of 50 penalty units or six months imprisonment. This is the same penalty as formerly applied by virtue of the general penalty provision, section 149, repealed by clause 45. The former section 149 was omitted on the advice of the Office of the Queensland Parliamentary Counsel as not reflecting current drafting practice regarding penalty provisions. Current drafting practice is to allocate the requisite penalty for each individual offence rather than allocating penalties for a number of offences by way of a general penalty offence.

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

Clause 15 (1) to (5) renumbers sub clauses and internal references of section 69.

Clause 15 (6) inserts a penalty of 50 penalty units or six months imprisonment. This is the same penalty as formerly applied by virtue of the general penalty provision, section 149, repealed by clause 45. The former section 149 was omitted on the advice of the Office of the Queensland Parliamentary Counsel as not reflecting current drafting practice regarding penalty provisions. Current drafting practice is to allocate the requisite penalty for each individual offence rather than allocating penalties for a number of offences by way of a general penalty offence.

Clause 15 (7) inserts a provision that requires a requisition given to a particular occupier under section 69(2)(a) to state:

- the reason for the requisition;
- that the occupier may object to the giving of the notice; and
- how the occupier may make an objection, including the time by which it must be made.

Prior to the insertion of this provision there was no right to object to a requisition given to an occupier under section 69(2)(a). This provision, in conjunction with clause 29, remedies that defect by providing a right to object. The right of objection is to the panel established under the Act. In

addition, under clause 34, a new provision, section 104PA, permits an occupier the subject of a requisition under section 69 of the Act to apply to the panel for a stay of the notice. The panel can stay the notice if necessary to secure the effectiveness of the objection and any later appeal under section 104SH.

Amendment of s 72 (Offences re lighting fires)

Clause 16 inserts a penalty of 50 penalty units or six months imprisonment for a breach of section 72(1) or 250 penalty units or 1 years imprisonment for a breach of these provisions during a state of fire emergency. This is the same penalty as formerly applied by virtue of the general penalty provision, section 149, repealed by clause 45. The former section 149 was omitted on the advice of the Office of the Queensland Parliamentary Counsel as not reflecting current drafting practice regarding penalty provisions. Current drafting practice is to allocate the requisite penalty for each individual offence rather than allocating penalties for a number of offences by way of a general penalty offence.

Amendment of a 104A (Interpretation)

Clause 17 omits the definition of "building certifier" , and ''Building Code of Australia'' from the terms defined for use in Part 9A and schedule 5 of the Act. The term is inserted by clause 50 into the general interpretation section of the Act in schedule 6.

Clause 17 amends the definition of "building" by removing sub clause (c) of the definition, which excludes a building in which no fire safety installation is required to be maintained pursuant to section 104D of the Act, from the definition of a building. The effect of the amendment is that the building fire safety obligations contained in Part 9A will now apply to buildings that otherwise meet the definition but are not required to maintain prescribed fire safety installations under section 104D of the Act. A small number of pre 1975 buildings (constructed prior to the commencement of the *Building Act 1975*) were not required by the approval authority at the time, local governments, to have prescribed fire safety installations installed. The amendment will mean that these buildings will be required to comply with the building fire safety obligations contained in Part 9A. For these buildings, this will include the preparation of a fire and evacuation plan under section 104E of the Act.

Amendment of s 104B (Application to prisons)

This clause renumbers the internal reference to a section of the Act to reflect the new numbering. There is no change to the effect of the section.

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

Clause 19 amends section 104C to include new penalties that impose significant penalties that are proportioned to the consequences of the contravention. Where the contravention of the obligation to maintain free from obstruction adequate means of escape:

- causes multiple deaths the maximum penalty is 2000 penalty units or 3 years imprisonment;
- causes death or grievous bodily harm the maximum penalty is 1000 penalty units or 2 years imprisonment;
- causes bodily harm the maximum penalty is 750 units or 1 years imprisonment;
- otherwise the penalty is 100 penalty units.

Under new subdivision 3A a person causes something for the purposes of section 104C if the person's act or omission is a substantial or significant cause of the thing or substantially contributes to the thing. Subdivision 3A is intended to import the approach to the definition of cause evidenced in cases such as *Royall v R* (1991) 172 CLR 378, *Lowrie v R* (2000*)* 2 Qd R 529 and *R v Carter (2003)* QCA 515.

Under new subdivision 3A section 104C applies despite the Criminal Code sections 23(1) and 24.

Under subdivision 3A it is a defence to a proceeding under clause 104C for a person to prove that:

- that they took reasonable precautions and exercised proper diligence to prevent the contravention; and
- that the contravention was due to causes over which the person had no control.

The offence constituted by section 104C and the new penalties are in line with similar offences and penalties in other public safety legislation such as the *Workplace Health and Safety Act 1995* and the *Dangerous Goods Safety Management Act 2001.*

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

Clause 20 amends section 104D to include new penalties that impose significant penalties that are proportioned to the consequences of the contravention. Where the contravention of the obligation to maintain prescribed fire safety installations to a standard of safety and reliability in the event of fire causes:

- multiple deaths the maximum penalty is 2000 penalty units or 3 years imprisonment;
- death or grievous bodily harm the maximum penalty is 1000 penalty units or 2 years imprisonment;
- bodily harm the maximum penalty is 750 units or 1 years imprisonment;
- substantial property loss the maximum penalty is 500 penalty units or 6 months imprisonment;
- otherwise the penalty is 100 penalty units.

Under new subdivision 3A a person causes something for the purposes of section 104D if the person's act or omission is a substantial or significant cause of the thing or substantially contributes to the thing. Subdivision 3A is intended to import the approach to the definition of cause evidenced in cases such as *Royall v R* (1991) 172 CLR 378, and *Lowrie v R* (2000*)* 2 Qd R 529 and *R v Carter (2003)* QCA 515.

Under new subdivision 3A Section 104D applies despite the Criminal Code sections 23(1) and 24.

Under subdivision 3A it is a defence to a proceeding under clause 104D for a person to prove that:

- that they took reasonable precautions and exercised proper diligence to prevent the contravention; and
- that the contravention was due to causes over which the person had no control.

The offence constituted by section 104D and the new penalties are in line with similar offences and penalties in other public safety legislation such as the *Workplace Health and Safety Act 1995* and the *Dangerous Goods Safety Management Act 2001.*

Insertion of new s 104DA

Clause 21 inserts a new provision, section 104DA.

This new provision obliges the occupier of a building to maintain automatic alarm systems monitored by the Queensland Fire and Rescue Service to ensure an unacceptable number of unwanted alarms are not signaled from the system. The duty to maintain the system includes a duty to:

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

The provision defines an unacceptable number of unwanted alarms as more than 4 since the end of the last financial year and more than the average number of unwanted alarms per building for all monitored buildings. The commissioner is obliged to publish the average number of unwanted alarms as soon as practicable after the end of each financial year.

Under clause 104DA (3) the commissioner of the Queensland Fire and Rescue Service may decide that, even though the number of unwanted alarms signaled from a system exceeds the number stared above, the number is acceptable having regard to:

- the size and other characteristics of the building;
- how the building is used;
- the number of detector heads in the building; and
- whether the monitored system also relates to other buildings.

The contravention of the obligation to maintain a monitored alarm system to ensure an unacceptable number of alarms are not signaled is not itself an offence. However, the contravention would enable the commissioner to give a notice under section 104G of the *Fire and Rescue Service Act 1990* to take steps to remedy the contravention. Contravention of the notice, if proved, would constitute an offence.

Amendment of s 104E (Fire and evacuation plan)

Clause 22 amends section 104E (1) of the Act to extend the category of persons to whom an occupier of a building must provide evacuation instructions. Currently, the Act requires that such instructions be provided to persons working or residing in a building. The amendment extends the obligation to persons that visit a building for more than a total time, during a period, prescribed under a regulation.

Clause 22 amends section 104E to include new penalties that impose significant and appropriate penalties that are proportioned to the consequences of the breach. Where the contravention of the obligation to maintain a fire and evacuation plan, and provide instructions to defined persons in the building about the steps to be taken to ensure their safety if a fire happens, causes:

- multiple deaths the maximum penalty is 2000 penalty units or 3 years imprisonment;
- death or grievous bodily harm the maximum penalty is 1000 penalty units or 2 years imprisonment;
- bodily harm the maximum penalty is 750 units or 1 years imprisonment;
- otherwise the penalty is 100 penalty units.

Under new subdivision 3A a person causes something for the purposes of section 104E if the person's act or omission is a substantial or significant cause of the thing or substantially contributes to the thing. Subdivision 3A is intended to import the approach to the definition of cause evidenced in cases such as *Royall v R* (1991) 172 CLR 378 and *Lowrie v R* (2000*)* 2 Qd R 529, and *R v Carter (2003)* QCA 515.

Under new subdivision 3A section 104E applies despite the Criminal Code sections 23(1) and 24.

Under subdivision 3A it is a defence to a proceeding under clause 104E for a person to prove that:

- that they took reasonable precautions and exercised proper diligence to prevent the contravention; and
- that the contravention was due to causes over which the person had no control.

The offence constituted by section 104E and the new penalties are in line with similar offences and penalties in other public safety legislation such as

the *Workplace Health and Safety Act 1995* and the *Dangerous Goods Safety Management Act 2001.*

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

Clause 23 amends section 104FA to include new penalties that impose significant penalties that are proportioned to the consequences of the contravention. Where the contravention of the obligation to prepare a fire safety management plan causes:

- multiple deaths the maximum penalty is 2000 penalty units or 3 years imprisonment;
- death or grievous bodily harm the maximum penalty is 1000 penalty units or 2 years imprisonment;
- bodily harm the maximum penalty is 750 units or 1 years imprisonment; and
- otherwise the penalty is 100 penalty units.

Under new subdivision 3A a person causes something for the purposes of section 104FA if the person's act or omission is a substantial or significant cause of the thing or substantially contributes to the thing. Subdivision 3A is intended to import the approach to the definition of cause evidenced in cases such as *Royall v R* (1991) 172 CLR 378 and *Lowrie v R* (2000*)* 2 Qd R 529 and *R v Carter (2003)* QCA 515.

Under new subdivision 3A section 104FA applies despite the Criminal Code sections 23(1) and 24.

Under subdivision 3A it is a defence to a proceeding under clause 104FA for a person to prove that:

- that they took reasonable precautions and exercised proper diligence to prevent the contravention; and
- that the contravention was due to causes over which the person had no control.

The offence constituted by section 104FA and the new penalties are in line with similar offences and penalties in other public safety legislation such as the *Workplace Health and Safety Act 1995* and the *Dangerous Goods Safety Management Act 2001.*

Amendment of s 104FB (other obligations about fire safety management plans

Clause 24 amends section 104FB to include new penalties that impose significant penalties that are proportioned to the consequences of the contravention. Where the contravention of the obligation to update fire safety management plans after a change in circumstances causes:

- multiple deaths the maximum penalty is 2000 penalty units or 3 years imprisonment;
- death or grievous bodily harm the maximum penalty is 1000 penalty units or 2 years imprisonment;
- bodily harm the maximum penalty is 750 units or 1 years imprisonment; and
- otherwise the penalty is 100 penalty units.

Under new subdivision 3A a person causes something for the purposes of section 104FB if the person's act or omission is a substantial or significant cause of the thing or substantially contributes to the thing. Subdivision 3A is intended to import the approach to the definition of cause evidenced in cases such as *Royall v R* (1991) 172 CLR 378, *Lowrie v R* (2000*)* 2 Qd R 529 and *R v Carter (2003)* QCA 515

Under new subdivision 3A Section 104FB applies despite the Criminal Code sections 23(1) and 24.

Under subdivision 3A it is a defence to a proceeding under clause 104FB for a person to prove that:

- that they took reasonable precautions and exercised proper diligence to prevent the contravention; and
- that the contravention was due to causes over which the person had no control.

The offence constituted by section 104FB and the new penalties are in line with similar offences and penalties in other public safety legislation such as the *Workplace Health and Safety Act 1995* and the *Dangerous Goods Safety Management Act 2001.*

Insertion of new pt 9A, div2, subdiv 3A

Clause 25 inserts into division 2 a new subdivision- subdivision 3A-that contains provisions relating to the offences mentioned in section 104C, 104D, 104E, 104FA or 104FB.

Subdivision 3A Matters relating to particular proceedings under this division

Provisions applying for particular proceedings

This new provision states that a person *causes* something mentioned in section 104C, 104D, 104E, 104FA and 104FB if the person's act or omission is a substantial or significant cause of the thing or substantially contributes to the thing.

This provision is intended to import the approach to the definition of cause evidenced in cases such as *Royall v R* (1991) 172 CLR 378, *Lowrie v R* (2000*)* 2 Qd R 529 and *R v Carter (2003)* QCA 515.

This new provision states that sections 104C, 104D, 104E, 104FA and 104FB apply despite the provisions of section 23(1) and 24 of the Criminal Code.

This new provision states that in proceedings under sections 104C, 104D, 104E, 104FA and 104FB it is a defence for a person to prove:

- the person took reasonable precautions and exercised proper diligence to prevent the contravention; or
- that the contravention was due to causes over which the person had no control.

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

Clause 26 removes the reference to the position of Chief Commissioner as this position no longer exists.

Insertion of new pt 9A, div 3A

Clause 27 inserts a part 9A, division 3 which is a new provision dealing with occupancy limits for oarticular licensed buildings.

Division 3A Occupancy limits for particular licensed buildings

Subdivision 1 Preliminary

104KA Definitions for div 3B

This new provision defines the terms used throughout the division, including:

- **fire safety system** – means a building's fire safety features and procedures established for the building for warning occupants of a fire, safely evacuating the occupants and extinguishing or stopping the spread of fire.
- **licensed building** means a building or part of a building that is a licensed premises under the *Liquor Act 1992.*
- **risk of overcrowding –** 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

This new provision outlines the overall object of the division, which is to ensure that occupants of licensed buildings can safety evacuate if a fire or hazardous materials emergency happens. This is achieved by identifying licensed buildings with an unacceptable risk of overcrowding and by establishing and implementing safe occupancy number limits.

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

This new provision states that, except where stated otherwise, the occupancy limit provisions apply to a part of a licensed building as if it were a whole licensed building. This permits the commissioner to treat part of licensed premises, for instance an upstairs section of a 2 storey premises, as licensed premises and to apply a safe occupancy limit to that part of the premises.

The provision only applies unless stated otherwise. Provisions where it is stated otherwise and where the stated obligations do not apply to the part of the licensed premises where a safe occupancy limit has been applied are:

- Implementing a counting system (section 104KM); and
- Displaying signs of the occupancy number (section 104KM).

The effect of these provisions is that the commissioner can allocate an occupancy number to part of a premises but the occupier is not obliged to operate a counting system into and out of that part or display a number for that part. The occupier is, however, obliged to comply with other obligations in relation to the part of the premises, including the obligation to ensure that the occupancy limit is not exceeded and that staff are familiar with the occupancy limit.

Subdivision 2 Occupancy Notices

104KD Deciding if a building is an at risk licensed building

This new provision states that at risk licensed buildings will be identified. In assessing the risk, the Commissioner will have regard to the characteristics of the building, how the building is used, the likely number, mobility and other characteristics of occupants and the fire safety system in the building.

104KE Deciding an occupancy number

This new provision, which applies to a building that has been determined by the Commissioner to be an at risk building, explains that in deciding the maximum occupancy number for a licensed building, the Commissioner will have regard to matters contained in s 104KD(2). Further, the occupancy number must not be more than the maximum number that may be accommodated by reference to specified provisions of the Building Code of Australia and, for budget accommodation buildings, Part 14 of the Queensland Development Code.

104KF Commissioner may give occupancy notice to occupier

This new provision specifies that if the commissioner decides under section 104KD that a building is at an risk licensed building, then the commissioner may issue an occupancy notice to the occupier, which includes various information including the reasons for deciding that the building is an at risk building, the occupier's obligations and the occupier's right to object to the notice within a specified timeframe.

104KG Occupancy number applying during particular uses or circumstances

This new provision permits the commissioner to give occupancy numbers for a building that applies for particular uses or circumstances.

104KH Application and currency of occupancy notice

This new provision states that an occupancy notice applies to the person stated in it, which is the building occupier at the time the notice was issued, until the notice is revoked or the person stops being the occupier of the building.

104KI Re-assessment of risk of overcrowding

This new provision permits the commissioner, at the commissioner's discretion, to at any time re-assess a building that has been issued with an occupancy notice. The occupier may make a request to the commissioner for re-assessment or the commissioner may carry out a re-assessment on the commissioner's own initiative. In cases where any of the matters stated in section 104KD(2) have changed in a way the is relevant to the risk of overcrowding and the occupier provides a written notice of the change to the commissioner and asks for a re-assessment, then the commissioner is compelled to carry out the re-assessment. If a re-assessment is carried out as a result a written notice received under section 104KH (3)(b) and the commissioner decides not to revoke the current occupancy notice, then the commissioner must give the occupier a decision notice, which is to include the decision and reason not to revoke the occupancy notice and the occupier's right to objection within a specified timeframe.

Subdivision 3 Obligations of occupiers of at risk licensed buildings

104KJ Application of sdiv 3

This new provision specifies that this subdivision applies if an occupancy notice is in force for a licensed building and that any reference to the occupier in this subdivision 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

This provision states that the occupier must ensure that the number of people within the building does not exceed the maximum allowed occupancy number.

104KL Ensuring staff are aware of the occupancy number

This new provision requires an occupier to ensure that each employee, who is present in the building when members of the public may enter the building, is aware of the occupancy number for the building.

104KM Implementing a counting system

This new provision applies only to buildings that are entirely licensed buildings and have an occupancy number of 200 or more. For such buildings, the occupier must ensure that the required counting system is implemented at all times that the building is open to the public. This section defines a required counting system as: for a building with an occupancy number of at least 200 but less than 1000, then either a manual counting system (such as a clicker or tickets) or an automatic counting system, which is a system that is capable of operating without human intervention; for a building with an occupancy limit of at least 1000, then an automatic counting system is required.

104KN Displaying signs stating the occupancy number

This new provision refers only to buildings that are entirely licensed buildings and have an occupancy number of 200 or more and requires the occupier to conspicuously display a sign stating the occupancy number for the building above every public entrance.

104KO including the occupancy number in particular fire and evacuation plans

This new provision requires that the occupancy number be stated in the occupier's fire and evacuation plan for the building.

104KP Notifying the commissioner of relevant changes

This provision requires the occupier to provide written notice to the commissioner of any changes relating to the matters in 104KP(2) that may increase the risk of overcrowding. Further, if a person stops being an

occupier, then the person must immediately give the commissioner written notice of this change.

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

This provision empowers an authorised fire officer, who either knows or reasonably suspects the number of persons in the building is more than the occupancy number, to require the occupier to either do or stop doing something in order to reduce the risk to the safety of the persons in the buildings, including for example: asking persons in the building to leave, stopping music or other entertainment and stopping the service of alcohol. This requirement may be made either orally or in writing, but if given orally, it must be confirmed in writing as soon as possible. The occupier must comply unless the occupier has a reasonable excuse. Under this provision, the occupier includes the 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)

This new provision permits the commissioner to give copies of occupancy notices to the chief executive of the department in which the *Liquor Act 1992* is administered.

104KS Commissioner may publish occupancy numbers

This new provision permits the commissioner to disclose to the public occupancy numbers established for licensed premises.

Omission of pt9A, div 4 hdg (Objection to notices)

Clause 28 omits the heading, Part 9A, division 4 heading.

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

Clause 29 allows a person that is aggrieved by a notice given in a particular case under section 69 (2)(a) to object in writing to that notice. This

provision needs to be read in conjunction with clause 15 that provides that the notice must contain a statement on its face stating that an objection may be made and stating how to make that objection. The clause should also be read in conjunction with clause 104PA that permits an application for a stay of a notice in defined circumstances.

The clause also removes references to the "regional commander" as this position no longer exists within the Queensland Fire and Rescue Service.

Amendment of s 104M (Panel of Referees to be convened)

This clause omits the word "division" and inserts in its stead the word "part". The amendment is necessary because clause 39 of the Bill reorganizes the objection provisions of the *Fire and Rescue Service Act 1990* into a new Part, Part 9B.

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

Clause 31 (1) includes a nominee of the chief executive of the department in which the *Liquor Act 1992* is administered as a member of the panel of referees in relation to objections in relation to occupancy limits for at risk licensed buildings. The intention of the clause is to ensure that the panel hearing such objections has the benefit, in its deliberations, of a member with knowledge and expertise of the liquor industry.

The clause also effects necessary renumbering and makes adjustments to the referee panel to accommodate new appeals from notices under section 69(2)(a) of the *Fire and Rescue Service Act 1990*.

Amendment of s 104O (Determination of Objection)

Clause 32 effects necessary renumbering of section 104O. Also, clause 32(6) provides that if the panel of referees has 4 members the chair referee has the casting vote. For occupancy limit appeals the panel will consist of 4 members due to the addition of a nominee by the chief executive administering the *Liquor Act 1992*.

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

Clause 33 extends to persons objecting to occupancy notices in relation to occupancy limits for at risk licensed premises the same level of protection that applies to objectors against enforcement notices issued under section 104G of the *Fire and Rescue Service Act 1990.* If an objection is validly

made an objector is not liable to a penalty under the Act for failing to comply with the notice until the objector is given notice of the outcome of the objection. This provides a necessary and appropriate level of protection to an objector pending the determination of the objection.

Insertion of new s 104PA

Clause 34 inserts a new provision which applies where an objection is made to a notice by the commissioner given under section 69(2)(a) of the *Fire and Rescue Service Act 1990*. The provision of a right to object to such a notice is a new provision in the Bill. Section 69 (2)(a) authorises the commissioner to give a notice to an occupier to take measures to reduce the risk of fire occurring on a premises or reducing the risk to persons, property and the environment in the event of a fire. The notice can require measures to be taken such as making firebreaks, removing vegetation and suspending operations for specified periods. The notice is available for use in emergent situations where there is a high degree of risk and the necessity for prompt action. For this reason it is not appropriate that, by lodging a valid objection, an objector obtains the benefit of a relief from penalty as is the case for objections from building fire safety notices under section 104G of the Act and licensed premises occupancy notices.

The clause provides that the making of an objection does not stay the notice; however, the panel of referees may, on application by the objector, grant a stay of the notice where this is necessary to secure the effectiveness of the objection and any later appeal.

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

Clause 35 renumbers an internal reference in section 104Q to reflect new numbering in the Bill.

Amendment of s 104R (Injunctions)

Clause 36 amends section 104R to extend the capacity of the Commissioner of the Queensland Fire and Rescue Service to apply for an injunction from the Supreme Court prohibiting or restricting use of a building. Currently, the injunction is available where the risk to persons in the event of fire, or the risk of spread of fire, is so serious that use of the building should be prohibited or restricted until steps have been taken to reduce the risk to a reasonable level. The Queensland Fire and Rescue Service has a statutory responsibility to protect persons property and the environment from hazardous materials emergencies. The injunction power

has been extended to permit the grant of an injunction where the risk to persons in the event of a hazardous materials emergency is so serious that use of a building should be prohibited or restricted until the risk is reduced to a reasonable level.

Insertion of Part 9A, division 5A

Clause 37 inserts new provisions, Part 9A, division 5A dealing with the installation and ongoing maintenance of smoke alarms in certain domestic dwellings.

Division 5A Smoke Alarms for Domestic dwellings

104RA Interpretation

This provision defines the terms used throughout the division, including:

- "domestic dwelling" means a class 1a and sole occupancy unit in a class 2 building. Class 1a and class 2 buildings are defined as buildings so defined under the 2005 edition of the Building Code of Australia. This term is the critical definition in the scheme of the smoke alarm provisions as it defines the types of building to which the smoke alarm provisions apply;
- "information statement" in relation to a tenant means the statement given to the tenant under the *Residential Tenancies Act 1994*, section 43. Under section 43 of the *Residential Tenancies Act 1994* the lessor or lessor's agent must give a tenant a statement in the approved form containing information for the benefit of the tenant. One of the things about which information may be provided is the duties and entitlements of the landlord and tenant. Information about the tenants obligations to test, clean and change batteries in smoke alarms (see sections 104RC, 104RE and 104RG of the Bill) will be included in the information statement so that tenants are informed about their smoke alarm maintenance obligations.
- "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. It is noted that the smoke alarm provisions are laws

dealing with issues about the health or safety of persons under section 103 (1) (d) and 3 (c) of the *Residential Tenancies Act 1994*. Accordingly the smoke alarm laws are obligations imposed under the *Residential Tenancies Act 1994* which are taken to be included in residential tenancy agreements under the *Residential Tenancies Act 1994.*

- "manufactured home", is defined by reference to the definition of " manufactured home" in section 10 of the *Manufactured Homes (Residential Parks) Act 2003.* The Bill defines a range of terms by reference to the *Manufactured Homes (Residential Parks) Act 2003.* These definitions are necessary to support the manufactured homes smoke alarm provisions contained in Section 104RM of the Bill.

- "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. These instructions are required to be packaged with the smoke alarm by Australian Standard 3786-1993, which specifies the design and performance requirements for smoke alarms. The standard specifies that smoke alarms must be packaged with installation instructions that include typical installation layouts and the operation, testing and maintenance procedures for the packaged alarm.

- "tenant" means a person to whom the right to occupy a premises is given under a residential tenancy agreement to which the *Residential Tenancies Act 1994* applies and includes the subtenant of the tenant. The definition means that a person with a right to occupy premises to which the *Residential Tenancies Act 1994* does not apply is not a tenant for the purposes of the application of the smoke alarm provisions. This is intended to incorporate the inclusions and exclusions listed in Part 4, division 2 of the *Residential Tenancies Act 1994*. The most important of these exclusions is that contained in section 21 of the *Residential Tenancies Act 1994* which excludes premises used for holidays. Under section 21 (2) of the *Residential Tenancies Act 1994* a right to occupy premises for 6 weeks or longer is taken not to be for holiday purposes unless the contrary is proved. The intention is that tenants of short holiday tenancies (usually 6 weeks or less) are not caught by the smoke alarm maintenance provisions contained in the Bill (i.e. ss104RD, 104RE, 104RF and 104RG of the Bill).

- "transfer date" for residential land, means the date the transferee of 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 under the *Land Act 1994* as a lessee or personal representative of a deceased lessee of the land or as an owner or the personal representative of a deceased owner of the land.
- "transferor" of residential land means either: the mortgagee in possession of the land immediately before the transfer date under the *Property Law Act 1974*; or the person registered, immediately before the transfer date for the land, as a lessee or personal representative of a deceased lessee of the land or as an owner or personal representative of a deceased owner of the land under the *Land Act 1994*.

104RB Owner must Install Smoke Alarm

This new provision specifies that the only type of smoke alarm permitted to be installed is one that complies with the Australia Standard 3786-1993. With regard to installation requirements in class 1a and class 2 buildings, this new provision specifies that smoke alarms be installed in accordance with Building Code of Australia (BCA) requirements. However, this section allows the owner of a domestic dwelling to put a smoke alarm at another location that will provide a warning if it is impracticable to put a smoke alarm at the location required by the BCA. For example, a smoke alarm that is regularly activated by steam from a bathroom or smoke or fumes from a kitchen may be moved to another location.

104RC Lessor must replace smoke alarm

This new provision requires that the lessor of a domestic dwelling must replace a smoke alarm before it reaches the end of its service life. Australian Standard 3786-1993 states that a smoke alarm shall have a recommended service life of at least 10 years under normal conditions of use.

104RD Testing smoke alarms

This new provision states the smoke alarm testing obligations for lessors and tenants. The lessor is obliged to test smoke alarms within 30 days

before the start of a tenancy. During the tenancy the tenant must test smoke alarms once every 12 months.

The testing by the tenant and lessor for smoke alarms with a test button or other testing device is done by pressing the button or device. The purpose of the test is to ascertain whether the alarm is capable of detecting smoke. This type of test is the most common type of test as at the date of these notes.

There are alarms that are tested in other ways, for instance some smoke alarms can be tested by the light from a torch. For alarms tested other than by pressing a button or device they are to be tested by lessors in accordance with the manufactures's instructions and by tenants as specified in the information statement provided by the lessor at the start of the tenancy.

By virture of the definition of tenant the testing obligations placed on tenants by this provision do not apply to a tenant of a short term holiday tenancy (see notes to section 104RA). However, the lessor's testing obligations still apply.

104RE Lessor must replace battery in smoke alarm

This new provision states the smoke alarm battery replacement requirements for tenants and landlords.

The lessor is obliged to within 30 days of the start of a tenancy to replace batteries that are spent or that the lessor is aware are nearly spent. During the tenancy the tenant must replace batteries that are spent or that the tenant is aware are almost spent. Under the applicable Australian Standard smoke alarms are required to emit a warning signal (for example a shirping sound) when a battery is almost spent.

By virtue of the definition of tenants the battery replacement obligations placed on tenants by this provision do not apply to a tenant of a short term holiday tenancy (see notes to section 104RA). However, the lessor's obligations still apply.

104RF Tenant must advise lessor if battery needs replacing

This new provision states that a tenant must advise a lessor if the smoke alarm fails or is about to fail.

104RG Cleaning smoke alarms

This new provision state the smoke alarm cleaning obligations for lessors and tenants. The lessor is obliged to clean smoke alarms within 30 days before the start of a tenancy. During the tenancy the tenant must clean smoke alarms once every 12 months.

Alarms are to be cleaned by lessors in accordance with the manufacturer's instructions and for tenants as specified in the information statement provided by the lessor at the start of the tenancy.

By virtue of the definition of tenant the testing obligations placed on tenants by this provision do not apply to a tenant of a short term holiday tenancy (see notes to section 104RA). However, the lessor's testing obligations still apply.

104RH Person must not interfere with smoke alarm

This new provision states that a person must not remove a smoke alarm or remove the battery from the smoke alarm or do anything that would reduce the effectiveness of the warning provided by the smoke alarm. However, a smoke alarm or a battery from a smoke alarm may be removed for maintenance purposes, such as battery or alarm replacement. As per section 104RB of the Act, the owner of a domestic dwelling is permitted to put a smoke alarm at another location that will provide a warning if it is impracticable to put a smoke alarm at the location required by the Building Code of Australia.

104RI Division applies for all alarms

Under this new provision, the Owner of a domestic dwelling who has installed a smoke alarm that is not required to be installed under section 104RB of the Act must nevertheless still comply with all sections under this part. For example, if an Owner chooses to install additional alarms that exceed the minimum requirements then these must comply with all sections in this part, including testing, cleaning and battery replacement requirements.

104RJ Agent may act for owner

This new provision allows an agent, other than a tenant, to act on behalf of an owner to carry out any smoke alarm requirements. If the owner is a lessor the tenant must not be the agent. The intention of this provision is to

ensure that a lessor does not transfer the lessor's obligations under the Bill to the tenant.

104RK Notice to transferee about smoke alarms

With respect to agreements dated from 1 July 2007 or after, this new provision requires that the transferor of residential land must, on or before the date of possession of the land, give the transferee of the land written notice of whether smoke alarms complying with all applicable legislative requirements are installed in the domestic dwelling on the land.

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

This new provision requires a transferor of residential land to give a notice containing specified property information and an indication as to whether smoke alarms were installed in the property within 90 days of possession. The transferor is also required to indicate that written advice about smoke alarms was provided to the transferee. The notice can be given to the chief executive that administers the *Land Act 1994* and the *Land Title Act 1994*.

Administrative arrangements will be in place before commencement to include the smoke alarm material in the Property Transfer Information-Form 24, which is administered by the Queensland Land Registry.

104RM Notice to buyer of manufactured home about smoke alarms

This new provision requires that the seller of a manufactured home give the buyer of the home a notice stating whether smoke alarms complying with the division are installed in the manufactured home.

The notice must be included in the form of assignment provided for in section 47 of the *Manufactured Homes (Residential Parks) Act 2003*.

Manufactured homes as defined in section 10 of the *Manufactured Homes (Residential Parks) Act 2003* are domestic dwellings as defined in section 104RA as they are class 1a buildings as defined under the Building Code of Australia. Accordingly manufactured homes are required to install smoke alarms as required by the division.

The intention of section 104RM is to provide a smoke alarm compliance mechanism for smoke alarms that requires the seller of a manufactured home to advise the buyer whether compliant alarms are installed.

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

Clause 38 inserts new provisions to broaden the power of the Governor in Council to make regulations under section 154 with respect to: the installation and maintenance of smoke alarms; and matters necessary to protect persons, property and the environment from fire and hazardous emergencies.

Insertion of new pt 9B

Clause 39 inserts a new Part 9B dealing with objections to notices.

Part 9B Objections to notices

104SA Application of Pt 9B to notices under s 69

This provision states that the part applies to a notice given under section 69(2)(a) as if a reference in the part to a building were a reference to premises. This provision is necessary to apply the objection provisions to section 69 (2)(a) notices because section 69 (2)(a) applies to premises not only to buildings. Premises are defined in Schedule 6 of the *Fire and Rescue Service Act 1990* to mean any land or building.

Renumbering and relocation of ss 104L-104Q

Clause 40 renumbers and relocates sections 104L-104Q to part 9B.

Amendments of s115 (Annual contribution etc. deemed to be rates)

Clause 41 amends s 115 to correct a drafting error and update internal cross references.

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

Under section 147 of the *Building Act 1975,* private certifiers are required to keep certain records relating to the specifics of a building being approved for construction under the *Integrated Planning Act 1997*. These documents include a list of required fire safety installations and required special fire services.

Section 137 of the *Fire and Rescue Service Act 1990* requires that local governments provide fire safety officers with these documents where the local government has certified a building.

Clause 42 amends section 137 of the *Fire and Rescue Service Act 1990* to extend to building certifiers the requirement to provide fire safety inspectors with records where these records are not available from local government. This power permits an authorised officer to enter any premises in which a certifier carries on business during the ordinary hours of business. Nothing in the section permits an officer to enter any part of a dwelling if the part of the dwelling is not also a workplace.

Amendment of s 142A (Confidentiality)

The Queensland Fire and Rescue Service is currently impeded by confidentiality provisions of the *Fire and Rescue Service Act* 1990 from providing information about building fire safety to prospective building purchasers or tenants.

Clause 43 amends section 142A of the Act to allow QFRS to disclose any information in relation to fire safety at a premises to the owner, occupier or a person with an interest in the premises.

Disclosure is also permitted where the disclosure is reasonably necessary for enforcement of the criminal law.

Amendment of s 144 (Charges for services)

Clause 44 amends the charges for services provision of the *Fire and Rescue Service Act 1990* to clarify the intent of the section by:

- Amending s 144(1), which prior to the amendment provided that charges could be made for any service provided by the chief executive, to provide that charges can be made for any service provided under the Act. This more clearly incorporates the intent of the section that all services except for those specifically exempted are able to be charged;
- Amending s 144(7) to clearly provide that owners of prescribed property are liable to be charged for attendances at unwanted alarms;
- Adding a new section 144(12), which recognizes that the chief executive is able to waive a charge where it is reasonable in the circumstances to do so.

Amendment of s 147 (Offences)

Clause 45 inserts particular penalties for each of the offences enumerated in section 147 instead of one general penalty for all the offences listed. Current drafting practice is to allocate the requisite penalty for each individual offence rather than allocating penalties for a number of offences by way of a general penalty offence. The penalties are the same as or less than the general penalty that formerly applied.

Replacement of ss 148 and 149

Clause 46 replaces section 148 that provides that a prosecution under the Act is by way of a summary proceeding. It also replaces section 149 that provided a general offence and penalty for a range of offences under the Act.

148 Indictable and summary offences

This new provision states when offences are misdemeanors, crimes and summary offences.

148A Proceedings for indictable offences

This new provision establishes the procedures for indictable offences.

148B Limitation on who may summarily hear indictable offence proceedings

This new provision establishes the appropriate jurisdiction in which summary offences matters are dealt with.

148C Proceeding for offences

This new provision states that proceedings for offences, other than indictable offences must be taken summarily under the *Justices Act 1886.*

148D when proceedings start

This new provision establishes the time limits for starting proceedings for summary offences.

148E Allegations of false or misleading information or document

This new provision states what can be included in charges for misleading information matters.

148F Forfeiture on conviction

This new provision states the circumstance in which the court can order forfeiture to the State anything that is used to commit an offence or that is the subject of the offence.

149 Dealing with forfeited thing

This new provision states how the State may deal with a forfeited thing.

Omission of s 150 (Continuing Offences)

Clause 47 omits the continuing offence provisions contained in the former section 150.

Amendment of s 153 (Evidentiary)

Clause 48 provides evidentiary assistance to establish and evidence the provision of a service to a person, the amount charged for the service and that the amount outstanding for a particular service.

Amendment of s 154 (Regulation making power)

Clause 49 (1) provides a head of power to make regulations for the institution and determination of appeals under part 9B and the charging of fees and charges.

Clause 49 (3) validates fees charged by the Queensland Fire and Rescue Service for the provision of fire safety advice by the service as part of the developmental approval process.

Amendment of sch 6 (Dictionary)

Clause 50 includes definitions for the purposes of the Bill.

Part 3 Amendment of Residential Tenancies Act 1994

Act amended in pt 3

Clause 51 states that the Bill amends the *Residential Tenancies Act 1994*.

Amendment of s109 (Grounds for entry)

Clause 52 amends the *Residential Tenancies Act 1994* to provide a right or entry for lessors to comply with *the Fire and Rescue Service Act 1990* in relation to smoke alarms and to comply with the *Electrical Safety Act 2002* in relation to approved safety switches.

Part 4 Amendment of the Building Act 1975

Act amended in pt 4

Clause 53 states that the Bill amends the *Building Act 1975*.

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

Clause 54 amends section 216 of the *Building Act 1975* to overcome the decision of the District Court of Queensland Charleville Registry in *Goldfox Investments Pty Ltd v Paul Evans* (No 1/2005 and 2/2005, 17 July 2006, per Wylie J).

In the Goldfox decision Wylie J decided that the mere existence of accommodation as defined in the definition of budget accommodation contained in section 216 of the Act as it then stood, was insufficient to prove for the purposes of a criminal prosecution, that the accommodation was in fact budget accommodation within the definition. His honour considered that it was necessary to prove that the accommodation was actually used for the purposes of providing budget accommodation to fall within the definition.

Section 216 was intended to apply to buildings configured to provide accommodation so that the mere existence of a building configured to provide accommodation in accordance with the definition would be

sufficient for the building to meet the definition of a budget accommodation building.

The Goldfox decision indicates that this intention has not been achieved and the section has been amended to achieve the original intention.

Section 216 (3) overcomes the Goldfox decision by specifying that evidence that a building has beds available for use is evidence that the building provides accommodation, whether or not persons are in fact present in the building at the time.

Further, section 216 (1) (a) has been amended to more clearly establish that it is the configuration of the building rather than its use that is the focus of the definition. Section 216 (1) (a) contains one aspect of the definition of a budget accommodation building and now states that a building whose occupants have shared access to a bathroom or sanitary facilities, other than a laundry is a budget accommodation building.

Part 5 Amendment of Building and Other Legislation Amendment Act 2006

Act amended in pt 5

Clause 55 states that part 5 amends the *Building and other Legislation Amendment Act 2006.*

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

Clause 56 omits three amendments to the *Fire and Rescue Service Act 1990* made by the *Building and other Legislation Amendment Act 2006.* The three amendments updated references in the *Fire and Rescue Service Act 1990* to the *Building Act 1975* to make them consistent with the renumbered and rearranged clauses of the *Building Act 1975.*

The updated references have now been incorporated directly into the Bill so that the amendments are no longer necessary.