

Fair Trading Inspectors Bill 2013

Explanatory Notes

Short title

The short title of the Bill is the Fair Trading Inspectors Bill 2013.

Policy objectives and the reasons for them

The policy objectives of the Bill are to:

1. address inconsistencies, harmonise, and consolidate inspectorate provisions contained in a number of Acts about fair trading
2. improve enforcement and compliance activities relating to fair trading legislation through harmonised and consolidated inspectorate provisions
3. provide a flexible legislative framework which enables additional Acts dealing with fair trading to be added to the scope of the Bill in the future
4. repeal the inspectorate provisions contained in particular Acts about fair trading and make consequential amendments.

There are a number of Acts about fair trading which are administered and enforced by the Department of Justice and Attorney-General (DJAG) through the Office of Fair Trading. These Acts contain inspectorate provisions, which deal with the appointment, powers and responsibilities of inspectors, and establish a range of offences relating to the exercise of inspectors' powers. Such provisions are necessary to monitor compliance with the legislation, investigate alleged breaches and prosecute offenders in order to protect consumers and ensure a fair and competitive marketplace.

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

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

Both reviews identified that inconsistencies arose largely as a result of legislation being enacted and amended at different times, noting that drafting styles can change over time. In many instances, no substantive reasons were identified for the inconsistencies in inspectorate and enforcement provisions between fair trading Acts.

Variations in inspectorate and enforcement provisions result in inefficiency and difficulty enforcing legislation, as well as inconsistent enforcement practices. Moreover, businesses and consumers may have difficulty understanding the different enforcement powers that may be exercised by inspectors under various Acts dealing with fair trading matters.

While the Bill primarily represents a considerable red tape reduction measure of an internal, administrative nature, the Bill is expected to benefit businesses and consumers through increased transparency and more consistent enforcement practices.

Achievement of policy objectives

The Bill establishes a law that provides common inspectorate provisions for the enforcement of certain Acts about fair trading (referred to in the Bill as 'primary Acts'). The common provisions represent a harmonisation and consolidation of the inspectorate provisions contained in the primary Acts. The common provisions also reflect standard inspectorate and enforcement principles, and will increase consistency of these types of laws across the statute book. In preparing the Bill, provisions have been drafted having regard to fundamental legislative principles.

The following Acts are the primary Acts under the Bill:

- *Agents Financial Administration Act 2013*
- *Debt Collectors (Field Agents and Collection Agents) Act 2013*
- *Funeral Benefit Business Act 1982*
- *Introduction Agents Act 2001*
- *Land Sales Act 1984*
- *Manufactured Homes (Residential Parks) Act 2003*
- *Motor Dealers and Chattel Auctioneers Act 2013*
- *Property Occupations Act 2013*
- *Residential Services (Accreditation) Act 2002*
- *Retirement Villages Act 1999*
- *Second-hand Dealers and Pawnbrokers Act 2003*
- *Security Providers Act 1993*

- *Tourism Services Act 2003*
- *Travel Agents Act 1988*

In order to achieve a balance between common enforcement provisions and specialisation, the Bill allows the common provisions to be modified in relation to stated Acts through the use of 'modifying provisions'.

As stated above, one objective of the Bill is to provide a flexible framework in which additional Acts about fair trading (including legislation administered by government agencies other than DJAG) can be added as a primary Act, and thereby utilise the harmonised inspectorate and enforcement provisions contained in the Bill.

For example, the Manufactured Homes (Residential Parks) Act, Residential Services (Accreditation) Act and Retirement Villages Act were formerly administered by DJAG, but are currently administered by the Department of Housing and Public Works.

Among other matters, these Acts deal with important fair trading issues and it is therefore appropriate for the Acts to be primary Acts under the Bill. The Bill provides administrative flexibility by allowing a department other than DJAG to utilise the provisions of the Bill for enforcement of that department's legislation without having an operational impact on DJAG. That is, the department with responsibility for administering a primary Act will remain responsible for the resourcing and management of its inspectors.

Finally, the Bill repeals the inspectorate provisions in the primary Acts and makes the necessary consequential amendments. Repealing inspectorate and enforcement provisions that will become unnecessary as a result of the Bill will make a significant contribution to reducing the volume of regulation and legislative requirements under the primary Acts.

Alternative ways of achieving policy objectives

An alternative to the Bill, as recommended in the 2002 review of the Fair Trading Act, is to insert the common inspectorate provisions into the Fair Trading Act itself. This option was not implemented due to substantial amendments made to the Fair Trading Act to apply the Australian Consumer Law in Queensland. The Fair Trading Act therefore falls outside the scope of this Bill due to its application of the Australian Consumer Law.

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

Estimated cost for government implementation

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

Consistency with fundamental legislative principles

Questions about consistency with fundamental legislative principles contained in section 4 of the *Legislative Standards Act 1992* and those that are generally recognised will invariably arise given the subject matter of the Bill. However, investigative and enforcement powers are necessary to achieve the overarching consumer protection objects of the primary Acts.

The Bill has been drafted to have sufficient regard to fundamental legislative principles. The powers contained in the Bill represent a suite of powers, ranging from less intrusive to more intrusive powers. It is entirely appropriate, as well as intrinsic to the nature of their job, for inspectors to have at their disposal a range of powers to be used depending on the seriousness of the situation in question and in accordance with internal administrative procedures and appropriate managerial oversight. For example, it would not be contemplated to use search and entry powers in a simple dispute between a consumer and trader over a refund. There are, however, instances in fair trading legislation involving health and safety and significant financial detriment and in such cases, the ability of inspectors to use more forceful powers to protect affected parties is vital. The Bill is structured in such a way that these variances are accounted for, with sufficient regard also for fundamental legislative principles. A more detailed discussion of fundamental legislative principles is provided below.

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

Clause 22 of the Bill confers power on inspectors to enter places under a number of circumstances, including where no warrant is issued. An inspector may enter a place if—

- (a) an occupier of the place consents under division 2 to the entry and clause 25 has been complied with for the occupier; or
- (b) it is a public place and the entry is made when it is open to the public; or
- (c) the entry is authorised under a warrant and, if there is an occupier at the place, clause 32 has been complied with for the occupier; or
- (d) it is a place of business that is regulated by a primary Act and is—
 - (i) open for carrying on business; or
 - (ii) otherwise open for entry; or
 - (iii) required to be open for inspection under the primary Act.

While inspectors may enter a place without a warrant, the circumstances they may do so under clause 22 are sufficiently limited. Additionally, the Bill provides appropriate safeguards. For instance, clauses 25 and 26 prescribe procedures that inspectors must follow when entering a place with consent while clause 32 prescribes the procedure for entering a place under a warrant.

Clause 34 confers power on inspectors to direct a person to stop or move vehicles in order to allow the inspector to exercise his or her powers. While this may appear to be an excessive power, the power may only be exercised if an inspector reasonably suspects, or is aware, that a thing in or on a vehicle may provide evidence of the commission of an offence against the Bill or a primary Act. It should also be noted that the power in the Bill is unlike the power available to police in that it is much more limited. For instance, inspectors do not have the power to establish road blocks or conduct pursuits. The power is justified on the grounds that a vehicle is just as likely to contain evidence of the commission of an offence as a place, particularly in relation to itinerant traders. It therefore follows that inspectors should have the power to stop vehicles so that they can be searched. The Office of Fair Trading will also develop the appropriate policies, procedures and training to ensure that the power can be exercised safely and lawfully.

Once an inspector has entered a place, the Bill confers a number of powers that may be exercised. Clause 38 lists the general powers that an inspector may exercise after entering a place. The powers in clause 38, are relatively standard powers available to inspectors in legislation and do not include any expanded or additional powers. In respect to seizing items, the Bill provides safeguards in that the decision to seize the item is subject to internal review and appeal to the Magistrates Court; the person entitled to the seized item may have access to it; and the seized item must be returned. The chief executive's decision to forfeit a seized item to the State can also be appealed against to the Magistrates Court.

Clause 42 confers powers on inspectors to seize evidence at a place that may be entered only with consent or warrant. An inspector may also seize anything else at the place on the reasonable belief that the thing is evidence of an offence against a primary Act or has just been used in committing an offence against a primary Act. While concerns may be raised that seizing evidence of an offence unrelated to the investigation or warrant may adversely affect the rights and liberties of individuals, clause 42 enshrines the established common law power referred to as the 'chance discovery' principle. The chance discovery principle is also currently enshrined in primary Acts to be harmonised in the Bill, as well as other Queensland laws and laws of other Australian jurisdictions.

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

Clause 40 makes it an offence for a person to contravene a requirement to help an inspector made under clause 39. While self-incrimination is a reasonable excuse, it does not apply if a document or information the subject of the help requirement is required to be held or kept under a primary Act. It is considered appropriate to abrogate the privilege against self-incrimination in this instance as the person is specifically required under a primary Act to keep certain documents or information. Accordingly, such documents or information would be peculiarly within the possession or knowledge of the person and would otherwise be difficult to obtain or establish.

Clause 58 makes it an offence for a person to contravene a document production requirement made under clause 57. It is not a reasonable excuse for a person to fail to comply with the requirement if it might tend to incriminate the person. Again, it is considered appropriate to abrogate the privilege in this instance as the documents required to be produced are those which are issued to a person or required to be kept by a person under a primary Act.

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

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

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

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

Privacy and confidentiality rights

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

Appropriateness of penalties

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

The penalties in the Bill, however, are still considered to be proportionate to the seriousness of the offence. For instance, a maximum penalty of 20 penalty units is prescribed under clause 19 if a person who ceases to be an inspector fails to return their identity card to the chief executive within 21 days. The more serious offences, such as those which go directly to an inspector's ability to exercise their powers and undertake an investigation, attract higher maximum penalties. For instance, a maximum penalty of 200 penalty units or 2 years imprisonment is prescribed under clause 68 for the offence of giving an inspector false or misleading information.

Forfeiture of property

Clause 50 gives the chief executive power to decide that a seized thing is forfeited to the State. However, under the Bill, property can only be seized if it is authorised under a warrant or an inspector reasonably believes the property is evidence of an offence, or has just been used in committing an offence. The chief executive can only forfeit a seized thing to the State if an inspector:

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

A further safeguard is provided in that the chief executive's decision is subject to both internal review and appeal to the Magistrates Court.

Usual safeguards

As indicated, the Bill has been drafted to have sufficient regard to fundamental legislative principles. The Bill contains usual safeguards included in inspectorate and enforcement provisions of legislation, which include:

- issuing inspectors with identification cards and requiring the cards to be produced or displayed before or when exercising a power
- limiting the power to enter a place of residence with consent of the occupier or warrant only
- requiring an inspector to give appropriate warnings before exercising a power
- providing for the seizure of things only with justification (i.e. by warrant or reasonable belief)
- requiring an inspector to give a receipt for a seized thing
- allowing the owner of a seized thing to have access to it
- providing for the return of the seized thing, unless there are reasonable grounds that it should be forfeited
- requiring an inspector to give notice of any damage to the owner of the property, and allowing the owner to make a claim for compensation
- providing evidential immunity to balance the abrogation of the privilege against self-incrimination.

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

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

Consultation

The SDPC conducted extensive consultation during its review. The SDPC's recommendations were subsequently borne from this consultation process. Queensland Government agencies were also consulted in the development of the Bill and a draft Bill was released for public consultation.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another state.

Notes on provisions

Chapter 1 Preliminary

Clause 1 states that when enacted, the Bill will be cited as the *Fair Trading Inspectors Act 2013* (the Act).

Clause 2 states that the Act commences on a day to be fixed by proclamation.

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

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

- (a) *Agents Financial Administration Act 2013*;
- (b) *Debt Collectors (Field Agents and Collection Agents) Act 2013*;
- (c) *Funeral Benefit Business Act 1982*;
- (d) *Introduction Agents Act 2001*;
- (e) *Land Sales Act 1984*;
- (f) *Manufactured Homes (Residential Parks) Act 2003*;
- (g) *Motor Dealers and Chattel Auctioneers Act 2013*;
- (h) *Property Occupations Act 2013*;
- (i) *Residential Services (Accreditation) Act 2002*;
- (j) *Retirement Villages Act 1999*;
- (k) *Second-hand Dealers and Pawnbrokers Act 2003*;
- (l) *Security Providers Act 1993*;
- (m) *Tourism Services Act 2003*;
- (n) *Travel Agents Act 1988*.

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

Clause 5 modifies the common provisions of the Act for the *Manufactured Homes (Residential Parks) Act 2003*. Specifically, the definition of ‘occupier’ is modified so that a park owner of a residential park is an occupier of the residential park, other than in relation to any part of the park that is a home owner’s manufactured home or the site on which it is positioned. Also, the entry power under clause 21(1)(d) is modified to include the power to enter a place (other than a part of the place where a person resides) that is an office or other place for administering or managing a residential park for which site agreements are in force, and that is—

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

Clause 6 modifies the common provisions of the Act for the Property Occupations Act. In clauses 28, 41, 42, 49, 55 and 67, a reference to an offence against a primary Act is taken to include a reference to a contravention of particular sections of the Property Occupations Act. The modifying provision ensures that inspectors can exercise specified powers to investigate concerns about marketeers engaging in particular misleading or unconscionable conduct, or making false representations relating to residential property.

Clause 7 modifies the common provisions of the Act for the Residential Services (Accreditation) Act. Specifically, the definition of ‘occupier’ is modified so that it includes the service provider for premises at which a residential service is provided, other than in relation to any part of the premises that is occupied by a person as the person’s place of residence. Also, if an inspector enters a private residence under clause 22(1)(a) or (c), the inspector must preserve, as far as practicable, the privacy of anyone living at the residence. This continues the existing requirements in the Residential Services (Accreditation) Act.

Clause 8 modifies the common provisions of the Act for the Retirement Villages Act. Specifically, the entry power under clause 22(1)(d) is modified to include the power to enter a place (other than a part of the place where a person resides) that is an office or other place for administering or managing a retirement village and that is—

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

Clause 9 modifies the common provisions of the Act for the Tourism Services Act. Specifically, the entry power under clause 22(1)(d) is modified to include the power to enter a place (other than a part of a place where a person resides) if—

- (a) the inspector reasonably believes that records relating to carrying on the business of an inbound tour operator, or business as a tour guide, are kept at the place; and
- (b) the place is—
 - (i) open for carrying on business; or
 - (ii) otherwise open for entry.

An inspector also must not seize a thing under clause 41 or 42 if the inspector knows or suspects it is the property, or in the possession, of a tourist. Additionally, a reference to an offence against a primary Act in clauses 28, 33, 41, 42, 49, 55 and 67 is taken to include a reference to a 'relevant contravention', as defined in schedule 2 of the Tourism Services Act. These modifications continue the existing position in the Tourism Services Act.

Clause 10 modifies the common provisions in the Bill for the *Travel Agents Act 1988*. Specifically, compliance with the document production requirement under clause 57(1) in relation to a document requires making available for inspection by an inspector, or producing to the inspector for inspection, in addition to the document, a statement, written in the English language and decipherable on sight, containing the whole of the information in the document. This requirement continues the position in the Travel Agents Act and applies only in relation to a document that is not written in the English language or is not decipherable on sight.

Clause 11 provides that the dictionary in schedule 1 defines particular words used in the Act.

Chapter 2 Inspectors

Part 1 General provisions about inspectors

Division 1 Functions

Clause 12 makes provision for the functions of inspectors under the Act in relation to both the Act itself or a primary Act. Subclause (1) provides that for the Act or a primary Act, an inspector has the following functions—

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

Subclause (2) provides that subject to the Act, an inspector may exercise the powers under the Act for the purpose of these functions.

Subclause (3) provides that subject to the modifying provisions for the Manufactured Homes (Residential Parks) Act, Property Occupations Act, Residential Services (Accreditation) Act, Retirement Villages Act, Tourism Services Act and Travel Agents Act, and any provisions of the primary Act, the functions are in addition to and do not limit any functions the inspector has under the primary Act. Subclause (4) provides that it is unnecessary for the inspector to hold a separate appointment for the Act.

Division 2 Appointment

Clause 13 provides for the appointment and qualifications of inspectors. Subclause (1) allows the chief executive (as defined in schedule 1), to appoint any of the following persons (by instrument in writing) as an inspector for a primary Act—

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

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

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

Clause 14 provides for the appointment conditions and limits on inspectors' powers. Subclause (1) provides that an inspector holds office on any conditions stated in—

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

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

Clause 15 provides for when an inspector ceases to hold office. Subclause (1) provides that the office of a person as an inspector ends if any of the following happens—

- (a) the term of office stated in a condition of office ends;
- (b) under another condition of office, the inspector ceases to hold office;
- (c) the inspector's resignation under clause 16 takes effect.

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

Clause 16 makes provision for the resignation of inspectors. Subclause (1) provides that an inspector may resign by signed notice given to the chief executive. However, subclause (2) provides that if holding office as an inspector is a condition of the inspector holding another office, the inspector may not resign as an inspector without resigning from the other office.

Division 3 Identity cards

Clause 17 makes provision for the issue of identity cards to inspectors. Subclause (1) requires the chief executive to issue an identity card to each inspector. Subclause (2) provides that the identity card must—

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

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

Clause 18 places a requirement on inspectors to produce or display their identity card. Subclause (1) provides that in exercising a power in relation to a person in the person's presence, an inspector must—

- (a) produce the inspector's identity card for the person's inspection before exercising the power; or
- (b) have the identity card displayed so it is clearly visible to the person when exercising the power.

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

Subclause (3) provides that for subclause (1), an inspector does not exercise a power in relation to a person only because the inspector has entered a place as mentioned in clause 22(1)(b) or (d).

Clause 19 requires a person who ceases to be an inspector to return their identity card to the chief executive within 21 days after ceasing to hold office as an inspector unless the person has a reasonable excuse. A maximum penalty of 20 penalty units applies for a contravention.

Division 4 Miscellaneous provisions

Clause 20 clarifies the position in relation to references to the exercise of powers under the chapter. If a provision of the chapter refers to the exercise of a power by an inspector and there is no reference to a specific power, the reference is to the exercise of all or any inspectors' powers under the chapter or a warrant, to the extent the powers are relevant.

Clause 21 clarifies the position in relation to references to a document. A reference in the chapter to a document includes a reference to an image or writing produced from an electronic document; or not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

Part 2 Entry to places by inspectors

Division 1 Power to enter

Clause 22 makes provision for an inspector's general power to enter places. Under subclause (1), an inspector may enter a place if—

- (a) an occupier of the place consents under division 2 to the entry and clause 25 has been complied with for the occupier; or
- (b) it is a public place and the entry is made when it is open to the public; or
- (c) the entry is authorised under a warrant and, if there is an occupier of the place, clause 32 has been complied with for the occupier; or
- (d) it is a place of business that is regulated under a primary Act and is—
 - (i) open for carrying on the business; or
 - (ii) otherwise open for entry; or
 - (iii) required to be open for inspection under the primary Act.

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

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

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

Subclause (7) provides that for the clause, a place of business is regulated under a primary Act if the person who carries on business at the place holds, or is required to hold, an authority under the primary Act to carry on the business; or the place of business is, or is required to be, mentioned in an authority under the primary Act.

Subclause (8) provides a definition of 'authority'.

Division 2 Entry by consent

Clause 23 provides that the division applies if an inspector intends to ask an occupier of a place for consent to the inspector or another inspector entering the place under clause 22(1)(a).

Clause 24 provides that for the purpose of asking the occupier for the consent, the inspector may, without the occupier's consent or a warrant—

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

Clause 25 provides that before asking for the consent, the inspector must give a reasonable explanation to the occupier—

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

Clause 26 makes provision for the giving of a consent acknowledgment. Subclause (1) provides that if the consent is given, the inspector may ask the occupier to sign an acknowledgement of the consent. Subclause (2) then lists the matters the acknowledgement must state.

Subclause (3) provides that if the occupier signs the acknowledgement, the inspector must immediately give a copy to the occupier. However, subclause (4) provides that if it is impractical for the inspector to give the occupier a copy of the acknowledgement immediately, the inspector must give the occupier the copy as soon as practicable. There may be instances where it is impracticable to give a copy immediately, such as where a carbon copy or access to a photocopier may not be readily available.

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

Division 3 Entry under warrant

Subdivision 1 Obtaining warrant

Clause 27 makes provision for the application for a warrant. Subclause (1) provides that an inspector may apply to a magistrate for a warrant for a place. Subclause (2) requires an

inspector to prepare a written application that states the grounds on which the warrant is sought and subclause (3) requires the application to be sworn.

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

Clause 28 makes provision for the issue of a warrant. Subclause (1) provides that the magistrate may issue a warrant for the place only under subclause (2) or (3).

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

Subclause (3) allows monitoring warrants to be issued. The proactive monitoring of compliance with fair trading legislation is a key function of the Office of Fair Trading. The subclause provides that the magistrate may issue a warrant for the place for the purpose of the inspector's performance of the function mentioned in clause 12(1)(a) at the place if—

- (a) the place is a place mentioned in clause 22(1)(b) or (d); and
- (b) the magistrate is satisfied it is reasonably necessary that the inspector should have access to the place for the purpose of effectively performing the function at the place.

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

Clause 29 makes provision for the application for a warrant by electronic communication.

Clause 30 provides the additional procedures for an application made by electronic communication.

Clause 31 provides that a warrant is not invalidated by a defect in the warrant or in compliance with the subdivision unless the defect affects the substance of the warrant in a material particular. Subclause (2) defines 'warrant' to include a duplicate warrant mentioned in clause 30(3).

Subdivision 2 Entry procedure

Clause 32 sets out the procedure for entering a place and subclause (1) provides that the clause applies if an inspector is intending to enter a place under a warrant issued under the division. Subclause (2) provides that before entering the place, the inspector must do or make a reasonable attempt to do the following things—

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

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

Subclause (4) defines 'warrant' to include a duplicate warrant mentioned in clause 30(3).

Part 3 Other inspectors' powers and related matters

Division 1 Stopping or moving vehicles

Clause 33 provides that the division applies if an inspector reasonably suspects, or is aware, that a thing in or on a vehicle may provide evidence of the commission of an offence against the Act or a primary Act.

Clause 34 makes provision for the power to stop or move a vehicle. Subclause (1) provides that if the vehicle is moving, the inspector may, to exercise his or her powers, signal or otherwise direct the person in control of the vehicle to stop the vehicle and to bring the vehicle to, and keep it at, a convenient place within a reasonable distance to allow the inspector to exercise the powers.

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

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

Subclause (3) provides that when giving the direction under subclause (2), the inspector must give the person in control an offence warning (defined in schedule 1) for the direction.

Clause 35 makes provision for identification requirements if a vehicle is moving. Subclause (1) provides that the clause applies if the inspector proposes to give a direction under clause 34(1) and the vehicle is moving. Subclause (2) requires the inspector to clearly identify himself or herself as an inspector exercising the inspector's powers.

Subclause (3) provides that when the vehicle stops, the inspector must have with him or her the inspector's identity card, and immediately produce the identity card for the inspection of the person in control of the vehicle. Subclause (4) provides that subclause (3) applies despite clause 18.

Clause 36 makes a failure to comply with a direction an offence. Subclause (1) provides that the person in control of the vehicle must comply with a direction under clause 34 unless the person has a reasonable excuse. A maximum penalty of 165 penalty units applies for a contravention.

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

- (a) the vehicle was moving and the inspector did not comply with clause 35; or
- (b) to comply immediately would have endangered someone else or caused loss or damage to property, and the person complies as soon as it is practicable to do so.

However, subclause (3) provides that subclause (2) does not limit subclause (1). Subclause (4) provides that a person does not commit an offence against subclause (1) if the direction the person fails to comply with is given under clause 34(2), and the person is not given an offence warning for the direction.

Division 2 General powers of inspectors after entering places

Clause 37 deals with the application of division 2. Subclause (1) provides that the powers under the division may be exercised if an inspector enters a place under clause 22(1)(a), (c) or (d). However, subclause (2) provides that if an inspector enters under clause 22(1)(a) or (c), the powers under the division are subject to any conditions of the consent or terms of the warrant.

Clause 38 makes provision for an inspector's general powers after entering a place. Subclause (1) provides that the inspector may do any of the following (each a 'general power')—

- (a) search any part of the place;
- (b) inspect, examine or film any part of the place or anything at the place;
- (c) take for examination a thing, or a sample of or from a thing, at the place;
- (d) place an identifying mark in or on anything at the place;
- (e) take an extract from, or copy, a document at the place, or take the document to another place to copy;

- (f) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;
- (g) take to, into or onto the place and use any person, equipment and materials the inspector reasonably requires for exercising the inspector's powers under the division;
- (h) remain at the place for the time necessary to achieve the purpose of the entry.

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

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

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

Clause 39 makes provision for an inspector to require reasonable help from a person. Subclause (1) provides that the inspector may make a requirement (a 'help requirement') of an occupier of the place or a person at the place to give the inspector reasonable help to exercise a general power, including, for example, to produce a document or to give information.

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

Clause 40 makes it an offence to contravene a help requirement. Subclause (1) provides that a person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse. A maximum penalty of 200 penalty units or 1 year's imprisonment applies for a contravention.

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

Division 3 Seizure by inspectors and forfeiture

Subdivision 1 Power to seize

Clause 41 makes provision for an inspector's power to seize evidence at a place that may be entered without the occupier's consent or a warrant. Subclause (1) provides that an inspector who enters a place the inspector may enter under the Act without the consent of an occupier of the place and without a warrant under clause 28(2) may seize a thing at the place if the inspector reasonably believes the thing is evidence of an offence against the Act or a primary Act.

Subclause (2) provides that subclause (1) applies even if the entry is under a warrant issued under clause 28(3).

Clause 42 makes provision for an inspector's power to seize evidence and subclause (1) provides that the clause applies if—

- (a) an inspector is authorised to enter a place only with the consent of an occupier of the place or a warrant; and
- (b) the inspector enters the place after obtaining the consent or under a warrant issued under clause 28(2).

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

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

Subclause (3) provides that if the inspector enters the place under a warrant issued under clause 28(2), the inspector may seize the evidence for which the warrant was issued.

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

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

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

Clause 43 deals with seizing property subject to a security interest. Subclause (1) provides that an inspector may seize a thing, and exercise powers relating to the thing despite a lien or other security over it claimed by another person. However, subclause (2) provides that the

seizure does not affect the other person's claim to the lien or other security against a person other than the inspector or a person acting for the inspector.

Subdivision 2 Powers to support seizure

Clause 44 provides for an inspector's power to secure a seized thing. Subclause (1) provides that having seized a thing, an inspector may leave it at the place where it was seized and take reasonable action to restrict access to it, or move it from the place of seizure. Subclause (2) provides examples of actions an inspector may take to restrict access to a thing.

Clause 45 provides that a person must comply with a requirement made of the person under clause 44(2)(c) unless the person has a reasonable excuse. A maximum penalty of 50 penalty units applies for a contravention.

Clause 46 makes it an offence to interfere with a seized thing. Subclause (1) provides that if access to a seized thing is restricted under clause 44, a person must not tamper with the thing or with anything used to restrict access to the thing without an inspector's approval or a reasonable excuse. A maximum penalty of 50 penalty units applies for a contravention.

Subclause (2) provides that if access to a place is restricted under clause 44, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without an inspector's approval or a reasonable excuse. A maximum penalty of 50 penalty units applies for a contravention.

Subdivision 3 Safeguards for seized things

Clause 47 places a requirement on an inspector to give a receipt and information notice for a seized thing. Subclause (1) provides that the clause applies if an inspector seizes anything under the division unless—

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

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

- (a) a receipt for the thing that generally describes the thing and its condition; and
- (b) an information notice about the decision to seize it.

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

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

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

Clause 48 allows for access to a seized thing. Subclause (1) provides that until a seized thing is forfeited or returned, the inspector who seized the thing must allow an owner of the thing—

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

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

Clause 49 makes provision for the return of seized things and subclause (1) provides that the clause applies if a seized thing has some intrinsic value and is not—

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

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

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

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

- (a) its continued retention as evidence is no longer required; and
- (b) it is lawful for the owner to possess it.

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

Subdivision 4 Forfeiture

Clause 50 makes provision for the chief executive's power to forfeit particular seized things to the State. Subclause (1) provides that the chief executive may decide a seized thing is forfeited to the State if an inspector—

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

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

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

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

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

Clause 51 places a requirement on the chief executive to give an information notice about a forfeiture decision. Subclause (1) provides that if the chief executive decides under clause 50(1) to forfeit a thing, the chief executive must as soon as practicable give a person who owned the thing immediately before the forfeiture (the 'former owner') an information notice about the decision.

Subclause (2) provides that if the decision was made under clause 50(1)(a) or (b), the information notice may be given by leaving it at the place where the thing was seized, in a conspicuous position and in a reasonably secure way.

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

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

- (a) the decision was made under clause 50(1)(a) or (b); and
- (b) the place where the thing was seized is—
 - (i) a public place; or
 - (ii) a place where the notice is unlikely to be read by the former owner.

Subdivision 5 Dealing with property forfeited or transferred to State

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

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

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

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

Division 4 Disposal orders

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

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

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

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

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

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

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

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

Division 5 Other information-obtaining powers of inspectors

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Part 4 Obtaining criminal history reports

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

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

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

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

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

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

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

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

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

Part 5 Miscellaneous provisions relating to inspectors

Division 1 Damage

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

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

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

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

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

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

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

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

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

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

Division 2 Compensation

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

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

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

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

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

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

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

Division 3 Other offences relating to inspectors

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

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

Clause 69 makes it an offence to obstruct an inspector. Subclause (1) provides that a person must not obstruct an inspector exercising a power, or someone helping an inspector exercising a power, unless the person has a reasonable excuse. A maximum penalty of 200 penalty units or 1 year's imprisonment applies for a contravention.

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

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

Subclause (3) defines 'obstruct' to include assault, hinder, resist, attempt to obstruct and threaten to obstruct. The subclause also defines 'power' to mean a power under the Act or a primary Act.

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

Division 4 Other provisions

Clause 71 makes provision for evidential immunity. Subclause (1) provides that subclause (2) applies if an individual gives or produces information or a document to an inspector under clause 39 or 57.

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

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

Chapter 3 Appeals, evidence and legal proceedings

Part 1 Reviews and appeals

Division 1 Right of appeal

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

Division 2 Internal review of decisions

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

Clause 74 sets out how to apply for review.

Clause 75 clarifies that an application for review of a decision does not stay the decision. However, the applicant may apply to the Magistrates Court for a stay of the decision.

Clause 76 makes provision for the chief executive's review decision and the giving of a review notice to the applicant. The chief executive may confirm the original decision, amend the original decision, or substitute another decision for the original decision.

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

Division 3 Appeals

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

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

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

Clause 80 sets out the powers the court has in deciding an appeal. The court may confirm the review decision; or set aside the review decision and substitute another decision; or set aside the review decision and return the matter to the chief executive with directions the court considers appropriate.

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

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

Part 2 Evidence and legal proceedings

Division 1 Evidentiary provisions

Clause 82 provides that the division applies to a proceeding under the Act.

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

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

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

- (a) that a stated document of any of the following types is a document given, issued, kept or made under the Act—
 - (i) an appointment, approval or decision;
 - (ii) a direction or requirement;
 - (iii) a notice or other document given under the Act
- (b) that a stated document is another document kept under the Act;
- (c) that a stated document is a copy of, or an extract from or part of, a thing mentioned in paragraph (a) or (b);
- (d) that on a stated day—
 - (i) a stated person was given a stated decision, direction or notice under the Act; or
 - (ii) a stated requirement under the Act was made of a stated person;
- (e) that a stated amount is payable under the Act by a stated person and has not been paid.

Division 2 Offence proceedings

Clause 86(1) provides that an offence against the Act is a summary offence. Subclause (2) provides that a proceeding for an offence against the 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 commission of the offence.

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

Chapter 4 Miscellaneous provisions

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

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

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

Subclause (2) provides that if subclause (1) prevents a civil liability attaching to a designated person, the liability attaches instead to the State. Subclause (3) defines 'civil liability' to include liability for the payment of costs ordered to be paid in a proceeding for an offence against the Act. A 'designated person' is also defined in subclause (3) to mean—

- (a) the chief executive; or
- (b) an inspector; or
- (c) a person acting under the authority or direction of an inspector; or
- (d) a special investigator under the *Agents Financial Administration Act 2013*.

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

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

- (a) the confidential information is disclosed—
 - (i) in the performance of functions under the Act; or
 - (ii) with the written consent of the person to whom the information relates; or
 - (iii) to the person to whom the information relates; or
 - (iv) in a form that could not identify any person; or

- (b) the disclosure of the confidential information is authorised under an Act or another law.

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

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

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

Chapter 5 Transitional provisions

Part 1 Purposes, definitions and general approach

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

- (a) to provide for provisions of the Act that are substantially the same as repealed provisions of a primary Act to be dealt with as replacements of the repealed provisions; and
- (b) without limiting paragraph (a), if matters relating to the appointment and powers of inspectors for a primary Act, and the procedures relating to the exercise of the powers, were dealt with in a primary Act, to provide for the continuation of the matters under the Act.

Clause 96 provides definitions for chapter 5.

Clause 97 provides that a reference in the chapter to a primary Act may, if the context permits, be taken to include a reference to the repealed *Property Agents and Motor Dealers Act 2000*.

Clause 98 provides for the continuation of a document, action, obligation or protection under a previous provision of a primary Act.

Clause 99 provides for the continuation of terminology used in a document mentioned in clause 98(1) or evidence of a document, action, obligation or protection as mentioned in clause 98(1).

Clause 100 provides for the continuation of a period for doing something stated in a previous provision of a primary Act.

Clause 101 provides for the continuation of a period for doing something stated in a document given under a previous provision of a primary Act.

Clause 102 provides that an action as mentioned in clause 98(1) happening before commencement may be relevant to a proceeding relating to a contravention of a provision of the Act involving an act or omission that happened after commencement.

Clause 103 provides that the chapter does not limit the *Acts Interpretation Act 1954*, section 20.

Part 2 Transitional provisions relating to particular provisions of primary Acts

Division 1 Examples for chapter 2

Clause 104 provides, for the operation of chapter 2, examples of documents as mentioned in clause 98(1)(a) in relation to matters dealt with under a primary Act.

Clause 105 provides, for the operation of chapter 2, examples of an obligation as mentioned in clause 98(1)(c) in relation to matters dealt with under a primary Act.

Clause 106 provides, for the operation of chapter 2, examples of a protection as mentioned in clause 98(1)(d) in relation to matters dealt with under a primary Act.

Division 2 General matters

Clause 107 provides for the continuation of the appointment of existing authorised officers as inspectors under the Act.

Clause 108 provides for the continuation of the appointment of existing inspectors.

Clause 109 provides for the continuation of existing reviews and appeals.

Clause 110 provides that a reference in an Act or document to a previous provision of a primary Act may, if the context permits, be taken as a reference to the corresponding provision of the previous provision.

Chapter 6 Amendment of Acts

Part 1 Amendment of this Act

Clause 111 provides that the Part amends the Act.

Clause 112 amends the long title of the Act to remove the references to the consequential amendments of the primary Acts.

Part 2 Amendment of Funeral Benefit Business Act 1982

Clause 113 provides that the part amends the *Funeral Benefit Business Act 1982*.

Clause 114 inserts a new section 3 which deals with the relationship between the Funeral Benefit Business Act and the Act.

Clause 115 amends section 5 by omitting the definition of ‘inspector’ and inserting new definitions of ‘FTI Act’ and ‘inspector’.

Clause 116 replaces the part 2 heading, ‘Appointment of officers’ with a new heading, ‘The registrar’.

Clause 117 omits sections 6B to 6D.

Clause 118 amends section 52 in order to remove the reference to an inspector in subsection (14).

Clause 119 omits section 81.

Part 3 Amendment of Introduction Agents Act 2001

Clause 120 provides that the part amends the *Introduction Agents Act 2001*.

Clause 121 inserts a new section 4A which deals with the relationship between the Introduction Agents Act and the Act.

Clause 122 omits the words ‘and notes’ from the part 2, division 1 heading.

Clause 123 omits section 6.

Clause 124 omits part 6.

Clause 125 amends section 91 to omit references to an inspector.

Clause 126 amends section 96 to omit the reference to an inspector.

Clause 127 amends schedule 2 by omitting the definition of ‘inspector’.

Part 4 Amendment of Land Sales Act 1984

Clause 128 provides that the part amends the *Land Sales Act 1984*.

Clause 129 inserts a new section 5A which deals with the relationship between the Land Sales Act and the Act.

Clause 130 omits part 3A.

Part 5 Amendment of Manufactured Homes (Residential Parks) Act 2003

Clause 131 provides that the part amends the *Manufactured Homes (Residential Parks) Act 2003*.

Clause 132 amends the part 1, division 2 heading by inserting the words ‘of Act and relationship with FTI Act’.

Clause 133 inserts a new section 4A which deals with the relationship between the Manufactured Homes (Residential Parks) Act and the Act.

Clause 134 omits parts 16 and 17.

Clause 135 amends section 134 to omit the reference to an inspector.

Clause 136 amends section 143 to omit the reference to an inspector.

Clause 137 amends the schedule by omitting definitions of ‘facsimile warrant’, ‘inspector’ and ‘warrant form’ and inserting a definition of ‘FTI Act’.

Part 6 Amendment of Residential Services (Accreditation) Act 2002

Clause 138 provides that the part amends the *Residential Services (Accreditation) Act 2002*.

Clause 139 inserts a new section 2A which deals with the relationship between the Residential Services (Accreditation) Act and the Act.

Clause 140 omits part 8, other than section 139.

Clause 141 relocates section 139 and renumbers it as section 82A.

Clause 142 amends section 165 to omit references to an authorised officer.

Clause 143 amends section 166 to omit the reference to an authorised officer.

Clause 144 amends section 167 to omit the reference to an authorised officer.

Clause 145 amends section 180 to omit the reference to an authorised officer.

Clause 146 amends section 182 to omit the references to an authorised officer.

Clause 147 amends schedule 2 by omitting the definitions of ‘authorised officer’ and ‘owner’.

Part 7 Amendment of Retirement Villages Act 1999

Clause 148 provides that the part amends the *Retirement Villages Act 1999*.

Clause 149 amends the part 1, division 2 heading by inserting the words ‘of Act and relationship with FTI Act’.

Clause 150 inserts a new section 3A which deals with the relationship between the Retirement Villages Act and the Act.

Clause 151 omits part 8.

Clause 152 amends section 220 to omit references to an inspector.

Clause 153 amends section 221 to omit the reference to an inspector.

Clause 154 amends the schedule by inserting a definition of ‘FTI Act’.

Part 8 Amendment of Second-hand Dealers and Pawnbrokers Act 2003

Clause 155 provides that the part amends the *Second-hand Dealers and Pawnbrokers Act 2003*.

Clause 156 inserts a new section 3A which deals with the relationship between the Second-hand Dealers and Pawnbrokers Act and the Act.

Clause 157 amends section 59(3)(a) by replacing the reference to the repealed section 90 with ‘the FTI Act’.

Clause 158 omits part 5.

Clause 159 amends section 96 by omitting references to an authorised officer.

Clause 160 omits section 97.

Clause 161 amends section 103 by replacing references to an authorised officer with references to an inspector.

Clause 162 amends section 104 by replacing the references to an authorised officer with references to an inspector.

Clause 163 amends section 113 to replace the reference to an authorised officer with a reference to an inspector.

Clause 164 amends schedule 3 by omitting the definition of ‘authorised officer’ and inserting new definitions of ‘FTI Act’ and ‘inspector’.

Part 9 Amendment of Security Providers Act 1993

Clause 165 provides that the part amends the *Security Providers Act 1993*.

Clause 166 inserts a new section 2A which deals with the relationship between the Security Providers Act and the Act.

Clause 167 replaces section 25A with a new section 25A in order to remove the reference to an inspector. Under the new section 25A, the licensee is now only required to produce their licence to a person with whom the licensee is dealing when carrying out a function (and where the licensee is not wearing the prescribed identification). An inspector would therefore use their powers under the Act to request the production of a licence.

Clause 168 omits part 3, other than section 44.

Clause 169 amends section 44 to remove the references to an inspector, and relocates and renumbers section 44 as section 49A.

Clause 170 amends section 48 by omitting subsection (4)(c), thereby removing the reference to an inspector.

Clause 171 replaces section 49 with a new section 49 to remove the references to an inspector and a person acting under the direction of an inspector.

Clause 172 amends section 51 to omit the references to an inspector.

Clause 173 amends schedule 2 by omitting the definition of ‘inspector’.

Part 10 Amendment of Tourism Services Act 2003

Clause 174 provides that the part amends the *Tourism Services Act 2003*.

Clause 175 inserts a new section 6A which deals with the relationship between the Tourism Services Act and the Act.

Clause 176 amends section 13 to insert a reference to the Act.

Clause 177 omits part 6.

Clause 178 omits section 85(3).

Clause 179 amends section 88 to remove references to an inspector.

Clause 180 amends section 95 to remove a reference to an inspector.

Clause 181 amends schedule 2 by omitting the definitions of ‘facsimile warrant’, ‘inspector’, ‘place’, ‘seized thing’, and ‘warrant form’. The clause also inserts a definition of ‘FTI Act’.

Part 11 Amendment of Travel Agents Act 1988

Clause 182 provides that the part amends the *Travel Agents Act 1988*.

Clause 183 inserts a new section 4 which deals with the relationship between the Travel Agents Act and the Act.

Clause 184 amends section 6 by omitting the definitions of ‘authorised officer’ and ‘inspector’. The clause also omits the note for the definition of ‘commissioner for consumer affairs’.

Clause 185 omits sections 45 to 45J.

Clause 186 omits section 47.

Clause 187 amends section 50 to remove references to an ‘inspector’.

Clause 188 replaces section 54 with a new section 54 in order to remove the reference to an inspector and modernise the provision.

Clause 189 amends section 56 to remove references to an ‘inspector’.

Schedule 1 Dictionary

The schedule provides definitions for terms used in the Bill.