Queensland

Fair Trading Inspectors Act 2014

Current as at [Not applicable]

Indicative reprint note

This is an ***unofficial*** version of a reprint of this Act that incorporates all proposed amendments to the Act included in the Associations Incorporation and Other Legislation Amendment Bill 2019. This indicative reprint has been prepared for information only—***it is not an authorised reprint of the Act***.

The point-in-time date for this indicative reprint is the introduction date for the Associations Incorporation and Other Legislation Amendment Bill 2019—26 November 2019.

Detailed information about indicative reprints is available on the **Information** page of this website.

© State of Queensland 2020

This work is licensed under a Creative Commons Attribution 4.0 International License.

Queensland

Fair Trading Inspectors Act 2014

Contents

		Page
Chapter 1	**Preliminary**	
1	Short title	7
2	Commencement	7
3	Act binds all persons	7
4	Operation of Act	7
4A	Modifying operation of Act for Associations Incorporation Act 1981	8
5	Modifying operation of Act for Manufactured Homes (Residential Parks) Act 2003	9
6	Modifying operation of Act for Property Occupations Act 2014	10
7	Modifying operation of Act for Residential Services (Accreditation) Act 2002	10
8	Modifying operation of Act for Retirement Villages Act 1999	11
9	Modifying operation of Act for Tourism Services Act 2003	11
11	Definitions	12
Chapter 2	**Inspectors**	
Part 1	**General provisions about inspectors**	
Division 1	**Functions**	
12	Functions of inspectors	12
Division 2	**Appointment**	
13	Appointment and qualifications	13
14	Appointment conditions and limit on powers	14
15	When office ends	14
16	Resignation	14
Division 3	**Identity cards**	
17	Issue of identity card	15
18	Production or display of identity card	15
19	Return of identity card	16

Not authorised—indicative only

Division 4 **Miscellaneous provisions**

20 References to exercise of powers 16

21 Reference to document includes reference to reproductions from electronic document 16

Part 2 **Entry to places by inspectors**

Division 1 **Power to enter**

22 General power to enter places 17

Division 2 **Entry by consent**

23 Application of div 2 18

24 Incidental entry to ask for access 18

25 Matters inspector must tell occupier 18

26 Consent acknowledgement 19

Division 3 **Entry under warrant**

Subdivision 1 **Obtaining warrant**

27 Application for warrant 20

28 Issue of warrant 20

29 Electronic application 22

30 Additional procedure if electronic application 22

31 Defect in relation to a warrant 24

Subdivision 2 **Entry procedure**

32 Procedure 24

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

Division 1 **Stopping or moving vehicles**

33 Application of div 1 25

34 Power to stop or move 25

35 Identification requirements if vehicle moving 26

36 Failure to comply with direction 26

Division 2 **General powers of inspectors after entering places**

37 Application of div 2 27

38 General powers 27

39 Power to require reasonable help 28

40 Offence to contravene help requirement 29

Division 3 **Seizure by inspectors and forfeiture**

Subdivision 1 **Power to seize**

41 Seizing evidence at a place that may be entered without consent or warrant 29

Not authorised—indicative only

42 Seizing evidence at a place that may be entered only with consent or warrant 30
43 Seizure of property subject to security 31
Subdivision 2 Powers to support seizure
44 Power to secure seized thing 31
45 Offence to contravene other seizure requirement 32
46 Offence to interfere 32
Subdivision 3 Safeguards for seized things
47 Receipt and information notice for seized thing 32
48 Access to seized thing 33
49 Return of seized thing 34
Subdivision 4 Forfeiture
50 Forfeiture by chief executive decision 34
51 Information notice about forfeiture decision 35
Subdivision 5 Dealing with property forfeited or transferred to the State
52 When thing becomes property of the State 36
53 How property may be dealt with 36
Division 4 Disposal orders
54 Disposal order 37
Division 5 Other information-obtaining powers of inspectors
55 Power to require name and address 38
56 Offence to contravene personal details requirement 39
57 Power to require production of document 39
58 Offence to contravene document production requirement 40
59 Offence to contravene document certification requirement 41
60 Power to require information 41
61 Offence to contravene information requirement 42
Part 4 Obtaining criminal history reports
62 Purpose of pt 4 42
63 Chief executive's power to obtain criminal history report 43
64 Criminal history is confidential document 43
Part 5 Miscellaneous provisions relating to inspectors
Division 1 Damage
65 Duty to avoid inconvenience and minimise damage 44
66 Notice of damage 44
Division 2 Compensation

Not authorised—indicative only

67 Compensation 45

Division 3 Other offences relating to inspectors

68 Giving inspector false or misleading information 46

69 Obstructing inspector 47

70 Impersonating inspector 47

Division 4 Other provisions

71 Evidential immunity for individuals complying with particular requirements 48

Chapter 3 Appeals, evidence and legal proceedings

Part 1 Reviews and appeals

Division 1 Right of appeal

72 Right of appeal 48

Division 2 Internal review of decisions

73 Appeal process starts with internal review 49

74 How to apply for review 49

75 Stay of operation of decision 50

76 Review decision 50

Division 3 Appeals

77 Who may appeal 51

78 Procedure for an appeal to the court 51

79 Stay of operation of review decision 52

80 Powers of court on appeal 52

81 Effect of decision of court on appeal 53

Part 2 Evidence and legal proceedings

Division 1 Evidentiary provisions

82 Application of div 1 53

83 Authority 53

84 Signatures 54

85 Other evidentiary aids 54

Division 2 Offence proceedings

86 Offences under Act are summary 54

87 Statement of complainant's knowledge 55

Chapter 4 Miscellaneous provisions

88 Supervision by inspector 55

89 Reasonable excuse defences 55

90 Protection from liability for particular persons 55

Not authorised—indicative only

91 Delegation by chief executive 56
92 Confidentiality of information 56
93 Approved forms 57
94 Regulation-making power 57
Chapter 5 Transitional provisions
Part 1 Purposes, definitions and general approach
95 Main purposes of ch 5 57
96 Definitions for ch 5 58
97 References to primary Act for ch 5 59
98 Document, action, obligation or protection under previous provision of primary Act 59
99 Terminology in things mentioned in s 98(1) 60
100 Period stated in previous provision 61
101 Period or date stated in document given under previous provision 61
102 Action happening before commencement may be relevant to proceeding for particular acts or omissions 62
103 Acts Interpretation Act 1954, s 20 not limited 62
Part 2 Transitional provisions relating to particular provisions of primary Acts
Division 1 Examples for chapter 2
104 Examples for ch 2 of documents under s 98 62
105 Examples for ch 2 of obligations under s 98 64
106 Examples for ch 2 of protections under s 98 65
Division 2 General matters
107 Existing authorised officers 66
108 Existing inspectors 66
109 Reviews and appeals 67
110 References in Acts and documents 67
Schedule 1 Dictionary 68

Not authorised—indicative only

Not authorised—indicative only

Fair Trading Inspectors Act 2014

An Act to provide for the powers of inspectors under legislation about fair trading

Chapter 1 Preliminary

1 Short title

This Act may be cited as the *Fair Trading Inspectors Act 2014*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Act binds all persons

(1) This Act binds all persons, including the State, and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

(2) Nothing in this Act makes the State, the Commonwealth or another State liable to be prosecuted for an offence.

4 Operation of Act

(1) This Act enacts common provisions for the following Acts (each a ***primary Act***)—

(a) *Agents Financial Administration Act 2014*;

(b) *Associations Incorporation Act 1981*;

Not authorised—indicative only

Not authorised—indicative only

(c) *Body Corporate and Community Management Act 1997*, chapter 5, part 2, division 5, subdivisions 2 and 3;

(d) *Building Units and Group Titles Act 1980*, part 4, division 3, subdivision 2;

(e) *Debt Collectors (Field Agents and Collection Agents) Act 2014*;

(f) *Funeral Benefit Business Act 1982*;

(g) *Introduction Agents Act 2001*;

(h) *Land Sales Act 1984*;

(i) *Manufactured Homes (Residential Parks) Act 2003*;

(j) *Motor Dealers and Chattel Auctioneers Act 2014*;

(k) *Property Occupations Act 2014*;

(l) *Residential Services (Accreditation) Act 2002*;

(m) *Retirement Villages Act 1999*;

(n) *Second-hand Dealers and Pawnbrokers Act 2003*;

(o) *Security Providers Act 1993*;

(p) *South Bank Corporation Act 1989*, part 9A, divisions 5 and 6;

(q) *Tourism Services Act 2003*.

(2) The common provisions mostly concern—

(a) the appointment and powers of inspectors for primary Acts; and

(b) the procedures relating to the exercise of the powers.

4A Modifying operation of Act for Associations Incorporation Act 1981

(1) The common provisions are modified for the *Associations Incorporation Act 1981* by subsections (3) to (5) (each a ***modifying provision***).

(2) A word defined in the *Associations Incorporation Act 1981* and used in a modifying provision has the same meaning in the modifying provision as it has in that Act.

(3) In section 12 a reference to a power under this Act of an inspector for the *Associations Incorporation Act 1981* does not include a power mentioned in chapter 2, part 3, division 1.

(4) The power for an inspector to enter a place under section 22(1)(d) includes the power to enter a place (other than a part of a place where a person resides) where an incorporated association carries out its activities, holds its general meetings or keeps its records.

(5) Chapter 2, part 4 does not apply in relation to an inspector for the *Associations Incorporation Act 1981*.

5 Modifying operation of Act for Manufactured Homes (Residential Parks) Act 2003

(1) The common provisions are modified for the *Manufactured Homes (Residential Parks) Act 2003* by subsections (3) and (4) (each a ***modifying provision***).

(2) A word defined in the *Manufactured Homes (Residential Parks) Act 2003* and used in a modifying provision has the same meaning in the modifying provision as it has in that Act.

(3) Without limiting who may be an occupier under schedule 1, definition *occupier*, of a place, the park owner for a residential park is an occupier of the residential park, other than any part of the park that is a home owner's manufactured home or the site on which it is positioned.

(4) The power for an inspector to enter a place under section 22(1)(d) includes the power to enter a place (other than a part of the place where a person resides) that is an office or other place for administering or managing a residential park for which site agreements are in force, and that is—

(a) open for carrying on the business of the park; or

(b) otherwise open for entry.

Not authorised—indicative only

Not authorised—indicative only

6 Modifying operation of Act for Property Occupations Act 2014

(1) The common provisions are modified for the *Property Occupations Act 2014* by subsection (3) (the ***modifying provision***).

(2) A word defined in the *Property Occupations Act 2014* and used in the modifying provision has the same meaning in the modifying provision as it has in that Act.

(3) In sections 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 the *Property Occupations Act 2014*, section 207, 208 or 209.

7 Modifying operation of Act for Residential Services (Accreditation) Act 2002

(1) The common provisions are modified for the *Residential Services (Accreditation) Act 2002* by subsections (3) and (4) (each a ***modifying provision***).

(2) A word defined in the *Residential Services (Accreditation) Act 2002* and used in a modifying provision has the same meaning in the modifying provision as it has in that Act.

(3) Without limiting who may be an occupier under schedule 1, definition *occupier*, of a place, the service provider for a residential service is an occupier of premises in which the residential service is being conducted, other than any part of the premises that is occupied by a person as the person's place of residence.

(4) If an inspector enters a private residence under section 22(1)(a) or (c), the inspector must preserve, as far as practicable, the privacy of anyone living at the residence.

(5) In this section—

private residence includes a room in registered premises occupied by a person as the person's place of residence.

8 Modifying operation of Act for Retirement Villages Act 1999

(1) The common provisions are modified for the *Retirement Villages Act 1999* by subsection (3) (the ***modifying provision***).

(2) A word defined in the *Retirement Villages Act 1999* and used in the modifying provision has the same meaning in the modifying provision as it has in that Act.

(3) The power for an inspector to enter a place under section 22(1)(d) includes the power to enter a place (other than a part of the place where a person resides) that is an office or other place for administering or managing a retirement village and that is—

(a) open for carrying on the business of the retirement village; or

(b) otherwise open for entry.

9 Modifying operation of Act for Tourism Services Act 2003

(1) The common provisions are modified for the *Tourism Services Act 2003* by subsections (3) to (5) (each a ***modifying provision***).

(2) A word defined in the *Tourism Services Act 2003* and used in a modifying provision has the same meaning in the modifying provision as it has in that Act.

(3) The power for an inspector to enter a place under section 22(1)(d) includes 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.

Not authorised—indicative only

Not authorised—indicative only

(4) An inspector must not seize a thing under section 41 or 42 if the inspector knows or suspects it is the property, or in the possession, of a tourist.

(5) In sections 28, 33, 41, 42, 49, 55 and 67 a reference to an offence against a primary Act is taken to include a reference to a relevant contravention.

Note—

The term 'relevant contravention' is defined in the *Tourism Services Act 2003*, schedule 2.

11 Definitions

The dictionary in schedule 1 defines particular words used in this Act.

Chapter 2 Inspectors

Part 1 General provisions about inspectors

Division 1 Functions

12 Functions of inspectors

(1) For this Act or a primary Act, an inspector has the following functions—

(a) to investigate, monitor and enforce compliance with this Act or the primary Act;

(b) to investigate or monitor whether an occasion has arisen for the exercise of powers under this Act or the primary Act;

(c) to facilitate the exercise of powers under this Act or the primary Act.

(2) Subject to this Act, an inspector may exercise the powers under this Act for the purpose of these functions.

(3) Subject to the modifying provisions for the following Acts 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—

(a) *Associations Incorporation Act 1981*;

(b) *Manufactured Homes (Residential Parks) Act 2003*;

(c) *Property Occupations Act 2014*;

(d) *Residential Services (Accreditation) Act 2002*;

(e) *Retirement Villages Act 1999*;

(f) *Tourism Services Act 2003*.

(4) It is unnecessary for the inspector to hold a separate appointment for this Act.

Division 2 Appointment

13 Appointment and qualifications

(1) The chief executive may, by instrument in writing, appoint any of the following persons as an inspector for a primary Act—

(a) a public service employee;

(b) a person prescribed by the primary Act;

(c) a person prescribed under a regulation.

(2) However, 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.

Not authorised—indicative only

Not authorised—indicative only

(3) The instrument must state the primary Act for which the person is appointed as an inspector.

(4) A person may be appointed as an inspector for more than 1 primary Act.

14 Appointment conditions and limit on powers

(1) 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.

(2) The instrument of appointment, a signed notice given to the inspector or a regulation may limit the inspector's powers.

(3) In this section—

signed notice means a notice signed by the chief executive.

15 When office ends

(1) 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 office ends;

(c) the inspector's resignation under section 16 takes effect.

(2) Subsection (1) does not limit the ways the office of a person as an inspector ends.

(3) In this section—

condition of office means a condition under which the inspector holds office.

16 Resignation

(1) An inspector may resign by signed notice given to the chief executive.

(2) However, 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

17 Issue of identity card

(1) The chief executive must issue an identity card to each inspector.

(2) The identity card must—

(a) contain a recent photo of the inspector; and

(b) contain a copy of the inspector's signature; and

(c) identify the person as an inspector appointed under this Act 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.

(3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

18 Production or display of identity card

(1) 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.

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

Not authorised—indicative only

Not authorised—indicative only

(3) For subsection (1), an inspector does not exercise a power in relation to a person only because the inspector has entered a place as mentioned in section 22(1)(b) or (d).

19 Return of identity card

If the office of a person as an inspector ends, the person must return the person's identity card to the chief executive within 21 days after the office ends unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

Division 4 Miscellaneous provisions

20 References to exercise of powers

If—

(a) a provision of this chapter refers to the exercise of a power by an inspector; and

(b) there is no reference to a specific power;

the reference is to the exercise of all or any inspectors' powers under this chapter or a warrant, to the extent the powers are relevant.

21 Reference to document includes reference to reproductions from electronic document

A reference in this chapter to a document includes a reference to an image or writing—

(a) produced from an electronic document; or

(b) 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

22 General power to enter places

(1) An inspector may enter a place if—

(a) an occupier of the place consents under division 2 to the entry and section 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, section 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.

(2) For subsection (1)(d), a ***place of business*** does not include a part of the place where a person resides.

(3) 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.

(4) If the power to enter is under a warrant, the power is subject to the terms of the warrant.

(5) The consent may provide consent for re-entry and is subject to the conditions of consent.

(6) If the power to re-enter is under a warrant, the re-entry is subject to the terms of the warrant.

Not authorised—indicative only

Not authorised—indicative only

(7) For this section, a place of business is regulated under a primary Act if—

(a) 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

(b) the place of business is, or is required to be, mentioned in an authority under the primary Act.

(8) In this section—

authority, under a primary Act, means a licence, registration, permit or other authority, however called, issued under the primary Act.

Division 2 Entry by consent

23 Application of div 2

This 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 section 22(1)(a).

24 Incidental entry to ask for access

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.

25 Matters inspector must tell occupier

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 given subject to conditions and may be withdrawn at any time.

26 Consent acknowledgement

(1) If the consent is given, the inspector may ask the occupier to sign an acknowledgement of the consent.

(2) The acknowledgement must state—

(a) the purpose of the entry, including the powers to be exercised; and

(b) the following has been explained to the occupier—

(i) the purpose of the entry, including the powers intended to be exercised;

(ii) that the occupier is not required to consent;

(iii) that the consent may be given subject to conditions and may be withdrawn at any time; and

(c) the occupier gives the inspector or another inspector consent to enter the place and exercise the powers; and

(d) the time and day the consent was given; and

(e) any conditions of the consent.

(3) If the occupier signs the acknowledgement, the inspector must immediately give a copy to the occupier.

(4) However, if it is impractical for the inspector to give the occupier a copy of the acknowledgement immediately, the inspector must give the copy as soon as practicable.

(5) If—

(a) an issue arises in a proceeding about whether the occupier consented to the entry; and

Not authorised—indicative only

Not authorised—indicative only

(b) an acknowledgement complying with subsection (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

27 Application for warrant

(1) An inspector may apply to a magistrate for a warrant for a place.

(2) The inspector must prepare a written application that states the grounds on which the warrant is sought.

(3) The written application must be sworn.

(4) 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.

Example—

The magistrate may require additional information supporting the written application to be given by statutory declaration.

28 Issue of warrant

(1) The magistrate may issue a warrant for the place only under subsection (2) or (3).

(2) 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 this Act or a primary Act.

(3) Also, the magistrate may issue a warrant for the place for the purpose of the inspector's performance of the function mentioned in section 12(1)(a) at the place if—

(a) the place is a place mentioned in section 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.

Example for paragraph (b)—

The magistrate may be satisfied under paragraph (b) if the inspector has made a reasonable attempt to perform the function at the place without a warrant, but because of obstruction has been unsuccessful.

(4) The warrant must state—

(a) the place to which the warrant applies; and

(b) that a stated inspector or any inspector may with necessary and reasonable help and force—

(i) enter the place and any other place necessary for entry to the place; and

(ii) exercise the inspector's powers; and

(c) particulars of the offence or other circumstances that the magistrate considers appropriate; and

(d) if the warrant is issued under subsection (2)—the name of the person suspected of having committed the offence unless the name is unknown or the magistrate considers it inappropriate to state the name; and

(e) the evidence that may be seized under the warrant; and

(f) the hours of the day or night when the place may be entered; and

(g) the magistrate's name; and

(h) the day and time of the warrant's issue; and

Not authorised—indicative only

Not authorised—indicative only

(i) the day, within 14 days after the warrant's issue, the warrant ends.

(5) Subsection (3) does not limit the powers that an inspector can exercise in the absence of a warrant.

29 Electronic application

(1) An application under section 27 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the inspector reasonably considers it necessary because of—

(a) urgent circumstances; or

(b) other special circumstances, including, for example, the inspector's remote location.

(2) The application—

(a) may not be made before the inspector prepares the written application under section 27(2); but

(b) may be made before the written application is sworn.

30 Additional procedure if electronic application

(1) For an application made under section 29, the magistrate may issue the warrant (the ***original warrant***) only if the magistrate is satisfied—

(a) it was necessary to make the application under section 29; and

(b) the way the application was made under section 29 was appropriate.

(2) After the magistrate issues the original warrant—

(a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the inspector, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the inspector; or

(b) otherwise—

(i) the magistrate must tell the inspector the information mentioned in section 28(4); and

(ii) the inspector must complete a form of warrant, including by writing on it the information mentioned in section 28(4) provided by the magistrate.

(3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the ***duplicate warrant***), is a duplicate of, and as effectual as, the original warrant.

(4) The inspector must, at the first reasonable opportunity, send to the magistrate—

(a) the written application complying with section 27(2) and (3); and

(b) if the inspector completed a form of warrant under subsection (2)(b)—the completed form of warrant.

(5) The magistrate must keep the original warrant and, on receiving the documents under subsection (4)—

(a) attach the documents to the original warrant; and

(b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.

(6) Despite subsection (3), if—

(a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and

(b) the original warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.

(7) This section does not limit section 27.

(8) In this section—

Not authorised—indicative only

Not authorised—indicative only

relevant magistrates court, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

31 Defect in relation to a warrant

(1) A warrant is not invalidated by a defect in—

(a) the warrant; or

(b) compliance with this subdivision;

unless the defect affects the substance of the warrant in a material particular.

(2) In this section—

warrant includes a duplicate warrant mentioned in section 30(3).

Subdivision 2 Entry procedure

32 Procedure

(1) This section applies if an inspector is intending to enter a place under a warrant issued under this division.

(2) 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 who is an occupier of the place and is present 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.

(3) However, the inspector need not comply with subsection (2) if the inspector believes on reasonable grounds that entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.

(4) In this section—

warrant includes a duplicate warrant mentioned in section 30(3).

Part 3 Other inspectors' powers and related matters

Division 1 Stopping or moving vehicles

33 Application of div 1

This 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 this Act or a primary Act.

34 Power to stop or move

(1) 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.

(2) 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.

Not authorised—indicative only

Not authorised—indicative only

(3) When giving the direction under subsection (2), the inspector must give the person in control an offence warning for the direction.

35 Identification requirements if vehicle moving

(1) This section applies if the inspector proposes to give a direction under section 34(1) and the vehicle is moving.

(2) The inspector must clearly identify himself or herself as an inspector exercising the inspector's powers.

Examples—

1 If the inspector is in a moving vehicle, he or she may use a loudhailer to identify himself or herself as an inspector exercising powers.

2 If the inspector is standing at the side of the road, he or she may use a sign to identify himself or herself as an inspector exercising powers.

(3) When the vehicle stops, the inspector must—

(a) have with him or her the inspector's identity card; and

(b) immediately produce the identity card for the inspection of the person in control of the vehicle.

(4) Subsection (3) applies despite section 18.

36 Failure to comply with direction

(1) The person in control of the vehicle must comply with a direction under section 34 unless the person has a reasonable excuse.

Maximum penalty—165 penalty units.

(2) 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 section 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.

(3) Subsection (2) does not limit subsection (1).

(4) A person does not commit an offence against subsection (1) if—

(a) the direction the person fails to comply with is given under section 34(2); and

(b) the person is not given an offence warning for the direction.

Division 2 General powers of inspectors after entering places

37 Application of div 2

(1) The powers under this division may be exercised if an inspector enters a place under section 22(1)(a), (c) or (d).

(2) However, if the inspector enters under section 22(1)(a) or (c), the powers under this division are subject to any conditions of the consent or terms of the warrant.

38 General powers

(1) 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;

Not authorised—indicative only

Not authorised—indicative only

(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 this division;

(h) remain at the place for the time necessary to achieve the purpose of the entry.

(2) The inspector may take a necessary step to allow the exercise of a general power.

(3) If the 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.

(4) 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.

(5) In this section—

examine includes analyse, test, account, measure, weigh, grade, gauge and identify.

film includes photograph, videotape and record an image in another way.

inspect, a thing, includes open the thing and examine its contents.

39 Power to require reasonable help

(1) 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.

(2) When making the help requirement, the inspector must give the person an offence warning for the requirement.

40 Offence to contravene help requirement

(1) A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(2) 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.

(3) However, subsection (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 this Act or a primary Act.

Note—

See, however, section 71.

Division 3 Seizure by inspectors and forfeiture

Subdivision 1 Power to seize

41 Seizing evidence at a place that may be entered without consent or warrant

(1) An inspector who enters a place the inspector may enter under this Act without the consent of an occupier of the place and without a warrant under section 28(2) may seize a thing at the place if the inspector reasonably believes the thing is evidence of an offence against this Act or a primary Act.

Not authorised—indicative only

Not authorised—indicative only

(2) Subsection (1) applies even if the entry is under a warrant issued under section 28(3).

42 Seizing evidence at a place that may be entered only with consent or warrant

(1) This section 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 section 28(2).

(2) 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 this 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.

(3) If the inspector enters the place under a warrant issued under section 28(2), the inspector may seize the evidence for which the warrant was issued.

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

(a) the thing is evidence of an offence against this Act or a primary Act; and

(b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.

(5) 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 this Act or a primary Act.

43 Seizure of property subject to security

(1) An inspector may seize a thing, and exercise powers relating to the thing, despite a lien or other security over the thing claimed by another person.

(2) However, 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

44 Power to secure seized thing

(1) Having seized a thing under this division, an inspector may—

(a) leave it at the place where it was seized (the ***place of seizure***) and take reasonable action to restrict access to it; or

(b) move it from the place of seizure.

(2) For subsection (1)(a), the inspector may, for example—

(a) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or

(b) for equipment—make it inoperable; or

Example—

make it inoperable by dismantling it or removing a component without which the equipment can not be used

(c) require a person the inspector reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or (b) or anything else an inspector could do under subsection (1)(a).

Not authorised—indicative only

Not authorised—indicative only

45 Offence to contravene other seizure requirement

A person must comply with a requirement made of the person under section 44(2)(c) unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

46 Offence to interfere

(1) If access to a seized thing is restricted under section 44, a person must not tamper with the thing or with anything used to restrict access to the thing without—

(a) an inspector's approval; or

(b) a reasonable excuse.

Maximum penalty—50 penalty units.

(2) If access to a place is restricted under section 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—

(a) an inspector's approval; or

(b) a reasonable excuse.

Maximum penalty—50 penalty units.

Subdivision 3 Safeguards for seized things

47 Receipt and information notice for seized thing

(1) This section applies if an inspector seizes anything under this 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 this section.

(2) 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.

(3) However, 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.

(4) The receipt and information notice may—

(a) be given in the same document; and

(b) relate to more than 1 seized thing.

(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 this Act.

(6) However, 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 at which the thing was seized to keep it under observation.

48 Access to seized thing

(1) 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.

Not authorised—indicative only

Not authorised—indicative only

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

(3) The inspection or copying must be allowed free of charge.

49 Return of seized thing

(1) This section 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.

(2) The inspector must return the seized 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.

(3) Despite subsection (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 necessary; and

(b) it is lawful for the owner to possess it.

(4) Nothing in this section affects a lien or other security over the seized thing.

Subdivision 4 Forfeiture

50 Forfeiture by chief executive decision

(1) 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.

(2) However, 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.

Example for paragraph (b)—

the owner of the thing has migrated to another country

(3) 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.

51 Information notice about forfeiture decision

(1) If the chief executive decides under section 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.

(2) If the decision was made under section 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.

(3) 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.

(4) However, subsections (1) to (3) do not apply if—

(a) the decision was made under section 50(1)(a) or (b); and

Not authorised—indicative only

Not authorised—indicative only

(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 the State

52 When thing becomes property of the State

A thing becomes the property of the State if—

(a) the thing is forfeited to the State under section 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.

53 How property may be dealt with

(1) This section applies if, under section 52, a thing becomes the property of the State.

(2) The chief executive may deal with the thing as the chief executive considers appropriate, including, for example, by destroying it or giving it away.

(3) The chief executive must not deal with the thing in a way that could prejudice the outcome of an appeal against the forfeiture under this Act.

(4) 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.

(5) This section is subject to any disposal order made for the thing.

Division 4 Disposal orders

54 Disposal order

(1) This section applies if a person is convicted of an offence against this Act or a primary Act.

(2) 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 this Act.

(3) The court may make a disposal order for a thing—

(a) whether or not it has been seized under this Act; and

(b) if the thing has been seized—whether or not it has been returned to the former owner.

(4) 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.

(5) The court may make any order to enforce the disposal order that it considers appropriate.

(6) This section does not limit the court's powers under another law.

Not authorised—indicative only

Not authorised—indicative only

Division 5 Other information-obtaining powers of inspectors

55 Power to require name and address

(1) This section applies if an inspector—

(a) finds a person committing an offence against this 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 this Act or a primary Act; or

(c) has information that leads the inspector to reasonably suspect a person has just committed an offence against this Act or a primary Act.

(2) The inspector may require the person to state the person's name and address.

(3) 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.

(4) When making a personal details requirement, the inspector must give the person an offence warning for the requirement.

(5) A requirement under this section is a ***personal details requirement***.

(6) In this section—

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.

Not authorised—indicative only

56 Offence to contravene personal details requirement

(1) A person of whom a personal details requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

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

57 Power to require production of document

(1) 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.

(2) A requirement under subsection (1) is a ***document production requirement***.

(3) 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.

(4) The inspector may keep the document to copy it.

(5) 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.

Not authorised—indicative only

(6) A requirement under subsection (5) is a ***document certification requirement***.

(7) The inspector must return the document to the person as soon as practicable after copying it.

(8) However, if a document certification requirement is made of a person, the inspector may keep the document until the person complies with the requirement.

58 Offence to contravene document production requirement

(1) A person of whom a document production requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(2) 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.

Note—

See, however, section 71.

(3) 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 section 71, there is a limited immunity against the future use of the information or document given in compliance with the requirement.

(4) If the person fails to comply with the document production requirement when the inspector has failed to comply with subsection (3), the person can not be convicted of the offence against subsection (1).

(5) If a court convicts a person of an offence against subsection (1), the court may, as well as imposing a penalty

for the offence, order the person to comply with the document production requirement.

59 Offence to contravene document certification requirement

(1) A person of whom a document certification requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(2) 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.

Note—

See, however, section 71.

(3) 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 section 71, there is a limited immunity against the future use of the information or document given in compliance with the requirement.

(4) If the person fails to comply with the document certification requirement when the inspector has failed to comply with subsection (3), the person can not be convicted of the offence against subsection (1).

60 Power to require information

(1) This section applies if an inspector reasonably believes—

(a) an offence against this Act or a primary Act has been committed; and

Not authorised—indicative only

Not authorised—indicative only

(b) a person may be able to give information about the offence.

(2) 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.

(3) A requirement under subsection (2) is an ***information requirement***.

(4) 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.

(5) In this section—

information includes a document.

61 Offence to contravene information requirement

(1) A person of whom an information requirement is made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(2) It is a reasonable excuse for an individual not to give the information if giving the information might tend to incriminate the individual or expose the individual to a penalty.

Part 4 Obtaining criminal history reports

62 Purpose of pt 4

The purpose of this part is to help an inspector to decide whether the inspector's unaccompanied entry of a place under

part 2 would create an unacceptable level of risk to the inspector's safety.

63 Chief executive's power to obtain criminal history report

(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.

(2) The commissioner of the police service must give the report to the chief executive.

(3) However, the report is required to contain only criminal history in the commissioner's possession or to which the commissioner has access.

(4) 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.

(5) The chief executive may give the inspector information in the report about the offences identified under subsection (4).

64 Criminal history is confidential document

(1) 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 section 63.

Maximum penalty—100 penalty units.

(2) However, the person does not contravene subsection (1) if—

(a) the disclosure of the report or information is for the purpose of the other person performing a function in relation to this Act; or

(b) the disclosure of the report or information is for the purpose of the other person performing a function in

Not authorised—indicative only

Not authorised—indicative only

relation to a primary Act and the function is substantially the same as a function under this Act; or

(c) the disclosure of the report or information is otherwise required or permitted by law.

(3) 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 section 62.

Part 5 Miscellaneous provisions relating to inspectors

Division 1 Damage

65 Duty to avoid inconvenience and minimise damage

In exercising a power, an inspector must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

Note—

See also section 67.

66 Notice of damage

(1) This section 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.

(2) However, this section 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.

(3) The inspector must give notice of the damage to the person who appears to the inspector to be an owner, or person in control, of the thing.

(4) However, if for any reason it is not practicable to comply with subsection (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.

(5) The inspector may delay complying with subsection (3) or (4) if the inspector reasonably suspects complying with the subsection may frustrate or otherwise hinder the performance of the inspector's functions.

(6) 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.

(7) 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.

(8) The notice must state—

(a) particulars of the damage; and

(b) that the person who suffered the damage may claim compensation under section 67.

Division 2 Compensation

67 Compensation

(1) A person may claim compensation from the State if the person incurs loss because of the exercise, or purported exercise, of a

Not authorised—indicative only

Not authorised—indicative only

power by or for an inspector including a loss arising from compliance with a requirement made of the person under this chapter.

(2) However, subsection (1) does not include loss arising from a lawful seizure or a lawful forfeiture.

(3) 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 this Act or a primary Act the investigation of which gave rise to the claim for compensation.

(4) 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.

(5) In considering whether it is just to order compensation, the court must have regard to any relevant offence committed by the claimant.

(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.

(7) Section 65 does not provide for a statutory right of compensation other than is provided by this section.

(8) In this section—

loss includes costs and damage.

Division 3 Other offences relating to inspectors

68 Giving inspector false or misleading information

(1) A person must not, in relation to the administration of this Act or a primary Act, give an inspector information, or a

document containing information, that the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units or 2 years imprisonment.

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

69 Obstructing inspector

(1) 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.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(2) 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.

(3) In this section—

obstruct includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

power means a power under this Act or a primary Act.

70 Impersonating inspector

A person must not impersonate an inspector.

Maximum penalty—80 penalty units.

Not authorised—indicative only

Not authorised—indicative only

Division 4 Other provisions

71 Evidential immunity for individuals complying with particular requirements

(1) Subsection (2) applies if an individual gives or produces information or a document to an inspector under section 39 or 57.

(2) 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.

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

Chapter 3 Appeals, evidence and legal proceedings

Part 1 Reviews and appeals

Division 1 Right of appeal

72 Right of appeal

A person who has a right to be given an information notice about a decision made under this Act has a right to appeal against the decision.

Division 2 Internal review of decisions

73 Appeal process starts with internal review

(1) Every appeal against a decision must be, in the first instance, by way of an application for an internal review.

(2) A person who has a right to appeal against a decision may apply to the chief executive for a review of the decision.

74 How to apply for review

(1) An application for review of a decision must be—

(a) in the approved form; and

(b) supported by enough information to enable the chief executive to decide the application.

(2) The application must be made within 20 business days after—

(a) the day the person is given the information notice about the decision; or

(b) if the person is not given an information notice about the decision—the day the person otherwise becomes aware of the decision.

(3) The chief executive may extend the period for applying for the review.

(4) The application must not be dealt with by—

(a) the person who made the decision; or

(b) a person in a less senior office than the person who made the decision.

(5) Subsection (4)—

(a) applies despite the *Acts Interpretation Act 1954*, section 27A; and

(b) does not apply to a decision made by the chief executive.

Not authorised—indicative only

Not authorised—indicative only

75 Stay of operation of decision

(1) An application for review of a decision does not stay the decision.

(2) However, the applicant may immediately apply for a stay of the decision to a Magistrates Court.

(3) The court may stay the decision to secure the effectiveness of the review and a later appeal to the court.

(4) The stay—

(a) may be given on conditions the court considers appropriate; and

(b) operates for the period fixed by the court; and

(c) may be amended or revoked by the court.

(5) The period of the stay must not extend past the time when the chief executive makes a review decision about the decision and any later period the court allows the applicant to enable the applicant to appeal against the review decision.

(6) An application for review of a decision affects the decision, or carrying out of the decision, only if the decision is stayed.

76 Review decision

(1) The chief executive must, within 30 business days after receiving the application—

(a) review the decision (the ***original decision***); and

(b) make a decision (the ***review decision***) to—

(i) confirm the original decision; or

(ii) amend the original decision; or

(iii) substitute another decision for the original decision; and

(c) give the applicant notice (the ***review notice***) of the review decision.

(2) If the review decision is not the decision sought by the applicant, the review notice must state the following—

(a) the day the notice is given to the applicant (the ***review notice day***);

(b) the reasons for the decision;

(c) that the applicant may appeal against the decision to a Magistrates Court within 28 days after the review notice day;

(d) how to appeal;

(e) that the applicant may apply to the court for a stay of the decision.

(3) If the chief executive does not give the review notice within the 30 days, the chief executive is taken to have made a review decision confirming the original decision.

Division 3 Appeals

77 Who may appeal

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.

78 Procedure for an appeal to the court

(1) An appeal to the court is started by filing notice of appeal with the clerk of the court.

(2) A copy of the notice must be served on the chief executive.

(3) The notice of appeal must be filed—

(a) if the chief executive gave a review notice of the review decision to the applicant within the 30 business days mentioned in section 76(1)—within 28 days after the review notice day; or

Not authorised—indicative only

Not authorised—indicative only

(b) otherwise—within 28 days after the end of the 30 business days mentioned in section 76(1).

(4) The court may, whether before or after the time for filing the notice of appeal ends, extend the period for filing the notice of appeal.

(5) The notice of appeal must state fully the grounds of the appeal.

79 Stay of operation of review decision

(1) The court may grant a stay of the operation of a review decision appealed against to secure the effectiveness of the appeal.

(2) A stay—

(a) may be granted on conditions the court considers appropriate; and

(b) operates for the period fixed by the court; and

(c) may be amended or revoked by the court.

(3) The period of a stay stated by the court must not extend past the time when the court decides the appeal.

(4) An appeal against a decision affects the decision, or the carrying out of the decision, only if the decision is stayed.

80 Powers of court on appeal

(1) In deciding an appeal, the court—

(a) has the same powers as the chief executive in making the review decision appealed against; and

(b) is not bound by the rules of evidence; and

(c) must comply with natural justice.

(2) An appeal is by way of rehearing.

(3) The court may—

(a) confirm the review decision; or

(b) set aside the review decision and substitute another decision; or

(c) set aside the review decision and return the matter to the chief executive with directions the court considers appropriate.

81 Effect of decision of court on appeal

(1) 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 this part.

(2) 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

82 Application of div 1

This division applies to a proceeding under this Act.

83 Authority

The power of the chief executive or an inspector to do anything under this Act must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it.

Not authorised—indicative only

Not authorised—indicative only

84 Signatures

A signature purporting to be the signature of the chief executive or an inspector is evidence of the signature it purports to be.

85 Other evidentiary aids

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 this Act—

(i) an appointment, approval or decision;

(ii) a direction or requirement;

(iii) a notice or other document given under this Act;

(b) that a stated document is another document kept under this 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 this Act; or

(ii) a stated requirement under this Act was made of a stated person;

(e) that a stated amount is payable under this Act by a stated person and has not been paid.

Division 2 Offence proceedings

86 Offences under Act are summary

(1) An offence against this Act is a summary offence.

(2) A proceeding for an offence against this Act must start within the later of the following periods to end—

(a) 1 year after the commission of the offence;

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

87 Statement of complainant's knowledge

In a complaint starting a proceeding for an offence against this 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

88 Supervision by inspector

If a direction or requirement under this Act allows or requires a person to take action, the direction or requirement may also require the person to take the action under an inspector's supervision.

89 Reasonable excuse defences

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

90 Protection from liability for particular persons

(1) A designated person does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

Not authorised—indicative only

Not authorised—indicative only

(2) If subsection (1) prevents a civil liability attaching to a designated person, the liability attaches instead to the State.

(3) In this section—

civil liability includes liability for the payment of costs ordered to be paid in a proceeding for an offence against this Act.

designated person means—

(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 2014*.

91 Delegation by chief executive

(1) The chief executive may delegate the chief executive's functions under this Act to an appropriately qualified public service employee.

(2) In this section—

appropriately qualified includes having the qualifications, experience or standing appropriate for the functions.

Example of standing—

a person's classification level in the public service

92 Confidentiality of information

(1) An inspector must not, whether directly or indirectly, disclose confidential information.

Maximum penalty—100 penalty units.

(2) However, subsection (1) does not apply if—

(a) the confidential information is disclosed—

(i) in the performance of functions under this 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.

(3) In this section—

confidential information means information that has become known to an inspector in the course of performing the inspector's functions for this Act.

93 Approved forms

The chief executive may approve forms for use under this Act.

94 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may impose a penalty of no more than 20 penalty units for a contravention of a regulation.

Chapter 5 Transitional provisions

Part 1 Purposes, definitions and general approach

95 Main purposes of ch 5

The main purposes of this chapter are—

Not authorised—indicative only

Not authorised—indicative only

(a) to provide for provisions of this 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 this Act.

96 Definitions for ch 5

In this chapter—

2014 primary Act means—

(a) the *Agents Financial Administration Act 2014*; or

(b) the *Debt Collectors (Field Agents and Collection Agents) Act 2014*; or

(c) the *Motor Dealers and Chattel Auctioneers Act 2014*; or

(d) the *Property Occupations Act 2014*.

commencement means the day this section commences.

corresponding provision, for a previous provision of a primary Act, means a provision of this Act that is substantially the same as the previous provision of the primary Act.

made includes given and issued.

obligation includes duty.

previous, in relation to a stated provision of a primary Act that includes a number, means the provision of the primary Act with that number immediately before the commencement, if the provision is repealed under this Act.

previous provision, of a primary Act, means—

(a) for a primary Act other than a 2014 primary Act—a provision of the primary Act, as in force immediately

before the commencement, if the provision is repealed under this Act; or

(b) otherwise—a provision of the repealed *Property Agents and Motor Dealers Act 2000*, as in force immediately before its repeal under the *Property Occupations Act 2014*.

protection includes a statement to the effect of any of the following—

(a) that there is no liability;

(b) that there is no invalidity;

(c) that a person has an entitlement.

97 References to primary Act for ch 5

A reference in this 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*.

98 Document, action, obligation or protection under previous provision of primary Act

(1) This section applies to any of the following—

(a) a document made or kept under a previous provision of a primary Act (the ***relevant previous provision*** for the document) if the document continued to have effect or was in force immediately before the commencement;

(b) an action done under a previous provision of a primary Act (the ***relevant previous provision*** for the action) if the action continued to have effect immediately before the commencement;

(c) an entity's obligation under a previous provision of a primary Act (the ***relevant previous provision*** for the obligation) if the obligation applied to the entity immediately before the commencement;

Not authorised—indicative only

Not authorised—indicative only

(d) an entity's protection under a previous provision of a primary Act (the ***relevant previous provision*** for the protection) that applied to the entity immediately before the commencement.

(2) Subject to a specific provision of this Act in relation to the document, action, obligation or protection, if there is a corresponding provision for the relevant previous provision for the document, action, obligation or protection, the document, action, obligation or protection—

(a) continues in force or to have effect according to its terms; and

(b) may be taken to have been made, kept or done under the corresponding provision.

(3) Subsection (2)(b) applies whether or not the relevant previous provision refers to the document, action, obligation or protection by reference to a provision of the primary Act.

(4) Other provisions of this part include examples of the operation of this section.

99 Terminology in things mentioned in s 98(1)

(1) This section applies to a document (the ***relevant document***) that is—

(a) a document as mentioned in section 98(1); or

(b) evidence of a document, action, obligation or protection as mentioned in section 98(1).

(2) A reference in the relevant document to a document, action, obligation or protection as mentioned in section 98(1) is to be read, if the context permits and with the necessary changes to terminology, as if the document, action, obligation or protection were made, kept or done under this Act.

Example for subsection (2)—

An instrument of appointment given under a primary Act by the chief executive to an inspector limiting the powers of the inspector is to be read as if the instrument limited the powers of the inspector under this Act.

Not authorised—indicative only

100 Period stated in previous provision

(1) This section applies if, in a previous provision of a primary Act, there is a period for doing something, and the period for doing the thing started but did not finish before the commencement.

(2) If there is a corresponding provision to the previous provision of the primary Act and both the corresponding provision and the previous provision provide for the same period, the period for doing the thing continues to have started from when the period started under the previous provision but ends under the corresponding provision.

101 Period or date stated in document given under previous provision

(1) This section applies if—

(a) there was a previous provision of a primary Act that provided for a document to be made under it; and

(b) there is a corresponding provision to the previous provision of the primary Act; and

(c) under the previous provision and before the commencement, a document was given to a person, whether or not the person had received the document before the commencement.

Example for paragraph (c)—

a notice under the *Residential Services (Accreditation) Act 2002*, previous section 127, that states a period within which a person who is in control of a thing to be seized must take the thing to a place stated in the notice

(2) If the document stated a period for doing something—

(a) the stated period continues to apply for doing the thing; and

(b) the period continues to have started from when the period started under the previous provision of the primary Act.

Not authorised—indicative only

(3) If the document stated a day before which, or by which, a thing is to be done (however expressed), the thing must be done by the stated day.

102 Action happening before commencement may be relevant to proceeding for particular acts or omissions

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

(2) This section does not limit the *Acts Interpretation Act 1954*, section 20C.

(3) In this section—

contravention includes an alleged contravention.

103 Acts Interpretation Act 1954, s 20 not limited

This 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

104 Examples for ch 2 of documents under s 98

For the operation of chapter 2, the following are examples of documents as mentioned in section 98(1)(a) in relation to matters dealt with under a primary Act—

(a) an acknowledgement given under a previous provision of a primary Act of consent for an inspector to enter a place;

Examples of previous provisions—

- the *Residential Services (Accreditation) Act 2002*, previous section 114
- the *Second-hand Dealers and Pawnbrokers Act 2003*, previous section 83

(b) a warrant issued under a previous provision of a primary Act;

Examples of previous provisions—

- the *Residential Services (Accreditation) Act 2002*, previous section 116
- the *Retirement Villages Act 1999*, previous section 142
- the *Second-hand Dealers and Pawnbrokers Act 2003*, previous section 85

(c) a notice under a previous provision of a primary Act requiring a person to take a thing to be seized to a stated place;

Example of previous provision—

the *Residential Services (Accreditation) Act 2002*, previous section 127

(d) a notice under a previous provision of a primary Act requiring a person to give information;

Example of previous provision—

the *Residential Services (Accreditation) Act 2002*, previous section 133

(e) a receipt for a seized thing under a previous provision of a primary Act;

Examples of previous provisions—

- the *Second-hand Dealers and Pawnbrokers Act 2003*, previous section 91
- the *Tourism Services Act 2003*, previous section 55

(f) an information notice under a previous provision of a primary Act.

Not authorised—indicative only

Not authorised—indicative only

Example of previous provision—

a QCAT information notice under the *Tourism Services Act 2003*, previous section 56

105 Examples for ch 2 of obligations under s 98

For the operation of chapter 2, the following are examples of an obligation as mentioned in section 98(1)(c) in relation to matters dealt with under a primary Act—

(a) an obligation under a previous provision of a primary Act for an inspector to give notice of the particulars of damage to anything;

Examples of previous provisions—

- the *Manufactured Homes (Residential Parks) Act 2003*, previous section 123
- the *Residential Services (Accreditation) Act 2002*, previous section 137
- the *Tourism Services Act 2003*, previous section 63

(b) an obligation under a previous provision of a primary Act to return a seized thing to the person from whom it is seized or its owner;

Examples of previous provisions—

- the *Land Sales Act 1984*, previous section 30H(3)
- the *Manufactured Homes (Residential Parks) Act 2003*, previous section 120
- the *Residential Services (Accreditation) Act 2002*, previous section 130
- the *Security Providers Act 1993*, previous section 39

(c) an obligation under a previous provision of a primary Act to allow an owner of a seized thing to inspect the thing;

Examples of previous provisions—

- the *Land Sales Act 1984*, previous section 30H(2)
- the *Manufactured Homes (Residential Parks) Act 2003*, previous section 121

- the *Residential Services (Accreditation) Act 2002*, previous section 131

(d) a requirement under a previous provision of a primary Act to make a particular document available for inspection;

Examples of previous provisions—

- the *Manufactured Homes (Residential Parks) Act 2003*, previous section 122
- the *Residential Services (Accreditation) Act 2002*, previous section 134

(e) a requirement under a previous provision of a primary Act to take a thing to be seized to a stated place.

Example of previous provision—

the *Residential Services (Accreditation) Act 2002*, previous section 127

106 Examples for ch 2 of protections under s 98

For the operation of chapter 2, the following are examples of a protection as mentioned in section 98(1)(d) in relation to matters dealt with under a primary Act—

(a) a statement in a previous provision of a primary Act that particular information or a particular document is not admissible in evidence against an individual in any criminal proceedings;

Example of previous provision—

the *Land Sales Act 1984*, previous section 30F(5)

(b) a right for a person to claim compensation under a previous provision of a primary Act.

Examples of previous provisions—

- the *Land Sales Act 1984*, previous section 30J
- the *Manufactured Homes (Residential Parks) Act 2003*, previous section 124
- the *Residential Services (Accreditation) Act 2002*, previous section 138
- the *Retirement Villages Act 1999*, previous section 152

Not authorised—indicative only

Not authorised—indicative only

- the *Security Providers Act 1993*, previous section 46

Division 2 General matters

107 Existing authorised officers

(1) This section applies to a person who—

(a) before the commencement, was appointed under a primary Act as an authorised officer; and

(b) still held the appointment immediately before the commencement.

Note—

The relevant primary Acts are the *Residential Services (Accreditation) Act 2002* and the *Second-hand Dealers and Pawnbrokers Act 2003*.

(2) On the commencement—

(a) the person's appointment as an authorised officer under the primary Act ends; and

(b) the person is taken to hold office under this Act as an inspector for the primary Act on the conditions stated in the person's instrument of appointment under the primary Act.

108 Existing inspectors

(1) Subsection (2) applies to a person who—

(a) before the commencement, was appointed under a primary Act as an inspector; and

(b) still held the appointment immediately before the commencement.

Note—

The relevant primary Acts are the *Introduction Agents Act 2001*, the *Manufactured Homes (Residential Parks) Act 2003* and the *Security Providers Act 1993*, but not the *Tourism Services Act 2003* which adopted inspectors appointed under the *Fair Trading Act 1989*.

(2) On the commencement, the person is taken to hold office under this Act as an inspector for the primary Act on the conditions stated in the person's instrument of appointment under the primary Act.

(3) Subsection (4) applies to a person who—

(a) before the commencement, was appointed under the repealed *Property Agents and Motor Dealers Act 2000* as an inspector; and

(b) still held the appointment immediately before the commencement.

(4) On the commencement, the person is taken to hold office under this Act as an inspector for each 2014 primary Act on the conditions stated in the person's instrument of appointment under the repealed *Property Agents and Motor Dealers Act 2000.*

109 Reviews and appeals

Previous provisions of any primary Act that provide for review or appeal of a decision made under the primary Act continue to apply after the commencement in relation to a decision made before the commencement as if the primary Act had not been amended by this Act.

110 References in Acts and documents

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.

Not authorised—indicative only

Not authorised—indicative only

Schedule 1 Dictionary

section 11

approved form means a form approved by the chief executive under section 93.

chief executive, for the application of this Act to a primary Act that is administered in a department other than the department in which this Act is administered, means the chief executive of the department in which the primary Act is administered.

conviction means a finding of guilt, or the acceptance of a plea of guilty, by any court.

criminal history, of a person, means the convictions, other than a spent conviction, recorded against the person for offences, in Queensland or elsewhere, whether before or after the commencement of this definition.

disposal order see section 54(2).

document certification requirement see section 57(6).

document production requirement see section 57(2).

electronic document means a document of a type under the *Acts Interpretation Act 1954*, schedule 1, definition *document*, paragraph (c).

former owner see section 51(1).

general power see section 38(1).

help requirement see section 39(1).

identity card, for a provision about inspectors, means an identity card issued under section 17(1).

information notice, about a decision, means a notice stating the following—

(a) the decision;

(b) the reasons for it;

(c) that the person to whom the notice is given may apply to the chief executive for a review of the decision within 20 business days after the person receives the notice;

(d) how to apply for a review.

information requirement see section 60(3).

inspector means a person who holds office under chapter 2, part 1 as an inspector for a primary Act.

modifying provision—

(a) for the *Associations Incorporation Act 1981*—see section 4A(1); or

(b) for the *Manufactured Homes (Residential Parks) Act 2003*—see section 5(1); or

(c) for the *Property Occupations Act 2014*—see section 6(1); or

(d) for the *Residential Services (Accreditation) Act 2002*—see section 7(1); or

(e) for the *Retirement Villages Act 1999*—see section 8(1); or

(f) for the *Tourism Services Act 2003*—see section 9(1).

notice means a written notice.

occupier, of a place, includes the following—

(a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;

(b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;

(c) if no-one apparently occupies the place—any person who is an owner of the place.

of, a place, includes at or on the place.

offence warning, for a direction or requirement by an inspector, means a warning that, without a reasonable excuse, it is an offence for the person to whom the direction or requirement is made not to comply with it.

Not authorised—indicative only

Not authorised—indicative only

original decision see section 76(1)(a).

owner, of a thing that has been seized under this Act, includes a person who would be entitled to possession of the thing had it not been seized.

personal details requirement see section 55(5).

person in control—

(a) of a vehicle, includes—

(i) the vehicle's driver or rider; and

(ii) anyone who reasonably appears to be, claims to be, or acts as if he or she is, the vehicle's driver or rider or the person in control of the vehicle; or

(b) of another thing, includes anyone who reasonably appears to be, claims to be, or acts as if he or she is, the person in possession or control of the thing.

place includes the following—

(a) premises;

(b) vacant land;

(c) a place in Queensland waters;

(d) a place held under more than 1 title or by more than 1 owner;

(e) the land or water where a building or structure, or a group of buildings or structures, is situated.

premises includes the following—

(a) a building or other structure;

(b) a part of a building or other structure;

(c) a caravan or vehicle;

(d) a cave or tent;

(e) premises held under more than 1 title or by more than 1 owner.

primary Act—

(a) generally—see section 4(1); or

(b) in relation to a particular inspector—means a primary Act for which the inspector is appointed; or

(c) in relation to the exercise of a power by an inspector—means a primary Act for which the inspector is appointed and exercising the power.

public place means—

(a) a place, or part of a place—

(i) that the public is entitled to use, that is open to members of the public or that is used by the public, whether or not on payment of money; or

Examples of a place that may be a public place under subparagraph (i)—

a beach, a park, a road

(ii) the occupier of which allows, whether or not on payment of money, members of the public to enter; or

Examples of a place that may be a public place under subparagraph (ii)—

a saleyard, a showground

(b) a place that is a public place under another Act.

reasonably believes means believes on grounds that are reasonable in the circumstances.

reasonably suspects means suspects on grounds that are reasonable in the circumstances.

review decision see section 76(1)(b).

review notice day see section 76(2)(a).

spent conviction means a conviction—

(a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and

(b) that is not revived as prescribed by section 11 of that Act.

vehicle—

Not authorised—indicative only

(a) means a vehicle under the *Transport Operations (Road Use Management) Act 1995*; and

(b) includes a vessel under that Act.

Not authorised—indicative only