

Agents Financial Administration Bill 2013

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Jarrod Bleijie MP

Title of the Bill

Agents Financial Administration Bill 2013

Objective of the Amendments

The objective of the amendments is to correct minor and technical drafting errors in the Bill.

Achievement of the Objective

The objective is to be achieved by making minor amendments to the Bill.

Alternative Ways of Achieving Policy Objective

Legislative amendment is the only means of achieving the policy objective.

Estimated Cost for Government Implementation

The proposed amendments to the Bill will not impose additional costs on Government.

Consistency with Fundamental Legislative Principles

The proposed amendments are consistent with fundamental legislative principles.

Consultation

The amendments to the Bill principally stem from drafting errors identified by the Legal Affairs and Community Safety Committee during its inquiry into the Bill. The Committee consulted on the Bill by inviting written submissions and holding a public hearing.

NOTES ON PROVISIONS

Amendment 1 **Clause 15 (Application of ss 15 and 16)**

Amendment 1 amends clause 15 of the Bill to replace an incorrect reference to section 15 in the title of the clause with a correct reference to section 17.

Amendment 2 **Clause 19 (Multiple trust accounts not required)**

Amendment 2 corrects a numbering error in clause 19.

Amendment 3 **Clause 28 (Dealing with amount if no notice)**

Amendment 3 amends clause 28(3) to replace an incorrect reference to section 25 with a correct reference to section 26.

Amendment 4 **Clause 103 (Party may ask QCAT to review chief executive's decision)**

Amendment 4 amends clause 103(2)(c) of the Bill to ensure potentially affected respondents are parties to a review being undertaken by the Queensland Civil and Administrative Tribunal (QCAT) in relation to a decision of the chief executive under clause 100.

Clause 103(2)(c) provides that 'the person named by the chief executive as being liable for the claimant's financial loss' is a party to the review. However, this provision does not capture a respondent to a claim, where the chief executive refuses the claim, or otherwise does not determine that the respondent is liable for the claimant's financial loss. This is problematic given that on review, QCAT may allow the claim, and if so, must also make an order about determining liability for the claimant's financial loss.

Amendment 4 replaces the reference to 'the person named by the chief executive as being liable for the claimant's financial loss' in clause 103(2)(c) with the term 'respondent' which is defined for a claim as 'a person whose actions are alleged to have given rise to the claim' (clause 80). This amendment will ensure respondents are afforded procedural fairness by being appropriately identified as parties to a review of the chief executive's decisions on claims, regardless of whether the chief executive determined that the respondent is liable for the claimant's financial loss.

Amendment 5 **Clause 117 (Application for reimbursement order)**

Amendment 5 amends clause 117(4)(a) to replace an incorrect reference to section 101 with a correct reference to section 102.

Amendment 6 **Clause 151 (Delegation – chief executive)**

Amendment 6 amends clause 151 to replace an incorrect reference to section 147 with a correct reference to section 148.

Amendment 7 **After clause 172—**

Amendment 7 inserts the new clause 173 (Chief executive may accept PAMDA forms approved) after clause 172. The new clause 173 is a transitional provision to allow the chief executive to continue to accept particular forms approved under the *Property Agents and Motor Dealers Act 2000* (PAMD Act) following commencement of the Bill.

The particular PAMD Act forms are in relation to a claim or intention to claim, namely the PAMD Form 50 – *Claim against the claim fund*, and PAMD Form 50-1 – *Notice of intention to claim for a marketeering contravention*.

The ability of the chief executive to accept PAMD Act claim forms following commencement of this Bill will ensure that potential claimants are not at risk of their claim being out of time merely because they have used an old version of the form. For example, a claimant may have started to fill in a claim form prior to the commencement of this Bill using the PAMD Act approved form current at that time, but may not lodge the claim with the chief executive until after this Bill commences. Enabling the chief executive to accept a PAMD Act approved form in these circumstances will avoid the need for the claimant having to apply to QCAT for an extension of time in which to make their claim.

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