Queensland

PROPERTY AGENTS AND MOTOR DEALERS AMENDMENT BILL 2002

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TABLE OF PROVISIONS

2002

A BILL

FOR

An Act to amend the *Property Agents and Motor Dealers Act 2000*

The Parliament of Queensland enacts—

Clause 1 Short title

This Act may be cited as the *Property Agents and Motor Dealers Amendment Act 2002*.

Clause 2 Act amended

This Act amends the *Property Agents and Motor Dealers Act 2000.*

Clause 3 Amendment of s 469 (Definitions for ch 14)

Section 469—

insert—

' **"marketeering contravention"** means a contravention of any of the following by a relevant person—

(a) section 573A, 573B or 573C of this Act;

(b) section 60, 69, 70, 72, 73 or 74 of the repealed Act.[1]'.

Clause 4 Insertion of new s 469A

Chapter 14, part 1, after section 469—

insert—

'469A What is the purchase of a "non-investment residential property"

'A person purchases a **"non-investment residential property"** only if—

(a) the property is a residential property; and

(b) either of the following has been assessed in relation to the purchase—

1 For claims relating to offences mentioned in paragraph (b), see section 604 (Former fund).

(i) a concession, under the *Duties Act 2001,* chapter 2, part 9, for transfer duty;

(ii) a concession, under the repealed *Stamp Act 1894*, section 55A, for stamp duty.[2]'.

Clause 5 Amendment of s 471 (Persons who can not claim)

Section 471(2)—

insert—

'(h) a person who suffers financial loss because of, or arising out of, a marketeering contravention in relation to the purchase by the person of a residential property (other than a non-investment residential property).'.

Clause 6 Insertion of new section 471A

Chapter 14, part 2, division 1, after section 471—

insert—

'471A Claims limited to realised loss

'**(1)** A person may make a claim against the fund for financial loss relating to a non-investment residential property purchased by the person because of, or arising out of, a marketeering contravention only to the extent the loss is capital loss.

'**(2)** Also, capital loss mentioned in subsection (1) may be claimed only if the loss has been realised as mentioned in section 488B.[3]'.

Clause 7 Replacement of s 472 (Claims—time limit)

Section 472—

omit, insert—

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2 *Duties Act 2001*, chapter 2 (Transfer duty), part 9 (Concessions for homes)
Stamp Act 1894, section 55A (Duty relating to principal place of residence and first principal place of residence)

3 Section 488B (General test for working out loss)
See also section 634 (Application of amendments to claims).

'472 General time limit for making claims

'**(1)** This section applies to a claim against the fund other than a claim because of, or arising out of, a marketeering contravention in relation to the purchase of a non-investment residential property.

'**(2)** A person may make the claim against the fund only if the person makes the claim within the earlier of the following—

(a) 1 year after the person becomes aware that the person has suffered financial loss because of the happening of an event mentioned in section 470(1);[4]

(b) 3 years after the happening of the event that caused the person's financial loss.

'**(3)** However if the person starts a proceeding in a court to recover the person's financial loss within the time permitted to make a claim under subsection (2), the person may make the claim within 3 months after the proceeding in the court ends.

'**(4)** Subsection (3) does not limit the time allowed under subsection (2) to make a claim.

'**(5)** Despite subsections (2) and (3), the tribunal, on application under section 510,[5] may extend the time within which a person may make the claim.

'472A Time limit for making particular claims relating to marketeering contraventions and non-investment residential property

'**(1)** A person may make a claim against the fund for capital loss because of, or arising out of, a marketeering contravention in relation to the person's purchase of a non-investment residential property only if—

(a) the person has within 1 year after the contract date, given the chief executive notice in the approved form that the person intends to make the claim; and

(b) the person makes the claim within 6 years after the contract date.

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4 Section 470 (Claims)

5 Section 510 (Application to extend time to file claim or review decision)

‘**(2)** The approved form must include the matters mentioned in section 473(2)(a) to (d).

‘**(3)** In this section—

“contract date” means the day on which the contract for the purchase was entered into.

‘472B Time limit for a claim notified by receiver

‘Despite section 472 or 472A, a claim given under section 432(3)(b)[6] to the chief executive by a receiver is taken to have been made within the time allowed under section 472 or 472A.’.

Clause 8 Amendment of s 473 (How to make a claim)

(1) Section 473, words before subsection (2)—

omit, insert—

‘473 General provision for how to make a claim

‘**(1)** This section applies to a claim against the fund, other than a claim for loss because of, or arising out of, a marketeering contravention in relation to the purchase of a non-investment residential property.’.

(2) Section 473(2), ‘must state’—

omit, insert—

‘must be made to the chief executive in the approved form and state’.

(3) Section 473(3), ‘A claim’—

omit, insert—

‘The claim’.

(4) Section 473(6)—

omit.

Clause 9 Insertion of new s 473A

After section 473—

6 Section 432 (Payment of claims)

insert—

‘473A Making particular claims relating to marketeering contraventions and non-investment residential property

‘**(1)** This section applies to a claim against the fund for capital loss because of, or arising out of, a marketeering contravention in relation to the purchase of a non-investment residential property.

‘**(2)** The claim must—

(a) be made to the chief executive in the approved form; and

(b) state the realised capital loss claimed.[7]

‘**(3)** A purported claim that does not substantially comply with subsection (2) is of no effect.

‘**(4)** The chief executive may require the claimant to verify the claim or part of the claim.

Example of verification—

Statutory declaration.

‘**(5)** To remove any doubt, it is declared that if the purchase was by more than 1 person, only 1 claim may be made.

‘**(6)** A claim mentioned in subsection (5) may be made by 1 of the purchasers or by 2 or more of the purchasers jointly.’.

Clause 10 Insertion of new ch 14, pt 2, div 4A

Chapter 14, part 2—

insert—

‘Division 4A—Deciding financial loss for non-investment residential property

‘488A Application of div 4A

‘This division applies if the chief executive or the tribunal is deciding a claimant’s financial loss for realised capital loss because of, or arising out

7 See also division 4A (Deciding financial loss for non-investment residential property).

of, a marketeering contravention in relation to the purchase of a non-investment residential property.[8]

‘488B General test for working out loss

‘**(1)** Subject to section 488C, the financial loss is the amount of the difference between the contract price or value for the property paid by the claimant and the contract price or value for the sale of the property by the claimant (the **“on-sale”**).

‘**(2)** The loss is only realised if the on-sale has been completed.[9]

‘488C Adjustment for on-sale not at market value

‘**(1)** The chief executive or the tribunal must decide whether the contract price or value for the on-sale reasonably reflected the property’s market value when the contract was entered into.

‘**(2)** If the chief executive or the tribunal decides the contract price or value did not reasonably reflect the property’s market value—

(a) the chief executive or the tribunal must fix what the reasonable market value of the property was when the contract was entered into; and

(b) for section 488B(1), the contract price or value is taken to be that fixed market value.’.

Clause 11 Amendment of s 489 (Payment of claims)

Section 489—

insert—

‘**(3)** This section is subject to section 492.[10]’.

Clause 12 Replacement of ss 490 and 491

Sections 490 and 491—

8 See also section 471A (Claims limited to realised loss).

9 See also section 634 (Application of amendments to claims).

10 Section 492 (Limits on recovery from fund)

omit, insert—

‘490 Liability for payment from the fund

‘**(1)** This section applies if—

(a) a person (the **“responsible person”**) is named in the chief executive’s decision or the tribunal’s order as being liable for a claimant’s financial loss;[11] and

(b) an amount has, under section 489, been paid from the fund to the claimant in settlement of the claimant’s claim.

‘**(2)** Each person as follows is jointly and severally liable to reimburse the fund to the extent of the amount paid to the claimant—

(a) the responsible person;

(b) if the responsible person is a corporation—each person who was an executive officer of the corporation when the relevant event mentioned in section 470(1)[12] happened.

‘**(3)** The chief executive may recover from each person mentioned in subsection (2) as a debt an amount for which the person is, under the subsection, liable to reimburse the fund.[13]’.

Clause 13 Amendment of s 492 (Limits on recovery from fund)

(1) Section 492—

insert—

‘**(2A)** Also, the claimant may not recover more than $35 000 from the fund for a single claim for financial loss if the claim relates to a non-investment residential property purchased by the claimant because of, or arising out of, a marketeering contravention.[14]’.

(2) Section 492(3), ‘(a **“wrong”**)’—

omit.

11 See sections 481 (Deciding minor claims), 488 (Deciding claims other than minor claims) and 530 (Orders tribunal may make on claim hearing).

12 Section 470 (Claims)

13 See also section 635 (Application of liability for payment from the fund).

14 See also section 634 (Application of amendments to claims).

(3) Section 492(4)—

omit.

(4) Section 492(2A) and (3)—

renumber as section 492(3) and (4).

Clause 14 Amendment of s 510 (Application to extend time to file claim or review decision)

Section 510(1), after 'claim'—

insert—

'to which section 472[15] applies'.

Clause 15 Amendment of s 604 (Former fund)

Section 604—

insert—

'**(7)** For applying subsection (3) and this Act, a contravention, stealing or fraudulent misappropriation or misapplication mentioned in section 119(1) of the repealed Act in relation to which the claim arose is taken to be an event mentioned in section 470(1).[16]'.

Clause 16 Insertion of new ch 19, pt 4

Chapter 19—

insert—

'PART 4—TRANSITIONAL PROVISIONS FOR PROPERTY AGENTS AND MOTOR DEALERS AMENDMENT ACT 2002

15 Section 472 (General time limit for making claims)

16 Section 119 (Application of fund) of the repealed Act
Section 470 (Claims)

‘634 Application of amendments to claims

‘**(1)** The amended chapter 14, part 2 applies to claims made against the fund at any time—

(a) whether before or after the commencement of the amendments of the previous chapter 14, part 2 made by the amending Act; and

(b) irrespective of when any circumstance relating to them happened.

‘**(2)** However, the previous chapter 14, part 2 continues to apply for a claim if before 25 November 2002—

(a) an amount was, under section 489,[17] paid from the fund in settlement of the claim; or

(b) the chief executive or the tribunal had decided the claim, but an amount had not yet been paid from the fund in settlement of the claim.

‘**(3)** To remove any doubt, it is declared that this section applies to—

(a) a claim mentioned in section 604[18] made against the former fund; and

(b) a claim that could have been made against the former fund.

‘**(4)** In this section—

“amended chapter 14, part 2” means chapter 14, part 2,[19] as amended by the amending Act.

“amending Act” means the *Property Agents and Motor Dealers Amendment Act 2002.*

“previous chapter 14, part 2” means chapter 14, part 2, as in force before the date of assent for the amending Act.

17 Section 489 (Payment of claims)

18 Section 604 (Former fund)

19 Chapter 14 (Claims against the fund and other proceedings), part 2 (Claims against the fund)

‘635 Application of liability for payment from the fund

‘Section 490,[20] as inserted by the *Property Agents and Motor Dealers Amendment Act 2002* applies to any payment from the fund made at any time, whether before or after the commencement of the section.’.

Clause 17 Amendment of sch 3 (Dictionary)

Schedule 3—

insert—

‘ **“marketeering contravention”**, for chapter 14, see section 469.

“non-investment residential property”, for chapter 14, see section 469A.

“on-sale” for chapter 14, part 2, division 4A, see section 488B(1).’.

20 Section 490 (Liability for payment from the fund)