

FIRST PRINT

**HOMEFUND COMMISSIONER (MISCELLANEOUS
AMENDMENTS) BILL 1993**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the HomeFund Commissioner Act 1993 so as:

- (a) to extend the powers of the HomeFund Commissioner to require the production of information; and
- (b) to extend the class of persons with respect to whom the HomeFund Commissioner may make determinations; and
- (c) to extend the powers of the HomeFund Commissioner to make orders with respect to the payment of money and other orders; and
- (d) to extend the class of parties who may be bound by a determination made by the HomeFund Commissioner; and
- (e) to enable determinations of the HomeFund Commissioner to be enforced in courts of competent jurisdiction; and
- (f) to enable an appeal on a question of law to be made to the Supreme Court from a determination of the HomeFund Commissioner; and
- (g) to enact savings and transitional provisions consequent on the enactment of the proposed Act.

Clause 1 specifies the short title to the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the HomeFund Commissioner Act 1993.

HomeFund Commissioner (Miscellaneous Amendments) 1993

SCHEDULE 1—AMENDMENTS

Production of information under section 16

Section 16 enables the HomeFund Commissioner to require authorities to produce certain information for the purposes of an investigation being carried out by the Commissioner.

Schedule 1 (3) (a) amends section 16 so as to enable the Commissioner to make such a requirement for the purposes of a preliminary assessment of a complaint as well as for the purposes of an investigation.

Schedule 1 (3) (b) further amends section 16 so as to enable the Commissioner to make such a requirement of any person.

Schedule 1 (3) (c) is consequential on the amendment made by Schedule 1 (3) (b).

Determinations under section 25

Section 25 enables the HomeFund Commissioner to make determinations about the whole or any part of the subject-matter of a complaint.

Schedule 1 (5) (a) amends the section so as to enable a determination to cover additional persons and bodies, being:

- (a) the First Australian National Mortgage Acceptance Corporation Limited ("FANMAC"); and
- (b) any person or body who appears to be materially involved in the subject-matter of the complaint; and
- (c) any person or body who consents to being covered by the determination.

Schedule 1 (5) (b) amends the section so as to make it clear that an order for the payment of money can be made against any party to a determination other than a HomeFund borrower.

Schedule 1 (5) (c) amends the section so as to enable a determination to make ancillary orders for the payment of money (as provided by the amendments proposed by Schedule 1 (5) (d)), to grant consequential or ancillary relief and to order the doing of anything else that is necessary to give effect to the determination.

Schedule 1 (5) (d) amends the section so as to provide that a determination may not apply to a person unless the complainant is entitled to a legal remedy against that person and is not eligible for appropriate relief under a relief program referred to in proposed section 31B.

There is to be one exception to the requirement that the complainant must have an entitlement to such a legal remedy: the Commissioner will be able to make an order requiring the FANMAC trustee (who is a party to all HomeFund mortgages) to alter or substitute a mortgage even if the complainant is not entitled to a legal remedy against the trustee.

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However, such an order may be made only if the complainant is entitled to a legal remedy against some other person and an ancillary order is made requiring that other person to compensate the FANMAC trustee for the costs incurred by the FANMAC trustee in complying with the determination.

The FANMAC trustee will not be obliged to comply with such an order until those costs have been paid.

Schedule 1 (5) (e) amends the section so as to require a determination to have due regard to, and not prejudice, a complainant's eligibility for relief under a relief program referred to in proposed section 31B.

Schedule 1 (5) (f) makes amendments consequential on the other amendments made to the section.

Schedule 1 (7) substitutes section 28 so as to provide that the complainant, and all parties named in a determination, are to be bound by the determination (rather than, as is currently the case, public authorities only).

Schedule 1 (9) inserts a new section 29A. The proposed section provides that a determination has effect as if it were a judgment or order of a court of competent jurisdiction and may be enforced accordingly.

Schedule 1 (10) substitutes section 30 so as to require all determinations to be in writing and to state the Commissioner's findings and reasons for the determination. The existing section requires a determination to be reduced to writing only if a party so requests.

Schedule 1 (11) inserts new sections 31A and 31B.

Proposed section 31A ensures that the power to make and enforce determinations is not affected by the expiration of any relevant limitation period (that is, a period beyond which the taking of legal action is barred by law).

Proposed section 31B provides for the Minister to notify the Commissioner of the existence of any relief program (such as a program for restructuring HomeFund mortgages) that is available to HomeFund borrowers.

Appeals under section 40

Section 40 currently prevents any appeal from being made against a determination or decision of the HomeFund Commissioner.

Schedule 1 (12) amends section 40 so as to enable an appeal to be made to the Supreme Court, but only with the leave of the Supreme Court, in relation to any determination of the Commissioner on a question of law. An application for leave to appeal against a determination will have to be made within 28 days after the making of the determination or within such further time as the Supreme Court may allow. The parties to the appeal will include the Commissioner and, except as otherwise provided by the regulations, the parties to the determination. The Minister will be empowered to intervene in any proceedings on an appeal. The parties to an appeal will be required to bear their own costs, as the Supreme Court will be prevented from making any order as to the costs of the appeal.

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Miscellaneous

Schedule 1 (13) inserts a new section 40A. The proposed section enables proceedings by or against the Department of Housing to be taken in the name of the Director of Housing.

Schedule 1 (1), (2), (4), (6) and (8) make minor, consequential or ancillary amendments.

Schedule 1 (14) and (15) make provision of a savings and transitional nature as a consequence of the enactment of the proposed Act.

FIRST PRINT

**HOMEFUND COMMISSIONER (MISCELLANEOUS
AMENDMENTS) BILL 1993**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of HomeFund Commissioner Act 1993 No. 9

SCHEDULE 1—AMENDMENTS

**HOMEFUND COMMISSIONER (MISCELLANEOUS
AMENDMENTS) BILL 1993**

NEW SOUTH WALES



No. , 1993

A BILL FOR

An Act to amend the HomeFund Commissioner Act 1993 to make further provision with respect to determinations that may be made by the HomeFund Commissioner under that Act; and for other purposes.

HomeFund Commissioner (Miscellaneous Amendments) 1993

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the HomeFund Commissioner (Miscellaneous Amendments) Act 1993.

5 Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of HomeFund Commissioner Act 1993 No. 9

3. The HomeFund Commissioner Act 1993 is amended as set out in
10 Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 3 (**Definitions**):

After the definition of “mortgage” in section 3 (1), insert:

15 “**party**” to a determination means a person or body
 named in the determination as being covered by the
 determination;

(2) Heading to Division 2 of Part 4:

20 Omit “Investigations”, insert instead “Dealing with and
 investigating complaints”.

(3) Section 16 (**Information to be given**):

(a) In section 16 (1), after “purposes of”, insert “a preliminary
 assessment or”.

25 (b) From section 16 (1), omit “an authority (as defined in
 subsection (3))”, insert instead “any person”.

(c) Omit section 16 (3).

(4) Section 19 (**Limits on secrecy and privilege (information and
 inquiries)**):

30 From section 19 (1), omit “, in the course of an
 investigation,”.

HomeFund Commissioner (Miscellaneous Amendments) 1993

SCHEDULE 1—AMENDMENTS—*continued*

(5) Section 25 (**Determinations**):

(a) Omit section 25 (2), insert instead:

(2) A determination applies to such of the following as are named in the determination as being covered by it: 5

(a) the parties to a HomeFund mortgage;

(b) the parties to an ancillary contract or arrangement to which a HomeFund borrower is or was a party (including for example a real estate developer, real estate agent or lawyer); 10

(c) a co-operative housing society;

(d) the Department of Housing;

(e) FANMAC;

(f) any person or body (other than a person or body referred to in paragraphs (a)–(e)) who appears to be materially involved in the subject-matter of the complaint; 15

(g) any person or body (other than a person or body referred to in paragraphs (a)–(f)) who consents to being covered by the determination. 20

(2A) A person or body cannot be named as a party to a determination unless the person or body has been given notice of the investigation of the complaint (under section 14) and an opportunity to make submissions on the subject-matter of the complaint (under section 22). 25

(b) In section 25 (3) (d), after “to a HomeFund borrower”, insert “by a person or body (other than a HomeFund borrower)”;

(c) After section 25 (3) (d), insert:

(e) ordering the payment to the FANMAC trustee by a person or body (other than a HomeFund borrower) of an amount referred to in subsection (4A) (b); 30

(f) granting such other relief as is consequential or ancillary to the relief granted by paragraphs (a)–(e);

(g) ordering the doing of anything else that is necessary to give effect to the determination. 35

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SCHEDULE 1—AMENDMENTS—*continued*

(d) Omit section 25 (4), insert instead:

5 (4) The Commissioner is not to make a determination applying to any person or body (other than a HomeFund borrower) unless satisfied:

(a) that the complainant has (apart from this Act) an entitlement to a legal remedy against that person or body in relation to the complaint; and

10 (b) that the complainant is not eligible for relief under any relief program whose existence has been notified to the Commissioner under section 31B or that any such program is inappropriate in the particular circumstances of the complainant's case.

15 (4A) However, subsection (4) (a) does not prevent the Commissioner from making a determination applying to the FANMAC trustee just because the complainant does not have an entitlement to a legal remedy against the FANMAC trustee, so long as:

20 (a) the Commissioner is satisfied that the complainant has such an entitlement against one or more of the other parties to the determination; and

25 (b) the Commissioner makes an order requiring some or all of those other parties to pay to the FANMAC trustee such amount as, in the Commissioner's opinion, is sufficient to compensate the FANMAC trustee for the costs incurred by the FANMAC trustee in complying with the requirements of the determination.

30 (4B) The FANMAC trustee is not obliged to comply with the requirements of a determination referred to in subsection (4A) until it has received (whether or not from a party specified in an order referred to in subsection (4A) (b)) an amount, by way of compensation for the costs referred to in that paragraph, of at least the amount specified in the order.

(e) After section 25 (5), insert:

35 (5A) However, the determination must be made with due regard to, and must not prejudice the complainant's eligibility for, any relief for which the complainant is eligible under a relief program whose existence has been notified to the Commissioner under section 31B.

HomeFund Commissioner (Miscellaneous Amendments) 1993

SCHEDULE 1—AMENDMENTS—*continued*

- (f) Omit section 25 (6), insert instead:
- (6) Nothing in this section affects the operation of section 26 or the power to make a determination under section 27.
- (7) In any determination, more than one person or body may be the subject of orders of the kind referred to in subsection (3) (d) or (e), but only one person or body may be the subject of any one order. 5
- (8) Without affecting the generality of subsection (3) (g), an order referred to in that paragraph may order the disposition of an interest in land, either by the holder of the interest or, if the holder fails to comply with such an order, by some other person. 10
- (9) The regulations may make provision for or with respect to the things that must be done before an order for the disposition of land takes effect, and any person (including the Registrar-General) who is required by the regulations to do any thing is authorised to do it. 15
- (10) No stamp duty is payable in connection with an instrument that is required to be executed for the purpose of giving effect to any relief granted by a determination. 20
- (6) Section 26 (**Monetary determinations**):
- Omit section 26 (4).
- (7) Section 28:
- Omit the section, insert instead: 25
- Binding nature of determinations**
28. A determination binds the complainant and all of the parties named as covered by the determination.
- (8) Section 29 (**Consents to determinations**):
- Omit section 29 (2). 30
- (9) Section 29A:
- After section 29, insert:
- Enforcement of determinations**
- 29A. (1) A determination has effect as if it were a judgment or order of a court of competent jurisdiction and, on registration in such a court, may be enforced against a 35

HomeFund Commissioner (Miscellaneous Amendments) 1993

SCHEDULE 1—AMENDMENTS—*continued*

person or body bound by the determination as if the determination were a judgment or order of that court.

5 (2) In particular, an order of the kind referred to in section 25 (8) has effect as if it were an order of the Supreme Court and, in the case of an order relating to land under the provisions of the Real Property Act 1900, section 86 of that Act has effect accordingly.

10 (3) Regulations or rules of court may be made for the purposes of this section for or with respect to the registration and enforcement of determinations. Regulations prevail over rules of court to the extent of an inconsistency.

(10) Section 30:

Omit the section, insert instead:

15 **Form of determination**

30. A determination is to be in writing and is to contain a statement of the Commissioner's findings (both of fact and of law) and the Commissioner's reasons for the determination.

(11) Sections 31A, 31B:

20 After section 31, insert:

Suspension of limitation periods

25 31A. (1) A determination may be made and enforced in accordance with this Part regardless of the expiration of any limitation period applicable to the complainant's entitlement to a legal remedy on which the determination is based.

(2) However, a determination ordering the payment of money to a HomeFund borrower may not be made unless the complaint from which the determination arises was made before the expiration of any such limitation period.

30 **Minister may notify Commissioner of alternative relief programs**

35 31B. The Minister may notify the Commissioner of the existence of any relief program (such as a program for restructuring HomeFund mortgages) that is available to HomeFund borrowers, either generally or to particular HomeFund borrowers or particular classes of HomeFund borrowers.

HomeFund Commissioner (Miscellaneous Amendments) 1993

SCHEDULE 1—AMENDMENTS—*continued*

(12) Section 40 (**Appeal**):

At the end of the section, insert:

(2) However, an appeal lies to the Supreme Court, on a question of law, against a determination of the Commissioner. 5

(3) Such an appeal may be made only with the leave of the Supreme Court.

(4) Application for leave to appeal must be made to the Supreme Court within 28 days after the determination is made or within such further time as the Supreme Court may allow in a particular case. 10

(5) The parties to an appeal are the Commissioner and, except as otherwise provided by the regulations, each of the parties to the determination against which the appeal is made. 15

(6) The Minister may intervene in an appeal at any stage. On intervening, the Minister becomes a party to the appeal and has all the rights of a party to the appeal.

(7) The Supreme Court is not to award costs to or against any party to an appeal. 20

(13) Section 40A:

After section 40, insert:

Proceedings by or against the Department of Housing

40A. (1) Proceedings under this Act may be commenced and maintained: 25

(a) by the Director of Housing as nominal plaintiff for the Department of Housing; or

(b) against the Director of Housing as nominal defendant for the Department of Housing,

and may be continued until their final determination regardless of any change in the office of the Director during the course of the proceedings. 30

(2) The Director of Housing is not personally liable under any order or judgment arising from any such proceedings.

*HomeFund Commissioner (Miscellaneous Amendments) 1993*SCHEDULE 1—AMENDMENTS—*continued*

(14) Section 47:

After section 46, insert:

Savings and transitional provisions

5 47. Schedule 3 has effect.

(15) Schedule 3:

After Schedule 2, insert:

**SCHEDULE 3—SAVINGS AND TRANSITIONAL
PROVISIONS**

10 (Sec. 47)

**Part 1—Provisions consequent on the enactment of
the HomeFund Commissioner (Miscellaneous
Amendments) Act 1993****Definitions**

15 1. In this Part:

“**amending Act**” means the HomeFund Commissioner
(Miscellaneous Amendments) Act 1993;

20 “**relevant commencement**”, in relation to a provision of
this Act that is amended by a provision of the amending
Act, means the day appointed under section 2 of the
amending Act for the commencement of the provision
of the amending Act that amends the provision of this
Act.

Pending complaints

25 2. (1) A provision of this Act, as amended by the
amending Act, applies to complaints made before the
relevant commencement as well as to complaints made on or
after the relevant commencement.

30 (2) However, a complainant whose complaint was made
before the date of assent to the amending Act may withdraw
the complaint, whether or not the Commissioner agrees.

HomeFund Commissioner (Miscellaneous Amendments) 1993

SCHEDULE 1—AMENDMENTS—*continued*

Existing determinations

3. An amendment made by the amending Act does not apply to any determination made under a provision of this Act before the relevant commencement.

SECOND PRINT

**HOMEFUND COMMISSIONER (MISCELLANEOUS
AMENDMENTS) BILL 1993**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of HomeFund Commissioner Act 1993 No. 9

SCHEDULE 1—AMENDMENTS

This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Legislative Assembly

Clerk of the Legislative Assembly.

NEW SOUTH WALES



Act No. , 1993

An Act to amend the HomeFund Commissioner Act 1993 to make further provision with respect to determinations that may be made by the HomeFund Commissioner under that Act; and for other purposes.

HomeFund Commissioner (Miscellaneous Amendments) 1993

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the HomeFund Commissioner (Miscellaneous Amendments) Act 1993.

5 Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of HomeFund Commissioner Act 1993 No. 9

3. The HomeFund Commissioner Act 1993 is amended as set out in
10 Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 3 (**Definitions**):

15 (a) Insert in section 3 (1), in alphabetical order, the following definitions:

“**FANMAC Guidelines**” means so much of the document published by FANMAC under that name as is comprised in:

20 (a) PART II—CREDIT REQUIREMENTS AND PROPERTY GUIDELINES; and

(b) PART IV—LOAN MANAGEMENT;

“**party**” to a determination means a person or body named in the determination as being covered by the determination;

25 (b) In the definition of “FANMAC trustee” in section 3 (1), after “lending”, insert “, being the person who is for the time being the mortgagee under a FANMAC mortgage”.

(2) Section 10 (**Right to complain**):

30 From section 10 (2), omit “may accept a complaint outside that period if of the opinion that special circumstances exist”, insert instead “has a discretion to accept a complaint outside that period”.

HomeFund Commissioner (Miscellaneous Amendments) 1993

SCHEDULE 1—AMENDMENTS—*continued*

- (3) Heading to Division 2 of Part 4:
Omit “Investigations”, insert instead “Dealing with and investigating complaints”.
- (4) Section 16 (**Information to be given**): 5
- (a) In section 16 (1), after “purposes of”, insert “a preliminary assessment or”.
- (b) From section 16 (1), omit “an authority (as defined in subsection (3))”, insert instead “any person”.
- (c) Omit section 16 (3). 10
- (5) Section 19 (**Limits on secrecy and privilege (information and inquiries)**):
- From section 19 (1), omit “, in the course of an investigation,”.
- (6) Section 25 (**Determinations**): 15
- (a) Omit section 25 (2), insert instead:
- (2) A determination applies to such of the following as are named in the determination as being covered by it:
- (a) the parties to a HomeFund mortgage;
- (b) the parties to an ancillary contract or arrangement to which a HomeFund borrower is or was a party (including for example a real estate developer, real estate agent or lawyer); 20
- (c) a co-operative housing society;
- (d) the Department of Housing; 25
- (e) FANMAC;
- (f) any person or body (other than a person or body referred to in paragraphs (a)–(e)) who appears to be materially involved in the subject-matter of the complaint; 30
- (g) any person or body (other than a person or body referred to in paragraphs (a)–(f)) who consents to being covered by the determination.

HomeFund Commissioner (Miscellaneous Amendments) 1993

SCHEDULE 1—AMENDMENTS—*continued*

- 5 (2A) A person or body cannot be named as a party to a determination unless the person or body has been given notice of the investigation of the complaint (under section 14) and an opportunity to make submissions on the subject-matter of the complaint (under section 22).
- (b) In section 25 (3) (d), after “to a HomeFund borrower”, insert “by a person or body (other than a HomeFund borrower)”;
- (c) After section 25 (3) (d), insert:
- 10 (e) ordering the payment to the FANMAC trustee by a person or body (other than a HomeFund borrower) of an amount referred to in subsection (4A) (b);
- (f) granting such other relief as is consequential or ancillary to the relief granted by paragraphs (a)–(e);
- 15 (g) ordering the doing of anything else that is necessary to give effect to the determination.
- (d) In section 25 (4), after “determination”, insert “under this section”.
- (e) After section 25 (4), insert:
- 20 (4A) For the purposes of subsection (4) but without limiting that subsection, a HomeFund borrower has an entitlement to a legal remedy in relation to a complaint if the circumstances leading to entry into the HomeFund mortgage to which the complaint relates did not comply with the
- 25 FANMAC Guidelines in force:
- (a) at the time the loan was granted; or
- (b) at the time of the event to which the complaint relates.
- (4B) For the purposes of subsection (4) but without limiting that subsection, a HomeFund borrower has an
- 30 entitlement to a legal remedy in relation to a complaint if the Commissioner is satisfied that, at the time the HomeFund borrower entered into the mortgage to which the complaint relates:
- (a) any one of the parties referred to in section 25 (2) (b);
- 35 or
- (b) the relevant officers of the Department of Housing,

HomeFund Commissioner (Miscellaneous Amendments) 1993

SCHEDULE 1—AMENDMENTS—*continued*

knew, or could have found by reasonable inquiry at the time, that the borrower could not reasonably be expected to pay in accordance with the terms of the mortgage or could not do so without substantial hardship. 5

(4C) The Commissioner may make a determination applying to the FANMAC trustee even if the complainant does not have an entitlement to a legal remedy against the FANMAC trustee, so long as:

(a) the Commissioner is satisfied that the complainant has such an entitlement against one or more of the other parties to the determination; and 10

(b) the Commissioner makes an order requiring some or all of those other parties to pay to the FANMAC trustee such amount as, in the Commissioner's opinion, is sufficient to compensate the FANMAC trustee for the costs incurred by the FANMAC trustee in complying with the requirements of the determination. 15

(4D) The FANMAC trustee is not obliged to comply with the requirements of a determination referred to in subsection (4A) until it has received (whether or not from a party specified in an order referred to in subsection (4A) (b)) an amount, by way of compensation for the costs referred to in that paragraph, of at least the amount specified in the order. 20

(f) After section 25 (5), insert: 25

(5A) However, the determination must be made with due regard to, and must not prejudice the complainant's eligibility for, any relief for which the complainant is eligible under a relief program whose existence has been notified to the Commissioner under section 31B. 30

(g) Omit section 25 (6), insert instead:

(6) Nothing in this section affects the operation of section 26 or the power to make a determination under section 27.

(7) In any determination, more than one person or body may be the subject of orders of the kind referred to in subsection (3) (d) or (e), but only one person or body may be the subject of any one order. 35

HomeFund Commissioner (Miscellaneous Amendments) 1993

SCHEDULE 1—AMENDMENTS—*continued*

5 (8) Without affecting the generality of subsection (3) (g), an order referred to in that paragraph may order the disposition of an interest in land, either by the holder of the interest or, if the holder fails to comply with such an order, by some other person.

10 (9) The regulations may make provision for or with respect to the things that must be done before an order for the disposition of land takes effect, and any person (including the Registrar-General) who is required by the regulations to do any thing is authorised to do it.

(10) No stamp duty is payable in connection with an instrument that is required to be executed for the purpose of giving effect to any relief granted by a determination.

15 (7) Section 26 (**Monetary determinations**):

Omit section 26 (4).

(8) Section 28:

(a) Omit section 28 (1), insert instead:

20 (1) A determination binds such of the following as are persons to which it applies:

- (a) the State of New South Wales;
- (b) a public authority;
- (c) a mortgagee under a HomeFund mortgage.

(b) After section 28 (2), insert:

25 (3) Despite subsection (2), a determination binds such of the following as are persons to which it applies:

- (a) a party referred to in section 25 (2) (b) or (f);
- (b) a co-operative housing society;
- (c) FANMAC;

30 (d) a HomeFund borrower,

to the extent to which the determination provides the HomeFund borrower with relief against that person and to the extent to which the HomeFund borrower consents to being bound by the determination.

HomeFund Commissioner (Miscellaneous Amendments) 1993

SCHEDULE 1—AMENDMENTS—*continued*

- (4) If a determination requires a person referred to in subsection (3) (a), (b) or (c) to pay an amount to a HomeFund borrower and the amount is not paid in full within 28 days after the determination is made, the State of New South Wales is to pay to the HomeFund borrower the amount by which the amount required to be paid remains unpaid. 5
- (5) Any amount paid under subsection (4) may be recovered by the State of New South Wales from the person by whom the amount was ordered to be paid as a debt in any court of competent jurisdiction. 10
- (6) The State of New South Wales is to pay to the mortgagee under a HomeFund mortgage such amounts as may from time to time be necessary to compensate the mortgagee for: 15
- (a) any costs incurred by the mortgagee in complying with a determination; and
- (b) any loss of income suffered by the mortgagee as a result of its compliance with a determination. 20
- (7) Payments under subsections (4) and (6) are to be made out of funds legally available or out of funds to be appropriated by Parliament for that purpose.
- (8) A HomeFund borrower's entitlement under a determination, to the extent to which the determination orders the payment of money to the HomeFund borrower, is stayed by an appeal against the determination. 25
- (9) Section 29A:
After section 29, insert:
- Enforcement of determinations** 30
- 29A. (1) A determination has effect as if it were a judgment or order of a court of competent jurisdiction and, on registration in such a court, may be enforced against a person or body bound by the determination as if the determination were a judgment or order of that court. 35

HomeFund Commissioner (Miscellaneous Amendments) 1993

SCHEDULE 1—AMENDMENTS—*continued*

5 (2) In particular, an order of the kind referred to in section 25 (8) has effect as if it were an order of the Supreme Court and, in the case of an order relating to land under the provisions of the Real Property Act 1900, section 86 of that Act has effect accordingly.

10 (3) Regulations or rules of court may be made for the purposes of this section for or with respect to the registration and enforcement of determinations. Regulations prevail over rules of court to the extent of an inconsistency.

(10) Section 30:

Omit the section, insert instead:

Form of determination

15 30. A determination is to be in writing and is to contain a statement of the Commissioner's findings (both of fact and of law) and the Commissioner's reasons for the determination.

(11) Sections 31A, 31B:

After section 31, insert:

Suspension of limitation periods

20 31A. A determination may be made and enforced in accordance with this Part regardless of the expiration of any limitation period applicable to the complainant's entitlement to a legal remedy on which the determination is based.

25 **Minister may notify Commissioner of alternative relief programs**

30 31B. The Minister may notify the Commissioner of the existence of any relief program (such as a program for restructuring HomeFund mortgages) that is available to HomeFund borrowers, either generally or to particular HomeFund borrowers or particular classes of HomeFund borrowers.

(12) Section 40 (**Appeal**):

At the end of the section, insert:

35 (2) However, an appeal lies to the Supreme Court by a person referred to in section 28 (3) (a), (b) or (c), on a question of law, against a determination of the Commissioner.

HomeFund Commissioner (Miscellaneous Amendments) 1993

SCHEDULE 1—AMENDMENTS—*continued*

(3) Such an appeal may be made only with the leave of the Supreme Court.

(4) Application for leave to appeal must be made to the Supreme Court within 28 days after the determination is made or within such further time as the Supreme Court may allow in a particular case. 5

(5) The parties to an appeal are the Commissioner and, except as otherwise provided by the regulations, each of the parties to the determination against which the appeal is made. 10

(6) The Minister may intervene in an appeal at any stage. On intervening, the Minister becomes a party to the appeal and has all the rights of a party to the appeal.

(7) The Supreme Court is not to award costs to or against any party to an appeal. 15

(8) If a HomeFund borrower is a party to any proceedings on an appeal, then, unless the Minister elects to fund the proceedings, the proceedings are to be conducted by the Minister on the HomeFund borrower's behalf and the borrower and the Minister conjointly entitled to select counsel. 20

(13) Section 40A:

After section 40, insert:

Proceedings by or against the Department of Housing

40A. (1) Proceedings under this Act may be commenced and maintained: 25

(a) by the Director of Housing as nominal plaintiff for the Department of Housing; or

(b) against the Director of Housing as nominal defendant for the Department of Housing, 30

and may be continued until their final determination regardless of any change in the office of the Director during the course of the proceedings.

(2) The Director of Housing is not personally liable under any order or judgment arising from any such proceedings. 35

*HomeFund Commissioner (Miscellaneous Amendments) 1993*SCHEDULE 1—AMENDMENTS—*continued*

(14) Section 47:

After section 46, insert:

Savings and transitional provisions

5 47. Schedule 3 has effect.

(15) Schedule 3:

After Schedule 2, insert:

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS

10 (Sec. 47)

Part 1—Provisions consequent on the enactment of the HomeFund Commissioner (Miscellaneous Amendments) Act 1993**Definitions**

15 1. In this Part:

“**amending Act**” means the HomeFund Commissioner (Miscellaneous Amendments) Act 1993;

20 “**relevant commencement**”, in relation to a provision of this Act that is amended by a provision of the amending Act, means the day appointed under section 2 of the amending Act for the commencement of the provision of the amending Act that amends the provision of this Act.

Pending complaints

25 2. (1) A provision of this Act, as amended by the amending Act, applies to complaints made before the relevant commencement as well as to complaints made on or after the relevant commencement.

30 (2) However, a complainant whose complaint was made before the date of assent to the amending Act may withdraw the complaint, whether or not the Commissioner agrees.

HomeFund Commissioner (Miscellaneous Amendments) 1993

SCHEDULE 1—AMENDMENTS—*continued*

Existing determinations

3. An amendment made by the amending Act does not apply to any determination made under a provision of this Act before the relevant commencement.

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