

FIRST PRINT

HOMEFUND LEGISLATION (AMENDMENT) BILL 1994

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, the HomeFund Restructuring Act 1993 and the Legal Aid Commission Act 1979 to deal with complaints by HomeFund borrowers and assistance to HomeFund borrowers by the Legal Aid Commission and to adjust the period for relief under the HomeFund restructuring scheme.

The Bill:

- (a) extends the final date by which complaints must be made to the HomeFund Commissioner by HomeFund borrowers from 31 March 1994 to 30 September 1994 (amendments to section 10, HomeFund Commissioner Act 1993); and
- (b) extends the earliest date for cutting off offers of assistance under the HomeFund restructuring scheme from 30 June 1994 to 30 September 1994 (amendment to Schedule 1, HomeFund Restructuring Act 1993); and
- (c) requires the Legal Aid Commission to provide financial counselling and legal assistance services to HomeFund borrowers who are eligible to participate in the restructuring scheme, but who are not yet participating in that scheme, without applying means tests or other conditions (proposed section 14, HomeFund Restructuring Act 1993 and proposed section 12A, Legal Aid Commission Act 1979); and
- (d) ensures that certain provisions of the Legal Aid Commission Act 1979 relating to the imposition of tests and conditions for granting legal aid and other matters do not apply to those financial counselling and legal assistance services (proposed section 12B, Legal Aid Commission Act 1979); and
- (e) makes it clear that other legal aid may still be granted to HomeFund borrowers in relation to HomeFund mortgages (proposed section 12C, Legal Aid Commission Act 1979); and
- (f) enables the Legal Aid Commission to terminate the provision of financial counselling and legal assistance services if it considers that sufficient services have been provided to the borrower (proposed section 38B, Legal Aid Commission Act 1979); and

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- (g) enables any amounts paid to the Legal Aid Commission as contributions for the provision of financial counselling and legal assistance services to HomeFund borrowers to be paid into the Legal Aid Fund (amendment to section 63, Legal Aid Commission Act 1979); and
- (h) makes a consequential amendment (amendment to section 4, Legal Aid Commission Act 1979).

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act commences on the date of assent.

Clause 3 is a formal provision giving effect to Schedule 1.

SCHEDULE 1—AMENDMENT OF ACTS

Schedule 1 amends the HomeFund Commissioner Act 1993, the HomeFund Restructuring Act 1993 and the Legal Aid Commission Act 1979 in the manner set out above.

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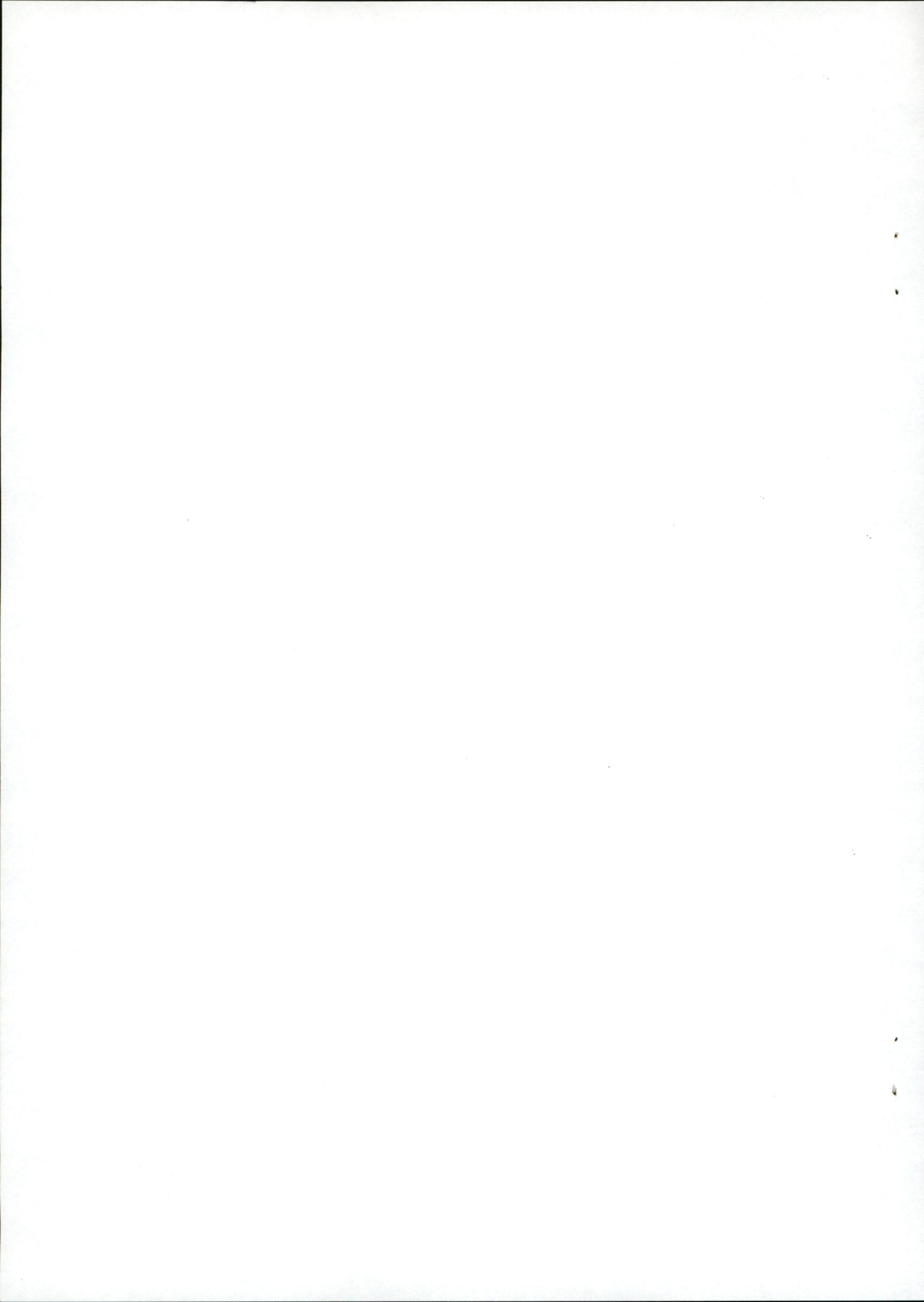
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Acts

SCHEDULE 1—AMENDMENT OF ACTS



HOMEFUND LEGISLATION (AMENDMENT) BILL 1994

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No. , 1994

A BILL FOR

An Act to amend the HomeFund Commissioner Act 1993, the HomeFund Restructuring Act 1993 and the Legal Aid Commission Act 1979 with respect to complaints by, and the provision of assistance to, HomeFund borrowers and the HomeFund restructuring scheme; and for other purposes.

HomeFund Legislation (Amendment) 1994

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the HomeFund Legislation (Amendment) Act 1994.

5 Commencement

2. This Act commences on the date of assent.

Amendment of Acts

3. The Acts specified in Schedule 1 are amended as set out in that Schedule.

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SCHEDULE 1—AMENDMENT OF ACTS

(Sec. 3)

HomeFund Commissioner Act 1993 No. 9

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

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(a) From section 10 (2), omit "31 March 1994", insert instead "30 September 1994".

(b) After section 10 (7), insert:

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(8) A complaint made after 31 March 1994, and before the commencement of the HomeFund Legislation (Amendment) Act 1994, is taken to have been made within the time required by this Act.

HomeFund Restructuring Act 1993 No. 112

(1) Section 14:

Omit the section, insert instead:

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Provision of financial counselling and legal assistance to HomeFund borrowers

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14. It is the duty of the Minister, and the Minister administering the Legal Aid Commission Act 1979, jointly to ensure that HomeFund borrowers who are eligible to participate in the restructuring scheme, but who are not yet participating in that scheme, are given access to financial counselling services, and legal assistance services, provided by the Legal Aid Commission.

HomeFund Legislation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF ACTS—*continued*

(2) Schedule 1 (**Restructuring scheme**):

From clause 6, omit “30 June 1994”, insert instead “30 September 1994”.

Legal Aid Commission Act 1979 No. 78

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(1) Section 4 (**Definitions**):

From section 4 (1), omit the definition of “legal aid”, insert instead:

“legal aid” means legal aid under this Act and includes:

- (a) aid provided to a person who is a patient within the meaning of the Mental Health Act 1990, whether of a legal nature or not; and
- (b) financial counselling and legal assistance services provided under section 12A;

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(2) Sections 12A, 12B, 12C:

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After section 12, insert:

Services to HomeFund borrowers

12A. (1) The Commission must provide financial counselling and legal assistance services to HomeFund borrowers who are eligible to participate in the restructuring scheme under the HomeFund Restructuring Act 1993, but who are not yet participating in that scheme, on the request of the Minister administering that Act or on application by any such HomeFund borrower.

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(2) The financial counselling and legal assistance services must be provided by the Commission without charge and without means tests or other conditions.

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(3) An application by a HomeFund borrower under this section may be made orally or in writing.

(4) The Commission may arrange for the provision of financial counselling services to HomeFund borrowers by another body, or persons other than employees of the Commission.

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*HomeFund Legislation (Amendment) 1994*SCHEDULE 1—AMENDMENT OF ACTS—*continued*

(5) In this section:

5 “**legal assistance services**” means the giving of legal advice as to the rights of HomeFund borrowers under HomeFund mortgages (within the meaning of the HomeFund Restructuring Act 1993) and legislation affecting HomeFund borrowers.

Provisions of Act not to apply to HomeFund borrower services

10 12B. (1) The object of this section is to exclude provisions relating to applications for legal aid, imposing tests for or conditions on legal aid, requiring securities and payment for legal aid and legal costs and other related provisions from applying to the grant of financial counselling and legal assistance services to HomeFund borrowers.

15 (2) Section 10 (2) and Part 3 (except sections 37, 39, 41 and 43A) do not apply to the provision of financial counselling or legal assistance services under section 12A.

HomeFund borrower may still obtain other legal aid

20 12C. Nothing in section 12A prevents a HomeFund borrower who has applied for, or is eligible for, financial counselling or legal assistance services from obtaining other legal aid in accordance with this Act in relation to the HomeFund mortgage or other related matters.

25 (3) Section 38B:

After section 38A, insert:

Termination of assistance to HomeFund borrowers

30 38B. (1) The Commission may, at any time, terminate the provision of financial counselling or legal assistance services to a HomeFund borrower under section 12A.

 (2) The Commission may terminate the provision of financial counselling or legal assistance services only if it is of the opinion that sufficient counselling or services have been provided by the Commission to the HomeFund borrower.

35 (3) The Commission must notify the HomeFund borrower, and any solicitor acting for the borrower, in writing of the termination within 14 days after the termination.

HomeFund Legislation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF ACTS—*continued*

(4) Section 63 (**Payments into the Fund**):

After section 63 (d1), insert:

- (d2) money received by the Commission under section 13A
 - (3) (c1) of the Home Purchase Assistance Authority Act 1993;
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HOMEFUND LEGISLATION (AMENDMENT) BILL 1994

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Acts

SCHEDULE 1—AMENDMENT OF ACTS

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. , 1994

An Act to amend the HomeFund Commissioner Act 1993, the HomeFund Restructuring Act 1993 and the Legal Aid Commission Act 1979 with respect to complaints by, and the provision of assistance to, HomeFund borrowers and the HomeFund restructuring scheme; and for other purposes.

HomeFund Legislation (Amendment) 1994

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the HomeFund Legislation (Amendment) Act 1994.

5 Commencement

2. This Act commences on the date of assent.

Amendment of Acts

3. The Acts specified in Schedule 1 are amended as set out in that Schedule.

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SCHEDULE 1—AMENDMENT OF ACTS

(Sec. 3)

HomeFund Commissioner Act 1993 No. 9

Section 10 (Right to complain):

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(a) From section 10 (2), omit "31 March 1994", insert instead "30 November 1994".

(b) After section 10 (7), insert:

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(8) A complaint made after 31 March 1994, and before the commencement of the HomeFund Legislation (Amendment) Act 1994, is taken to have been made within the time required by this Act.

(9) An appeal to the Supreme Court may be made against the Commissioner's decision to discontinue an investigation of a complaint under section 12.

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

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(11) Application for leave to appeal may be made to the Supreme Court at any time before the expiry of 28 days after the complainant is informed of the decision or within such further time as the Supreme Court may allow in a particular case.

(12) The parties to an appeal are the Commissioner and the complainant.

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

HomeFund Legislation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF ACTS—*continued*

(14) Section 40 does not apply to a decision referred to in subsection (9) or to an appeal under this section against such a decision.

HomeFund Restructuring Act 1993 No. 112 5

(1) Section 14:

Omit the section, insert instead:

Provision of financial counselling and legal assistance to HomeFund borrowers

14. It is the duty of the Minister, and the Minister administering the Legal Aid Commission Act 1979, jointly to ensure that HomeFund borrowers who are eligible to participate in the restructuring scheme, but who are not yet participating in that scheme, are given access to financial counselling services, and legal assistance services, provided by the Legal Aid Commission. 10
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(2) Schedule 1 (**Restructuring scheme**):

From clause 6, omit “30 June 1994”, insert instead “30 September 1994”.

Legal Aid Commission Act 1979 No. 78 20

(1) Section 4 (**Definitions**):

From section 4 (1), omit the definition of “legal aid”, insert instead:

“**legal aid**” means legal aid under this Act and includes:

- (a) aid provided to a person who is a patient within the meaning of the Mental Health Act 1990, whether of a legal nature or not; and 25
- (b) financial counselling and legal assistance services provided under section 12A;

(2) Sections 12A, 12B, 12C: 30

After section 12, insert:

Services to HomeFund borrowers

12A. (1) The Commission must provide financial counselling and legal assistance services to HomeFund borrowers who are eligible to participate in the restructuring 35

*HomeFund Legislation (Amendment) 1994*SCHEDULE 1—AMENDMENT OF ACTS—*continued*

5 scheme under the HomeFund Restructuring Act 1993, but who are not yet participating in that scheme, on the request of the Minister administering that Act or on application by any such HomeFund borrower.

(2) The financial counselling and legal assistance services must be provided by the Commission without charge and without means tests or other conditions.

10 (3) An application by a HomeFund borrower under this section may be made orally or in writing.

(4) The Commission may arrange for the provision of financial counselling services to HomeFund borrowers by another body, or persons other than employees of the Commission.

15 (5) Nothing in section 42A (1) or (2) of the HomeFund Commissioner Act 1993 applies in relation to advice given by any person in the course of the provision of legal aid referred to in subsection (1).

(6) In this section:

20 “legal assistance services” means the giving of legal advice as to the rights of HomeFund borrowers under HomeFund mortgages (within the meaning of the HomeFund Restructuring Act 1993) and legislation affecting HomeFund borrowers.

25 **Provisions of Act not to apply to HomeFund borrower services**

12B. (1) The object of this section is to exclude provisions relating to applications for legal aid, imposing tests for or conditions on legal aid, requiring securities and payment for legal aid and legal costs and other related provisions from applying to the grant of financial counselling and legal assistance services to HomeFund borrowers.

30 (2) Section 10 (2) and Part 3 (except sections 37, 39, 41 and 43A) do not apply to the provision of financial counselling or legal assistance services under section 12A.

35 **HomeFund borrower may still obtain other legal aid**

12C. Nothing in section 12A prevents a HomeFund borrower who has applied for, or is eligible for, financial counselling or legal assistance services from obtaining other

HomeFund Legislation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF ACTS—*continued*

legal aid in accordance with this Act in relation to the HomeFund mortgage or other related matters.

(3) Section 38B:

After section 38A, insert:

Termination of assistance to HomeFund borrowers

38B. (1) The Commission may, at any time, terminate the provision of financial counselling or legal assistance services to a HomeFund borrower under section 12A.

(2) The Commission may terminate the provision of financial counselling or legal assistance services only if it is of the opinion that sufficient counselling or services have been provided by the Commission to the HomeFund borrower.

(3) The Commission must notify the HomeFund borrower, and any solicitor acting for the borrower, in writing of the termination within 14 days after the termination.

(4) Section 63 (**Payments into the Fund**):

After section 63 (d1), insert:

(d2) money received by the Commission under section 13A (3) (c1) of the Home Purchase Assistance Authority Act 1993;

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