

FIRST PRINT

HOMEFUND RESTRUCTURING 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 give legislative effect to a restructuring scheme for HomeFund borrowers.

PART 1—PRELIMINARY

Clause 1 sets out the short title of the proposed Act.

Clause 2 provides that the proposed Act will commence on a day or days to be proclaimed.

Clause 3 defines expressions used in the proposed Act. For the purposes of the proposed Act, the definition of HomeFund borrower is principally directed at a mortgagor under a HomeFund mortgage.

Clause 4 sets out the objects of the proposed Act, which are to enable HomeFund borrowers to participate in a restructuring scheme and to provide for the consequences of the scheme.

Clause 5 makes it clear that notes contained in the body of the proposed Act do not form part of it.

PART 2—RESTRUCTURING SCHEME

Clause 6 provides for the restructuring scheme. The scheme is a scheme to be established by the Home Purchase Assistance Authority, with the consent of the Minister, as generally contemplated by the report of the Home Purchase Assistance Authority to the Minister for Housing dated 6 December 1993. The principal features of the restructuring scheme are set out in proposed Schedule 1.

Clause 7 provides that the Home Purchase Assistance Authority, with the consent of the Minister, may appoint a day for the extension of the restructuring scheme to cover

HomeFund Restructuring 1993

State Partnership Loans and Rent-buy Loans. The extension of the scheme must comply with the principal features set out in the Act, subject to the regulations. The proposed section also enables the Authority, with the consent of the Minister, to vary the scheme, but not so as to be inconsistent with the principal features of the scheme.

Clause 8 makes HomeFund borrowers eligible to participate in the restructuring scheme.

Clause 9 gives the Home Purchase Assistance Authority the function of managing the restructuring scheme and confers functions on it for that purpose.

Clause 10 enables a HomeFund borrower to appeal to the HomeFund Advisory Panel against a categorisation of the borrower by the Home Purchase Assistance Authority under the restructuring scheme. In hearing an appeal, the Advisory Panel must apply the same criteria for determining categories as the Authority.

Clause 11 provides that, after hearing an appeal, the HomeFund Advisory Panel is to recommend to the Home Purchase Assistance Authority that the category be changed or that the category stay the same. The Authority is to determine the matter after taking into account the Advisory Panel's recommendation.

Clause 12 enables regulations to be made relating to procedures for appeals.

Clause 13 formally confers the appeal functions on the HomeFund Advisory Panel.

PART 3—CONSEQUENCES OF RESTRUCTURING SCHEME

Clause 14 exempts the Crown, FANMAC, the FANMAC trustee and co-operative housing societies, including persons acting on their behalf, from any action, liability, claim or demand (and provides that a determination may not be made) in respect of any HomeFund mortgage, in respect of any transaction relating to, preliminary to or arising from such a mortgage or in respect of the promotion, origination or management of any HomeFund mortgage or HomeFund scheme. Any HomeFund borrowers who are eligible to participate in the restructuring scheme and former HomeFund borrowers who have refinanced will not be able to obtain a determination by the HomeFund Commissioner except about a complaint (or part of a complaint) relating to an administrative matter listed in proposed Schedule 2 or the regulations. The power of the Commissioner to make determinations altering mortgages when making determinations about complaints by any such borrowers or former borrowers is also removed. The Commissioner will still be able to make monetary determinations about such matters.

Clause 15 sets out the way in which entitlements and complaints are affected by proposed section 14. The proposed section 14 will not affect determinations made before its commencement.

The result of the proposed sections 14 and 15 is that the Commissioner may still make:

- (a) monetary determinations about complaints by HomeFund borrowers who are eligible for the restructuring scheme or by former HomeFund borrowers who have refinanced relating to administrative matters listed in proposed Schedule 2 or the regulations; and
- (b) determinations about HomeFund borrowers under State Partnership Loans or Rent-buy Loans, until the restructuring scheme is extended to cover those borrowers; and

HomeFund Restructuring 1993

- (c) determinations about all matters relating to HomeFund borrowers who have ceased to be HomeFund borrowers otherwise than by means of refinancing; and
- (d) determinations about eviction in relation to all HomeFund borrowers.

PART 4—MISCELLANEOUS

Clause 16 provides that the proposed Act will bind the Crown.

Clause 17 makes it clear that HomeFund mortgages permit capitalisation of interest as originally contemplated.

Clause 18 removes the requirement for the FANMAC trustee to obtain certain consents in relation to the restructuring scheme.

Clause 19 requires the Home Purchase Assistance Authority to report on the operation and effectiveness of the restructuring scheme in its annual report.

Clause 20 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 21 is a formal provision giving effect to Schedule 3, which amends other Acts.

Clause 22 is a formal provision giving effect to Schedule 4, which contains savings and transitional provisions.

Clause 23 provides for the proposed Act to be reviewed by the Minister after 5 years.

SCHEDULE 1—RESTRUCTURING SCHEME

The Schedule contains the principal features of the restructuring scheme. It sets out the categories of borrowers and the assistance under the scheme, as well as other incidents of the scheme. Borrowers will be divided into categories based on their financial position and the kind of assistance will vary accordingly. Assistance offered to the different categories of borrowers includes the following:

- Category A—the opportunity to refinance;
- Category B—restructured income-gearred loans;
- Category C—sale back to the Authority and waiver of excess debt, together with rent back for 5 years and further provision of public housing thereafter;
- Category D—3 months in which to pay arrears together with arrangements for rent back or other assistance, if arrears are paid or arrangements to pay are made;
- Category E—reduction in interest rate payable under Aged-Persons Update Loans;
- Category F—relief relating to the rental component of State Partnership Loans or Rent-buy Loans.

SCHEDULE 2—COMPLAINTS THAT MAY BE THE SUBJECT OF A DETERMINATION UNDER THE HOMEFUND COMMISSIONER ACT 1993

The Schedule lists the kinds of complaint (or part of a complaint) about which the HomeFund Commissioner may still make a determination in relation to HomeFund borrowers who are eligible to participate in the restructuring scheme or who have

HomeFund Restructuring 1993

refinanced. The complaints listed include complaints relating to matters such as incorrect accounting, improper refusal of mortgage relief and improper threats about legal action. The regulations may provide for other complaints (or parts of complaints) about which determinations may also be made.

SCHEDULE 3—AMENDMENT OF OTHER ACTS**Defamation Act 1974**

The amendment to this Act ensures that there is absolute privilege for a publication to or by the HomeFund Advisory Panel, or to or by any member of that Panel, for the purposes of section 10, 11 or 12 of the proposed Act. Under the proposed Act, the Advisory Panel is to have the function of hearing appeals from categorisation decisions of the Home Purchase Assistance Authority under the proposed restructuring of the HomeFund scheme.

Home Purchase Assistance Authority Act 1993

Item (1) inserts a definition of "Panel" (meaning the HomeFund Advisory Panel) into section 3.

Item (2) ensures that the Home Purchase Assistance Authority ("the Authority") is able to grant financial assistance to eligible applicants with or without security. It is contemplated that the restructuring scheme under the proposed Act will involve the granting of such assistance.

Item (3) reproduces as section 17B a provision that is currently section 37 of the HomeFund Commissioner Act 1993. This is done to ensure that the Panel can continue to exercise its functions (including, in particular, its functions under the proposed Act) after the expiry of the HomeFund Commissioner Act 1993.

Item (4) amends section 18 (**Personal liability of members and others**) as a consequence of the proposed reconstitution of the Panel under the Act.

Item (5) creates an offence (proposed section 21A) of furnishing false or misleading information to the Authority or the Panel. It also inserts a provision (proposed section 21B) with respect to proceedings for offences under the Act (proposed section 21A creates the first such offence).

HomeFund Commissioner Act 1993

Item (1) clarifies the meaning of "party" when used in connection with a determination under the Act.

Item (2) amends section 9 as a consequence of the proposed reconstitution of the HomeFund Advisory Panel under the Home Purchase Assistance Authority Act 1993.

Item (3) facilitates the acceptance by the HomeFund Commissioner of complaints that are made out of time.

Item (4) is consequential on the amendments made by items (6) and (7).

Item (5) ensures that the HomeFund Commissioner can reopen an investigation that has previously been discontinued.

Items (6) and (7) extend the powers of the HomeFund Commissioner to require persons to furnish information.

HomeFund Restructuring 1993

Item (8):

- (a) extends the classes of persons and bodies to whom a determination under section 25 can apply (proposed section 25 (2) and (2A));
- (b) extends the classes of orders that the HomeFund Commissioner can make as part of a determination (proposed section 25 (3) (e)-(g));
- (c) makes it clear that the HomeFund Commissioner is not to make a determination against any person or body unless satisfied that the complainant has an entitlement to a legal remedy against that person or body (proposed section 25 (4));
- (d) contains other ancillary amendments (proposed section 25 (6)-(9)).

Item (9) omits section 26 (4) as a consequence of the enactment of proposed section 29A.

Item (10) inserts new sections 26A, 26B and 26C.

Proposed section 26A will enable the HomeFund Commissioner to apportion liability when making a monetary determination. The effect of the apportionment will be that a party to a determination requiring two or more parties to pay money will be liable only for the amount apportioned against that party.

Proposed section 26B provides that:

- (a) the prohibition referred to in proposed section 25 (4) does not apply with respect to determinations against the FANMAC trustee, but that such a determination cannot be made unless a determination is made ordering some other person or body (being a person or body against whom the complainant does have an entitlement to a legal remedy) to compensate the FANMAC trustee for the trustee's costs in complying with the determination; and
- (b) the FANMAC trustee is not obliged to comply with a determination referred to in paragraph (a) until it has received the costs of doing so.

Proposed section 26C:

- (a) prevents the HomeFund Commissioner from granting relief to a HomeFund borrower if the granting to the HomeFund borrower of such relief is excluded by the proposed Act; and
- (b) makes it clear that the HomeFund Commissioner may make certain determinations despite proposed section 14 (1) of that Act, thus overriding two obstacles:
 - (i) the first obstacle is that section 14 (1) would operate directly to prevent the making of such a determination;
 - (ii) the second obstacle is that section 14 (1) would operate indirectly to prevent the making of such a determination, since the making of the determination would require the existence of an entitlement to some other legal remedy; and
- (c) prevents the HomeFund Commissioner from making certain determinations on the sole basis of the existence of an entitlement to a legal remedy under the Trade Practices Act 1974 of the Commonwealth.

HomeFund Restructuring 1993

Item (11) substitutes section 28. The proposed section will provide that all parties named as covered by a determination will be bound by the determination. Currently, persons other than public authorities are bound only with their consent.

Item (12) inserts a new section 29A. The proposed section provides for the enforcement of determinations generally. Currently, the Act provides only for the enforcement of monetary determinations (existing section 26 (4)).

Item (13) substitutes section 30. The proposed section will require all determinations to be in writing and to give reasons. Currently, a determination is only required to be reduced to writing if a party so requests.

Item (14) omits section 37 (**HomeFund Advisory Panel**) as a consequence of the proposed reconstitution of the Panel under the Home Purchase Assistance Authority Act 1993.

Item (15) inserts a new section 37A. The proposed section will enable the HomeFund Commissioner to prevent persons (such as credit reporting agencies) from giving adverse credit reports on persons who are, or who have been, in default of a HomeFund mortgage where the HomeFund Commissioner is satisfied that any such default has arisen from circumstances for which the person is not, and should not be held to be, responsible.

Item (16) amends section 39 (**Personal liability of Commissioner and others**) as a consequence of the proposed reconstitution of the HomeFund Advisory Panel under the Home Purchase Assistance Authority Act 1993.

Item (17) amends section 40 (**Appeal**) so as to allow appeals to the Supreme Court on questions of law. Currently no appeals can be made against a determination of the HomeFund Commissioner. The proposed amendments provide:

- (a) that such an appeal may be made only with the leave of the Supreme Court (proposed section 40 (3));
- (b) that an application for leave to appeal must be made within 28 days or such further time as the Supreme Court may allow (proposed section 40 (4));
- (c) that the Minister may intervene and, on intervening, becomes a party to the appeal (proposed section 40 (6));
- (d) that the making of an application for leave to appeal operates to stay the decision to which the application relates (proposed section 40 (7));
- (e) that the Supreme Court is not to make any order as to costs with respect to an appeal (proposed section 40 (8)).

Item (18) inserts a new section 40A. The proposed section will facilitate the taking of legal action by and against the Department of Housing.

Item (19) inserts a new section 42A. The proposed section will prohibit the charging or recovery of any fee for assisting a person to make a complaint under the Act or to furnish information with respect to any complaint. Agreements to exclude the operation of the proposed section will be void.

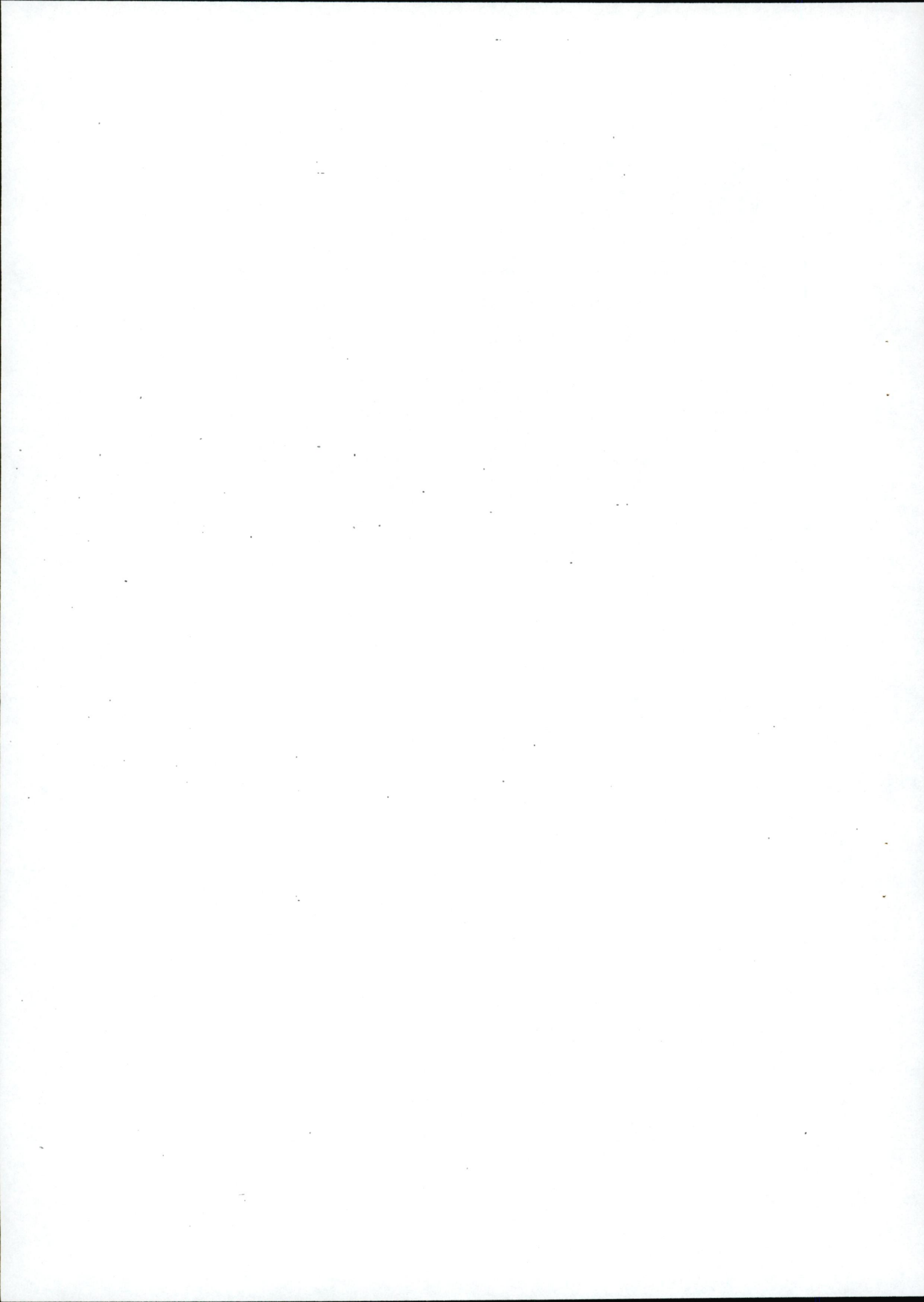
SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS

The Schedule contains savings and transitional provisions consequent on the enactment of the proposed Act. The provisions include:

- (a) a definition clause (clause 1);

HomeFund Restructuring 1993

- (b) a provision that applies the amendments to the HomeFund Commissioner Act 1993 to complaints made before the commencement of those amendments as well as to complaints made after their commencement (clause 2);
 - (c) a provision that ensures that the amendments to the HomeFund Commissioner Act 1993 do not apply to determinations made before the commencement of those amendments (clause 3);
 - (d) a provision to the effect that the HomeFund Advisory Panel constituted under the Home Purchase Assistance Authority Act 1993 is a continuation of the HomeFund Advisory Panel constituted under the HomeFund Commissioner Act 1993, and that members of the Advisory Panel are to continue in office in accordance with the terms of their appointments (clause 4).
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FIRST PRINT

HOMEFUND RESTRUCTURING BILL 1993

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TABLE OF PROVISIONS

PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Definitions
4. Objects
5. Notes

PART 2—RESTRUCTURING SCHEME

6. Restructuring scheme
7. Extension and variation of the restructuring scheme
8. HomeFund borrowers' access to restructuring scheme
9. Administration of restructuring scheme
10. Appeal against categorisation of borrower
11. Decision on appeal
12. Procedures for appeals
13. Conferral of functions on HomeFund Advisory Panel

PART 3—CONSEQUENCES OF RESTRUCTURING SCHEME

14. Other relief
15. Application to existing entitlements and complaints

PART 4—MISCELLANEOUS

16. Act binds Crown
17. Capitalisation of interest
18. Certain consents not required
19. Report
20. Regulations

HomeFund Restructuring 1993

21. Amendment of other Acts
22. Savings and transitional provisions
23. Review of Act

SCHEDULE 1—RESTRUCTURING SCHEME

**SCHEDULE 2—COMPLAINTS THAT MAY BE THE SUBJECT OF A
DETERMINATION UNDER THE HOMEFUND COMMISSIONER ACT 1993**

SCHEDULE 3—AMENDMENT OF OTHER ACTS

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS

HOMEFUND RESTRUCTURING BILL 1993

NEW SOUTH WALES



No. , 1993

A BILL FOR

An Act with respect to a restructuring scheme for HomeFund borrowers;
and for other purposes.

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the HomeFund Restructuring Act 1993.

5 **Commencement**

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

Definitions

3. (1) In this Act:

10 **“determination”** means a determination under Part 5 of the HomeFund Commissioner Act 1993;

“exercise” of a function includes, if the function is a duty, the performance of the duty;

15 **“FANMAC”** means First Australian National Mortgage Acceptance Corporation Limited;

“FANMAC trustee” means the trustee of funds raised from time to time by FANMAC for the purposes of home lending;

“function” includes a power, authority or duty;

20 **“Home Purchase Assistance Authority”** means the body of that name constituted under the Home Purchase Assistance Authority Act 1993;

25 **“HomeFund Advisory Panel”** means the body of that name constituted under the HomeFund Commissioner Act 1993 or under the Home Purchase Assistance Authority Act 1993 (after the commencement of section 17B of that Act);

“HomeFund borrower” means the mortgagor under a HomeFund mortgage or the guarantor under an associated contract of guarantee, but does not include a person who has ceased to be such a mortgagor or guarantor;

30 **“HomeFund Commissioner”** means the HomeFund Commissioner appointed under the HomeFund Commissioner Act 1993;

HomeFund Restructuring 1993

“HomeFund mortgage” means a mortgage executed by Permanent Trustee Company Limited as mortgagee in its capacity as FANMAC trustee, and includes:

- (a) the credit contract secured by such a mortgage; and
- (b) any contract of guarantee or other contract associated with such a mortgage or credit contract;

“mortgage” has the same meaning as in the Conveyancing Act 1919;

“restructuring scheme” means the scheme referred to in section 6 and Schedule 1.

(2) Until the extension of the restructuring scheme to HomeFund mortgages described as State Partnership Loans or Rent-buy Loans, this Act does not apply to any such HomeFund mortgage or any associated residential tenancy agreement, associated equity purchase agreement or other associated agreement.

Objects

4. The objects of this Act are to enable HomeFund borrowers to participate in a restructuring scheme and to provide for the consequences of the restructuring scheme.

Notes

5. Matter appearing under the heading “Note” in this Act does not form part of this Act.

PART 2—RESTRUCTURING SCHEME

Restructuring scheme

6. (1) The restructuring scheme is a scheme established by the Home Purchase Assistance Authority, with the consent of the Minister, as generally contemplated by the report of the Authority to the Minister for Housing dated 6 December 1993. The scheme established by the Authority is to comply with the principal features of the scheme set out in Schedule 1.

(2) The restructuring scheme (including any extension of the scheme) is, for the purposes of section 13A (3) (e) of the Home Purchase Assistance Authority Act 1993, a program for the restructuring of a HomeFund scheme.

HomeFund Restructuring 1993

Extension and variation of the restructuring scheme

7. (1) The Home Purchase Assistance Authority may, with the consent of the Minister, appoint a day for the extension of the scheme to HomeFund mortgages described as State Partnership Loans or Rent-buy
5 Loans.

(2) The extension of the scheme must comply with the relevant principal features set out in Schedule 1, subject to any variation of that Schedule set out in the regulations in relation to that extension.

(3) The scheme may be varied by the Home Purchase Assistance
10 Authority, with the consent of the Minister, but not so as to depart from the principal features of the scheme.

HomeFund borrowers' access to restructuring scheme

8. (1) A HomeFund borrower is eligible to participate in the restructuring scheme in accordance with the conditions of the scheme.

15 (2) A HomeFund borrower is eligible to participate in the restructuring scheme even though the borrower has made a complaint under the HomeFund Commissioner Act 1993 or a complaint made by the borrower under that Act is the subject of a determination by the HomeFund Commissioner.

20 (3) However, a HomeFund borrower under a HomeFund mortgage described as a State Partnership Loan or Rent-buy Loan is not eligible to participate in the restructuring scheme before the day the scheme is extended to such a mortgage under section 7.

Administration of restructuring scheme

25 9. (1) The Home Purchase Assistance Authority is to manage the restructuring scheme.

(2) For the purposes of managing the restructuring scheme, the Home Purchase Assistance Authority may exercise its functions under the Home Purchase Assistance Authority Act 1993, including its functions under
30 section 13 (2) of that Act, as if the restructuring scheme were a scheme managed under that Act.

Appeal against categorisation of borrower

10. (1) A HomeFund borrower may appeal to the HomeFund
35 Advisory Panel against the categorisation of the borrower by the Home Purchase Assistance Authority under the restructuring scheme.

(2) An appeal is to be made within 28 days of written notice of categorisation being given to the borrower.

HomeFund Restructuring 1993

(3) The HomeFund Advisory Panel is to hear an appeal under this section. On an appeal the Advisory Panel is to be constituted as provided by the regulations.

(4) In hearing an appeal, the HomeFund Advisory Panel must apply the same criteria for determining categories as are determined and applied by the Home Purchase Assistance Authority for the purpose of determining categories and as are notified to the Advisory Panel by the Authority from time to time.

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Decision on appeal

11. (1) After hearing an appeal under section 10, the HomeFund Advisory Panel may recommend in writing to the Home Purchase Assistance Authority that the Authority change the categorisation of the borrower or continue the same categorisation.

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(2) The Authority must determine the matter after taking into account any recommendation made by the Advisory Panel under this section.

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(3) Until the Home Purchase Assistance Authority determines the matter, any time for the taking of any action under the restructuring scheme does not run.

(4) The Advisory Panel may report to the Minister in respect of any recommendation it makes after hearing an appeal under section 10.

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Procedures for appeals

12. The regulations may provide for the procedure for the making and hearing of an appeal under section 10, including fees for an appeal.

Conferral of functions on HomeFund Advisory Panel

13. In addition to any functions conferred on it by or under any other Act, the HomeFund Advisory Panel has the functions conferred on it by or under this Act.

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PART 3—CONSEQUENCES OF RESTRUCTURING SCHEME

Other relief

14. (1) **Claims against the Crown and others extinguished.** The Crown, FANMAC, the FANMAC trustee and a co-operative housing society, including any persons acting on their behalf, are not subject to any action, liability, claim or demand (and a determination may not be made) in respect of:

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(a) any HomeFund mortgage; or

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HomeFund Restructuring 1993

(b) any transaction relating to, preliminary to or arising from any HomeFund mortgage; or

(c) the promotion, origination or management of any HomeFund mortgage or HomeFund scheme.

5 **(2) Restricted determinations may be made.** The HomeFund Commissioner may however make a determination under the HomeFund Commissioner Act 1993 about a complaint or part of a complaint by a HomeFund borrower who is eligible to participate in the restructuring scheme, or a former HomeFund borrower who has refinanced a
10 HomeFund mortgage, but may do so only if the determination relates to a complaint or part of a complaint listed in Schedule 2 or specified in the regulations.

15 **(3) Limit on type of relief.** The Commissioner may not, in making such a determination, make a determination referred to in section 25 (3) (a), (b) or (c) of the HomeFund Commissioner Act 1993, which relate to altering mortgages and entering into new mortgages.

(4) Statutory remedies. Subsection (1) extends to, but is not limited to, claims under the Contracts Review Act 1980, the Consumer Claims Tribunals Act 1987 or the Fair Trading Act 1987.

20 **Application to existing entitlements and complaints**

15. (1) Section 14 applies to entitlements in existence, and complaints made, before or after the commencement of that section.

(2) However, that section does not affect:

25 (a) proceedings commenced in any court or tribunal (except against the Crown or persons referred to in section 14 (1)) before that commencement or any decision of a court or tribunal made before that commencement; or

 (b) a determination made under the HomeFund Commissioner Act 1993 before that commencement; or

30 (c) any power to make a determination under section 27 (which relates to stays of eviction) of the HomeFund Commissioner Act 1993; or

35 (d) any power of the HomeFund Commissioner to make a determination about complaints in relation to former HomeFund borrowers who ceased to be HomeFund borrowers otherwise than by means of refinancing.

HomeFund Restructuring 1993

NOTE: The remaining jurisdiction of the Commissioner, as a result of sections 14 and 15, is to make:

- (a) monetary determinations about complaints relating to administrative matters listed in Schedule 2 or the regulations in relation to HomeFund borrowers who are eligible to participate in the restructuring scheme and borrowers who have refinanced; and 5
- (b) determinations about HomeFund borrowers under State Partnership Loans or Rent-buy loans, until the restructuring scheme is extended to cover those borrowers; and
- (c) determinations about complaints relating to any matters by former HomeFund borrowers who left otherwise than by means of refinancing; and 10
- (d) determinations about stays of eviction concerning HomeFund borrowers.

PART 4—MISCELLANEOUS

Act binds Crown

16. This Act binds the Crown. 15

Capitalisation of interest

17. (1) For the avoidance of doubt, it is declared that the provisions of registered Memoranda numbers Y 901844, Y 901845, Y 901846, Y 901847, Y 901848, Z 274110, Z 274111, Z 274112, Z 274113 and Z 274114 relating to capitalisation of interest permit, and have always permitted, the capitalisation of the interest accrued for the month to which a monthly instalment relates less any money actually received by the mortgagee on account of interest so accrued. 20

(2) The regulations may extend the operation of this section to a specified document constituting or forming part of, or previously constituting or forming part of, a HomeFund mortgage. 25

Certain consents not required

18. The FANMAC trustee is not required to obtain the consent of the beneficiaries of any trust of which it is trustee, or any FANMAC bond holders or unit holders, to the doing of any act, matter or thing in connection with the restructuring scheme. The FANMAC trustee is not subject to any action, liability, claim or demand for a failure to consult with or obtain the consent of any such beneficiaries, bond holders or unit holders in relation to the doing of any such act, matter or thing. 30

Report

19. The Home Purchase Assistance Authority must, in its annual report, report on the operation and effectiveness of the restructuring scheme, including, but not limited to, the number of people affected by the scheme and the kinds of assistance offered and received.

Regulations

20. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Amendment of other Acts

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

Savings and transitional provisions

22. Schedule 4 has effect.

Review of Act

23. (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.
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*HomeFund Restructuring 1993***SCHEDULE 1—RESTRUCTURING SCHEME**

(Sec. 6)

1. The restructuring scheme will apply to borrowers on the basis of the principal features set out in this Schedule, subject to any variation under section 7 (2). Borrowers will be categorised by the Home Purchase Assistance Authority on the basis of an allocated category. The categorisation will be notified in writing. 5
2. The broad categories of borrowers and assistance are as follows:
 - (a) **Category A.** Borrowers who are able to refinance with commercial lenders as at 7 December 1993 or such later date as may be prescribed by the regulations. These borrowers will be informed that they may refinance or remain in the existing unstructured scheme. Those who refinance may be eligible for the exemption from stamp duty for home loan refinancing while it continues in force. 10
 - (b) **Category B.** Borrowers who are unable to refinance with commercial lenders but who are determined by the Home Purchase Assistance Authority to be able to pay a restructured income-gearred mortgage as at 7 December 1993 or such later date as may be prescribed by the regulations. These borrowers will be offered such a mortgage and they will be informed that they may instead remain in the existing unstructured scheme. 15
 - (c) **Category C.** Borrowers who are unable to pay a restructured income-gearred mortgage and are not 3 months or more in arrears as at 7 December 1993 or such later date as may be prescribed by the regulations. These borrowers will be able to sell the property to the Authority, or a body nominated by the Authority, and any part of the debt that is more than the value of the property will be waived. These borrowers will be offered the right to rent the property for a period of up to 5 years on conditions determined by the Authority. These borrowers will be informed that they may instead remain in the existing unstructured scheme. At the end of the 5 year rental period these borrowers will be provided with public housing accommodation, subject to eligibility for such accommodation, or the rental period will be extended until such accommodation is available. 20
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 - (d) **Category D.** Borrowers who are 3 months or more in arrears as at 7 December 1993 or such later date as may be prescribed by the regulations. Borrowers who pay the arrears within 3 months will be offered assistance as set out in Category C or may instead be offered assistance as set out in Category B, as determined by the Authority. Borrowers who make satisfactory arrangements within 3 months to pay the arrears will be offered assistance as set out in Category C. If the arrears are not paid, or no satisfactory arrangement is made, within 3 months, the borrowers may be offered the right to occupy the premises for up to 15 months on conditions determined by the Authority. 35
 - (e) **Category E.** Borrowers under Aged-Persons Update Loans. These borrowers will be entitled to a reduction in the interest rate to the standard bank housing loan rate of interest dating from the commencement of the loans. 40

*HomeFund Restructuring 1993*SCHEDULE 1—RESTRUCTURING SCHEME—*continued*

- 5 (f) **Category F.** Borrowers under State Partnership Loans or Rent-buy Loans. In relation to the loan component of their HomeFund arrangements, these borrowers will be entitled to assistance according to their eligibility for Categories B–D. In relation to the rental component of their HomeFund arrangements, those borrowers who repay arrears within 3 months, or make satisfactory arrangements to do so, will be given relief as determined by the Authority. Assistance will be available in this category when the scheme is extended under this Act to such borrowers.
- 10 3. The scheme may provide for allowance to be made, as determined by the Authority, in respect of borrowers who have, before the date of the written notice referred to in clause 1, received the benefit of a determination under the HomeFund Commissioner Act 1993.
- 15 4. The scheme may provide for the situation where the borrower under a HomeFund mortgage changes or dies, or, where there are 2 or more borrowers, any one or more of them, change or die, or circumstances otherwise change.
5. The scheme may specify the circumstances in which 2 or more of the borrowers under a HomeFund mortgage must act together.
- 20 6. The scheme may limit the period in which assistance under the scheme must be taken up.
7. The scheme may make it a condition of participation in the scheme that a HomeFund borrower executes a deed of release relating to specified matters.

25 **SCHEDULE 2—COMPLAINTS THAT MAY BE THE SUBJECT OF A DETERMINATION UNDER THE HOMEFUND COMMISSIONER ACT 1993**

(Sec. 14)

- (1) Any complaint (or part of a complaint) alleging incorrect accounting with respect to payments made by a HomeFund borrower under a HomeFund mortgage.
- 30 (2) Any complaint (or part of a complaint) alleging mistakes with respect to arrangements for the direct debiting of a HomeFund borrower's bank account in connection with payments under a HomeFund mortgage.
- (3) Any complaint (or part of a complaint) alleging that mortgage assistance payable to a HomeFund borrower has not been paid into the borrower's home loan account.
- 35 (4) Any complaint (or part of a complaint) alleging that action has been improperly taken against a HomeFund borrower under a penalty clause in a HomeFund mortgage.

HomeFund Restructuring 1993

SCHEDULE 2—COMPLAINTS THAT MAY BE THE SUBJECT OF A
DETERMINATION UNDER THE HOMEFUND COMMISSIONER ACT 1993—
continued

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|---|----|
| (5) Any complaint (or part of a complaint) alleging undue delay in the preparation of documents to enable a HomeFund borrower to discharge a HomeFund mortgage. | 5 |
| (6) Any complaint (or part of a complaint) alleging that a HomeFund borrower has not been advised of his or her eligibility for mortgage assistance or other relevant relief. | |
| (7) Any complaint (or part of a complaint) alleging that a HomeFund borrower has been improperly refused mortgage assistance or other relevant relief for which he or she has been eligible. | 10 |
| (8) Any complaint (or part of a complaint) alleging that a HomeFund borrower has been improperly required to repay mortgage assistance or other relevant relief. | |
| (9) Any complaint (or part of a complaint) alleging that a HomeFund borrower's application for a reduction in the periodic payments due under a HomeFund mortgage has been improperly refused or that the granting of such a reduction has been improperly withdrawn. | 15 |
| (10) Any complaint (or part of a complaint) alleging that improper threats have been made against a HomeFund borrower as to the taking of legal action with respect to a HomeFund mortgage. | 20 |
| (11) Any complaint (or part of a complaint) alleging that legal action has been improperly taken against a HomeFund borrower with respect to a HomeFund mortgage. | |
| (12) Any complaint (or part of a complaint) alleging that a HomeFund borrower has been given false or misleading information as to the amount of any arrears due under a HomeFund mortgage. | 25 |
| (13) Any complaint (or part of a complaint) alleging that action to evict a HomeFund borrower from property the subject of a HomeFund mortgage has been improperly taken. | 30 |
| (14) Any complaint (or part of a complaint) alleging that action to exercise a power of sale over property the subject of a HomeFund mortgage has been improperly taken. | |
| (15) Any complaint (or part of a complaint) alleging that a HomeFund borrower has been improperly refused approval to enter into an arrangement to pay arrears due under a HomeFund mortgage. | 35 |

HomeFund Restructuring 1993

SCHEDULE 3—AMENDMENT OF OTHER ACTS

(Sec. 21)

Defamation Act 1974 No. 18

Section 17P:

5 After section 17O, insert:

Matters relating to the HomeFund Advisory Panel

10 17P. There is a defence of absolute privilege for a publication to or by the HomeFund Advisory Panel, or to or by any member of the HomeFund Advisory Panel, for the purposes of section 10, 11 or 12 of the HomeFund Restructuring Act 1993.

Home Purchase Assistance Authority Act 1993 No. 15

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

Insert, in alphabetical order:

15 “Panel” means the HomeFund Advisory Panel referred to in section 17B.

(2) Section 13 (**Principal functions**):

From section 13 (2) (e), omit “to eligible applicants with appropriate security”, insert instead “, with or without security, to eligible applicants”.

20 (3) Section 17B:

After section 17A, insert:

HomeFund Advisory Panel

25 17B. (1) There is to be a HomeFund Advisory Panel, consisting of members appointed by the Minister.

(2) The functions of the Panel are:

(a) to assist the HomeFund Commissioner in the exercise of the Commissioner’s functions under the HomeFund Commissioner Act 1993, as determined by the Commissioner; and

30 (b) to hear appeals under section 10 of the HomeFund Restructuring Act 1993; and

(c) to exercise such other functions as may be conferred or imposed on the Panel by or under this or any other Act or law.

35 (3) A member of the Panel is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine with respect to the member.

HomeFund Restructuring 1993

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

- (4) The regulations may make provision for or with respect to the Panel, including provisions for or with respect to conferring additional functions on the Panel, its procedures, the appointment of its members, and the termination of membership of the Panel. 5
- (5) If, by or under any Act, provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office, 10
- the provision does not operate to disqualify the person from holding that office and also the office of member of the Panel or from accepting and retaining any remuneration payable to the person as a member of the Panel.
- (4) Section 18 (**Personal liability of members and others**): 15
- (a) After "the Board" wherever occurring, insert "or the Panel".
- (b) Omit "Authority or", insert instead "Authority,".
- (c) Omit "this Act", insert instead "this or any other Act".
- (5) Sections 21A, 21B:
- After section 21, insert: 20
- False or misleading information**
- 21A. A person must not:
- (a) in or in connection with any application under this Act or under the restructuring scheme referred to in the HomeFund Restructuring Act 1993; or 25
- (b) in response to any request for information made by the Authority or the Panel,
- make any statement that the person knows to be false or misleading in a material particular.
- Maximum penalty: 20 penalty units. 30
- Proceedings for offences**
- 21B. Proceedings for an offence against this Act are to be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.
- HomeFund Commissioner Act 1993 No. 9**
- (1) Section 3 (**Definitions**): 35
- Insert in section 3 (1), in alphabetical order:
- "party" to a determination means a person or body named in the determination as being covered by the determination;

*HomeFund Restructuring 1993*SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

- (2) Section 9 (**Delegation of functions**):
From section 9 (3) (b), omit “this Act”, insert instead “the Home Purchase Assistance Authority Act 1993”.
- 5 (3) Section 10 (**Right to complain**):
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”.
- 10 (4) Heading to Division 2 of Part 4:
Omit “Investigations”, insert instead “Dealing with and investigating complaints”.
- (5) Section 12 (**Investigations**):
After section 12 (2), insert:
15 (2A) The Commissioner may, at any time, recontinue an investigation that has been discontinued.
- (6) Section 16 (**Information to be given**):
 (a) In section 16 (1), after “purposes of”, insert “a preliminary assessment or”.
 20 (b) From section 16 (1), omit “an authority (as defined in subsection (3))”, insert instead “any person”.
 (c) Omit section 16 (3).
- (7) Section 19 (**Limits on secrecy and privilege (information and inquiries)**):
From section 19 (1), omit “, in the course of an investigation,”.
- 25 (8) 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:
 30 (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);
 (c) a co-operative housing society;
 (d) the Department of Housing;
 (e) FANMAC;
 35 (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;

*HomeFund Restructuring 1993*SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

- (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.
- (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). 5
- (b) In section 25 (3) (d), after “to a HomeFund borrower”, insert “by a person or body (other than a HomeFund borrower)”. 10
- (c) From section 25 (3) (d), omit “borrower.”, insert instead “borrower);”.
- (d) 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 section 26B (1) (b); 15
- (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.
- (e) Omit section 25 (4), insert instead: 20
- (4) The Commissioner is not to make a determination applying to any person or body (other than a HomeFund borrower) unless satisfied that the complainant has (apart from this Act) an entitlement to a legal remedy against that person or body in relation to the complaint.
- (f) Omit section 25 (6), insert instead: 25
- (6) Nothing in this section affects the operation of section 26, 26A, 26B or 26C or the power to make a determination under section 27.
- (7) 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. 30
- (8) 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. 35
- (9) 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.
- (9) Section 26 (**Monetary determinations**): 40
- Omit section 26 (4).

*HomeFund Restructuring 1993*SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

(10) Section 26A:

After section 26, insert:

Contributions between parties

5 26A. (1) This section applies where the Commissioner finds that two or more of the parties named or proposed to be named as covered by a determination each bore a measure of responsibility in respect of the subject-matter of the complaint.

10 (2) The determination may require a contribution to be made between those parties in respect of any payment ordered to be made to a HomeFund borrower or to any other party.

15 (3) In the event that the determination contains such a requirement, the Commissioner must make the determination in such terms as will enable the determination to be enforced against each of those parties to such an extent as appears appropriate in the circumstances.

Determinations affecting the FANMAC trustee

20 26B. (1) 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

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 (2) The FANMAC trustee is not obliged to comply with the requirements of a determination referred to in subsection (1) until it has received (whether or not from a party specified in an order referred to in subsection (1) (b)) an amount, by way of compensation for the costs referred to in that paragraph, of at least the amount specified in the order.

Determinations affected by the restructuring scheme under the HomeFund Restructuring Act 1993

35 26C. (1) The Commissioner is not to make a determination granting relief to a HomeFund borrower if the granting to the HomeFund borrower of such relief is excluded by the HomeFund Restructuring Act 1993.

40 (2) The Commissioner may make a determination referred to in section 14 (2) or 15 (2) (d) of the HomeFund Restructuring Act 1993 despite section 14 (1) of that Act and as if section 14 (1) of that Act had not extinguished the action, liability, claim or demand on which any relevant entitlement to a legal remedy is based.

HomeFund Restructuring 1993

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

- (3) However, the Commissioner is not to make a determination referred to in section 14 (2) of the HomeFund Restructuring Act 1993 if the sole basis of the proposed determination is the existence of an entitlement to a legal remedy under the Trade Practices Act 1974 of the Commonwealth. 5
- (11) Section 28:
Omit the section, insert instead:
Binding nature of determinations
28: A determination binds the complainant and all of the parties named as covered by the determination. 10
- (12) 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 person or body bound by the determination as if the determination were a judgment or order of that court. 15
(2) In particular, an order of the kind referred to in section 25 (7) 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. 20
(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 any inconsistency. 25
- (13) Section 30:
Omit the section, insert instead:
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. 30
- (14) Section 37 (**HomeFund Advisory Panel**):
Omit the section.
- (15) Section 37A: 35
After section 37, insert:
Credit reporting agencies
37A. (1) The Commissioner may make an order prohibiting a specified person or body (such as a credit reporting agency within the

*HomeFund Restructuring 1993*SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

meaning of the Privacy Act 1988 of the Commonwealth) from furnishing to any other person or body any information or report:

5

(a) to the effect that a specified person is, or has been, in default with respect to a HomeFund mortgage; or

(b) that casts doubt on:

(i) a person's eligibility to be provided with credit; or

(ii) a person's history in relation to credit; or

(iii) a person's capacity to repay credit,

10

on the basis that the person is, or has been, in default with respect to a HomeFund mortgage.

(2) Such an order may be made on the Commissioner's own motion or on application made by a HomeFund borrower. An application may be made to the Commissioner whether or not the applicant is also a complainant with respect to a complaint currently before the Commissioner.

15

(3) The Commissioner may not make an order under this section unless satisfied:

20

(a) that the person concerned is not, and has not been, in default with respect to a HomeFund mortgage; or

(b) that the person concerned is, or has been, in default with respect to a HomeFund mortgage but the default has occurred as a result of some act or omission with respect to the mortgage for which the person is not, and should not be held to be, responsible.

25

(4) A person must not wilfully contravene an order in force under this section.

Maximum penalty: 100 penalty units.

(16) Section 39 (**Personal liability of Commissioner and others**):

30

(a) Omit “, the HomeFund Advisory Panel, a member of the Panel”.

(b) Omit “this Act”, insert instead “this or any other Act”.

(c) Omit “, member of the Panel”.

(17) Section 40 (**Appeal**):

At the end of the section, insert:

35

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

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

*HomeFund Restructuring 1993*SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

(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) Except as otherwise provided by the regulations, the parties to an appeal are each of the parties to the determination against which the appeal is made. 5

(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. 10

(7) Subject to any direction of the Supreme Court to the contrary, the making of an application for leave to appeal operates to stay the decision to which the application relates.

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

(18) 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: 20

(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. 25

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

(19) Section 42A:

After section 42, insert: 30

Certain agreements prohibited

42A. (1) A person is not entitled to charge or recover any fee for assisting another person to make a complaint or to furnish information to the Commissioner (such as in the form of a complaints guide) with respect to a complaint. 35

(2) A person who charges or recovers, or who attempts to recover, any such fee is guilty of an offence.

Maximum penalty: 100 penalty units.

*HomeFund Restructuring 1993*SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

5 (3) An agreement is void to the extent to which it purports to assign to any person, in payment for assistance of the kind referred to in subsection (1), any money received by a complainant as a result of a determination arising from the complaint.

(4) An agreement is void to the extent to which it purports to exclude, modify or restrict the operation of this section.

10 (5) This section applies to any agreement, whether in writing or not and whether entered into before or after the commencement of this section. Acts occurring before the commencement of this section do not give rise to an offence under subsection (2).

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 22)

Definitions

15 1. In this Schedule:

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

- **Pending complaints under the HomeFund Commissioner Act 1993**

20 2. (1) A provision of the HomeFund Commissioner Act 1993, as amended by this Act, applies to complaints made before the relevant commencement as well as to complaints made on or after the relevant commencement.

(2) However, a complainant whose complaint was made before the relevant commencement may withdraw the complaint, whether or not the Commissioner agrees.

25 **Existing determinations under the HomeFund Commissioner Act 1993**

3. (1) An amendment made by this Act to a provision of the HomeFund Commissioner Act 1993 does not apply in relation to any determination made under that Act before the relevant commencement.

30 (2) In particular, section 40 of the HomeFund Commissioner Act 1993, as amended by this Act, does not confer a right of appeal with respect to a determination made under that Act before the relevant commencement.

HomeFund Advisory Panel

35 4. (1) The HomeFund Advisory Panel constituted under section 17B of the Home Purchase Assistance Authority Act 1993 is a continuation of the HomeFund Advisory Panel constituted under section 37 of the HomeFund Commissioner Act 1993.

HomeFund Restructuring 1993

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(2) The reconstitution of the HomeFund Advisory Panel under section 17B of the Home Purchase Assistance Authority Act 1993 does not affect the membership of the Panel and the members of the Panel continue to hold office in accordance with the terms of their appointments.

REVISED DRAFT THIRD PRINT

[Draft print showing amendments passed by
the Legislative Council]

HOMEFUND RESTRUCTURING BILL 1993

NEW SOUTH WALES



TABLE OF PROVISIONS

PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Definitions
4. Objects
5. Notes

PART 2—RESTRUCTURING SCHEME

6. Restructuring scheme
7. Extension and variation of the restructuring scheme
8. HomeFund borrowers' access to restructuring scheme
9. Administration of restructuring scheme
10. Appeal against categorisation of borrower
11. Decision on appeal
12. Procedures for appeals
13. Conferral of functions on HomeFund Advisory Panel
14. Provision of financial counselling and legal assistance to HomeFund borrowers

PART 3—CONSEQUENCES OF RESTRUCTURING SCHEME

15. Other relief
16. Application to existing entitlements and complaints

PART 4—MISCELLANEOUS

17. Act binds Crown
18. Capitalisation of interest
19. Certain consents not required
20. Report

HomeFund Restructuring 1993

- 21. Regulations
- 22. Amendment of other Acts
- 23. Savings and transitional provisions
- 24. Review of Act

SCHEDULE 1—RESTRUCTURING SCHEME

SCHEDULE 2—COMPLAINTS THAT MAY BE THE SUBJECT OF A
DETERMINATION UNDER THE HOMEFUND COMMISSIONER ACT 1993

SCHEDULE 3—AMENDMENT OF OTHER ACTS

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS

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.

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

NEW SOUTH WALES



Act No. , 1993

An Act with respect to a restructuring scheme for HomeFund borrowers;
and for other purposes.

HomeFund Restructuring 1993

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY**Short title**

1. This Act may be cited as the HomeFund Restructuring Act 1993.

5 Commencement

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

Definitions

3. (1) In this Act:

10 “**determination**” means a determination under Part 5 of the HomeFund Commissioner Act 1993;

“**exercise**” of a function includes, if the function is a duty, the performance of the duty;

15 “**FANMAC**” means First Australian National Mortgage Acceptance Corporation Limited;

“**FANMAC trustee**” means the trustee of funds raised from time to time by FANMAC for the purposes of home lending;

“**function**” includes a power, authority or duty;

20 “**Home Purchase Assistance Authority**” means the body of that name constituted under the Home Purchase Assistance Authority Act 1993;

25 “**HomeFund Advisory Panel**” means the body of that name constituted under the HomeFund Commissioner Act 1993 or under the Home Purchase Assistance Authority Act 1993 (after the commencement of section 17B of that Act);

“**HomeFund borrower**” means the mortgagor under a HomeFund mortgage or the guarantor under an associated contract of guarantee, but does not include a person who has ceased to be such a mortgagor or guarantor;

30 “**HomeFund Commissioner**” means the HomeFund Commissioner appointed under the HomeFund Commissioner Act 1993;

HomeFund Restructuring 1993

“HomeFund mortgage” means a mortgage executed by Permanent Trustee Company Limited as mortgagee in its capacity as FANMAC trustee, and includes:

- (a) the credit contract secured by such a mortgage; and
- (b) any contract of guarantee or other contract associated with such a mortgage or credit contract; 5

“mortgage” has the same meaning as in the Conveyancing Act 1919;

“restructuring scheme” means the scheme referred to in section 6 and Schedule 1.

(2) Until the extension of the restructuring scheme to HomeFund mortgages described as State Partnership Loans or Rent-buy Loans, this Act does not apply to any such HomeFund mortgage or any associated residential tenancy agreement, associated equity purchase agreement or other associated agreement. 10

Objects 15

4. The objects of this Act are to enable HomeFund borrowers to participate in a restructuring scheme and to provide for the consequences of the restructuring scheme.

Notes

5. Matter appearing under the heading “Note” in this Act does not form part of this Act. 20

PART 2—RESTRUCTURING SCHEME

Restructuring scheme

6. (1) The restructuring scheme is a scheme established by the Home Purchase Assistance Authority, with the consent of the Minister, as generally contemplated by the report of the Authority to the Minister for Housing dated 6 December 1993. The scheme established by the Authority is to comply with the principal features of the scheme set out in Schedule 1. 25

(2) The restructuring scheme (including any extension of the scheme) is, for the purposes of section 13A (3) (e) of the Home Purchase Assistance Authority Act 1993, a program for the restructuring of a HomeFund scheme. 30

HomeFund Restructuring 1993

Extension and variation of the restructuring scheme

7. (1) The Home Purchase Assistance Authority may, with the consent of the Minister, appoint a day for the extension of the restructuring scheme to HomeFund mortgages described as State Partnership Loans or Rent-buy Loans.

(2) The extension of the scheme must comply with the relevant principal features set out in Schedule 1, subject to any variation of that Schedule set out in the regulations in relation to that extension.

(3) The scheme may be varied by the Home Purchase Assistance Authority, with the consent of the Minister, but not so as to depart from the principal features of the scheme.

HomeFund borrowers' access to restructuring scheme

8. (1) A HomeFund borrower is eligible to participate in the restructuring scheme in accordance with the conditions of the scheme.

(2) A HomeFund borrower is eligible to participate in the restructuring scheme even though the borrower has made a complaint under the HomeFund Commissioner Act 1993 or a complaint made by the borrower under that Act is the subject of a determination by the HomeFund Commissioner.

(3) However, a HomeFund borrower under a HomeFund mortgage described as a State Partnership Loan or Rent-buy Loan is not eligible to participate in the restructuring scheme before the day the scheme is extended to such a mortgage under section 7.

Administration of restructuring scheme

9. (1) The Home Purchase Assistance Authority is to manage the restructuring scheme.

(2) For the purposes of managing the restructuring scheme, the Home Purchase Assistance Authority may exercise its functions under the Home Purchase Assistance Authority Act 1993, including its functions under section 13 (2) of that Act, as if the restructuring scheme were a scheme managed under that Act.

Appeal against categorisation of borrower

10. (1) A HomeFund borrower may appeal to the HomeFund Advisory Panel against the categorisation of the borrower by the Home Purchase Assistance Authority under the restructuring scheme.

(2) An appeal is to be made within 28 days of written notice of categorisation being given to the borrower.

HomeFund Restructuring 1993

(3) The HomeFund Advisory Panel is to hear an appeal under this section. On an appeal the Advisory Panel is to be constituted as provided by the regulations.

(4) In hearing an appeal, the HomeFund Advisory Panel must apply the same criteria for determining categories as are determined and applied by the Home Purchase Assistance Authority for the purpose of determining categories and as are notified to the Advisory Panel by the Authority from time to time.

5

Decision on appeal

11. (1) After hearing an appeal under section 10, the HomeFund Advisory Panel may recommend in writing to the Home Purchase Assistance Authority that the Authority change the categorisation of the borrower or continue the same categorisation.

10

(2) The Authority must determine the matter after taking into account any recommendation made by the Advisory Panel under this section.

15

(3) Until the Home Purchase Assistance Authority determines the matter, any time for the taking of any action under the restructuring scheme does not run.

(4) The Advisory Panel may report to the Minister in respect of any recommendation it makes after hearing an appeal under section 10.

20

Procedures for appeals

12. The regulations may provide for the procedure for the making and hearing of an appeal under section 10.

Conferral of functions on HomeFund Advisory Panel

13. In addition to any functions conferred on it by or under any other Act, the HomeFund Advisory Panel has the functions conferred on it by or under this Act.

25

Provision of financial counselling and legal assistance to HomeFund borrowers

14. It is the duty of the Minister 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 impartial financial counselling and legal assistance services.

30

PART 3—CONSEQUENCES OF RESTRUCTURING SCHEME**Other relief**

5 **15. (1) Claims against the Crown and others extinguished.** The Crown, FANMAC, the FANMAC trustee and a co-operative housing society, including any persons acting on their behalf, are not subject to any action, liability, claim or demand (and a determination may not be made) in respect of:

- (a) any HomeFund mortgage; or
- 10 (b) any transaction relating to, preliminary to or arising from any HomeFund mortgage; or
- (c) the promotion, origination or management of any HomeFund mortgage or related HomeFund scheme.

15 **(2) Restricted determinations may be made.** The HomeFund Commissioner may however make a determination under the HomeFund Commissioner Act 1993 about a complaint or part of a complaint by a HomeFund borrower who is eligible to participate in the restructuring scheme, or a HomeFund borrower who has refinanced a HomeFund mortgage, but may do so only if the determination relates to a complaint or part of a complaint listed in Schedule 2 or specified in the regulations.

20 **(3) Limit on type of relief.** The Commissioner may not, in making such a determination, make a determination referred to in section 25 (3) (a), (b) or (c) of the HomeFund Commissioner Act 1993, which relate to altering mortgages and entering into new mortgages.

25 **(4) Statutory remedies.** Subsection (1) extends to, but is not limited to, claims under the Contracts Review Act 1980, the Consumer Claims Tribunals Act 1987 or the Fair Trading Act 1987.

(5) Protected borrowers. This section does not affect the rights of a person:

- 30 (a) who is categorised as Category C or D, as set out in Schedule 1, unless and until the person receives assistance as set out in Category B or C; or
- (b) who has ceased to be a HomeFund borrower (otherwise than by means of refinancing) and has not been granted assistance under the restructuring scheme.

35 Application to existing entitlements and complaints

16. (1) Section 15 (1) applies only to entitlements in existence at the commencement of section 15. Section 15 (1) and (2) apply to complaints made before or after the commencement of section 15.

HomeFund Restructuring 1993

(2) However, that section does not affect:

- (a) proceedings commenced in any court or tribunal (except against the Crown or persons referred to in section 15 (1)) before that commencement or any decision of a court or tribunal made before that commencement; or
- (b) a determination made under the HomeFund Commissioner Act 1993 before that commencement; or
- (c) any power to make a determination under section 27 (which relates to stays of eviction) of the HomeFund Commissioner Act 1993.

5

NOTE: The remaining jurisdiction of the Commissioner, as a result of sections 15 and 16, is to make:

10

- (a) monetary determinations about complaints relating to administrative matters listed in Schedule 2 or the regulations in relation to HomeFund borrowers who refinance or receive assistance in the restructuring scheme under Categories A, B and C; and
- (b) determinations about complaints relating to any matters by all other former HomeFund borrowers, including who left otherwise than by means of refinancing; and
- (c) determinations about stays of eviction concerning HomeFund borrowers.

15

PART 4—MISCELLANEOUS

20

Act binds Crown

17. This Act binds the Crown.

Capitalisation of interest

18. (1) For the avoidance of doubt, it is declared that the provisions of registered Memoranda numbers Y 901844, Y 901845, Y 901846, Y 901847, Y 901848, Z 274110, Z 274111, Z 274112, Z 274113 and Z 274114 relating to capitalisation of interest permit, and have always permitted, the capitalisation of the interest accrued for the month to which a monthly instalment relates less any money actually received by the mortgagee on account of interest so accrued.

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(2) The regulations may extend the operation of this section to a specified document constituting or forming part of, or previously constituting or forming part of, a HomeFund mortgage.

Certain consents not required

19. The FANMAC trustee is not required to obtain the consent of the beneficiaries of any trust of which it is trustee, or any FANMAC bond holders or unit holders, to the doing of any act, matter or thing in connection with the restructuring scheme. The FANMAC trustee is not subject to any action, liability, claim or demand for a failure to consult with or obtain the consent of any such beneficiaries, bond holders or unit holders in relation to the doing of any such act, matter or thing.

Report

20. The Home Purchase Assistance Authority must, in its annual report, report on the operation and effectiveness of the restructuring scheme, including, but not limited to, the number of people affected by the scheme and the kinds of assistance offered and received.

Regulations

21. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Amendment of other Acts

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

Savings and transitional provisions

23. Schedule 4 has effect.

Review of Act

24. (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.
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HomeFund Restructuring 1993

SCHEDULE 1—RESTRUCTURING SCHEME

(Sec. 6)

1. The restructuring scheme will apply to borrowers on the basis of the principal features set out in this Schedule, subject to any variation under section 7 (2). Borrowers will be categorised by the Home Purchase Assistance Authority on the basis of an allocated category. The categorisation will be notified in writing. 5

2. The broad categories of borrowers and assistance are as follows:
 - (a) **Category A.** Borrowers who are able to refinance with commercial lenders as at 7 December 1993 or such later date as may be prescribed by the regulations. These borrowers will be informed that they may refinance or remain in the existing unstructured scheme. Those who refinance may be eligible for the exemption from stamp duty for home loan refinancing while it continues in force. 10

 - (b) **Category B.** Borrowers who are unable to refinance with commercial lenders but who are determined by the Home Purchase Assistance Authority to be able to pay a restructured income-gear mortgage as at 7 December 1993 or such later date as may be prescribed by the regulations. These borrowers will be offered such a mortgage and they will be informed that they may instead remain in the existing unstructured scheme. 15

 - (c) **Category C.** Borrowers who are unable to pay a restructured income-gear mortgage and are not 3 months or more in arrears as at 7 December 1993 or such later date as may be prescribed by the regulations. These borrowers will be able to sell the property to the Authority or a body nominated by the Authority, and any part of the debt that is more than the value of the property will be waived. Any sale is to be for the market value of the property, as determined after an independent valuation is obtained. These borrowers will be offered the right to rent the property for a period of up to 5 years on conditions determined by the Authority. These borrowers will be informed that they may instead remain in the existing unstructured scheme. At the end of the 5 year rental period these borrowers will be provided with public housing accommodation, subject to eligibility for such accommodation, or the rental period will be extended until such accommodation is available. 20
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 - (d) **Category D.** Borrowers who are 3 months or more in arrears as at 7 December 1993 or such later date as may be prescribed by the regulations. Borrowers who pay the arrears within 3 months will be offered assistance as set out in Category C or may instead be offered assistance as set out in Category B, as determined by the Authority. Borrowers who make satisfactory arrangements within 3 months to pay the arrears will be offered assistance as set out in Category C. If the arrears are not paid, or no satisfactory arrangement is made, within 3 months, the borrowers may be offered the right to occupy the premises for up to 15 months on conditions determined by the Authority. Arrangements under this category may include arrangements to capitalise arrears. 35
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 - (e) **Category E.** Borrowers under Aged-persons Update Loans. These borrowers will be entitled to a reduction in the interest rate to the standard bank housing loan rate of interest dating from the commencement of the loans. 45

*HomeFund Restructuring 1993*SCHEDULE 1—RESTRUCTURING SCHEME—*continued*

- 5 (f) **Category F. Borrowers under State Partnership Loans or Rent-buy Loans.** In relation to the loan component of their HomeFund arrangements, these borrowers will be entitled to assistance according to their eligibility for Categories B–D. In relation to the rental component of their HomeFund arrangements, those borrowers who repay arrears within 3 months, or make satisfactory arrangements to do so, will be given relief as determined by the Authority. Assistance will be available in this category when the scheme is extended under this Act to such borrowers.
- 10 3. The scheme may provide for allowance to be made, as determined by the Authority, in respect of borrowers who have, before the date of the written notice referred to in clause 1, received the benefit of a determination under the HomeFund Commissioner Act 1993.
- 15 4. The scheme may provide for the situation where the borrower under a HomeFund mortgage changes or dies, or, where there are 2 or more borrowers, any one or more of them, change or die, or circumstances otherwise change.
5. The scheme may specify the circumstances in which 2 or more of the borrowers under a HomeFund mortgage must act together.
- 20 6. The scheme may limit the period in which assistance under the scheme must be taken up, but in any case the period must not end before 30 June 1994.
7. The scheme may make it a condition of participation in the scheme that a HomeFund borrower executes a deed of release relating to specified matters.

SCHEDULE 2—COMPLAINTS THAT MAY BE THE SUBJECT OF A DETERMINATION UNDER THE HOMEFUND COMMISSIONER ACT 1993

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(Sec. 15)

- (1) Any complaint (or part of a complaint) alleging incorrect accounting with respect to payments made by a HomeFund borrower under a HomeFund mortgage.
- 30 (2) Any complaint (or part of a complaint) alleging mistakes with respect to arrangements for the direct debiting of a HomeFund borrower's bank account in connection with payments under a HomeFund mortgage.
- (3) Any complaint (or part of a complaint) alleging that mortgage assistance payable to a HomeFund borrower has not been paid into the borrower's home loan account.
- 35 (4) Any complaint (or part of a complaint) alleging that action has been improperly taken against a HomeFund borrower under a penalty clause in a HomeFund mortgage.

HomeFund Restructuring 1993

SCHEDULE 2—COMPLAINTS THAT MAY BE THE SUBJECT OF A
DETERMINATION UNDER THE HOMEFUND COMMISSIONER ACT 1993—
continued

- | | |
|---|----|
| (5) Any complaint (or part of a complaint) alleging undue delay in the preparation of documents to enable a HomeFund borrower to discharge a HomeFund mortgage. | 5 |
| (6) Any complaint (or part of a complaint) alleging that a HomeFund borrower has not been advised of his or her eligibility for mortgage assistance or other relevant relief. | |
| (7) Any complaint (or part of a complaint) alleging that a HomeFund borrower has been improperly refused mortgage assistance or other relevant relief for which he or she has been eligible. | 10 |
| (8) Any complaint (or part of a complaint) alleging that a HomeFund borrower has been improperly required to repay mortgage assistance or other relevant relief. | |
| (9) Any complaint (or part of a complaint) alleging that a HomeFund borrower's application for a reduction in the periodic payments due under a HomeFund mortgage has been improperly refused or that the granting of such a reduction has been improperly withdrawn. | 15 |
| (10) Any complaint (or part of a complaint) alleging that improper threats have been made against a HomeFund borrower as to the taking of legal action with respect to a HomeFund mortgage. | 20 |
| (11) Any complaint (or part of a complaint) alleging that legal action has been improperly taken against a HomeFund borrower with respect to a HomeFund mortgage. | |
| (12) Any complaint (or part of a complaint) alleging that a HomeFund borrower has been given false or misleading information as to the amount of any arrears due under a HomeFund mortgage. | 25 |
| (13) Any complaint (or part of a complaint) alleging that action to evict a HomeFund borrower from property the subject of a HomeFund mortgage has been improperly taken. | 30 |
| (14) Any complaint (or part of a complaint) alleging that action to exercise a power of sale over property the subject of a HomeFund mortgage has been improperly taken. | |
| (15) Any complaint (or part of a complaint) alleging that a HomeFund borrower has been improperly refused approval to enter into an arrangement to pay arrears due under a HomeFund mortgage. | 35 |
| (16) Any complaint (or part of a complaint) alleging that there has been an administrative error with respect to the information given to a HomeFund borrower as to the payments due under a HomeFund mortgage. | |

HomeFund Restructuring 1993

SCHEDULE 2—COMPLAINTS THAT MAY BE THE SUBJECT OF A
DETERMINATION UNDER THE HOMEFUND COMMISSIONER ACT 1993—
continued

- 5 (17) Any complaint (or part of a complaint) alleging that there has been an administrative error in the assessment of the suitability to a HomeFund borrower of a particular class of HomeFund mortgage.

SCHEDULE 3—AMENDMENT OF OTHER ACTS

(Sec. 22)

Defamation Act 1974 No. 18

10 Section 17P:

After section 17O, insert:

Matters relating to the HomeFund Advisory Panel

15 17P. There is a defence of absolute privilege for a publication to or by the HomeFund Advisory Panel, or to or by any member of the HomeFund Advisory Panel, for the purposes of section 10, 11 or 12 of the HomeFund Restructuring Act 1993.

Home Purchase Assistance Authority Act 1993 No. 15

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

Insert, in alphabetical order:

20 "Panel" means the HomeFund Advisory Panel referred to in section 17B.

(2) Section 13 (**Principal functions**):

25 From section 13 (2) (e), omit "to eligible applicants with appropriate security", insert instead ", with or without security, to eligible applicants".

(3) Section 13A (**Establishment of Housing Reserve Fund**):

After section 13A (3) (c), insert:

30 (c1) contributing to the funding of 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;

(4) Section 17B:

After section 17A, insert:

35 **HomeFund Advisory Panel**

17B. (1) There is to be a HomeFund Advisory Panel, consisting of members appointed by the Minister.

HomeFund Restructuring 1993

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

- (2) The functions of the Panel are:
- (a) to assist the HomeFund Commissioner in the exercise of the Commissioner's functions under the HomeFund Commissioner Act 1993, as determined by the Commissioner; and 5
 - (b) to hear appeals under section 10 of the HomeFund Restructuring Act 1993; and
 - (c) to exercise such other functions as may be conferred or imposed on the Panel by or under this or any other Act or law.
- (3) A member of the Panel is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine with respect to the member. 10
- (4) The regulations may make provision for or with respect to the Panel, including provisions for or with respect to conferring additional functions on the Panel, its procedures, the appointment of its members, and the termination of membership of the Panel. 15
- (5) If, by or under any Act, provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
 - (b) prohibiting the person from engaging in employment outside the duties of that office, 20
- the provision does not operate to disqualify the person from holding that office and also the office of member of the Panel or from accepting and retaining any remuneration payable to the person as a member of the Panel. 25
- (5) Section 18 (**Personal liability of members and others**):
- (a) After "the Board" wherever occurring, insert "or the Panel".
 - (b) Omit "Authority or", insert instead "Authority,".
 - (c) Omit "this Act", insert instead "this or any other Act".
- (6) Sections 21A, 21B: 30
- After section 21, insert:
- False or misleading information**
- 21A. A person must not:
- (a) in or in connection with any application under this Act or under the restructuring scheme referred to in the HomeFund Restructuring Act 1993; or 35
 - (b) in response to any request for information made by the Authority or the Panel,
- make any statement that the person knows to be false or misleading in a material particular. 40
- Maximum penalty: 20 penalty units.

*HomeFund Restructuring 1993*SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued***Proceedings for offences**

21B. Proceedings for an offence against this Act are to be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.

5 HomeFund Commissioner Act 1993 No. 9**(1) Section 3 (Definitions):**

Insert in section 3 (1), in alphabetical order:

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

10 (2) Section 9 (Delegation of functions):

From section 9 (3) (b), omit “this Act”, insert instead “the Home Purchase Assistance Authority Act 1993”.

15 (3) Section 10 (Right to complain):

Omit section 10 (2), insert instead:

(2) Complaints must be made before 31 March 1994. However, the Commissioner has a discretion to accept a complaint after that date.

(4) Heading to Division 2 of Part 4:

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

20 (5) Section 12 (Investigations):

After section 12 (2), insert:

(2A) The Commissioner may, at any time, recontinue an investigation that has been discontinued.

25 (6) Section 16 (Information to be given):

(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).

30 (7) Section 19 (Limits on secrecy and privilege (information and inquiries)):

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

*HomeFund Restructuring 1993*SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

- (8) 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);
- (c) a co-operative housing society; 10
- (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.
- (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). 20
- (b) In section 25 (3) (d), after “to a HomeFund borrower”, insert “by a person or body (other than a HomeFund borrower)”.
- (c) From section 25 (3) (d), omit “borrower.”, insert instead “borrower);”. 25
- (d) 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 section 26B (1) (b);
- (f) granting such other relief as is consequential or ancillary to the relief granted by paragraphs (a)–(e); 30
- (g) ordering the doing of anything else that is necessary to give effect to the determination.
- (e) Omit section 25 (4), insert instead:
- (4) The Commissioner is not to make a determination applying to any person or body (other than a HomeFund borrower) unless satisfied that the complainant has (apart from this Act) an entitlement to a legal remedy against that person or body in relation to the complaint. 35
- (f) Omit section 25 (6), insert instead:
- (6) Nothing in this section affects the operation of section 26, 26A, 26B or 26C or the power to make a determination under section 27. 40

HomeFund Restructuring 1993

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

5 (7) 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.

(8) 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 (9) 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.

✓ (9) Section 26 (**Monetary determinations**):

Omit section 26 (4).

15 (10) Sections 26A–26C:

After section 26, insert:

Contributions between parties

20 26A. (1) This section applies where the Commissioner finds that two or more of the parties named or proposed to be named as covered by a determination each bore a measure of responsibility in respect of the subject-matter of the complaint.

(2) The determination may require a contribution to be made between those parties in respect of any payment ordered to be made to a HomeFund borrower or to any other party.

25 (3) In the event that the determination contains such a requirement, the Commissioner must make the determination in such terms as will enable the determination to be enforced against each of those parties to such an extent as appears appropriate in the circumstances.

Determinations affecting the FANMAC trustee

30 26B. (1) 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:

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

40 (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.

HomeFund Restructuring 1993

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

- (2) The FANMAC trustee is not obliged to comply with the requirements of a determination referred to in subsection (1) until it has received (whether or not from a party specified in an order referred to in subsection (1) (b)) an amount, by way of compensation for the costs referred to in that paragraph, of at least the amount specified in the order. 5
- Determinations affected by the restructuring scheme under the HomeFund Restructuring Act 1993**
- ✓ 26C. (1) The Commissioner is not to make a determination granting relief to a HomeFund borrower if the granting to the HomeFund borrower of such relief is excluded by the HomeFund Restructuring Act 1993. 10
- (2) The Commissioner may make a determination referred to in section 15 (2) or 16 (2) (d) of the HomeFund Restructuring Act 1993 despite section 15 (1) of that Act and as if section 15 (1) of that Act had not extinguished the action, liability, claim or demand on which any relevant entitlement to a legal remedy is based. 15
- ✓ (3) However, the Commissioner is not to make a determination referred to in section 15 (2) of the HomeFund Restructuring Act 1993 if the sole basis of the proposed determination is the existence of an entitlement to a legal remedy under the Trade Practices Act 1974 of the Commonwealth. 20
- (11) Section 28:
- Omit the section, insert instead:
- Binding nature of determinations**
28. A determination binds the complainant and all of the parties named as covered by the determination. 25
- (12) 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 person or body bound by the determination as if the determination were a judgment or order of that court. 30
- (2) In particular, an order of the kind referred to in section 25 (7) 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. 35
- (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 any inconsistency. 40

*HomeFund Restructuring 1993*SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

(13) Section 30:

Omit the section, insert instead:

Form of determination

5 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.

(14) Section 37 (**HomeFund Advisory Panel**):

Omit the section.

10 (15) Section 37A:

After section 37, insert:

Credit reporting agencies

15 37A. (1) The Commissioner may make an order prohibiting a specified person or body (such as a credit reporting agency within the meaning of the Privacy Act 1988 of the Commonwealth) from furnishing to any other person or body any information or report:

(a) to the effect that a specified person is, or has been, in default with respect to a HomeFund mortgage; or

(b) that casts doubt on:

20 (i) a person's eligibility to be provided with credit; or

(ii) a person's history in relation to credit; or

(iii) a person's capacity to repay credit,

on the basis that the person is, or has been, in default with respect to a HomeFund mortgage.

25 (2) Such an order may be made on the Commissioner's own motion or on application made by a HomeFund borrower. An application may be made to the Commissioner whether or not the applicant is also a complainant with respect to a complaint currently before the Commissioner.

30 (3) The Commissioner may not make an order under this section unless satisfied:

(a) that the person concerned is not, and has not been, in default with respect to a HomeFund mortgage; or

35 (b) that the person concerned is, or has been, in default with respect to a HomeFund mortgage but the default has occurred as a result of some act or omission with respect to the mortgage for which the person is not, and should not be held to be, responsible.

(4) A person must not wilfully contravene an order in force under this section.

40 Maximum penalty: 100 penalty units.

HomeFund Restructuring 1993

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

- (16) Section 39 (**Personal liability of Commissioner and others**):
- (a) Omit “, the HomeFund Advisory Panel, a member of the Panel”.
 - (b) Omit “this Act”, insert instead “this or any other Act”.
 - (c) Omit “, member of the Panel”. 5
- (17) 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.
 - (3) Such an appeal may be made only with the leave of the Supreme Court. 10
 - (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) 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. 20
 - (7) Subject to any direction of the Supreme Court to the contrary, the making of an application for leave to appeal operates to stay the decision to which the application relates.
 - (8) The Supreme Court is not to award costs to or against any party to an appeal. 25
- (18) 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: 30
- (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. 35
- (2) The Director of Housing is not personally liable under any order or judgment arising from any such proceedings.

*HomeFund Restructuring 1993*SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

(19) Section 42A:

After section 42, insert:

Certain agreements prohibited

5 42A. (1) A person is not entitled to charge or recover any fee for assisting another person to make a complaint or to furnish information to the Commissioner (such as in the form of a complaints guide) with respect to a complaint.

10 (2) A person who charges or recovers, or who attempts to recover, any such fee is guilty of an offence.

Maximum penalty: 100 penalty units.

15 (3) Nothing in subsections (1) and (2) applies in relation to advice given by a barrister or solicitor about relief under the HomeFund Restructuring Act 1993.

 (4) An agreement is void to the extent to which it purports to assign to any person, in payment for assistance of the kind referred to in subsection (1), any money received by a complainant as a result of a determination arising from the complaint.

20 (5) An agreement is void to the extent to which it purports to exclude, modify or restrict the operation of this section.

 (6) This section applies to any agreement, whether in writing or not and whether entered into before or after the commencement of this section. Acts occurring before the commencement of this section do not give rise to an offence under subsection (2).

25 **SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 23)

Definitions

1. In this Schedule:

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

Pending complaints under the HomeFund Commissioner Act 1993

35 2. (1) A provision of the HomeFund Commissioner Act 1993, as amended by this Act, applies to complaints made before the relevant commencement as well as to complaints made on or after the relevant commencement.

 (2) However, a complainant whose complaint was made before the relevant commencement may withdraw the complaint, whether or not the Commissioner agrees.

HomeFund Restructuring 1993

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Existing determinations under the HomeFund Commissioner Act 1993**

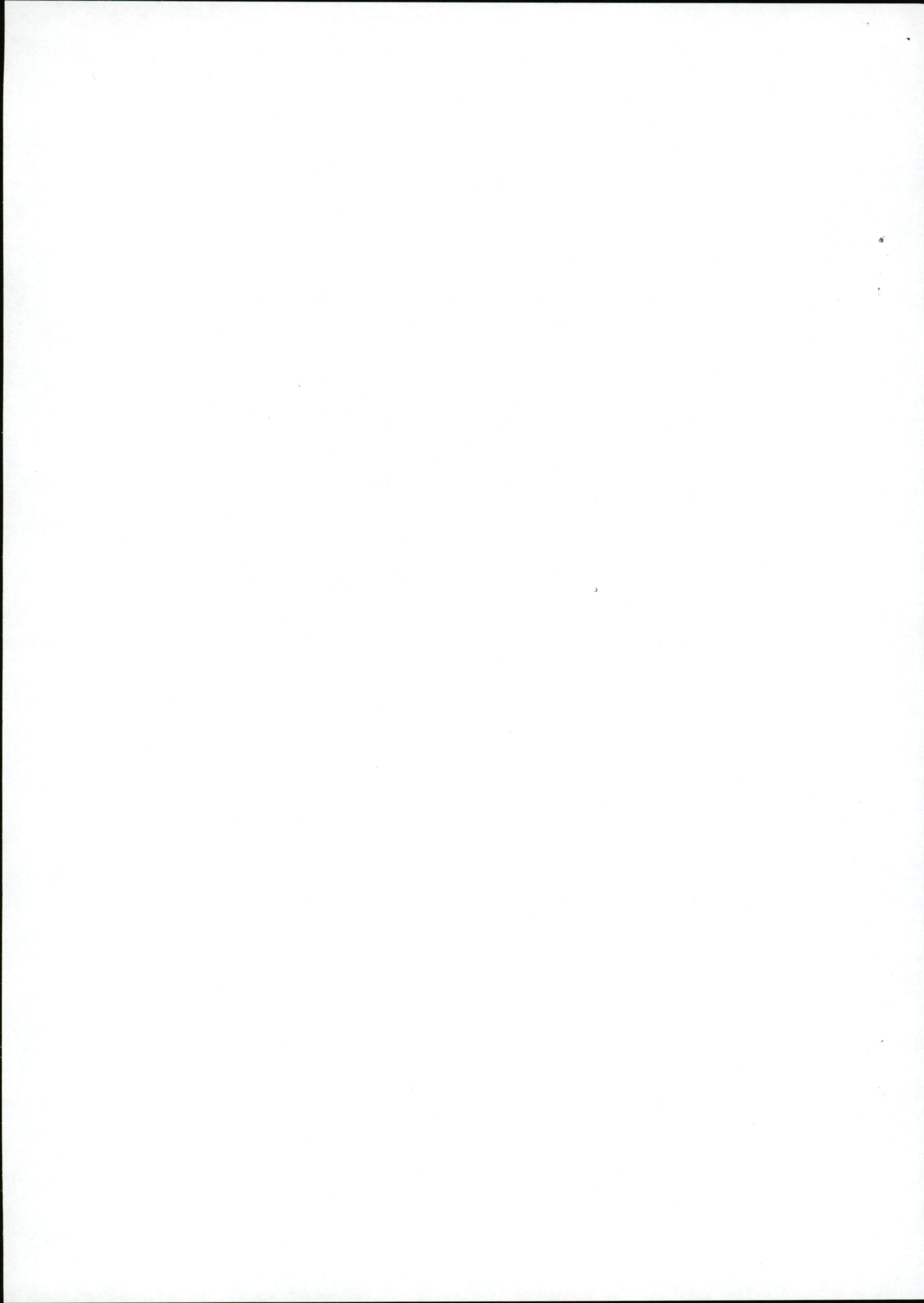
3. (1) An amendment made by this Act to a provision of the HomeFund Commissioner Act 1993 does not apply in relation to any determination made under that Act before the relevant commencement. 5

(2) In particular, section 40 of the HomeFund Commissioner Act 1993, as amended by this Act, does not confer a right of appeal with respect to a determination made under that Act before the relevant commencement.

HomeFund Advisory Panel

4. (1) The HomeFund Advisory Panel constituted under section 17B of the Home Purchase Assistance Authority Act 1993 is a continuation of the HomeFund Advisory Panel constituted under section 37 of the HomeFund Commissioner Act 1993. 10

(2) The reconstitution of the HomeFund Advisory Panel under section 17B of the Home Purchase Assistance Authority Act 1993 does not affect the membership of the Panel and the members of the Panel continue to hold office in accordance with the terms of their appointments. 15



HOMEFUND RESTRUCTURING ACT 1993 No. 112

NEW SOUTH WALES



TABLE OF PROVISIONS

PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Definitions
4. Objects
5. Notes

PART 2—RESTRUCTURING SCHEME

6. Restructuring scheme
7. Variation of the restructuring scheme
8. HomeFund borrowers' access to restructuring scheme
9. Administration of restructuring scheme
10. Appeal against categorisation of borrower
11. Decision on appeal
12. Procedures for appeals
13. Conferral of functions on HomeFund Advisory Panel
14. Provision of financial counselling and legal assistance to HomeFund borrowers

PART 3—CONSEQUENCES OF RESTRUCTURING SCHEME

15. Other relief
16. Application to existing entitlements and complaints

PART 4—MISCELLANEOUS

17. Act binds Crown
18. Capitalisation of interest
19. Certain consents not required
20. Suspension of limitation period
21. Report

HomeFund Restructuring Act 1993 No. 112

- 22. Regulations
- 23. Amendment of other Acts
- 24. Savings and transitional provisions
- 25. Review of Act

SCHEDULE 1—RESTRUCTURING SCHEME

SCHEDULE 2—COMPLAINTS THAT MAY BE THE SUBJECT OF A
DETERMINATION UNDER THE HOMEFUND COMMISSIONER ACT 1993

SCHEDULE 3—AMENDMENT OF OTHER ACTS

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS

HOMEFUND RESTRUCTURING ACT 1993 No. 112

NEW SOUTH WALES



Act No. 112, 1993

An Act with respect to a restructuring scheme for Homefund borrowers;
and for other purposes. [Assented to 24 December 1993]

HomeFund Restructuring Act 1993 No. 112

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the HomeFund Restructuring Act 1993.

Commencement

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

Definitions

3. (1) In this Act:

“**determination**” means a determination under Part 5 of the HomeFund Commissioner Act 1993;

“**exercise**” of a function includes, if the function is a duty, the performance of the duty;

“**FANMAC**” means First Australian National Mortgage Acceptance Corporation Limited;

“**FANMAC trustee**” means the trustee of funds raised from time to time by FANMAC for the purposes of home lending;

“**function**” includes a power, authority or duty;

“**Home Purchase Assistance Authority**” means the body of that name constituted under the Home Purchase Assistance Authority Act 1993;

“**HomeFund Advisory Panel**” means the body of that name constituted under the HomeFund Commissioner Act 1993 or under the Home Purchase Assistance Authority Act 1993 (after the commencement of section 17B of that Act);

“**HomeFund borrower**” means the mortgagor under a HomeFund mortgage or the guarantor under an associated contract of guarantee, but does not include a person who has ceased to be such a mortgagor or guarantor;

“**HomeFund Commissioner**” means the HomeFund Commissioner appointed under the HomeFund Commissioner Act 1993;

HomeFund Restructuring Act 1993 No. 112

“HomeFund mortgage” means a mortgage executed by Permanent Trustee Company Limited as mortgagee in its capacity as FANMAC trustee, and includes:

- (a) the credit contract secured by such a mortgage; and
- (b) any contract of guarantee or other contract associated with such a mortgage or credit contract;

“mortgage” has the same meaning as in the Conveyancing Act 1919;

“restructuring scheme” means the scheme referred to in section 6 and Schedule 1.

(2) This Act does not apply to a HomeFund mortgage described as a State Partnership Loan, a Rent-buy Loan or an Aged-persons Update Loan.

Objects

4. The objects of this Act are to enable HomeFund borrowers to participate in a restructuring scheme and to provide for the consequences of the restructuring scheme.

Notes

5. Matter appearing under the heading “Note” in this Act does not form part of this Act.

PART 2—RESTRUCTURING SCHEME

Restructuring scheme

6. (1) The restructuring scheme is a scheme established by the Home Purchase Assistance Authority, with the consent of the Minister, as generally contemplated by the report of the Authority to the Minister for Housing dated 6 December 1993. The scheme established by the Authority is to comply with the principal features of the scheme set out in Schedule 1.

(2) The restructuring scheme (including any extension of the scheme) is, for the purposes of section 13A (3) (e) of the Home Purchase Assistance Authority Act 1993, a program for the restructuring of a HomeFund scheme.

Variation of the restructuring scheme

7. The scheme may be varied by the Home Purchase Assistance Authority, with the consent of the Minister, but not so as to depart from the principal features of the scheme.

HomeFund borrowers' access to restructuring scheme

8. (1) A HomeFund borrower is eligible to participate in the restructuring scheme in accordance with the conditions of the scheme.

(2) A HomeFund borrower is eligible to participate in the restructuring scheme even though the borrower has made a complaint under the HomeFund Commissioner Act 1993 or a complaint made by the borrower under that Act is the subject of a determination by the HomeFund Commissioner.

Administration of restructuring scheme

9. (1) The Home Purchase Assistance Authority is to manage the restructuring scheme.

(2) For the purposes of managing the restructuring scheme, the Home Purchase Assistance Authority may exercise its functions under the Home Purchase Assistance Authority Act 1993, including its functions under section 13 (2) of that Act, as if the restructuring scheme were a scheme managed under that Act.

Appeal against categorisation of borrower

10. (1) A HomeFund borrower may appeal to the HomeFund Advisory Panel against the categorisation of the borrower by the Home Purchase Assistance Authority under the restructuring scheme.

(2) An appeal is to be made within 28 days of written notice of categorisation being given to the borrower.

(3) The HomeFund Advisory Panel is to hear an appeal under this section. On an appeal the Advisory Panel is to be constituted as provided by the regulations.

(4) In hearing an appeal, the HomeFund Advisory Panel must apply the same criteria for determining categories as are determined and applied by the Home Purchase Assistance Authority for the purpose of determining categories and as are notified to the Advisory Panel by the Authority from time to time.

Decision on appeal

11. (1) After hearing an appeal under section 10, the HomeFund Advisory Panel may recommend in writing to the Home Purchase Assistance Authority that the Authority change the categorisation of the borrower or continue the same categorisation.

(2) The Authority must determine the matter after taking into account any recommendation made by the Advisory Panel under this section.

(3) Until the Home Purchase Assistance Authority determines the matter, any time for the taking of any action under the restructuring scheme does not run.

(4) The Advisory Panel may report to the Minister in respect of any recommendation it makes after hearing an appeal under section 10.

Procedures for appeals

12. The regulations may provide for the procedure for the making and hearing of an appeal under section 10.

Conferral of functions on HomeFund Advisory Panel

13. In addition to any functions conferred on it by or under any other Act, the HomeFund Advisory Panel has the functions conferred on it by or under this Act.

Provision of financial counselling and legal assistance to HomeFund borrowers

14. It is the duty of the Minister 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 impartial financial counselling and legal assistance services.

PART 3—CONSEQUENCES OF RESTRUCTURING SCHEME**Other relief**

15. (1) **Claims against the Crown and others extinguished.** The Crown, FANMAC, the FANMAC trustee and a co-operative housing society, including any persons acting on their behalf, are not subject to any action, liability, claim or demand (and a determination may not be made) in respect of:

- (a) any HomeFund mortgage; or

HomeFund Restructuring Act 1993 No. 112

- (b) any transaction relating to, preliminary to or arising from any HomeFund mortgage; or
- (c) the promotion, origination or management of any HomeFund mortgage or related HomeFund scheme.

(2) Restricted determinations may be made. The HomeFund Commissioner may however make a determination under the HomeFund Commissioner Act 1993 about a complaint or part of a complaint by a HomeFund borrower who is eligible to participate in the restructuring scheme, or a HomeFund borrower who has refinanced a HomeFund mortgage, but (except as provided by this section) may do so only if the determination relates to a complaint or part of a complaint listed in Schedule 2 or specified in the regulations.

(3) Limit on type of relief. The Commissioner may not, in making such a determination, make a determination referred to in section 25 (3) (a), (b) or (c) of the HomeFund Commissioner Act 1993, which relate to altering mortgages and entering into new mortgages.

(4) Statutory remedies. Subsection (1) extends to, but is not limited to, claims under the Contracts Review Act 1980, the Consumer Claims Tribunals Act 1987 or the Fair Trading Act 1987.

(5) Rights of protected borrowers (other than rights to determinations). This section does not affect the rights (other than the right to have a determination made) of a person:

- (a) who is categorised as Category C or D, as set out in Schedule 1, unless and until the person receives assistance of a kind set out in Category B or C; or
- (b) who has ceased to be a HomeFund borrower (otherwise than by means of refinancing) and has not been granted assistance under the restructuring scheme.

(6) Rights of protected borrowers to determinations. This section does not affect the rights to have a determination made under the HomeFund Commissioner Act 1993 of a person who is categorised as Category B, C or D as set out in Schedule 1, unless and until the person receives assistance of a kind set out in Category B.

(7) Rights of protected borrowers who have left the HomeFund scheme to determinations. This section does not affect the rights to have a determination made under the HomeFund Commissioner Act 1993 of a person who has ceased to be a HomeFund borrower (otherwise than by means of refinancing) and has not been granted assistance under the restructuring scheme.

HomeFund Restructuring Act 1993 No. 112

(8) Payment of money payable under a determination. The HomeFund Commissioner may, in making a determination that an amount of money is payable to a person who is categorised as Category B, as set out in Schedule 1, require that the money is paid in reduction of the debt under the HomeFund mortgage.

(9) Other relief to be taken into account. Any determination made by the HomeFund Commissioner in favour of a HomeFund borrower must have due regard to any assistance that has been granted to the person, or to which the person is entitled or for which the person is eligible, under the restructuring scheme.

Application to existing entitlements and complaints

16. (1) Section 15 (1) applies only to entitlements in existence at the commencement of section 15. Section 15 (1) and (2) apply to complaints made before or after the commencement of section 15.

(2) However, that section does not affect:

- (a) proceedings commenced in any court or tribunal (except against the Crown or persons referred to in section 15 (1)) before that commencement or any decision of a court or tribunal made before that commencement; or
- (b) a determination made under the HomeFund Commissioner Act 1993 before that commencement; or
- (c) any power to make a determination under section 27 (which relates to stays of eviction) of the HomeFund Commissioner Act 1993.

NOTE: The remaining jurisdiction of the Commissioner, as a result of sections 15 and 16, is to make:

- (a) monetary determinations about complaints relating to administrative matters listed in Schedule 2 or the regulations in relation to HomeFund borrowers who refinance or receive assistance in the restructuring scheme under Category A or B; and
- (b) determinations about complaints relating to any matters by all other former HomeFund borrowers who left otherwise than by means of refinancing and other borrowers categorised as Category B, C or D who do not receive assistance as referred to in Category B; and
- (c) determinations about stays of eviction concerning HomeFund borrowers.

PART 4—MISCELLANEOUS**Act binds Crown**

17. This Act binds the Crown.

Capitalisation of interest

18. (1) For the avoidance of doubt, it is declared that the provisions of registered Memoranda numbers Y 901844, Y 901845, Y 901846, Y 901847, Y 901848, Z 274110, Z 274111, Z 274112, Z 274113 and Z 274114 relating to capitalisation of interest permit, and have always permitted, the capitalisation of the interest accrued for the month to which a monthly instalment relates less any money actually received by the mortgagee on account of interest so accrued.

(2) The regulations may extend the operation of this section to a specified document constituting or forming part of, or previously constituting or forming part of, a HomeFund mortgage.

Certain consents not required

19. The FANMAC trustee is not required to obtain the consent of the beneficiaries of any trust of which it is trustee, or any FANMAC bond holders or unit holders, to the doing of any act, matter or thing in connection with the restructuring scheme. The FANMAC trustee is not subject to any action, liability, claim or demand for a failure to consult with or obtain the consent of any such beneficiaries, bond holders or unit holders in relation to the doing of any such act, matter or thing.

Suspension of limitation period

20. (1) This section applies to any limitation period provided for by:

- (a) the Limitation Act 1969; or
- (b) the Contracts Review Act 1980; or
- (c) the Fair Trading Act 1987; or
- (d) the Consumer Claims Tribunals Act 1987.

(2) The following periods are to be disregarded when determining the last day of any limitation period to which this section applies:

- (a) in the case of proceedings arising out of a HomeFund mortgage in respect of which a determination is made by the HomeFund Commissioner, the period between 10 May 1993 and the date occurring 2 years after the determination is made;
- (b) in the case of any other proceedings arising out of a HomeFund mortgage, the period between 10 May 1993 and 31 March 1996.

Report

21. The Home Purchase Assistance Authority must, in its annual report, report on the operation and effectiveness of the restructuring scheme, including, but not limited to, the number of people affected by the scheme and the kinds of assistance offered and received.

Regulations

22. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Amendment of other Acts

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

Savings and transitional provisions

24. Schedule 4 has effect.

Review of Act

25. (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

HomeFund Restructuring Act 1993 No. 112

SCHEDULE 1—RESTRUCTURING SCHEME

(Sec. 6)

1. The restructuring scheme will apply to borrowers on the basis of the principal features set out in this Schedule, subject to any variation under section 7 (2). Borrowers will be categorised by the Home Purchase Assistance Authority on the basis of an allocated category. The categorisation will be notified in writing.

2. The broad categories of borrowers and assistance are as follows:

- (a) **Category A.** Borrowers who are able to refinance with commercial lenders as at 7 December 1993 or such later date as may be prescribed by the regulations. These borrowers will be informed that they may refinance or remain in the existing unstructured scheme. Those who refinance may be eligible for the exemption from stamp duty for home loan refinancing while it continues in force.
- (b) **Category B.** Borrowers who are unable to refinance with commercial lenders but who are determined by the Home Purchase Assistance Authority to be able to pay a restructured income-geared mortgage as at 7 December 1993 or such later date as may be prescribed by the regulations. These borrowers will be offered such a mortgage and they will be informed that they may instead remain in the existing unstructured scheme.
- (c) **Category C.** Borrowers who are unable to pay a restructured income-geared mortgage and are not 3 months or more in arrears as at 7 December 1993 or such later date as may be prescribed by the regulations. These borrowers will be able to sell the property to the Authority or a body nominated by the Authority, and any part of the debt that is more than the value of the property will be waived. Any sale is to be for the market value of the property, as determined after an independent valuation is obtained. These borrowers will be offered the right to rent the property for a period of up to 5 years on conditions determined by the Authority. These borrowers will be informed that they may instead remain in the existing unstructured scheme. At the end of the 5 year rental period these borrowers will be provided with public housing accommodation, subject to eligibility for such accommodation, or the rental period will be extended until such accommodation is available.
- (d) **Category D.** Borrowers who are 3 months or more in arrears as at 7 December 1993 or such later date as may be prescribed by the regulations. Borrowers who pay the arrears within 3 months will be offered assistance as set out in Category C or may instead be offered assistance as set out in Category B, as determined by the Authority. Borrowers who make satisfactory arrangements within 3 months to pay the arrears will be offered assistance as set out in Category C or may instead be offered assistance as set out in Category B, as determined by the Authority. If the arrears are not paid, or no satisfactory arrangement is made, within 3 months, the borrowers may be offered the right to occupy the premises for up to 15 months on conditions determined by the Authority. Arrangements under this category may include arrangements to capitalise arrears.

3. The scheme may provide for allowance to be made, as determined by the Authority, in respect of borrowers who have, before the date of the written notice

HomeFund Restructuring Act 1993 No. 112

SCHEDULE 1—RESTRUCTURING SCHEME—*continued*

referred to in clause 1, received the benefit of a determination under the HomeFund Commissioner Act 1993.

4. The scheme may provide for the situation where the borrower under a HomeFund mortgage changes or dies, or, where there are 2 or more borrowers, any one or more of them, change or die, or circumstances otherwise change.

5. The scheme may specify the circumstances in which 2 or more of the borrowers under a HomeFund mortgage must act together.

6. The scheme may limit the period in which assistance under the scheme must be taken up, but in any case the period must not end before 30 June 1994.

7. The scheme may make it a condition of participation in the scheme that a HomeFund borrower executes a deed of release relating to specified matters.

SCHEDULE 2—COMPLAINTS THAT MAY BE THE SUBJECT OF A DETERMINATION UNDER THE HOMEFUND COMMISSIONER ACT 1993

(Sec. 15)

- (1) Any complaint (or part of a complaint) alleging incorrect accounting with respect to payments made by a HomeFund borrower under a HomeFund mortgage.
- (2) Any complaint (or part of a complaint) alleging mistakes with respect to arrangements for the direct debiting of a HomeFund borrower's bank account in connection with payments under a HomeFund mortgage.
- (3) Any complaint (or part of a complaint) alleging that mortgage assistance payable to a HomeFund borrower has not been paid into the borrower's home loan account.
- (4) Any complaint (or part of a complaint) alleging that action has been improperly taken against a HomeFund borrower under a penalty clause in a HomeFund mortgage.
- (5) Any complaint (or part of a complaint) alleging undue delay in the preparation of documents to enable a HomeFund borrower to discharge a HomeFund mortgage.
- (6) Any complaint (or part of a complaint) alleging that a HomeFund borrower has not been advised of his or her eligibility for mortgage assistance or other relevant relief.
- (7) Any complaint (or part of a complaint) alleging that a HomeFund borrower has been improperly refused mortgage assistance or other relevant relief for which he or she has been eligible.
- (8) Any complaint (or part of a complaint) alleging that a HomeFund borrower has been improperly required to repay mortgage assistance or other relevant relief.

HomeFund Restructuring Act 1993 No. 112

SCHEDULE 2—COMPLAINTS THAT MAY BE THE SUBJECT OF A
DETERMINATION UNDER THE HOMEFUND COMMISSIONER ACT 1993—
continued

- (9) Any complaint (or part of a complaint) alleging that a HomeFund borrower's application for a reduction in the periodic payments due under a HomeFund mortgage has been improperly refused or that the granting of such a reduction has been improperly withdrawn.
- (10) Any complaint (or part of a complaint) alleging that improper threats have been made against a HomeFund borrower as to the taking of legal action with respect to a HomeFund mortgage.
- (11) Any complaint (or part of a complaint) alleging that legal action has been improperly taken against a HomeFund borrower with respect to a HomeFund mortgage.
- (12) Any complaint (or part of a complaint) alleging that a HomeFund borrower has been given false or misleading information as to the amount of any arrears due under a HomeFund mortgage.
- (13) Any complaint (or part of a complaint) alleging that action to evict a HomeFund borrower from property the subject of a HomeFund mortgage has been improperly taken.
- (14) Any complaint (or part of a complaint) alleging that action to exercise a power of sale over property the subject of a HomeFund mortgage has been improperly taken.
- (15) Any complaint (or part of a complaint) alleging that a HomeFund borrower has been improperly refused approval to enter into an arrangement to pay arrears due under a HomeFund mortgage.
- (16) Any complaint (or part of a complaint) alleging that there has been an administrative error with respect to the information given to a HomeFund borrower as to the payments due under a HomeFund mortgage.
- (17) Any complaint (or part of a complaint) alleging that there has been an administrative error in the assessment of the suitability to a HomeFund borrower of a particular class of HomeFund mortgage.

SCHEDULE 3—AMENDMENT OF OTHER ACTS

(Sec. 23)

Defamation Act 1974 No. 18

Section 17P:

After section 17O, insert:

Matters relating to the HomeFund Advisory Panel

17P. There is a defence of absolute privilege for a publication to or by the HomeFund Advisory Panel, or to or by any member of the HomeFund Advisory Panel, for the purposes of section 10, 11 or 12 of the HomeFund Restructuring Act 1993.

HomeFund Restructuring Act 1993 No. 112

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

Home Purchase Assistance Authority Act 1993 No. 15

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

Insert, in alphabetical order:

“Panel” means the HomeFund Advisory Panel referred to in section 17B.

(2) Section 13 (**Principal functions**):

From section 13 (2) (e), omit “to eligible applicants with appropriate security”, insert instead “, with or without security, to eligible applicants”.

(3) Section 13A (**Establishment of Housing Reserve Fund**):

After section 13A (3) (c), insert:

- (c1) contributing to the funding of 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;

(4) Section 17B:

After section 17A, insert:

HomeFund Advisory Panel

17B. (1) There is to be a HomeFund Advisory Panel, consisting of members appointed by the Minister.

(2) The functions of the Panel are:

- (a) to assist the HomeFund Commissioner in the exercise of the Commissioner’s functions under the HomeFund Commissioner Act 1993, as determined by the Commissioner; and
- (b) to hear appeals under section 10 of the HomeFund Restructuring Act 1993; and
- (c) to exercise such other functions as may be conferred or imposed on the Panel by or under this or any other Act or law.

(3) A member of the Panel is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine with respect to the member.

(4) The regulations may make provision for or with respect to the Panel, including provisions for or with respect to conferring additional functions on the Panel, its procedures, the appointment of its members, and the termination of membership of the Panel.

HomeFund Restructuring Act 1993 No. 112

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

(5) If, by or under any Act, provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of member of the Panel or from accepting and retaining any remuneration payable to the person as a member of the Panel.

(5) Section 18 (**Personal liability of members and others**):

- (a) After “the Board” wherever occurring, insert “or the Panel”.
- (b) Omit “Authority or”, insert instead “Authority,”.
- (c) Omit “this Act”, insert instead “this or any other Act”.

(6) Sections 21A, 21B:

After section 21, insert:

False or misleading information

21A. A person must not:

- (a) in or in connection with any application under this Act or under the restructuring scheme referred to in the HomeFund Restructuring Act 1993; or
- (b) in response to any request for information made by the Authority or the Panel,

make any statement that the person knows to be false or misleading in a material particular.

Maximum penalty: 20 penalty units.

Proceedings for offences

21B. Proceedings for an offence against this Act are to be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.

HomeFund Commissioner Act 1993 No. 9

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

Insert in section 3 (1), in alphabetical order:

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

HomeFund Restructuring Act 1993 No. 112

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

- (2) Section 9 (**Delegation of functions**):
From section 9 (3) (b), omit “this Act”, insert instead “the Home Purchase Assistance Authority Act 1993”.
- (3) Section 10 (**Right to complain**):
Omit section 10 (2), insert instead:
(2) Complaints must be made before 31 March 1994. However, the Commissioner has a discretion to accept a complaint after that date.
- (4) Heading to Division 2 of Part 4:
Omit “Investigations”, insert instead “Dealing with and investigating complaints”.
- (5) Section 12 (**Investigations**):
After section 12 (2), insert:
(2A) The Commissioner may, at any time, recontinue an investigation that has been discontinued.
- (6) Section 16 (**Information to be given**):
- (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).
- (7) Section 19 (**Limits on secrecy and privilege (information and inquiries)**):
From section 19 (1), omit “, in the course of an investigation,”.
- (8) 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:
 - (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);
 - (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;

HomeFund Restructuring Act 1993 No. 112

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

- (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.
- (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) From section 25 (3) (d), omit “borrower.”, insert instead “borrower);”.
- (d) 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 section 26B (1) (b);
 - (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.
- (e) Omit section 25 (4), insert instead:
- (4) The Commissioner is not to make a determination applying to any person or body (other than a HomeFund borrower) unless satisfied that the complainant has (apart from this Act) an entitlement to a legal remedy against that person or body in relation to the complaint.
- (f) Omit section 25 (6), insert instead:
- (6) Nothing in this section affects the operation of section 26, 26A, 26B or 26C or the power to make a determination under section 27.
- (7) 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.
- (8) 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.
- (9) 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.
- (9) Section 26 (**Monetary determinations**):
- Omit section 26 (4).

HomeFund Restructuring Act 1993 No. 112

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

(10) Sections 26A–26C:

After section 26, insert:

Contributions between parties

26A. (1) This section applies where the Commissioner finds that two or more of the parties named or proposed to be named as covered by a determination each bore a measure of responsibility in respect of the subject-matter of the complaint.

(2) The determination may require a contribution to be made between those parties in respect of any payment ordered to be made to a HomeFund borrower or to any other party.

(3) In the event that the determination contains such a requirement, the Commissioner must make the determination in such terms as will enable the determination to be enforced against each of those parties to such an extent as appears appropriate in the circumstances.

Determinations affecting the FANMAC trustee

26B. (1) 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
- (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.

(2) The FANMAC trustee is not obliged to comply with the requirements of a determination referred to in subsection (1) until it has received (whether or not from a party specified in an order referred to in subsection (1) (b)) an amount, by way of compensation for the costs referred to in that paragraph, of at least the amount specified in the order.

Determinations affected by the restructuring scheme under the HomeFund Restructuring Act 1993

26C. (1) The Commissioner is not to make a determination granting relief to a HomeFund borrower if the granting to the HomeFund borrower of such relief is excluded by the HomeFund Restructuring Act 1993.

(2) The Commissioner may make a determination referred to in section 15 (2) of the HomeFund Restructuring Act 1993 despite section 15 (1) of that Act and as if section 15 (1) of that Act had not extinguished the action, liability, claim or demand on which any relevant entitlement to a legal remedy is based.

HomeFund Restructuring Act 1993 No. 112

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

(3) However, the Commissioner is not to make a determination referred to in section 15 (2) of the HomeFund Restructuring Act 1993 if the sole basis of the proposed determination is the existence of an entitlement to a legal remedy under the Trade Practices Act 1974 of the Commonwealth.

(11) Section 28:

Omit the section, insert instead:

Binding nature of determinations

28. A determination binds the complainant and all of the parties named as covered by the determination.

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

(2) In particular, an order of the kind referred to in section 25 (7) 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.

(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 any inconsistency.

(13) Section 30:

Omit the section, insert instead:

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.

(14) Section 37 (**HomeFund Advisory Panel**):

Omit the section.

*HomeFund Restructuring Act 1993 No. 112*SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

(15) Section 37A:

After section 37, insert:

Credit reporting agencies

37A. (1) The Commissioner may make an order prohibiting a specified person or body (such as a credit reporting agency within the meaning of the Privacy Act 1988 of the Commonwealth) from furnishing to any other person or body any information or report:

- (a) to the effect that a specified person is, or has been, in default with respect to a HomeFund mortgage; or
- (b) that casts doubt on:
 - (i) a person's eligibility to be provided with credit; or
 - (ii) a person's history in relation to credit; or
 - (iii) a person's capacity to repay credit,

on the basis that the person is, or has been, in default with respect to a HomeFund mortgage.

(2) Such an order may be made on the Commissioner's own motion or on application made by a HomeFund borrower. An application may be made to the Commissioner whether or not the applicant is also a complainant with respect to a complaint currently before the Commissioner.

(3) The Commissioner may not make an order under this section unless satisfied:

- (a) that the person concerned is not, and has not been, in default with respect to a HomeFund mortgage; or
- (b) that the person concerned is, or has been, in default with respect to a HomeFund mortgage but the default has occurred as a result of some act or omission with respect to the mortgage for which the person is not, and should not be held to be, responsible.

(4) A person must not wilfully contravene an order in force under this section.

Maximum penalty: 100 penalty units.

(16) Section 39 (**Personal liability of Commissioner and others**):

- (a) Omit “, the HomeFund Advisory Panel, a member of the Panel”.
- (b) Omit “this Act”, insert instead “this or any other Act”.
- (c) Omit “, member of the Panel”.

HomeFund Restructuring Act 1993 No. 112

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

(17) 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.

(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) 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.

(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) Subject to any direction of the Supreme Court to the contrary, the making of an application for leave to appeal operates to stay the decision to which the application relates.

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

(18) 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:

(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.

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

(19) Section 42A:

After section 42, insert:

Certain agreements prohibited

42A. (1) A person is not entitled to charge or recover any fee for assisting another person to make a complaint or to furnish information to the Commissioner (such as in the form of a complaints guide) with respect to a complaint.

*HomeFund Restructuring Act 1993 No. 112*SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

(2) A person who charges or recovers, or who attempts to recover, any such fee is guilty of an offence.

Maximum penalty: 100 penalty units.

(3) Nothing in subsections (1) and (2) applies in relation to advice given by a barrister or solicitor about relief under the HomeFund Restructuring Act 1993.

(4) An agreement is void to the extent to which it purports to assign to any person, in payment for assistance of the kind referred to in subsection (1), any money received by a complainant as a result of a determination arising from the complaint.

(5) An agreement is void to the extent to which it purports to exclude, modify or restrict the operation of this section.

(6) This section applies to any agreement, whether in writing or not and whether entered into before or after the commencement of this section. Acts occurring before the commencement of this section do not give rise to an offence under subsection (2).

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 24)

Definitions

1. In this Schedule:

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

Pending complaints under the HomeFund Commissioner Act 1993

2. (1) A provision of the HomeFund Commissioner Act 1993, as amended by this Act, applies to complaints made before the relevant commencement as well as to complaints made on or after the relevant commencement.

(2) However, a complainant whose complaint was made before the relevant commencement may withdraw the complaint, whether or not the Commissioner agrees.

Existing determinations under the HomeFund Commissioner Act 1993

3. (1) An amendment made by this Act to a provision of the HomeFund Commissioner Act 1993 does not apply in relation to any determination made under that Act before the relevant commencement.

(2) In particular, section 40 of the HomeFund Commissioner Act 1993, as amended by this Act, does not confer a right of appeal with respect to a determination made under that Act before the relevant commencement.

HomeFund Restructuring Act 1993 No. 112

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

HomeFund Advisory Panel

4. (1) The HomeFund Advisory Panel constituted under section 17B of the Home Purchase Assistance Authority Act 1993 is a continuation of the HomeFund Advisory Panel constituted under section 37 of the HomeFund Commissioner Act 1993.

(2) The reconstitution of the HomeFund Advisory Panel under section 17B of the Home Purchase Assistance Authority Act 1993 does not affect the membership of the Panel and the members of the Panel continue to hold office in accordance with the terms of their appointments.

*[Minister's second reading speech made in—
Legislative Assembly on 14 December 1993
Legislative Council on 15 December 1993]*