

**HOMEFUND COMMISSIONER 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 provide for the appointment of a HomeFund Commissioner to investigate and deal with complaints made by HomeFund borrowers. The Commissioner will be able to give advice, conciliate complaints, refer complaints to the appropriate authorities, and in appropriate cases make determinations affecting rights.

The HomeFund scheme principally involves loans known as Premier Low Start Loans, Low Start Loans, Low Start Affordable Home Loans and Affordable Home Loans. These loans were part of a program developed in conjunction with the Department of Housing, were negotiated through the agency of co-operative building societies, were largely funded by FANMAC (First Australian National Mortgage Acceptance Corporation Limited) and were secured by mortgages to FANMAC Trustees.

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**PART 1—PRELIMINARY**

**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act.

**Clause 3** defines certain terms used in the proposed Act.

**Clause 4** sets out the object of the proposed Act.

**PART 2—APPOINTMENT OF COMMISSIONER**

**Clause 5** provides for the appointment of the HomeFund Commissioner.

**Clause 6** provides for the appointment of staff of the Commissioner, for the use of the staff of other agencies, and for the engagement of consultants and other experts.

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\* Amended in committee—see table at end of volume.

*HomeFund Commissioner 1993 [Act 1993 No. 9]*

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**PART 3—FUNCTIONS OF COMMISSIONER**

**Clause 7** is a formal provision describing generally the functions of the Commissioner.

**Clause 8** sets out the principal functions of the Commissioner. These are:

- to receive complaints from HomeFund borrowers
- to provide advice
- to refer borrowers to appropriate authorities
- to investigate complaints
- to conciliate complaints
- to make determinations.

The clause enables the Commissioner to make recommendations to the parties to a complaint. It also requires the Commissioner to keep records (this will facilitate the making of reports and recommendations).

**Clause 9** allows the Commissioner to delegate functions.

**PART 4—COMPLAINTS**

**Division 1—Complaints generally**

**Clause 10** confers a right on HomeFund borrowers to make complaints to the Commissioner by 1 August 1993. No fees are payable.

**Clause 11** allows the Commissioner to carry out a preliminary assessment of a complaint for the purpose of deciding whether to carry out further functions under the proposed Act.

**Division 2—Investigations**

**Clause 12** allows the Commissioner to carry out an investigation of a complaint and to discontinue an investigation.

**Clause 13** requires the Commissioner to notify the complainant of a decision not to carry out an investigation of a complaint or to discontinue an investigation. Reasons are to be given.

**Clause 14** requires the Commissioner to give notice of an investigation.

**Clause 15** requires investigations to be conducted privately.

**Clause 16** allows the Commissioner to require a public authority to give information and produce documents. This power extends to co-operative housing societies, FANMAC, a FANMAC trustee, the Home Purchase Assistance Fund Trust, and any body or person prescribed by regulation.

**Clause 17** authorises the Commissioner to hold inquiries. For this purpose, the Commissioner has certain powers of a royal commissioner.

**Clause 18** allows the Commissioner to enter the premises of a public authority and inspect documents.

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**Clauses 19 and 20** impose limits on secrecy and privilege when the Commissioner exercises powers of requiring information or entering premises. These limits are similar to those in the Ombudsman Act 1974.

**Clause 21** protects cabinet documents.

**Clause 22** gives affected parties the right to make submissions to the Commissioner.

**Division 3—General provisions**

**Clause 23** provides that a person is not to be represented before the Commissioner without the leave of the Commissioner. Leave is not to be given for a practising lawyer to appear for a person unless the Commissioner is satisfied special circumstances exist.

**Clause 24** enables the Commissioner to determine the procedures in exercising functions. Speed and informality are to be features of these procedures.

**PART 5—DETERMINATIONS**

**Clause 25** authorises the Commissioner to make determinations in connection with complaints. The determinations may apply to the parties to a HomeFund mortgage, the parties to an ancillary contract or arrangement, a co-operative housing society and the Department of Housing. The determinations that may be made are as follows:

- (a) relieving a HomeFund borrower of specified obligations, including current or future payments and arrears of payments;
- (b) setting aside or altering a HomeFund mortgage;
- (c) setting aside a HomeFund mortgage and entering into a new transaction;
- (d) ordering the payment to a HomeFund borrower of an amount of money, whether by way of damages or compensation, or otherwise, for financial loss (including, without limitation, ordering a refund of payments made by a HomeFund borrower).

A determination can only be made if the borrower has an entitlement to a legal remedy, but once that entitlement is established the determination is not limited to that remedy.

**Clause 26** makes further provisions regarding monetary determinations. They are limited to a maximum of \$20,000, and may be enforced as a debt.

**Clause 27** enables the Commissioner to make temporary determinations that have the effect of suspending action to evict HomeFund borrowers from their homes.

**Clause 28** provides that determinations are binding on a public authority and are also binding on other consenting parties.

**Clause 29** makes provision for the giving of consents. They may be general or specific, and are irrevocable except in special circumstances.

**Clause 30** provides for a borrower to request a determination to be reduced to writing.

**Clause 31** empowers the Commissioner to refrain from making a determination if other relief has been sought or obtained, and to make it a condition of a determination that the borrower will not seek other relief.

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**PART 6—REPORTS**

**Clause 32** provides for reports to be made about complaints.

**Clause 33** requires the submission of an annual report by the Commissioner.

**Clause 34** allows the Commissioner to make special reports to Parliament. The Commissioner will be able to recommend that these reports be released before being tabled.

**Clause 35** makes it clear that the commissioner can make general or specific recommendations about HomeFund matters.

**PART 7—MISCELLANEOUS**

**Clause 36** provides that the proposed Act binds the Crown.

**Clause 37** sets up the HomeFund Advisory Panel.

**Clause 38** makes it clear that the proposed Act extends to HomeFund mortgages entered into before the date of assent. The clause also makes it clear that a complaint may be made even though the mortgage to which the complaint relates has been discharged, but action may not be taken in such a case unless special circumstances exist.

**Clause 39** gives protection to the Commissioner and staff against personal liability.

**Clause 40** provides that there is no appeal from the Commissioner.

**Clause 41** provides that if under clause 16 a person is required to give a statement that tends to incriminate the person, neither the requirement nor the statement may be used in any proceedings against that person, except proceedings under clause 42.

**Clause 42** creates offences about obstructing the Commissioner and staff, failing to comply with lawful requirements of the Commissioner and staff, making false statements and impersonating the Commissioner and staff.

**Clause 43** provides that offences are to be dealt with before Local Courts.

**Clause 44** allows regulations to be made.

**Clause 45** is a formal provision giving effect to the Schedule of amendments.

**Clause 46** provides the proposed Act will expire on a day to be appointed by proclamation.

**SCHEDULE 1—PROVISIONS RELATING TO COMMISSIONER**

**Schedule 1** contains provisions relating to the terms and conditions of appointment of the Commissioner.

**SCHEDULE 2—AMENDMENT OF OTHER ACTS**

**Schedule 2** amends other Acts.

The Defamation Act 1974 is amended to give protection to publications to or by the Commissioner, and also to reports made public before being tabled in Parliament.

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The Ombudsman Act 1974 is amended to exclude the Commissioner from being the subject of investigation under that Act.

The Public Sector Management Act 1988 is amended to create the HomeFund Commissioner's Office as an administrative office, with the Commissioner exercising the functions of a Department Head.

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