

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]

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 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

- (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.

(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.

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 (l), 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.

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 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]*