

HomeFund Restructuring Act 1993 No 112

[1993-112]



New South Wales

Status Information

Currency of version

Repealed version for 29 June 2015 to 4 November 2015 (accessed 17 July 2024 at 19:17)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Repeal**

The Act was repealed by sec 3 (e) of the [Regulatory Reform and Other Legislative Repeals Act 2015 No 48](#) with effect from 5.11.2015.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 21 October 2015

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HomeFund Restructuring Act 1993 No 112



New South Wales

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

Part 1 Preliminary

1 Name of Act

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

2 Commencement

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

3 Definitions

(1) In this Act:

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* (as in force before its repeal).

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 mortgage means a mortgage executed, on or before 30 June 1994, 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](#).

New South Wales Land and Housing Corporation means the New South Wales Land and Housing Corporation constituted under the [Housing Act 2001](#).

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.

4 Objects

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.

5 Notes

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

Part 2 Restructuring scheme

6 Restructuring scheme

- (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 66 (3) (c) of the [Housing Act 2001](#), a program for the restructuring of a HomeFund scheme.

7 Variation of the restructuring scheme

The scheme may be varied by the New South Wales Land and Housing Corporation, with the consent of the Minister, but not so as to depart from the principal features of the scheme.

8 HomeFund borrowers' access to restructuring scheme

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

Note—

The last date on which assistance could be taken up under the restructuring scheme was 31 August 1994.

(2) (Repealed)

9 Administration of restructuring scheme

- (1) The New South Wales Land and Housing Corporation is to manage the restructuring scheme.
- (2) For the purposes of managing the restructuring scheme, the New South Wales Land and Housing Corporation may exercise its functions under the *Housing Act 2001*, including its functions under section 9 (2) of that Act, as if the restructuring scheme were a scheme managed under that Act.

10-14 (Repealed)

Part 3 Consequences of restructuring scheme

15 Claims against the Crown and others

- (1) 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 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), (3) (Repealed)
- (4) Subsection (1) extends to, but is not limited to, claims under the *Contracts Review Act 1980* or the *Fair Trading Act 1987*.
- (5) This section does not affect the rights 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)-(9) (Repealed)

16 Application of section 15 (1) to entitlements existing on 28 January 1994

- (1) Section 15 (1) applies only to entitlements in existence on 28 January 1994.
- (2) (Repealed)

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

17 Act binds Crown

This Act binds the Crown.

18 Capitalisation of interest

- (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.

19 Certain consents not required

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.

20, 21 (Repealed)

22 Regulations

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.

23 (Repealed)

24 Savings, transitional and other provisions

Schedule 4 has effect.

25 Review of Act

- (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

(Section 6)

Note—

The last date on which assistance could be taken up under this scheme was 31 August 1994.

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 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.

Schedules 2, 3 (Repealed)

Schedule 4 Savings, transitional and other provisions

(Section 24)

1 Revocation of repeal

Section 29A of the *Interpretation Act 1987* applies to the repeal of any provisions of this Act by the *Fair Trading Legislation (Repeal and Amendment) Act 2015*.

2-4 (Repealed)