



AUSTRALIAN CAPITAL TERRITORY

City Area Leases (Amendment) Act 1991

No. 12 of 1991

An Act to amend the *City Area Leases Act 1936*

[Notified in ACT Gazette S19: 3 April 1991]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *City Area Leases (Amendment) Act 1991*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Principal Act

3. In this Act, “Principal Act” means the *City Area Leases Act 1936*.¹

Variation of provision, covenant or condition of a lease

4. Section 11A of the Principal Act is amended—

- (a) by omitting subsection (1) and substituting the following subsection:

“(1) Notwithstanding anything contained in this Act, the Supreme Court may, subject to this section, on the application of the lessee (in this section referred to as the ‘application for variation’), vary, amend, omit or add any provision, covenant or condition of a lease.”;

- (b) by omitting paragraph (8) (a) and substituting the following paragraph:

“(a) the condition (to be included in the provisional order) that if in accordance with subsection (9), a betterment charge is payable to the Territory in respect of the variation, the amount of that charge will be paid to the Territory by the lessee within 2 months after the date on which the lessee is notified by the Minister of the relevant amount; and”;

- (c) by omitting subsections (9) to (9EA) (inclusive) and substituting the following subsections:

“(9) The Minister shall, as soon as practicable after a provisional order has been made, determine by instrument, as prescribed, the amount of the betterment charge, if any, payable in respect of the variation and cause notice of the amount so determined and a statement of the basis for that determination to be given to the lessee or, where no betterment charge is payable, a statement to that effect.

“(9A) A betterment charge is payable to the Territory in respect of the variation specified in the provisional order and the amount of the betterment charge is the amount, if any, determined in accordance with subsection (9).

“(9B) A notice under subsection (9) shall include a statement of the terms of section 11B.

“(9C) The validity of a determination made by the Minister under subsection (9) shall not be taken to be affected by a failure to comply with subsection (9B).

“(9D) An instrument under subsection (9) shall be published in the *Gazette*.”; and

- (d) by adding at the end the following subsection:

“(12) In this section—

‘variation’, in relation to a provision, covenant or condition of a lease, means a variation, amendment, omission or addition, as the case requires, in relation to a provision, covenant or condition of the lease.”.

Appeal to Administrative Appeals Tribunal

5. Section 11B of the Principal Act is amended—

- (a) by omitting subsection (1) and substituting the following subsection:

“(1) Application may be made to the Tribunal by a lessee who has paid the amount of the betterment charge payable in respect of a variation under section 11A for a review of the determination made by the Minister under subsection 11A (9).”; and

- (b) by omitting from subsection (2) “premium” and substituting “betterment charge”.

Repeal

6. Section 11C of the Principal Act is repealed and the following section substituted:

Adjustment of betterment charge on variation of determination on review

“11C. (1) Where, as a result of a review under section 11B, a variation is made to the determination of a betterment charge under subsection 11A (9), then—

- (a) if the amount of the betterment charge is reduced or a betterment charge is not payable, an amount is payable by the Territory to the lessee equal to the amount by which the betterment charge is reduced or an amount equal to the amount of the betterment charge paid, as the case requires; or

- (b) if the amount of the betterment charge is increased or a betterment charge becomes payable, an amount is payable by the lessee to the Territory equal to the amount by which the betterment charge is increased or an amount equal to the amount of the betterment charge that is payable, as the case requires.

“(2) In this section—

‘the lessee’ means the lessee on the date on which the Tribunal gives its decision on a review under section 11B.”.

Insertion

7. After section 11C of the Principal Act the following sections are inserted:

Restriction on certain dealings in respect of concessional leases

“11D. (1) In this section—

‘concessional lease’ means a lease granted—

- (a) free of consideration other than a nominal rent;
- (b) for less than the amount of the market value of the lease;
- (c) at a rental less than the full market rental; or
- (d) in such other circumstances as may be prescribed;

but does not include a lease in respect of which a units plan has been registered under the *Real Property (Unit Titles) Act 1970*;

‘community organisation’ means a body corporate that—

- (a) has as its principal purpose the provision of a form of assistance to persons living or working in the Territory;
- (b) is not carried on for the pecuniary profit or gain of its members; and
- (c) is not the holder of a Club Licence under the *Liquor Act 1975*.

“(2) A reference in this section to the market value of a lease is a reference to the amount that could be expected to be paid for the lease on the open market if it were sold by a willing but not anxious seller to a willing but not anxious buyer.

“(3) Subject to this section, a concessional lease shall not be capable of being assigned or transferred either at law or in equity unless the lessee has obtained the consent of the Minister to that transaction pursuant to subsection (4).

“(4) Where the lessee of a concessional lease applies to the Minister for his or her consent to a transaction referred to in subsection (3), the Minister shall, by instrument, consent to that transaction if he or she is satisfied that—

- (a) the amount of the premium payable in accordance with subsection (9) in respect of the transaction has been paid to the Territory by the lessee within 2 months after the date on which the lessee is notified by the Minister of the amount or amounts determined in accordance with subsection (5); or
- (b) in the case of a proposed assignment or transfer to a community organisation—
 - (i) the organisation has purposes similar to those of the lessee; and
 - (ii) the lessee has paid the determined fee.

“(5) The Minister shall as soon as practicable after application to the Minister by a lessee in respect of a transaction referred to in subsection (3), not being a transaction referred to in paragraph (4) (b), determine—

- (a) the amount of the market value of the lease, assuming that the consent of the Minister had been given to the relevant transaction; and
- (b) the amount of an allowance, if any, in respect of—
 - (i) the capital sum paid in respect of the grant of the lease; and
 - (ii) any amount paid to reduce the land rent liability under the lease to a nominal rent;

and cause notice of the determination of those amounts to be given to the lessee with a statement setting out the amount of the premium payable to the Territory in accordance with subsection (9).

“(6) The Minister shall not determine an amount referred to in paragraph (5) (b) in respect of a transaction referred to in subsection (3) otherwise than in accordance with criteria specified pursuant to subsection (7).

“(7) For the purposes of this section, the Minister, by instrument—

- (a) shall specify criteria applicable to the determination of an allowance to be made to a lessee in respect of a transaction referred to in subsection (3); or
- (b) may amend or revoke criteria so specified.

“(8) An instrument under subsection (7) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

“(9) A premium is payable to the Territory in respect of a transaction referred to in subsection (3), not being a transaction referred to in paragraph (4) (b), and the amount of the premium payable is—

- (a) the amount of the market value of the lease determined in accordance with paragraph (5) (a); or
- (b) the difference between that amount and the amount of the allowance, if any, as determined under paragraph (5) (b);

whichever is the lesser amount.

“(10) A notice under subsection (5) shall include a statement of the terms of section 11E.

“(11) The validity of a determination made by the Minister under subsection (5) shall not be taken to be affected by a failure to comply with subsection (10).

Appeal to the Administrative Appeals Tribunal

“11E. (1) In this section—

‘reviewable decision’ means—

- (a) a refusal by the Minister to consent to an assignment or transfer of a concessional lease pursuant to paragraph 11D (4) (b);
- (b) a determination made by the Minister under subsection 11D (5) in respect of a transaction referred to in subsection 11D (3).

“(2) Application may be made to the Tribunal for the review of a reviewable decision—

- (a) in the case of a decision referred to in paragraph (a) of the definition of ‘reviewable decision’—by the lessee; and
- (b) in the case of a decision referred to in paragraph (b) of that definition—by a lessee who has paid the premium payable in respect of the relevant transaction referred to in subsection 11D (3).

“(3) Notwithstanding the provisions of section 27 of the *Administrative Appeals Tribunal Act 1989* an application under subsection (2) for the review of a decision referred to in paragraph (b) of the definition of ‘reviewable decision’ shall be made within 30 days after the payment of the premium by the lessee or within such further period as the Tribunal allows, whether before or after the expiration of the period of 30 days.

Adjustment of premium on variation of determination on review

“11F. (1) Where, as the result of a review under section 11E, a variation is made to a determination made by the Minister under subsection 11D (5) in respect of a transaction referred to in subsection 11D (3), a recalculation of the premium shall be made pursuant to subsection 11D (9) and—

- (a) if by reason of the recalculation, the amount of the premium is reduced, an amount is payable by the Territory to the lessee equal to the amount by which the premium is so reduced; or
- (b) if, by reason of the recalculation, the amount of the premium is increased, an amount is payable by the lessee to the Territory equal to the amount by which the premium is so increased.

“(2) In this section—

‘the lessee’ means the lessee on the date on which the Tribunal gives its decision on a review under section 11E.”.

Application

8. (1) Where, immediately before the commencement date, the Supreme Court had not made a provisional order for the purposes of subsection 11A (8) of the Principal Act in respect of an application for the variation of a lease lodged pursuant to section 11A of the Principal Act on or after 22 February 1990, sections 11A, 11B and 11C of the Principal Act as amended by this Act shall apply to that application as if those provisions had been in force at the time of the lodgment of the application.

(2) Notwithstanding the amendments effected by sections 4, 5 and 6, sections 11A, 11B and 11C of the Principal Act continue to apply on and after the commencement date in respect of an application for the variation of a lease—

- (a) lodged with the Supreme Court before 22 February 1990; or

- (b) lodged with the Supreme Court after that date, being an application in respect of which the Supreme Court has made a provisional order for the purposes of subsection 11A (8) of the Principal Act before the commencement date.

(3) In this section—

“commencement date” means the date fixed by the Minister pursuant to subsection 2 (2) or the date ascertained in accordance with subsection 2 (3), whichever date occurs first.

NOTE

1. Ordinance No. 31, 1936 as amended by Nos. 38 and 40, 1936; No. 21, 1938; No. 14, 1947; No. 18, 1950; No. 8, 1951; No. 18, 1957; No. 21, 1959; No. 12, 1961; No. 18, 1963; No. 7, 1964; No. 19, 1966; No. 13, 1967; Nos. 3 and 28, 1968; No. 25, 1969; No. 45, 1970; No. 11, 1971; Nos. 3 and 58, 1973; Nos. 13, 19, 25, 50 and 56, 1974; No. 32, 1975; Nos. 12 and 25, 1976; Nos. 57 and 64, 1977; No. 18, 1978; No. 23, 1979; No. 56, 1982; Nos. 54 and 57, 1983; No. 39, 1984; No. 67, 1985; Nos. 16 and 20, 1986; No. 48, 1987; No. 88, 1988; Nos. 21 and 38, 1989; Act No. 60, 1990.

[Presentation speech made in Assembly on 14 March 1991]

© Australian Capital Territory 1991