

ATTORNEY-GENERAL'S DEPARTMENT

Explanatory Memorandum

Amendment of the Money Lenders Ordinance of the
Australian Capital Territory

Section 12(1) of the Seat of Government (Administration) Act 1910 provides that the Governor-General may make Ordinances for the peace, order and good government of the Territory.

2. The Money Lenders Ordinance 1936 regulates the activities of persons who conduct money lending business by requiring such persons to register and to comply with certain prescribed duties in the course of their business. The definition of money lender in section 4 of the Ordinance covers, in addition to persons who conduct money lending businesses, persons who lend money at a rate of interest exceeding 12% per annum.

3. With the increase in interest rates over recent years that definition now covers many ordinary share debenture holders and note holders of public companies. Depositors with such companies who have not complied with the registration requirement could be seriously disadvantaged; for example, the loan contract with the company would be an illegal contract with consequential problems of enforceability.

4. The effect of the Money Lenders (Amendment) Ordinance 1978 is to remove the need for investors to register as money lenders by excluding from the definition of money lender persons who deposit, or have deposited, money with, or who lend or have lent money to, a corporation or for the benefit of a proposed corporation at a rate of interest exceeding 12% per annum as a result of an invitation to the public by the corporation or another person. In addition, the definition of 'body corporate' and 'invitation to the public' are deleted from Section 12 and placed in the more appropriate general definitions section.

5. The Legislative Assembly for the Australian Capital Territory discussed the draft Ordinance on 7 March 1978 and agreed to it without amendment.