

# THE TERRITORY FOR THE SEAT OF GOVERNMENT.

No. 38 of 1936.

## AN ORDINANCE

### To amend the *City Area Leases Ordinance 1936*.

**B**E it ordained by the Governor-General in and over the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Seat of Government Acceptance Act 1909* and the *Seat of Government (Administration) Act 1910-1933*, as follows:—

1.—(1.) This Ordinance may be cited as the *City Area Leases Ordinance (No. 2) 1936*. Short title and citation.

(2.) The *City Area Leases Ordinance 1936* is in this Ordinance referred to as the Principal Ordinance.

(3.) The Principal Ordinance, as amended by this Ordinance, may be cited as the *City Area Leases Ordinance 1936*.

2. After section eleven of the Principal Ordinance the following section is inserted:—

“11A.—(1.) Notwithstanding anything contained in this Ordinance, the Supreme Court of the Australian Capital Territory may, subject to this section, on the application of the lessee (in this section referred to as the ‘application for variation’), vary any condition of a lease in relation to the purpose for which the land subject to the lease may be used. Variation of purposes for which land leased.

“(2.) No such variation shall be made—

(a) unless the Court is satisfied that there are such circumstances existing as in the opinion of the Court make it desirable to vary the condition in order that the reasonable user of the land should not be impeded; or

(b) if, not later than seven days before the day for hearing named in the notice of motion filed by the applicant in pursuance of this section, a certificate is filed by the Minister with the Registrar of the Court stating that, in his opinion, the variation sought would be repugnant to the principles for the time being governing the construction and development of the City of Canberra.

“(3.) An application for variation shall be made by motion supported by affidavit.

“(4.) The applicant shall file with the Registrar of the Court a notice of motion together with the affidavit in support and shall, at least thirty days before the day named in the notice for hearing the motion—

- (a) serve a copy of the notice and affidavit on the Minister at the Department of the Interior, Canberra; and
- (b) publish the notice in the *Gazette* and a newspaper circulating in the Territory.

“(5.) The Minister and also the applicant for variation shall be entitled, either personally or by counsel or solicitor, to be heard on the application for variation and to examine and cross-examine witnesses.

“(6.) Any person who, within twenty-one days after the publication of the notice of motion in the *Gazette*—

- (a) files with the Registrar of the Court notice of his intention to oppose the application for variation stating the grounds of his opposition; and
- (b) serves on the applicant for variation a copy of such notice of intention,

shall, with the leave of the Court, be entitled, either personally or by his counsel or solicitor, to be heard in opposition to the application for variation and to examine and cross-examine witnesses.

“(7.) The applicant for variation shall pay his own costs and, if the Court so orders, the full costs of any other person appearing in pursuance of this section.

“(8.) Any order of the Court on an application for variation may be absolute or subject to such conditions, whether as to compensation to other persons or otherwise, as the Court thinks just, and shall be final and conclusive:

Provided that, where the lease is registered under the *Real Property Ordinance 1925-1936*, the order of the Court shall not have any force or effect unless and until notice of the order is given to the Registrar of Titles by lodging with him the order or an office copy thereof.

“(9.) Upon receipt of the notice of the order, the Registrar of Titles shall enter in the Register Book and on the grant, certificate of title or instrument evidencing title to the leased land, the date of the order, the date and hour of the production to him of the order or office copy and particulars of the variation made by the order.

“(10.) Notice of the filing of any certificate referred to in paragraph (b) of sub-section (2.) of this section shall be published in the *Gazette* and shall, not later than seven days before the

application for variation is to be made to the Court, be given to the applicant and to every person who has filed notice of his intention to oppose the application.

“(11.) For the purposes of this section, service of any document on the Minister may be effected personally or by post or by leaving the document with the Secretary, Department of the Interior, Canberra.”

3. Section eighteen of the Principal Ordinance is amended by <sup>Reut.</sup> inserting in paragraph (b) of sub-section (2.), after the word “Ordinance” (third occurring), the words “or any repealed Ordinance”.

Dated this sixteenth day of September, 1936.

GOWRIE

Governor-General.

By His Excellency's Command,

T. PATERSON

Minister of State for the Interior.