

No. 57 of 1977

AN ORDINANCE

To amend the *City Area Leases Ordinance 1936*.

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated this nineteenth day of October 1977.

JOHN R. KERR
Governor-General

By His Excellency's Command,

A. A. STALEY
Minister of State for the Capital Territory

CITY AREA LEASES (AMENDMENT) ORDINANCE 1977

1. This Ordinance may be cited as the *City Area Leases (Amendment) Ordinance 1977*.* Short title

2. In this Ordinance, "Principal Ordinance" means the *City Area Leases Ordinance 1936*.† Principal Ordinance

3. Sections 9, 9B and 9C of the Principal Ordinance are repealed and the following sections substituted:—

"9. In sections 9A to 9CD (inclusive)—

- (a) 'land' means land held under a lease;
- (b) 'unauthorized purpose', in relation to land, means a purpose for which the use of the land is not authorized by or under the lease of the land; and
- (c) a reference to the use of land includes a reference to the use of part of the land.

Inter-pretation

"9A. Where the lessee or sub-lessee of land uses the land, or permits the land to be used, for an unauthorized purpose, the Supreme Court may, by order, direct the lessee or sub-lessee, as the case may be, not to use the land, or permit the land to be used, for that purpose. Supreme Court may restrain use of land for unauthorized purpose

* Notified in the *Commonwealth of Australia Gazette* on 24 October 1977.

† 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; and Nos. 12 and 25, 1976.

Who may
apply

- “ 9B. An application for an order under section 9A may be made—
- (a) by the Minister; or
 - (b) by a person who is a resident of, or the lessee or sub-lessee of land or premises in, the Territory.

Parties to an
application

- “ 9C. (1) The parties to an application under section 9B are—
- (a) the applicant;
 - (b) the person specified in the application as the person against whom an order under section 9A is sought; and
 - (c) any person who becomes a party by virtue of section 9CB.
- “ (2) A person referred to in paragraph (1) (b) or (1) (c) shall be a respondent to an application under section 9B.

Presumption
that land
used by
lessee

- “ 9CA. (1) Where, on an application for an order under section 9A against the lessee of land, it is proved that land has been used by a person other than the lessee, it shall be presumed that the lessee permitted the use of the land by that person unless—
- (a) the contrary is proved; or
 - (b) the lessee proves that, at the time at which the land was so used, the land was the subject of a sub-lease.

“ (2) Where, on an application for an order under section 9A in relation to land that is the subject of a sub-lease, it is proved that the land has been used by a person other than the sub-lessee, it shall be presumed that the sub-lessee permitted the use of the land by that person unless the contrary is proved.

Lessee or
sub-lessee
may be
joined as a
party

- “ 9CB. (1) Where—
- (a) an application is made for an order under section 9A against the lessee of land; and
 - (b) the land is the subject of a sub-lease,

the Court may direct that the applicant give notice to the sub-lessee of the making of the application and of the time and place at which the hearing of the application will commence or be continued, as the case may be.

“ (2) Where an application is made for an order under section 9A against the sub-lessee of land, the Court may direct that the applicant give notice to the lessee of the making of the application and of the time and place at which the hearing of the application will commence or be continued, as the case may be.

“ (3) Where notice is given to a person in accordance with a direction under sub-section (1), that person thereupon becomes a party to the application.

Supreme
Court may
declare sub-
lease void in
part

- “ 9CC. (1) Where—
- (a) the land to which an application under section 9B relates is the subject of a sub-lease;

- (b) the sub-lessee has used the land, or permitted the land to be used, for an unauthorized purpose;
- (c) the use of the land for that purpose is authorized by or under the sub-lease; and
- (d) the Supreme Court makes an order under section 9A against the sub-lessee,

the Court may declare the sub-lease void to the extent that it authorizes the use of the land for the purpose to which the application relates.

“(2) Where the Supreme Court makes a declaration in pursuance of sub-section (1) in relation to a sub-lease, the Court may make any other order that appears to the Court to be necessary to do justice between the lessee and sub-lessee.

“(3) Where the Supreme Court makes a declaration in pursuance of sub-section (1) in relation to a sub-lease, the sub-lease is void to the extent that it authorizes the use of the land the subject of the sub-lease for the purpose to which the application relates.

“(4) The Supreme Court shall not make a declaration or order under this section unless the lessee is a party to the application.

“9CD. (1) Where—

Costs

- (a) an application is made under section 9B for an order against the lessee of land;
- (b) a sub-lessee of the land becomes a party to the application; and
- (c) an order under section 9A is made against the sub-lessee but no such order is made against the lessee,

the Court shall not make an order for the payment by the applicant of the costs of the lessee unless the Court is of the opinion that the making of the application for an order under section 9A against the lessee was unreasonable.

“(2) Where—

- (a) an application is made under section 9B in relation to land held under a lease granted for residential purposes; and
- (b) an order is made under section 9A against a respondent to the application,

the Court shall not make an order for the payment by the respondent of the costs of the applicant if—

- (c) the Court is of the opinion that the making of the application was unreasonable; or
- (d) the decision of the question whether the land was used for an unauthorized purpose involved the resolution of a difficult question of law.”.