

AUSTRALIAN CAPITAL TERRITORY

Real Property (Amendment) Ordinance 1985

No. 71 of 1985

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 12 December 1985.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

G. SCHOLES
Minister of State for Territories

An Ordinance to amend the *Real Property Ordinance 1925*

Short title

1. This Ordinance may be cited as the *Real Property (Amendment) Ordinance 1985*.¹

Commencement

2. This Ordinance shall come into operation on such date as is fixed by the Minister of State for Territories by notice in the *Gazette*.

Instruments not to be registered

3. Section 51 of the *Real Property Ordinance 1952*² is amended by omitting sub-section (2) and substituting the following sub-section:

“(2) The Registrar shall not register—

- (a) an instrument executed on or after 1 July 1969, being an instrument included in a class of instruments specified in item 4, 5, 6 or 7 of Schedule 1 to the *Australian Capital Territory Stamp Duty Act 1969*; or
- (b) an instrument executed on or after the date of commencement of the *Real Property (Amendment) Ordinance 1985*, being an instrument included in a class of instruments specified in item 9 of Schedule 1 to the *Australian Capital Territory Stamp Duty Act 1969*,

unless—

- (c) the instrument is duly stamped within the meaning of the *Australian Capital Territory Taxation (Administration) Act 1969*;
- (d) the instrument bears a stamp impressed on it under the latter Act to the effect that no stamp duty is payable;
- (e) the instrument, being a counterpart of another instrument that has been so duly stamped, bears a stamp impressed on it under the latter Act to that effect; or
- (f) the instrument purports to be a grant or transfer of an estate or interest in land by or in the name of the Commonwealth or to the Commonwealth.”.

Surrender of a lease without prejudice to sub-lease or mortgage

4. Section 90A of the *Real Property Ordinance 1925* is amended—

- (a) by inserting in sub-section (1) “or mortgage” after “sub-lease” (wherever occurring);
- (b) by inserting in sub-section (2) “or mortgage” after “sub-lease”;
- (c) by inserting in sub-section (2) “or mortgages” after “sub-leases”;
- (d) by omitting from sub-section (3) “, and the covenants, agreements and conditions contained in, any sub-lease” and substituting “any sub-lease, and the covenants, agreements and conditions of any sub-lease or mortgage,”;
- (e) by omitting sub-section (4) and substituting the following sub-section:

“(4) Subject to the payment of any rent reserved by the sub-lease and to the observance of the covenants, agreements and conditions of the sub-lease or mortgage, a sub-lessee or mortgagee and any person deriving title under the sub-lessee or mortgagee shall

be entitled to hold and enjoy the land comprised in his or her sub-lease or mortgage as if the lease out of which the sub-lease or mortgage was derived had not been surrendered.”;

- (f) by omitting from sub-section (5) “distress or”;
- (g) by inserting in sub-section (5) “or mortgage” after “such sub-lease”;
- (h) by inserting in sub-section (5) “or mortgage” after “the sub-lease”;
- (i) by omitting paragraph (5) (b) and substituting the following paragraph:
 - “(b) if a new sub-lease or mortgage derived out of the new lease had been granted to the sub-lessee or mortgagee or a person deriving title under the sub-lessee or mortgagee,”;
- (j) by inserting in paragraph (6) (a) “or mortgages” after “sub-leases”;
- (k) by inserting in paragraph (6) (b) “or mortgage” after “sub-lease”; and
- (l) by omitting from sub-section (7) “and sub-leases” and substituting “, sub-leases and mortgages”.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 19 December 1985.
2. No. 1, 1925 as amended to date. For previous amendments see Note 2 to No. 9, 1985 and see also No. 9, 1985.