

CITY AREA LEASES (AMENDMENT) BILL 1991

EXPLANATORY MEMORANDUM

20965/91 Cat. No. 91 3227 3

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OUTLINE

This Bill effects amendments to the City Area Leases Act 1936 in relation to payment of betterment charges under section 11A of that Act, and effects changes to the administration of community and association leases under the Act, as foreshadowed in the A.C.T. Alliance Government Media Statement of 14 December 1990, relating to Changes to Concessional Lease Arrangements.

The Bill is intended to apply until the date of commencement of the Land Administration Bill 1991 in respect of concessional leases and applications under section 11A of the City Area Leases Act existing at the date of commencement of this Bill.

NOTES ON CLAUSES

Clause 1 : Short Title

Clause 1 states that this Act may be cited as the City Area Leases (Amendment) Act 1991.

Clause 2 : Commencement

Clause 2 provides that clauses 1 and 2 commence on the date of notification of the Act in the Gazette. The other clauses commence on the date fixed by the Minister by notice in the Gazette, but in any case not more than six months after the date of notification of the Act in the Gazette.

Clause 3 : Principal Act

Clause 3 provides that, in this Act, the "Principal Act" is the City Area Leases Act 1936.

Clause 4 : Variation of purposes for which land is leased

Clause 4 amends section 11A of the Principal Act:

- (a) by omitting subsection (1) and substituting a new subsection which provides that the Supreme Court may vary, amend, omit or add any provision, covenant or condition of a lease.
- (b) by omitting paragraph 8(a) and inserting a new paragraph providing for the condition that, if a betterment charge is payable in respect of a variation, that amount is to be paid within two months.
- (c) by omitting subsections (9) to (9EA) inclusive.

Clause 4(c) then provides for the insertion of the following subsections in section 11A:

Subsection (9) provides for the determination by the Minister, as prescribed, of the amount of any betterment payable in respect of a variation of a lease, and for notice of the determination to be given to the lessee.

Subsection (9A) makes it clear that a betterment charge is payable to the Territory in respect of the variation specified in the provisional order in the amount determined under subsection (9).

Subsection (9B) provides that a notice under subsection (9) shall include a statement of the terms of section 11B.

Subsection (9C) makes it clear that failure to comply with subsection (9B) shall not affect the validity of a determination under subsection (9).

Clause 4(d) provides for the insertion of a new subsection (12) in section 11A which defines "variation" for the purposes of section 11A.

Clause 5 : Appeal to Administrative Appeals Tribunal

Clause 5 amends section 11B of the Principal Act:

- (a) by omitting subsection (1) and inserting a new subsection (1) which provides that a lessee who has paid the betterment charge payable may apply to the Tribunal for a review of the determination of the amount payable.
- (b) by substituting in subsection (2) the words "betterment charge" for the word "premium".

Clause 6 : Repeal

Clause 6 repeals section 11C of the Principal Act and substitutes the following section:

Adjustment of betterment charge on variation of determination on review

Section 11C provides that, where a betterment charge is varied upon review under section 11B, and the amount of betterment payable is reduced, the Territory shall repay to the lessee the difference between the original determination and the redetermination. If the amount payable by the lessee is increased, the lessee shall pay to the Territory the difference between the original determination and the redetermination. For the purposes of this section, "lessee" means the lessee at the date of the Tribunal's decision under section 11B.

Clause 7 : Insertion

Clause 7 provides for the insertion of several new sections into the Principal Act. Those sections are set out below.

Restriction on certain dealings in respect of community organisation leases

Section 11D provides that certain dealings in concessional leases are prohibited without the consent of the Minister, and provides also for such consent to be given where the requirements of this section are met.

Subsection 11D(1) defines "concessional lease" and "community organisation".

Subsection (2) explains the meaning of references in this section to market value.

Subsection (3) provides that a concessional lease may not be transferred or assigned, without the

consent of the Minister under subsection (4).

Subsection (4) provides that, where a lessee of a concessional lease applies for consent to a transaction defined in subsection (3), consent shall not be given unless the Minister is satisfied that the premium payable under subsection (9) has been paid, or where the application relates to a transaction under subsection (3), the proposed transferee is a community organisation similar to the lessee and the determined fee has been paid.

Subsection (5) provides that the Minister is to determine the amount payable in respect of a transaction referred to in subsection (3), including any allowance to the lessee, and give notice of that determination to the lessee setting out the amount of the premium payable under subsection (9).

Subsection (6) makes it clear that a determination of an allowance under subsection (5)(b) must be made in accordance with criteria specified under subsection (7).

Subsection (7) allows the Minister, by instrument, to specify, vary or revoke criteria applicable to the determination of an allowance under subsection (5)(b).

Subsection (8) provides that an instrument under subsection (7) is a disallowable instrument for the purposes of section 10 of the Subordinate Laws Act 1989.

Subsection (9) makes it clear that a premium is payable in respect of a transaction referred to in subsection (3), and provides for the calculation of the amount of the premium.

Subsection (10) provides the required content of a notice under subsection (5).

Subsection (11) makes it clear that failure to comply with subsection (10) will not affect the validity of a determination under subsection (5).

Appeal to the Administrative Appeals Tribunal

Section 11E provides for appeals to the Administrative Appeals Tribunal.

Subsection (1) defines 'reviewable decision'.

Subsection (2) provides for application to be made to the Tribunal for the review of a reviewable decision defined in subsection (1).

Subsection (3) provides that an application for the review of a decision defined in paragraph (1)(b) shall be made within 30 days of payment of the premium by the lessee or within such further time as the Tribunal allows.

Adjustment of premium on variation of determination on review

Section 11F provides for the adjustment of determinations of premiums following review by the Administrative Appeals Tribunal.

Subsection (1) provides that, where a determination under subsection 11D(5) is reviewed under section 11E in respect of a transaction referred to in subsection 11D(3), the premium shall be recalculated under subsection 11D(9). If the premium is reduced as a result of the recalculation, the Territory shall pay to the lessee the amount by which the premium is reduced. If the premium is increased by the recalculation, the lessee shall pay to the Territory the amount by which the determination is increased.

Subsection (2) provides that, for the purposes of this section, "lessee" means the lessee on the date of the Tribunal's decision under section 11E.

Clause 8 : Application

Subclause 8(1) provides for the application of sections 11A, 11B and 11C of the Principal Act as amended by this Act to apply to applications under section 11A lodged on or after 22 February 1990, and in respect of which no provisional order has been made, as though the amendments had been made at the date of lodgment.

Subclause 8(2) makes it clear that sections 11A, 11B and 11C as amended by this Act do not apply to applications under section 11A lodged before 22 February 1990, or to applications lodged after that date in respect of which a provisional order has been made at the date of commencement of this Act.

Subclause 8(3) defines "commencement date".