

AUSTRALIAN CAPITAL TERRITORY
CITY AREA LEASES (AMENDMENT) ORDINANCE 1984

EXPLANATORY STATEMENT

No. 39 of 1984

The City Area Leases Ordinance 1936 (the principal Ordinance) provides a system for the grant and control of Crown Leases in the Australian Capital Territory. Section 28 of the principal Ordinance restricted the circumstances in which the lessee could transfer or mortgage his undeveloped land until the lessee had complied with the building and development covenant contained in the lease. The purpose of this was to ensure orderly development and to prevent speculation in vacant blocks of land. The lessee had to either comply with the building and development covenant by building a house, or come within the special circumstances in which a transfer was allowed in section 28.

Section 28 required the Minister to consent to every mortgage of undeveloped land. Further, section 28 did not include in the exemptions from the general prohibition on mortgaging, the common situation where a lessee wished to mortgage the land so as to secure money borrowed by the lessee in order to purchase the land.

Section 17 of the principal Ordinance provides that the Minister may grant a lease without the need for the more usual methods of holding an auction or inviting applications for leases. It is proposed to use this power to grant leases directly to certain classes of persons, but it is considered desirable that persons receiving the benefit of a lease granted in this way should be restricted in their dealings with the lease. Section 28B of the principal Ordinance already contained a scheme whereby persons who obtained a lease at a restricted auction, in which only certain classes of persons are eligible to bid, were restricted from transferring or otherwise dealing with the lease for a specified period. The amending Ordinance allows the Minister to declare, by notice in the gazette, a class of persons to whom leases may be granted under section 17, subject to the restrictions of section 28B.

The City Area Leases (Amendment) Ordinance 1984 (the amending Ordinance) amends the principal Ordinance to:

- . extend the circumstances in which a person may be exempted from the general prohibition of the mortgaging of undeveloped land contained in section 28:

apply the provisions of section 28B to specified land allocated under section 17.

Details of the amending Ordinance are as follows:

Sections 1 and 2 deal with interpretation.

Paragraph 3(a) amends section 28 of the existing Ordinance by restructuring sub-sections 28(2B) and 28(2C), which deal with restrictions on the transfer and mortgaging of undeveloped crown leases.

Proposed sub-section 28(2B) saves only those provisions of the existing sub-section 28 (2B) dealing with restrictions on the transfer of undeveloped land. Proposed sub-section 28(2C) saves those provisions of both existing sub-sections 28(2B) and 28(2C) dealing with restrictions on the mortgaging of undeveloped land, and amends the principal Ordinance so that:

- the requirement that the Minister consent to every mortgage of undeveloped land is removed, and
- a lessee may mortgage undeveloped land in order to secure money borrowed by the lessee for the purpose of acquiring the lease.

Paragraph 3(b) makes a consequential amendment to sub-section 28(4).

Paragraph 4(a) amends section 28B of the principal Ordinance, which deals with restrictions on the transfer of certain leases, by omitting sub-section 28B(1) and adding a restructured sub-section 28B(1) which, in paragraph (a) saves the provisions of sub-section 28B(1) of the principal Ordinance, and in paragraph (b) provides that Section 28B applies to and in relation to a lease granted under section 17 to a person included in a class of persons specified by the Minister for the purposes of this paragraph by instrument in writing published in the Gazette.

Paragraph 4(b) makes a consequential amendment to paragraph 28B(10)(a).

Paragraph 4(c) amends sub-section 28B(10) of the principal Ordinance, which deals with the period during which the restriction is to apply by omitting paragraph (10)(b) and substituting new paragraphs (10)(b) and (10)(c). The proposed paragraph 28B(10)(b) provides that the Minister may specify the period, if any, that is to apply to a lease of the kind referred to in the new paragraph 28B(1)(b) in the instrument specifying a class of persons for the purpose of that paragraph. Paragraph 28B(10)(c) saves the existing paragraph 28B(10)(b).

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