

AUSTRALIAN CAPITAL TERRITORY
CITY AREA LEASES ORDINANCE 1971
EXPLANATORY MEMORANDUM

The abolition of land rent in the Australian Capital Territory from 1 January 1971 by the City Area Leases Ordinance 1970 has caused difficulties with a covenant which has been included in the majority of the sub-lease agreements for land and buildings in that sub-lessees could be subjected to a liability additional to that originally contemplated by the parties to the sub-lease.

The proposed Ordinance provides that if a covenant in a sub-lease makes provision for an increase or decrease in the rent payable under the sub-lease according to whether the rent or rates or both payable under the head lease were increased or decreased, then on or after 1 January 1971, that covenant shall be read as though it referred to the rates payable after 1 January 1971 and to the aggregate of the rent and rates payable before that date.

This provision is subject to any contrary subsequent agreement as to the payment of rates made by the parties to the sub-lease.

For obvious reasons, it is impossible to ascertain all the possible covenants appearing in sub-lease agreements and therefore a provision has been included that if either the sub-lessor or the sub-lessee considers that the application of the proposed scheme is in the circumstances of a particular sub-lease unjust or inequitable he could apply to the Australian Capital Territory Supreme Court for an order that the scheme should not

apply in relation to the sub-lease and that the covenant in the lease should continue to have effect.

An opportunity has also been taken to repeal section 28(1.)(b) of the Ordinance in order to enable a lessee to sub-let a building or part of a building where the lease requires for the erection of more than one building or an extension of an existing building.