

AUSTRALIAN CAPITAL TERRITORY

CITY AREA LEASES ORDINANCE 1967

Explanatory Memorandum

No. 13 of 1967

Leases within the city area of Canberra under the terms of the City Area Leases Ordinance 1936 – 1966 each contain a covenant by the lessee to use the land only for the purpose for which the lease is granted.

In recent years, a number of cases has been detected involving apparent breaches of lease covenants. As a result of these cases, the City Area Leases Ordinance was amended in 1964 by the insertion of section 9A to provide that where the land is used for a purpose other than that authorised by or under the lease, the lessee or sub-lessee is guilty of an offence. The amendment provided a defence against prosecution for a breach involving land leased for residential purposes if the person charged with the offence could prove that the use of the land

- did not constitute a substantial nuisance,
- did not substantially disturb the occupier of any adjoining land,
- did not substantially interfere with the nature or amenities of the neighbourhood, and
- did not cause untidiness in the neighbourhood.

Defences of this nature are compatible with the principles of planning legislation applicable to free-hold systems of land tenure. Within such systems, the land owner initially has virtually unrestricted right of user in respect of his land. That right is, by the planning or similar legislation, restricted for the purpose of the common good of the community. The restrictions are justified on this ground and defences of this nature are properly available to the freehold for his protection.

On the other hand, under a system of Crown leasehold tenure such as exists in the Australian Capital Territory, each lease is offered for a specific purpose only and this is known to prospective lessees and accepted as a specific covenant in the lease agreement when a lease is granted. The provisions inserted by the 1964 amendment to the Ordinance therefore are not by their nature restrictive but designed simply to provide a means of enforcement of the covenants contained in leases. On the other hand the defences set out above for which provision was also made have the effect of permitting a wider field of activity than that which is permitted within the strict terms of the leases granted.

The defences have therefore been found to be not consistent with the Australian Capital Territory system of Crown leasehold land tenure, nor with the

planning principles applicable to the National Capital. Experience has shown that, rather than uphold public interest, the defences have provided a shield behind which a number of major offenders have sheltered.

The City Area Leases Ordinance 1967 deletes these defence provisions by repealing sub section (4) of section 9A and inserts a new sub-section (4) to the effect that offences in breach of lease conditions may be prosecuted only with the consent of the Minister or a person authorised by him. This provision would ensure that lessees, who may be in breach through some minor activity, are not subject to vexacious litigation.

C.R.K.

(Minister's Initials)