

AUSTRALIAN CAPITAL TERRITORY

COMPANIES ORDINANCE 1966.

EXPLANATORY MEMORANDUM

No. 11 of 1966

This Ordinance amends section 64 of the Companies Ordinance 1962-1963 of the Australian Capital Territory, to counter certain difficulties which might arise as a result of a recent decision of the Court of Appeal of New Zealand.

In the Australian Capital Territory there is as yet no strata titles legislation, enabling home unit occupants to obtain full legal titles for their units. The usual method of granting 'ownership' of a home unit is for a person to buy shares in the company which owns the building of home units, which shares confer on the purchaser either a licence for an exclusive right of occupancy together with the duty to pay outgoings or the right to a lease at a rental sufficient to cover outgoings only. The use of this method is also necessary in South Australia, where there is no strata titles legislation, but is not now necessary in the other States, because they have strata titles legislation.

The Court of Appeal of New Zealand recently decided that the grant by a company of a lease or right of occupancy in the abovementioned circumstances amounted to a return of capital not permitted by the law and was therefore invalid. Legislation was subsequently enacted in New Zealand to rectify the position.

Because of the similarity between the New Zealand and Australian company laws it is possible that the New Zealand decision would be followed in Australia. The matter was considered in the Standing Committee of Attorneys-General which is concerned with keeping Australian company laws uniform, and agreement was reached on the action necessary. South Australia has already legislated to prevent the New Zealand decision being followed and the Companies Ordinance 1966 will have the same effect as the South Australian legislation. It is expected that other States will legislate later.