

AUSTRALIAN CAPITAL TERRITORY

CITY AREA LEASES ORDINANCE 1964

EXPLANATORY MEMORANDUM

No. 7 of 1964

Under the City Area Leases Ordinance 1936-1963, the Minister is empowered to terminate a lease if the lessee commits a breach of the purpose covenant of the lease. Many of the breaches that have occurred in relation to his particular covenant are not of such a nature as would warrant the termination of the lease; however, quite often they constitute a nuisance in the neighbourhood and should be prevented.

Clause 3 of the draft Ordinance which inserts three new sections into the Principal Ordinance is designed to prevent the occurrence of breaches of the purpose covenant. New section 9A. will provide a penalty upon conviction of £100 to £10 per day while the offence continues for any person who uses the property, the subject of a lease, for any purpose other than that for which the lease was granted.

In respect to the holders of residential leases, sub-section (4.) of the new Section, will allow a defence where a lessee proves that the use of the land –

- (a) does not constitute a substantial nuisance;
- (b) does not substantially disturb the occupier of any adjoining land;
- (c) does not substantially interfere with the nature or amenities of the neighbourhood; and
- (d) does not cause untidiness in the neighbourhood.

New section 9B. empowers the Secretary of the Department of the Interior to require lessees to give notice of any sub-tenancies and provides offences for failing to give notice or for giving incorrect notice. The facts contained in the statements required under the new section are, pursuant to section 9C., to be regarded as evidence of the matters stated.

Draft section 6 amends section 25 of the current Ordinance to require the Proper Authority under the Ordinance to re-appraise the unimproved value of any lease, the purpose covenant for which has been varied by the Supreme Court pursuant to section 11A. of the Ordinance. Land rent as prescribed in the lease is to be payable on the basis of the new unimproved value of the land on the first day of the quarter next following the date of variation of the covenant.

Following the introduction of the City Area Leases Ordinance 1963, prescribing restrictions upon the transfer of land, the right to the grant of the lease for which was purchased at a restricted auction, some doubt arose as to the extent of the Minister's power to consent to certain classes of transactions. Sub-clause (1.) of

Clause 7 of the draft Ordinance clarifies the position by allowing the Minister to consent to any transaction within the prohibited period of five years. Sub-section (2.) of this draft section provides that the amendments effected by sub-section (1.) are deemed to have been in force as from the date of commencement of the City Area Leases Ordinance 1963 and thereby validates all transactions effected since that date.

The other amendments effected by the draft Ordinance are mechanical amendments made necessary due to a typing error and incorrect numbering of sub-sections. They do not alter any substantive provisions of the Ordinance.