



TASMANIA

ACCESS TO NEIGHBOURING LAND ACT 1992

No. 28 of 1992

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ACCESS TO NEIGHBOURING LAND ACT 1992

No. 28 of 1992

AN ACT to provide for obtaining access to neighbouring land for the purpose of carrying out work and for incidental purposes and to amend the *Magistrates Court (Small Claims Division) Act 1989*

[Royal Assent 13 November 1992]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title

1—This Act may be cited as the *Access to Neighbouring Land Act 1992*.

Commencement

2—This Act commences on a day to be proclaimed.

Interpretation

3—In this Act, unless the contrary intention appears—

“**access order**” means an order authorizing access to land made under section 5;

“**the court**” means—

(a) a magistrate; or

(b) the small claims division of the Magistrates Court;

“**owner**” includes occupier;

“**subject land**” means land in respect of which entry is sought under this Act.

Act to bind Crown

4—This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

Access orders

5—(1) Where a person—

(a) requires entry to land, other than a highway, for the purpose of carrying out work on other land; and

(b) the land on which he or she requires entry is adjoining or adjacent to the land in respect of which he or she wishes to carry out the work; and

(c) he or she does not have the agreement of another person whose agreement to the entry is required—

the first-mentioned person may apply to the court for an order authorizing access to the subject land on such occasions and during such period as may be specified in the order.

(2) The court may make an access order if it is satisfied that—

(a) the work for which entry is sought is reasonably necessary for the preservation of the land in respect of which the work is to be carried out; and

(b) the work cannot be carried out or would be substantially more difficult or expensive to carry out without entry to the land in respect of which entry is sought—

but the court must refuse to make an access order if it is satisfied that, notwithstanding any requirement of this Act or any term or condition that may be imposed under the access order, the entry would cause unreasonable hardship to any person affected by the order.

(3) The work for which an access order may be made includes—

- (a) carrying out work of repair, maintenance, improvement, decoration, alteration, adjustment, renewal or demolition of buildings and other structures; and
- (b) inspection for the purposes of ascertaining whether any such work is required; and
- (c) making plans in connection with any such work; and
- (d) ascertaining the course of drains, sewers, pipes or cables and renewing, repairing or clearing them; and
- (e) ascertaining whether any hedge, tree or shrub is dangerous, dead, diseased, damaged or insecurely rooted; and
- (f) replacing any hedge, tree or shrub; and
- (g) removing, felling, cutting back or treating any hedge, tree or shrub; and
- (h) clearing or filling in ditches; and
- (i) carrying out any work that is necessary for, or incidental to, any work referred to in paragraphs (a) to (h), both inclusive.

(4) The court must not make an access order unless—

- (a) the applicant can show that he or she has first served on the owner of the subject land or other person whose agreement to the entry is required a notice describing the work intended to be performed and the conditions that he or she is prepared to accept; and
- (b) the applicant has made reasonable efforts to reach agreement with that owner or other person regarding any counter proposal relating to that work, any conditions to which those proposals are subject and any modifications to that work or those conditions.

Power of court to impose terms and conditions

6—(1) An access order is to specify—

- (a) the work which may be carried out; and
- (b) the date on or from which entry is authorized and the date on which it ceases to be authorized; and
- (c) particulars of the subject land.

(2) The court may impose such terms and conditions as appear reasonably necessary for avoiding or minimizing—

- (a) loss, damage or injury to the owner of the subject land or to any other person or to any land or personal property; and
- (b) inconvenience or loss of privacy to the owner of the subject land or to any other person—

caused by the entry to the subject land and any such terms and conditions may include provision for any one or more of the following matters:—

- (c) the manner in which the work is to be carried out;
- (d) the days on which and the hours between which the work may be carried out;
- (e) the precautions and safeguards, if any, as may be specified;
- (f) the taking out of insurance cover by the applicant against such risks, if any, as may be specified;
- (g) compensation for loss, damage or injury, including damage to personal property, financial loss and personal injury, to the owner of the subject land.

(3) Compensation is not payable to the owner of the subject land under this section for any loss of privacy or for any inconvenience that he or she may suffer solely as a result of the entry authorized by the order or solely by reason of the making of the order.

(4) An access order may provide—

- (a) for the reimbursement by the applicant of any expenses reasonably incurred by the owner of the subject land that are not recoverable as costs; and
- (b) for the giving of security by the applicant for any amount that might become payable to the owner of the subject land under this section or section 7.

Effect of access order

7—(1) An access order authorizes the applicant—

- (a) to enter on the subject land for the purpose of carrying out work specified in the order; and
- (b) to bring on, leave on and remove from the land such materials, plant and equipment as are reasonably necessary for carrying out the work; and

- (c) to leave on and remove from the land any waste that may arise from carrying out the work and removing it—

and also authorizes the entry on the land by such number of servants, agents and other persons authorized by the applicant as are reasonably necessary for carrying out the work.

(2) An access order requires the applicant—

- (a) to make good the subject land so far as is reasonably practicable before such date as may be specified in the order for that purpose; and
- (b) to indemnify the owner of the subject land against damage to the land or personal property resulting from entry as authorized by the order—

and also requires the owner of the subject land to permit the applicant to take any action specified in the order.

(3) In addition to the powers conferred by section 10, the court may, on making an access order, dispense (wholly or in part) with or vary any action authorized or required to be taken under subsection (1) (b) or (c) or (2).

Enforcement

8—(1) In addition to any other remedy, the court may make an order for payment of damages by a party to the proceedings who fails to comply with a requirement of an access order or of section 7.

(2) An order made under subsection (1) may be enforced in the manner provided by section 92A of the *Justices Act 1959*.

Failure to comply with access order

9—A person who fails to comply with a requirement of an access order that is applicable to him or her is guilty of an offence and, in addition to any other remedy, is liable on summary conviction to a fine not exceeding 5 penalty units.

Discharge and variation of access orders

10—(1) On an application by a person in whose favour an access order has been made or a person who is affected by any such order, the court may make a further order discharging or varying the original order or an order previously made under this section or any term or condition of such an order or suspending any such term or condition temporarily or reviving any term or condition so suspended.

(2) Unless previously discharged, an access order and any order made under subsection (1) cease to have effect on a date specified in the order but without prejudice to the enforcement by the owner of the subject land of any terms and conditions specified in the order or any action required by section 7 (2).

(3) The discharge or cessation of an access order or an order made under subsection (1) does not affect the previous operation of the access order.

Jurisdiction and transfer of proceedings

11—(1) At any stage in any proceedings under this Act the court may, of its own motion or on application by a party to the proceedings, order the transfer of the whole or any part of the proceedings to the Supreme Court if the court considers that an important question of law is likely to arise.

(2) At any stage in any proceedings transferred to the Supreme Court under subsection (1), the Supreme Court may, of its own motion or on application by any party to the proceedings, order the transfer of the whole or any part of the proceedings to either a magistrate or the small claims division of the Magistrates Court, as the Supreme Court considers to be convenient to the parties.

(3) A transfer of proceedings under this section does not affect any right of appeal from the order directing the transfer or right to enforce in the Supreme Court any judgment given or order made in that Court before the transfer.

Supplementary provisions

12—(1) An access order does not bind a person who is not a party to the proceedings.

(2) Any agreement, whether made before or after the commencement of this Act, which would have the effect of preventing or restricting a person from applying for an access order is void to the extent that it would have that effect.

Rules of Court

13—(1) Rules may be made under the *Supreme Court Civil Procedure Act 1932* with respect to the hearing and determination of any proceedings transferred to or from the Supreme Court under section 11.

(2) Rules may not be made under subsection (1) on any matter in respect of which any regulations made under section 14 are in force.

Regulations

14—(1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the Governor may make regulations as to the service of applications, notices and access orders where the owner of the subject land cannot be found.

Administration of Act

15—Until an order is made under section 4 of the *Administrative Arrangements Act 1990—*

- (a) this Act is administered by the Minister for Justice; and
- (b) the Department responsible to the Minister in relation to the administration of this Act is the Department of Justice.

Section 10 of *Magistrates Court (Small Claims Division) Act 1989* amended (Jurisdiction)

16—Section 10 of the *Magistrates Court (Small Claims Division) Act 1989** is amended as follows:—

- (a) by omitting from subsection (1) (d) “counterclaim.” and substituting “counter-claim;”;

* Act No. 14 of 1989.

(b) by inserting after paragraph (d) the following paragraph:—

(e) a claim for an order authorizing access to land under section 5 of the *Access to Neighbouring Land Act 1992*.