

2. Section thirty-six AA is amended by adding at the end of subsection (2) the words "or under the *Road Safety (Alcohol and Drugs) Act 1970.*".
3. Section thirty-six A is amended—
  - (a) by omitting from subsection (4) the words "under section thirty-six, section forty-one, section forty-one B, or section forty-one C"; and
  - (b) by omitting from subsection (5) the words "under section thirty-six, section forty-one, section forty-one B, or section forty-one C".
4. Sections forty-one, forty-one B, forty-one C, and forty-one D are repealed.

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## BEAUTY POINT LANDSLIP.

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No. 78 of 1970.

AN ACT to make provision for the acquisition and clearance of certain lands in the town of Beauty Point in which earth movements have occurred, and for purposes incidental thereto.

[11 January 1971.]

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:—

**1** This Act may be cited as the *Beauty Point Landslip Act 1970.* Short title.

Interpre-  
tation.

**2** In this Act, unless the contrary intention appears—

“committee” means the Beauty Point Advisory Committee established under this Act;

“corporation” means the Warden, Councillors, and Electors of the municipality of Beaconsfield;

“earth movement” includes a landslip, a subsidence, and any movement of the subsoil of the ground;

“improvements” means, in relation to any land, all work done or material used thereon by the expenditure of capital on or for the benefit of the land, but so far only as—

(a) the effect of the work done or material used is to increase the value of the land; and

(b) the benefit thereof is unexhausted at the material time,

but does not include work done or material used on or for the benefit of land by the Crown or by any statutory public body, unless the work or material has been paid for by the contribution of the owner or occupier made for that purpose otherwise than through payment of taxes or rates;

“prescribed lands” means the lands to which this Act applies;

“real value”, in respect of land compulsorily acquired under section eight, means the value of that land for the purposes of section thirty-one of the *Lands Resumption Act* 1957 as the land existed on the day in respect of which compensation is to be assessed under that Act.

Application  
of Act.

**3**—(1) This Act applies to so much of the land described in the schedule as the Governor may by a proclamation, made on the recommendation of the committee, declare to be lands to which this Act applies.

(2) Before making a recommendation for the purposes of this section in respect of any land the committee shall consult with the corporation, and the committee shall not make such a recommendation unless it is satisfied—

(a) that, as a consequence of earth movement, the improvements on the land, or the main portion of them, have been demolished or removed; or

(b) that, by reason of damage or injury to any of the improvements on the land as a consequence of earth movement, they are not reasonably capable of being used for the purpose for which they were intended to be used,

and in either case that the improvements were or are—

(c) a dwelling-house that was or is occupied, or usually occupied, permanently; or

(d) such that their demolition, removal, or disuse has caused or will cause the owner of the land substantial personal hardship.

(3) The committee has absolute discretion whether or not to make a recommendation for the purposes of this section in a case in which it is satisfied as provided in paragraph (d) of subsection (2) of this section and not as provided in paragraph (c) of that subsection.

**4**—(1) There shall be a Beauty Point Advisory Committee constituted in accordance with this section.

Establishment of Beauty Point Advisory Committee.

(2) The committee shall consist of—

- (a) the Manager of the Agricultural Bank of Tasmania;
- (b) the Under-Treasurer or a person nominated by him;
- (c) the Chief Valuer or a person nominated by him; and
- (d) a person not residing in the area described in the schedule and nominated by the corporation.

(3) The Manager of the Agricultural Bank of Tasmania shall be the chairman of the committee.

(4) References in this section to the holder of any office shall be deemed to include references to a person for the time being acting in that office.

(5) The members of the committee are not, as such, subject to the provisions of the *Public Service Act 1923*, and an officer of the Public Service may hold office as a member of the committee in conjunction with his office as an officer of the Public Service.

(6) The Treasurer may pay to any member of the committee such remuneration and such travelling or other allowances as the Governor may approve.

**5**—(1) It is the duty of the committee—

General duties of committee.

- (a) to advise the Treasurer on matters arising in connection with the administration of this Act and to report to him on such matters relating to the administration of this Act as he may refer to it; and
- (b) to assist in the finding of suitable alternative accommodation for those persons who, as a consequence or in anticipation of earth movement, have removed or are likely to be required to remove from any of the prescribed lands.

(2) The committee shall make such arrangements and do such other acts as the Treasurer may require for the purpose of enabling him to carry out his functions under this Act or for the purpose of facilitating the carrying out of those functions.

(3) For the purpose of carrying out its duties under this Act the committee may carry out, or secure the carrying out, of such inquiries or investigations as it considers necessary.

**6**—(1) The chairman of the committee, or, in his absence or if there is no person entitled to act as chairman of the committee, such of the other members as they may choose shall preside at meetings of the committee.

Proceedings, &c., of committee.

(2) The person presiding at a meeting of the committee has a deliberative vote only.

(3) In the event of an equality of votes on any matter before a meeting of the committee, the matter stands adjourned to the next meeting of the committee.

(4) Three members of the committee constitute a quorum at any meeting of the committee.

(5) The committee may act notwithstanding a vacancy in its membership so long as a quorum remains.

(6) No act or proceeding of the committee is invalidated by any defect or irregularity in its constitution.

(7) Subject to this Act, the committee may regulate its own proceedings.

Officers, &c.,  
of committee.

**7**—(1) The Treasurer, at the request of the committee, may appoint a person to be secretary of the committee and may make arrangements to render available to the committee such staff and accommodation as the committee may require in the carrying out of its functions.

(2) With the consent of the Public Service Commissioner, an officer of the Public Service may, in conjunction with his office as such, hold office as secretary of the committee or serve the committee in any other capacity.

Acquisition  
of prescribed  
lands.

**8**—(1) The Treasurer may, for the purposes of this Act, purchase or take all or any of the prescribed lands.

(2) In its application for the purposes of this Act the *Lands Resumption Act 1957* has effect subject to the provisions of this Act, and in particular as if in Division III of Part IV thereof the expression "the Court" included a court of summary jurisdiction held before a stipendiary magistrate sitting alone, which courts shall have jurisdiction accordingly regardless of the amount in dispute.

Entitlement  
to special  
compensa-  
tion on  
compulsory  
acquisition.

**9**—(1) A person who has at the commencement of this Act an estate or interest in land described in the schedule has, subject to this section and to sections eleven, twelve, fourteen, and fifteen, the right on the acquisition of his estate or interest under section eight to obtain, if compensation is payable therefor, special compensation as provided in section ten.

(2) Subject to section eleven, a right to special compensation given by this section goes with the estate or interest in respect of which it arises from holder to holder thereof.

(3) Where a person having at the commencement of this Act an estate or interest in land described in the schedule acquired it for valuable consideration after the first day of July 1963 and at a time when—

(a) he knew; or

- (b) if he inspected the land or made such inquiries or investigations as he would in his own peculiar circumstances have been expected to make, would have become aware,

that the land was subject to a risk of earth movement or that damage or injury had occurred to any improvement on the land as a consequence of earth movement, the right to special compensation does not arise in respect of his estate or interest.

- (4) For the purposes of subsection (3) of this section—

- (a) the time at which a person acquired an estate or interest pursuant to a contract shall be deemed to be the date on which the contract was made; and
- (b) the time at which a person acquired an estate or interest otherwise than pursuant to a contract shall be deemed to be the date on which the estate or interest vested in that person.

**10**—(1) Special compensation for the purposes of this Act is an increase in the compensation to which a person whose estate or interest has been acquired compulsorily under section eight is otherwise entitled under section thirty of the *Lands Resumption Act 1957*. Amount of special compensation.

- (2) It amounts to the difference between—

- (a) three-quarters of the amount determined as provided in subsection (3) of this section; and
- (b) the compensation to which the claimant is otherwise entitled under section thirty of that Act.

(3) For the purposes of paragraph (a) of subsection (2) of this section, an amount shall be determined that shall be equal to the compensation that would have been determined if—

- (a) there were not at any time a risk of any earth movement in any of the prescribed lands;
- (b) where any improvement on the land has been demolished or removed as a consequence of damage or injury caused by earth movement, that improvement were still as it was just before it first suffered such damage or injury;
- (c) where any improvement on the land has been demolished or removed as a consequence of earth movement before suffering any damage or injury therefrom, that improvement were still as it was just before it was demolished or removed; and
- (d) where any improvement on the land has suffered damage or injury as a consequence of earth movement, that improvement were still as it was just before it first suffered such damage or injury.

(4) In assessing the value of lands for the purposes of subsection (3) of this section—

- (a) regard shall be had to the value of lands in localities (being localities where no earth movement has taken, or is likely to take, place) which have been developed

in a similar manner to the prescribed lands in the vicinity of the lands whose value is to be assessed and which contain a similar class of property to that contained in the land to be assessed; and

- (b) where an improvement has been made on the land after the commencement of this Act, that improvement shall be left out of account in the determination of special compensation.

(5) Where on any prescribed lands there is an improvement at the commencement of this Act which was made after the first day of July 1963 by a person—

- (a) having a sufficient estate or interest in the land to entitle him to make it at a time when—

(i) he knew; or

- (ii) if he had inspected the land or made such inquiries or investigations as he would in his own peculiar circumstances have been expected to make, would have become aware,

that the land was subject to a risk of earth movement or that damage or injury had occurred to any improvement on the land as a consequence of earth movement; or

- (b) without a sufficient estate or interest in the land to entitle him to make it,

that improvement shall be disregarded for the purposes of this section.

Destruction or limitation of entitlement.

**11**—(1) A right to special compensation is destroyed by—

- (a) a gift; or

- (b) a sale for a consideration other than a consideration in good faith adequate to or greater than the real value of the property subject thereto,

of the estate or interest to which the right is annexed to a person other than—

- (c) the spouse or child of the donor or vendor; or

- (d) a person approved by the committee.

(2) Where the estate or interest to which a right to special compensation is annexed is sold for a consideration in good faith adequate to or greater than the real value of that estate or interest, that right is limited from then on to the amount by which the consideration exceeds the real value.

Changes in estates and interests.

**12**—(1) For the purposes of section nine—

- (a) where an estate or interest has been created out of or upon an estate or interest existing at the commencement of this Act, it shall be deemed to have been then in existence within the estate or interest then existing out of or upon which it was created; and

- (b) where an estate or interest in existence at the commencement of this Act has merged in, fallen back into, or disappeared off another estate or interest then existing, the two estates or interests shall be deemed to have been one at the commencement of this Act.

(2) The principle of subsection (1) of this section applies to any like case not provided for in it.

**13**—(1) Where the Treasurer is satisfied, on a recommendation made to him by the committee, that, in relation to any special compensation to which an owner has or may become entitled in respect of the acquisition of land under section eight—

Application of special compensation in certain cases.

- (a) a dwelling-house that was erected on the land was used as a dwelling by the owner or his spouse;
- (b) it is just and reasonable that the special compensation should be applied in the provision of accommodation for a person referred to in paragraph (a) of this subsection (in this section referred to as “the selected person”); and
- (c) it is reasonable to expect that, if the special compensation is paid to the person who would otherwise be entitled to receive payment thereof, it will not or may not be applied in the provision of accommodation that will be reasonably available for the use of the selected person as a dwelling,

the Treasurer may make a direction under this section requiring the special compensation to be applied in the provision of accommodation for the selected person, and such a direction is referred to in this section as a direction in respect of the special compensation made in favour of that person.

(2) A direction made under this section may be revoked by the Treasurer on the recommendation of the committee, but the revocation of such a direction does not prejudice or affect anything done thereunder or prevent the making of a further direction under this section.

(3) Before making a recommendation to the Treasurer under this section with respect to special compensation the committee shall serve notice on the owner, and if the recommendation is for the revocation of a direction under this section, on the selected person in whose favour the direction was made, specifying the recommendation that it is intended to make and shall consider any representations that may be made to the committee by a person upon whom such a notice is served within one month of the service thereof.

(4) A direction may be made under this section in respect of special compensation, notwithstanding that the entitlement to that special compensation has not been admitted or established or that the amount of that special compensation has not been determined.

(5) A direction under this section may specify the special compensation to which it relates by reference to the owner who apart from this section has or may become entitled to that special compensation or to the estate or interest in respect of which the entitlement to that special compensation has arisen or may arise.

(6) Where a direction is made in favour of a selected person with respect to special compensation and, by reason of a joint tenancy or otherwise, that person, apart from this section, has or is entitled to any share or interest in the compensation to which that special compensation is a supplement, that share or interest shall, on application being made in writing to the Treasurer by the selected person, be treated for the purposes of this section (otherwise than for the purposes of subsection (12) thereof) as forming part of the special compensation, and the making of such an application shall be deemed to have the effect of severing any interest in that compensation held by the selected person jointly with any other person.

(7) Where a direction is made under this section in respect of special compensation in favour of a selected person that sum shall be deposited in the Treasury and, at any time during which that direction remains in force, may be applied by the Treasurer, on the recommendation of the committee, in the provision of accommodation for that person.

(8) The application of any sum in or towards the discharge of a mortgage or other incumbrance subsisting in respect of any land in which a person has an estate or interest and which he uses as a dwelling shall be deemed for the purposes of this section (but without prejudice to the generality thereof) to be the application of that sum in the provision of accommodation for that person.

(9) Section forty-seven of the *Lands Resumption Act 1957* applies to any sum deposited in the Treasury under this section as if that sum were compensation to which the selected person was entitled.

(10) Subject to this section, while a direction in respect of special compensation made in favour of a selected person is in force, any entitlement of the owner to that sum shall be deemed to have been transferred to and to be vested in the selected person, and accordingly, that sum shall be deemed for the purposes of the *Lands Resumption Act 1957* to be compensation to which the selected person is entitled in respect of the acquisition of the land in relation to which the entitlement to the special compensation arises.

(11) For the purposes of subsection (10) of this section, where a direction with respect to special compensation is made in favour of a selected person before the amount of that sum is determined, the *Lands Resumption Act 1957* has effect as if the selected person had made a claim for that sum which had become a disputed claim for compensation.

(12) Where special compensation in respect of which a direction is in force under this section is charged with a mortgage or other incumbrance that is charged also upon any other compensation that mortgage or incumbrance shall only be satisfied out of the special compensation to the extent that that other compensation is insufficient to satisfy it.

(13) Nothing in this section prevents the Treasurer from acquiring by agreement any land, notwithstanding that a direction is in force in respect of special compensation an entitlement to which



may arise in respect of the compulsory acquisition of that land, and the agreement may provide for part of the purchase-price to be in lieu of special compensation, in which case this section applies to that amount as if it were special compensation.

(14) A direction under this section is deemed to be revoked on the death of the selected person in whose favour it was made.

(15) Except as otherwise expressly provided in this section, nothing in this section affects the rights of any person in or in respect of any land acquired under this Act.

(16) In this section "owner", when used in relation to special compensation, means a person who holds or held the estate or interest in respect of which the entitlement to that special compensation arises and includes, where that estate or interest is or was held by two or more persons, whether jointly or in common or otherwise, any one of those persons.

**14**—(1) This section applies to a mortgage subsisting at the date of the proclamation of property that is or includes an estate or interest in any land subject to a proclamation under subsection (1) of section three. Limitation  
on rights of  
mortgagees.

(2) Subject to this section, a mortgage to which this section applies has effect as if the principal secured by the mortgage were reduced by one-quarter of that portion of the principal that on the date of the proclamation still remains due to be repaid, and where any part of the principal secured by the mortgage falls due to be paid on or after that date the mortgage has effect as if that part were proportionately reduced.

(3) Where, after the date of the proclamation, any further sum is lent or advanced on the security of a mortgage that was subsisting on that date, nothing in this section (other than subsection (7) of this section) prejudices or affects the rights, liabilities, or obligations of any person with respect to the recovery or payment of that sum, and accordingly for the purposes of subsection (2) of this section that further sum shall be deemed not to form part of the principal secured by the mortgage.

(4) Where any such further sum as is referred to in subsection (3) of this section is lent or advanced on the security of a mortgage it shall be assumed, for the purpose of determining for the purposes of subsection (2) of this section the portion of the principal secured by the mortgage that on the appropriate date remains due to be repaid, that any payment made, or assumed by virtue of subsection (5) of this section to have been made, by way of repayment of principal was applied to the repayment of that further sum and to the other principal moneys secured by the mortgage in the proportion that, immediately before that payment, the amount of so much of that further sum as then remained due to be repaid bore to the amount of the other principal moneys secured by the mortgage that then remained due to be repaid.

(5) For the purpose of determining for the purposes of subsection (2) of this section the amount by which the principal secured by a mortgage, or any part thereof, is to be reduced it shall be assumed that all payments due under the mortgage before the appropriate date have been paid on the date on which they became due and that the covenants and other terms and conditions of the mortgage have been duly observed.

(6) Nothing in subsection (2) of this section affects the operation of a mortgage with respect to the payment of interest on the principal secured by the mortgage, or any part thereof, except that no interest otherwise required to be paid under the mortgage shall be required to be paid or be regarded as accruing, in respect of any period commencing or after the date of the proclamation, on that part of the principal secured by the mortgage that by virtue of this section is not required to be repaid.

(7) The mortgagee of any mortgage to which this section applies is not entitled after the date of the proclamation to exercise any power of sale or leasing that he would otherwise be entitled to exercise by virtue of that mortgage and, after that date, no order or direction shall be made for foreclosure of, or the sale of any prescribed land that is subject to, the mortgage.

(8) Nothing in subsection (7) of this section affects any rights or obligations arising on or in respect of the acquisition under section eight of the land to which the mortgage relates.

(9) If a mortgage ceases to be a mortgage to which this section applies, the fact of its so ceasing does not have the effect of requiring to be repaid any part of the principal secured by the mortgage that, apart from this section, would, while this section applied to that mortgage, have fallen due to be repaid, and that by virtue of this section has not been required to be repaid.

(10) Where a mortgage comprises both prescribed land and other property, the mortgage debt shall be apportioned—

(a) by agreement between the mortgagor and the mortgagee;  
or

(b) in default of their agreement, by a stipendiary magistrate,

between the prescribed land and the other property and this section applies only to the prescribed land and so much of the mortgage debt as is apportioned to it.

(11) Where there is collateral security for a debt secured by a mortgage to which this section applies, that collateral security does not avail to enable the creditor to obtain more of the debt than this section allows.

(12) This section has effect notwithstanding any covenant or agreement to the contrary (whether that covenant or agreement was entered into before or after the commencement of this Act) and notwithstanding any stipulation, covenant, condition, term, or other provision of a mortgage (whether made before or after the commencement of this Act), and any such covenant or agreement, or any such stipulation, covenant, condition, term, or other provision,

in so far as it would otherwise exclude, prejudice, or affect the operation of this section in relation to any mortgage is void and of no effect.

**15**—(1) Where, immediately before the acquisition of land under section eight, any moneys owing to the corporation were charged on the land under section seven hundred and sixty-five of the *Local Government Act* 1962 or any other enactment, the charge shall have effect as if the sum thereby secured were reduced by one-quarter. Reduction of municipal charges.

(2) This section does not affect the amount that a person would be bound to pay the corporation if it were not charged on the land.

**16**—(1) The Treasurer may cause to be demolished or removed any improvements on any of the prescribed lands, and for that purpose may enter into and carry out such contracts, agreements, or arrangements as he thinks fit. Demolition, &c., of improvements on prescribed lands.

(2) Without prejudice to the generality of subsection (1) of this section, any contracts, agreements, or arrangements referred to in subsection (1) of this section may be entered into with the corporation, and the corporation may carry out any contract, agreement, or arrangement so entered into.

(3) Until it is acquired under section eight, the Treasurer shall not exercise the powers conferred by this section in respect of any land except with the consent of the occupier of the land, or, if the land is unoccupied, the person who is entitled to occupy the land.

**17**—(1) The Minister may on any land acquired under section eight do such things as he thinks appropriate to prevent, arrest, or mitigate further earth movement in or near the land. Dealing with acquired land.

(2) Land acquired under section eight shall not be granted in fee to any person, but Her Majesty may—

- (a) let the land on such conditions as the Director of Mines may recommend; and
- (b) grant, for any estate or interest, an easement or profit a prender over or out of the land.

**18**—(1) The expenses incurred by the Treasurer under this Act in relation to the purchase or acquisition of land or in relation to the demolition or removal of any improvements shall be met from the Consolidated Revenue, which, to the necessary extent, is appropriated accordingly. Expenses of Act.

(2) Any other expenses incurred by the Treasurer or the committee under this Act shall be defrayed out of moneys provided by Parliament for the purpose.

**19**—(1) The committee may by notice in writing served on a person who appears to it to have an estate or interest in any of the prescribed lands or appears to it to have resided or be residing on Particulars of prescribed lands.

that land to furnish the committee, within such period as may be specified in the notice, with such particulars as it may require with respect to—

- (a) the estates or interests subsisting in that land and the date at which and manner in which they were acquired or created;
- (b) the persons who were or are residing on the land and the spouses of any such persons; and
- (c) the provision that has been made for the accommodation of any person who is or was residing on the land or the spouse of any such person.

(2) The committee may require a person on whom a notice has been served under this section to verify by a statutory declaration any particulars furnished by him to the committee, and any person who fails to comply with a requirement of the committee under this subsection is guilty of an offence.

(3) Any person on whom a notice has been served under this section who fails within the period specified in the notice to furnish the committee with such particulars as the committee requires is, unless those particulars are not within his knowledge, guilty of an offence.

(4) Any person on whom a notice has been served under this section who furnishes the committee with any particulars he knows to be false or does not believe to be true is guilty of an offence.

(5) Any person found guilty of an offence under this section is liable to a fine of one hundred and fifty dollars.

Authentic-  
ation and  
service of  
notices and  
other  
documents.

**20**—(1) Any notice or other document required or authorized by this Act to be made, given, or served by the committee shall be signed by a member of the committee and the secretary of the committee.

(2) A notice or other document required or authorized by this Act to be given to, or served on, the committee may be delivered to the secretary thereof or sent by post addressed to the committee, or the chairman or secretary thereof, at the ordinary place of business of the committee.

(3) A notice or other document required or authorized by this Act to be given to, or served on, any person by the committee may be—

- (a) delivered to him personally; or
  - (b) sent by post addressed to him at his usual or last known place of abode or business.
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## THE SCHEDULE. ●

(Section 3.)

## LAND DISTRICT OF DEVON — TOWN OF BEAUTY POINT.

All that land bounded by a line commencing at a point at high-water mark on the western bank of the River Tamar and on the prolongation of the western side of Oxford Street and running thence southerly across the esplanade and by the western side of Oxford Street aforesaid to its intersection with Henry Street at the north-western corner thereof, thence southerly to the intersection of Robert Street and Augustus Street at the south-eastern corner thereof thence easterly by the southern side of Augustus Street aforesaid across Flinders Street and by the southern boundary of 10 acres 1 rood 6 perches purchased by F. E. Evans to a point at high-water mark on the western bank of the River Tamar and thence by the high-water mark on that bank in a general north-north-westerly direction to the point of commencement.

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**PRISON.**


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**No. 79 of 1970.**AN ACT to amend the *Prison Act* 1868.

[11 January 1971.]

**B**E 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:—

**1**—(1) This Act may be cited as the *Prison Act* 1970.

Short title  
and citation.

(2) The *Prison Act* 1868, as subsequently amended, is in this Act referred to as the Principal Act.

**2** Section three of the Principal Act is repealed.

Controller  
of Prisons.

**3** After section four of the Principal Act the following sections are inserted:—

“4A—(1) The Governor may appoint a Controller of Prisons and a Deputy Controller of Prisons.

Appointment  
of Controller  
of Prisons  
and other  
prison  
officers.

“(2) The Governor may, for any gaol to which the Minister by order declares this subsection to apply, appoint a governor and a deputy governor.