

FIRE DAMAGE RELIEF.

No. 40 of 1970.

AN ACT to amend the *Fire Damage Relief Act* 1967. [1 December 1970.]

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, citation, and commencement.

1—(1) This Act may be cited as the *Fire Damage Relief Act* 1970.

(2) The *Fire Damage Relief Act* 1967, as subsequently amended, is in this Act referred to as the Principal Act.

(3) This Act shall commence on a day to be fixed by proclamation.

2—(1) Section nine of the Principal Act is repealed and the following section is substituted therefor:—

Erection of dwelling-houses in certain cases.

“9—(1) Where the owner of any land satisfies the Minister that a building on that land was destroyed by the fires and that, at the time of its destruction, the building (in this section referred to as ‘the destroyed building’)—

- (a) was occupied by the owner as his sole or principal place of residence;
- (b) was occupied by some other person as his sole or principal place of residence under an agreement (whether made orally or in writing) for the letting thereof; or
- (c) although unoccupied at the time of its destruction, was ordinarily occupied by a person other than the owner as the sole or principal place of residence of such a person under an agreement (whether made orally or in writing) for the letting thereof,

the Minister, in his absolute discretion, and upon and subject to such terms and conditions as he thinks fit, may, on the application of the owner, erect a dwelling-house or cause a dwelling-house to be erected on that land or on other land owned by him, being a dwelling-house of such a type and constructed to such a standard as the Minister may determine.

“(2) The Minister may erect a dwelling-house or cause a dwelling-house to be erected pursuant to this section whether or not the owner of the land on which it is erected is an eligible person within the meaning of the *Homes Act 1935*.

“(3) Where a dwelling-house is erected on any land pursuant to this section—

(a) a transfer (as defined in subsection (18) of this section) is of no force or effect unless it—

- (i) arises through the operation of any law relating to bankruptcy;
- (ii) is made by a person acting in the capacity of executor or administrator of the estate of the owner;
- (iii) is made by a mortgagee in the exercise of his rights under a mortgage instrument or by operation of law, except where the Minister has declared in writing to the Recorder of Titles or Registrar of Deeds that, in the opinion of the Minister, the transfer is made as the result of collusion between the mortgagor and the mortgagee;
- (iv) is made by the Sheriff under a writ of *fierifacias*, a bailiff of a court held under the *Local Courts Act 1896* or the *Mining Act 1929* under a warrant of execution, or a person authorized to seize and sell under section forty-nine of the *Maintenance Act 1967*, except where the Minister has declared in writing to the Recorder of Titles or Registrar of Deeds that, in the opinion of the Minister, the judgment or order enforced by the execution has been obtained as the result of collusion between the parties to the action or complaint in which the judgment or order was given or made;
- (v) is made pursuant to an order of the Supreme Court; or
- (vi) is made with the consent of the Minister;

(b) in a case to which paragraph (b) of subsection (1) of this section relates, the owner shall not, at any time within such period (not exceeding ten years) after the date on which the erection of the dwelling-house is completed as the Minister may determine, except with the consent of the Minister—

- (i) let the dwelling-house to a person other than the person by whom the destroyed building was occupied at the time of its destruction by the fires; or
- (ii) let the dwelling-house to any person on terms or conditions (whether as to the rent payable or otherwise) that are less favourable

to the person to whom it is let than the terms and conditions upon which the destroyed building was let at the time of its destruction by the fires; and

- (c) the owner shall, during the period referred to in subsection (18) of this section, keep the dwelling-house insured against fire and such other risks (if any), and in such sum, as the Minister may require, and punctually pay all premiums and money necessary for effecting and keeping up the insurance.

“(4) Upon deciding to accede to an application under subsection (1) of this section, the Minister shall forthwith—

- (a) cause to be lodged with the Recorder of Titles, if the land to which the application relates is under the *Real Property Act 1862*; or
- (b) cause to be delivered to the Registrar of Deeds, in any other case,

a notification, in the prescribed form and containing the prescribed particulars, stating that the land is affected by the provisions of paragraph (a) of subsection (3) of this section.

“(5) A notification under subsection (4) of this section shall, when registered by the Recorder of Titles or the Registrar of Deeds, as the case may be, take priority, subject to subsection (9) of this section, as if it were an instrument under the *Real Property Act 1862* or the *Registration of Deeds Act 1935* to secure upon the land thereby affected the debt due to the Crown under subsection (6) of this section.

“(6) Where a notification has been lodged or delivered under subsection (4) of this section, the costs and expenses incurred by the Minister in and in connection with the erection of the dwelling-house applied for shall become—

- (a) a debt owed by the owner to the Crown;
- (b) a charge on the land affected by the notification; and
- (c) payable, subject to subsection (7) of this section, on a transfer as defined in subsection (18) of this section within the relevant period referred to in the latter subsection.

“(7) Where a debt becomes payable under subsection (6) of this section, the Minister may leave the whole or part outstanding until the next transfer and so from transfer to transfer until the expiration of the relevant period referred to therein.

“(8) The Minister may accept less than the whole in satisfaction of a debt due under subsection (6) of this section.

“(9) An instrument lodged under the *Real Property Act 1862* or registered under the *Registration of Deeds Act 1935* before the commencement of the *Fire Damage Relief Act 1970* takes priority over any debt due to the Crown under subsection (6) of this section.

“(10) A notification lodged with the Recorder of Titles under subsection (4) of this section shall—

- (a) operate as a caveat lodged in accordance with section eighty-two of the *Real Property Act* 1862 forbidding the registration of any transfer of the land subject to the notification otherwise than as mentioned in subparagraphs (i) to (vi) of paragraph (a) of subsection (3) of this section as if the Minister were the caveator; and
- (b) remain in force until—
 - (i) the period determined by the Minister as mentioned in subsection (18) of this section in respect of the land has expired; or
 - (ii) it is sooner withdrawn pursuant to subsection (16) of this section,
 and is incapable of lapsing sooner.

“(11) Section eighty-three of the *Real Property Act* 1862 applies to a notification lodged under subsection (4) of this section as if subsections (1) and (4) to (8) of that section were omitted.

“(12) Where the Registrar of Deeds receives—

- (a) a notification pursuant to subsection (4) of this section;
- (b) a declaration pursuant to sub-paragraph (iii) or sub-paragraph (iv) of paragraph (a) of subsection (3) of this section; or
- (c) a notice pursuant to subsection (16) of this section,

he shall register it and make—

- (d) in his index; and
- (e) in the case of a declaration or notice, on the relevant notification,

such entries as he thinks proper to give notice of the notification, declaration, or notice to a person searching in the Registry of Deeds.

“(13) Where the Minister consents to a transfer of land to which a notification under subsection (4) of this section relates he shall—

- (a) where the transfer secures a debt on the same land and he intends the Crown's debt to be postponed to that debt—
 - (i) if the land to which the notification relates is subject to the provisions of the *Real Property Act* 1862, lodge with the Recorder of Titles in accordance with section fifty-two A of that Act an instrument varying the priority between the charge created by the notification and the memorandum of mortgage or incumbrance which is to have priority as if the notification were a registered mortgage under that Act; or
 - (ii) if the land to which the notification relates is not subject to the provisions of that Act, lodge with the Registrar of Deeds a memorial in the prescribed form varying the priority of the charge created by the notification and the security which is to have priority; and

(b) where the transfer either does not secure a debt on the same land, or he does not intend the Crown's debt to be postponed to a debt to be secured by the transfer—

- (i) if the land to which the notification relates is subject to the provisions of the *Real Property Act 1862*, lodge with the Recorder of Titles an instrument of consent in the prescribed form; or
- (ii) if the land to which the notification relates is not so subject, give to the person seeking his consent an instrument of consent in the prescribed form.

“(14) The Recorder of Titles or the Registrar of Deeds, as the case may be, shall register an instrument or memorial lodged under paragraph (a) of subsection (13) of this section as if it were a registrable instrument under the *Real Property Act 1862* or the *Registration of Deeds Act 1935*, as the case may be.

“(15) An instrument of consent lodged or given under paragraph (b) of subsection (13) of this section does not affect the priority of a debt due to the Crown over a debt secured by the transfer to which the instrument relates.

“(16) If—

- (a) after lodging or registering a notification under subsection (4) of this section, the Minister decides not to proceed with the erection of a dwelling-house on the land to which the notification relates; or
- (b) the debt referred to in paragraph (a) of subsection (6) of this section is paid or otherwise discharged within the relevant period referred to in subsection (18) of this section,

the Minister shall lodge with the Recorder of Titles or register with the Registrar of Deeds, as the case may be, a notice withdrawing the notification.

“(17) If the owner of any land on which a dwelling-house is erected pursuant to this section lets that dwelling-house in contravention of any of the provisions of paragraph (b) of subsection (3) of this section or fails to comply with the provisions of paragraph (c) of that subsection, he is guilty of an offence against this Act.

Penalty: In the case of an offence against paragraph (b) of that subsection, one thousand dollars or two years' imprisonment; or, in the case of an offence against paragraph (c) of that subsection, five hundred dollars.

“(18) In this section—

- 'owner' includes any person who, by virtue of section four of the *Lands Resumption Act 1957*, is authorized to sell and convey land to Her Majesty;
- 'transfer' means a transfer or conveyance, assignment, surrender, mortgage, incumbrance or charge of the land on which a dwelling-house is erected pursuant to this section, or of any estate or interest therein, made by the

owner for the time being within such period (not exceeding ten years) after the date on which the dwelling-house was completed as the Minister may, in each case, determine.”.

(2) This section shall be deemed to have commenced on the commencement of the Principal Act.

(3) For the purpose of subsection (2) of this section where a transfer as defined in subsection (18) of section nine of the Principal Act, as re-enacted by this Act, has occurred before the commencement of this Act—

- (a) if the land charged with the debt created by subsection (6) of that section, as enacted by this Act, has been so transferred to a person other than a purchaser for value in good faith, the Minister shall be deemed to have left the whole debt outstanding till the next such transfer after the commencement of this Act; and
- (b) if the land charged with that debt has been so transferred to a purchaser for value in good faith, the charge shall be deemed to have been extinguished, but the debt shall be deemed to be recoverable from the first owner or his personal representative.

3—(1) Section ten of the Principal Act is repealed and the following section is substituted therefor:—

“ 10—(1) Where the Minister is satisfied that—

- (a) a person has been rendered homeless by reason of the destruction by the fires of the dwelling-house in which he resided at the time of the fires;
- (b) that person is unable, by reason of his financial position or otherwise, to purchase or rent a suitable dwelling-house; and
- (c) it is desirable in the public interest that that person be provided with accommodation for himself and his family (if any),

Special powers of the Minister in relation to the housing of homeless persons.

the Director of Housing shall, if the Minister in his absolute discretion so directs, sell or let to that person on such terms and conditions as the Minister may determine any dwelling-house erected under the *Homes Act 1935* or on land acquired pursuant to this section.

“(2) The Director of Housing may for the purposes of this section use the powers conferred on him by Part III of the *Homes Act 1935* to purchase or take—

- (a) land on which a dwelling-house is erected; or
- (b) land on which no dwelling-house is erected and to erect a dwelling-house thereon.”.

(2) A letting by the Minister under section ten of the Principal Act before its amendment by this section shall be deemed to have become a letting by the Director of Housing.

(3) The Minister shall be deemed to have had power under subsection (2) of section ten of the Principal Act before its amendment by this section to purchase or take land on which to erect a dwelling-house.

(4) The Minister may, by an appropriate instrument, vest any lands purchased or taken under the power referred to in subsection (3) of this section in the Director of Housing for the purposes of section ten of the Principal Act and the Recorder of Titles or the Registrar of Deeds, as the case may require, shall register that instrument without fee.

Restriction on alienation of land in certain cases.

4 Section twenty-six of the Principal Act is amended—

- (a) by omitting from subsection (1) the symbols and numeral “(2)” and substituting therefor the symbols and numeral “(3)”;
- (b) by omitting from subsection (3) the symbols and numeral “(2)” and substituting therefor the symbols and numeral “(3)”;
- (c) by omitting from subsection (4) the words “subsections (6) and (7)” and substituting therefor the words “subsections (16) and (12)”.

CROWN LANDS (MISCELLANEOUS PROVISIONS).

No. 41 of 1970.

AN ACT to make provision for certain matters relating to certain Crown lands and certain other lands. [1 December 1970.]

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 and incorporation.

1—(1) This Act may be cited as the *Crown Lands (Miscellaneous Provisions) Act 1970*.

(2) This Act is incorporated, and shall be read as one, with the *Crown Lands Act 1935* (in this Act referred to as the Principal Act).

Reinstatement of purchasers of Crown lands.

2—(1) The Commissioner may, with the consent of the Governor, reinstate—

- (a) *Catherine Josephine O'Keefe*, of Launceston in this State, as the purchaser of the land specified in Part I of the first schedule; and