

Power to
make and levy
a special rate.

16 If the council borrows any amount under the authority of section fifteen, it may, once in every year, make and levy a special rate in accordance with the *Local Government Act 1906** on all land within the district, for the purpose of providing for payments to a sinking fund and of interest in respect of any amount so borrowed.

Inspection of
sanitary
works.

17 Any officer authorised by the council may, at any time except at night, enter premises in which sanitary works are installed under this Act in order to ascertain whether there is any waste or misuse of water therein and to examine the condition or state of repair of those works, and to ascertain whether there is, in respect of those works, any breach of the *Public Health Act 1935†* or of this Act.

By-laws.

18 The council may, and, on the recommendation of the Director, shall, make by-laws for the purposes of this Act, and in particular—

(a) prescribing an amount to be paid by every owner for whom work is carried out by the council under section six to meet the council's administrative costs in respect of the work, including a portion of its costs and expenses under this Act; and

(b) for the use, maintenance, and cleansing of sanitary works constructed under this Act.

* 6 Edw. VII. No. 31. For this Act, as amended to 1936, see Reprint of Statutes, Vol. V., p. 15. Subsequently amended by 2 Geo. VI. Nos. 8 & 33, 4 Geo. VI. No. 46, 5 Geo. VI. Nos. 20 & 42, 6 Geo. VI. Nos. 26 and 62, 7 & 8 Geo. VI. No. 88, 8 Geo. VI. No. 17, 9 Geo. VI. No. 12, 11 Geo. VI. Nos. 5 & 61, No. 22 of 1949, Nos. 68 & 70 of 1950.

† 26 Geo. V. No. 48. For this Act as amended to 1949 see Appendix E to the Annual Volume of Statutes for 1949. Subsequently amended by No. 61 of 1950.

HIGHWAYS.

No. 83 of 1951.

AN ACT to amend the Law relating to Highways.
[18 December, 1951.]

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 *Highways Act 1951*.

2 In this Act unless the contrary intention appears—

“highway” means a highway over land;

“register”, used as a verb, means register under the *Real Property Act 1862**.

Interpre-
tation.

3—(1) Whenever any land of the Crown reserved or acquired for a highway is opened to the public, the Governor shall, before the opening thereof to the public, or as soon as possible thereafter, by proclamation, notify the dedication thereof and the boundaries of the highway.

Creation of
highways by
the Crown.

(2) A proclamation under this section may, in an appropriate case, be combined with a proclamation under section seven of the *Roads and Jetties Act 1935*†.

(3) The Secretary for Lands shall record every such proclamation in the proper records in his charge and shall notify the council within the district of which the highway affected lies.

(4) No highway hereafter opened over land of the Crown shall vest in any highway authority, notwithstanding any enactment to the contrary, until the dedication thereof is notified pursuant to subsection (1) of this section.

(5) No reservation of Crown land or acquisition of land by the Crown for highway purposes shall, of itself, create a highway over that land.

(6) No use by the public, whether before or after the commencement of this Act, of land of the Crown for passing and repassing shall be deemed to create any highway over that land, except where the land is reserved for the purpose or has been so used instead of land nearby so reserved, in which case dedication shall be deemed whenever it would be deemed in the same circumstances over private land.

4—(1) The Crown, or any authority empowered to take land for a road, street, or other kind of highway, may, in lieu of taking land, acquire for the public the right to pass and repass over the land by the same process and form, as nearly as may be, as that by which it may take land.

Taking land
for highways.

(2) When a public right to pass and repass is acquired under this section, the Crown, or the authority acquiring the right for the public, may enter on the land subject to the right and carry out works thereon for the more convenient use of the highway, and, from its first entry until completion of the works, exclude all persons therefrom as if it were the owner thereof.

5 The *Real Property Act 1886*‡ is amended—

(a) by inserting after section twenty-eight the following heading and sections:—

Amendment
of *Real
Property Act*
1886.

* 25 Vict. No. 16. For this Act, as amended to 1936, see Reprint of Statutes, Vol. V., p. 1002. Subsequently amended by 11 & 12 Geo. VI. No. 83.

† 26 Geo. V. No. 82. For this Act, as amended to 1936, see Reprint of Statutes, Vol. VI., p. 463. Subsequently amended by 4 Geo. VI. No. 51, 5 Geo. VI. No. 13, 8 Geo. VI. No. 4, 9 Geo. VI. No. 27, 11 Geo. VI. No. 74, and No. 22 of 1951.

‡ 50 Vict. No. 8. For this Act, as amended to 1936, see Reprint of Statutes, Vol. V., p. 1103. Subsequently amended by 11 & 12 Geo. VI. No. 83.

"Highways.

Highways not
to be
registered as
estates.

" 28A. Where by any Act any manner of highway is vested in a highway authority which is not the proprietor of the subjacent land, the highway authority shall not be registered under the Principal Act as proprietor of the highway, and the Principal Act shall not apply to any extension, diminution, or transfer of the estate of that authority in the highway.

Registration
of highways.

" 28B.—(1) Where a highway exists across land under the Principal Act and is not shown on the grant or certificate of title thereof, the highway authority charged with the control or maintenance of the highway may obtain an entry of the highway on the grant or certificate, as provided by this section.

(2) The highway authority may tender a consent to registration of a highway to the registered proprietor, which, if the registered proprietor signs it, shall operate as a deed made between the registered proprietor, the highway authority, and the Recorder, and may lodge it with the Recorder, who, when the grant or certificate of the land is also lodged with him, shall make thereon and in the register book the appropriate entries to show the highway.

(3) A consent under subsection (2) of this section shall be in accordance with form IIC. in the schedule.

(4) If the registered proprietor refuses to sign the consent when tendered, the highway authority may apply by originating summons to a judge in chambers for a declaration that the highway exists as shown in the consent tendered and for an order that the registered proprietor produce his grant or certificate to the Recorder for amendment accordingly.

(5) Unless the registered proprietor satisfies the judge that he would have a good defence to an action to establish the whole or some part of the highway, as shown in the consent tendered, the judge shall make the declaration and order sought, but shall not award the highway authority any costs where the summons is undefended.

(6) If the registered proprietor so satisfies the judge, he shall direct the trial of an issue to determine the existence of so much of the highway as is in dispute, and thereupon the Supreme Court may make an appropriate declaration and order.

(7) The Supreme Court or a judge may, by consent, make any appropriate declaration in respect of the highway.

(8) Costs shall, except as provided in subsection (5) of this section, be in the discretion of the Court or judge.

(9) Any declaration made under this section may be lodged with the Recorder and dealt with in the same manner as a consent under subsection (2) of this section.

(10) Rules of Court may be made for the purposes of this section and may include provision for the joinder of all interested parties. "; and

(b) by inserting in the schedule, after form IIB., the following form:—

“ FORM IIC.

TASMANIA.

(Section 28B.)

CONSENT TO REGISTRATION OF A HIGHWAY.

I, *A.B.* being seised of an estate (*here state the nature of the estate*) in all that piece of land (*here describe land, referring the existing grant or certificate*) on which there is a highway for (*here state the manner of use*) over the land coloured (*colour*) on the plan endorsed hereon, hereby consent to the entry by the Recorder of Titles of this highway on my said grant (*or certificate*) and I agree with (*the highway authority*) to produce my said grant (*or certificate*) for that purpose.

In witness whereof I have hereunto signed my name this
day of 19 , in the presence of

Signed by the abovenamed *AB.*, this day of
in the presence of *XY.*”.

6—(1) Where the owner of land makes a grant in the form in the schedule to the highway authority having the control of an adjoining highway, it shall—

Licences to
embank
highways.

- (a) be deemed to create an interest in the grantor's land to which the powers thereby granted are accessory;
- (b) enure for the benefit of, and bind, any other highway authority succeeding to the control of the adjoining highway; and
- (c) if the grantor's land is registered, be capable of registration as if it were an easement over the grantor's land appurtenant to some estate of the highway authority and its successors in control in the adjoining highway, but shall not be deemed to be an easement for the purposes of section forty of the *Real Property Act 1862**.

(2) The Crown, or any highway authority empowered to take land for highway purposes, may acquire the rights flowing from such a grant as if those rights were land.

7—(1) Easements appurtenant to land over which there is a highway for the benefit of that highway shall, if the seisin of the highway is severed from the seisin of the subjacent land and vested in a highway authority, be annexed and appurtenant to the highway without any express mention or conveyance.

Easements
appurtenant
to highways.

(2) Easements appurtenant to a highway shall enure to any highway authority in which the highway is for the time being vested.

(3) An easement appurtenant to a highway may be granted to the highway authority for (naming the highway) without naming the highway authority.

* 25 Vict. No. 16. For this Act, as amended to 1936, see Reprint of Statutes, Vol. V., p. 1002. Subsequently amended by 11 & 12 Geo. VI: No. 83.

THE SCHEDULE.

(Section 6.)

This Indenture made, &c., between A.B. of, &c., (hereinafter called the grantor) and the (hereinafter called the highway authority).

Whereas the grantor is registered proprietor of, &c., (hereinafter called the grantor's land)

And whereas the highway authority has the control of a (*kind of highway*) called adjoining the grantor's land.

Now this indenture witnesseth that in consideration, &c., the grantor as beneficial owner (*or as the case may be*) doth hereby grant to the highway authority to enter upon the grantor's land and there to make along (*the highway*) a bank of earth clay or stone or of any of these mixed of sufficient height and width to support (*the highway*) at a height not greater in any part than feet above (*the datum point*) together with the weight of all traffic reasonably upon (*the highway*) and thereafter to enter from time to time and keep the bank so made in good repair Reserving to the grantor his heirs and assigns to go upon build up plant trees shrubs bushes and grass on and otherwise to use and enjoy the said bank in any manner not affecting the support given by it to (*the highway*) And the highway authority hereby covenants with the grantor his heirs and assigns that it will not cover more of the grantor's land with the said bank than is reasonably necessary to support (*the highway*) as aforesaid, that it will give one month's notice before beginning the said bank, that it will give seventy-two hours' notice before entering to repair the said bank, that it will do no unnecessary damage in making or repairing the said bank, and that it will make full compensation for any such unnecessary damage done by it.

In witness whereof, &c.

CLARENCE WATER.

No. 84 of 1951.

AN ACT to amend the *Clarence Water Act* 1941.
[18 December, 1951.]

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 citation.

1—(1) This Act may be cited as the *Clarence Water Act* 1951.

(2) The *Clarence Water Act* 1941*, as subsequently amended, is in this Act referred to as the Principal Act.

Power to
borrow.

2 Section three of the Principal Act is amended by omitting therefrom the word "Eighty" and substituting therefor the words "two hundred".

* 5 Geo. VI. No. 32, as amended by 11 Geo. VI. No. 32.