



TASMANIA

LAND TITLES LEGISLATION AMENDMENT ACT 1990

No. 48 of 1990

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**LAND TITLES LEGISLATION AMENDMENT ACT 1990**

No. 48 of 1990

AN ACT to amend the *Land Titles Act 1980*, the *Local Government Act 1962* and the *Registration of Deeds Act 1935*

[Royal Assent 16 January 1991]

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:—

PART 1**INTRODUCTION****Short title**

1—This Act may be cited as the *Land Titles Legislation Amendment Act 1990*.

Commencement

2—The provisions of this Act commence on a day or days to be proclaimed.

PART 2**AMENDMENTS TO LAND TITLES ACT 1980*****Principal Act (Part 2)**

3—In this Part, the *Land Titles Act 1980* is referred to as the Principal Act.

Section 3 amended (Interpretation)

4—Section 3 of the Principal Act is amended by inserting before the definition of “assurance fund” the following definition:—

“Assistant Recorder of Titles” means an Assistant Recorder of Titles appointed pursuant to section 4 (3A);

Section 4 amended (Appointment of Recorder, &c.)

5—Section 4 of the Principal Act is amended by inserting the following subsection after subsection (3):—

(3A) The Governor may appoint people employed under the *Tasmanian State Service Act 1984* to an office of Assistant Recorder of Titles and a person so appointed shall hold office in conjunction with a position or an office under that Act.

Section 6 amended (Powers and immunities of Deputy Recorder, &c.)

6—Section 6 of the Principal Act is amended by omitting “the Deputy Recorder” and substituting “the Deputy Recorder or a person appointed to the office of Assistant Recorder of Titles”.

Section 7 amended (Documents purporting to be sealed or signed by Recorder or Deputy Recorder, &c., to be received in evidence)

7—Section 7 of the Principal Act is amended by omitting “the Deputy Recorder” and substituting “the Deputy Recorder or a person appointed to the office of Assistant Recorder of Titles”.

* No. 19 of 1980. Amended by No. 46 of 1981, Nos. 9, 51 and 99 of 1982, No. 29 of 1984, No. 51 of 1985, No. 98 of 1986, No. 2 of 1987 and Nos. 5 and 11 of 1990.

Section 8 amended (Facsimile signature of Recorder or Deputy Recorder, &c.)

8—Section 8 of the Principal Act is amended as follows:—

- (a) by omitting “or the Deputy Recorder sign” and substituting “, the Deputy Recorder or an Assistant Recorder of Titles sign”;
- (b) by omitting “or Deputy Recorder may” and substituting “, Deputy Recorder or an Assistant Recorder may”;
- (c) by omitting “or Deputy Recorder,” and substituting “, Deputy Recorder or an Assistant Recorder,”;
- (d) by omitting “and Deputy Recorder” and substituting “, Deputy Recorder and Assistant Recorder”.

Section 17A inserted

9—After section 17 of the Principal Act, the following section is inserted:—

Land to be brought under this Act upon subdivision

17A—(1) On and after the appointed day the owner of land which is not registered land shall not subdivide any land—

- (a) held under the same title; or
- (b) included in one subsisting legal mortgage by conveyance of the fee simple—

unless the owner has made an application under section 11 to bring the land under this Act.

Penalty: Fine not exceeding 20 penalty units.

(2) In subsection (1) “**subdivide**”, in respect of land, means to divide the surface of that land legally by creating estates or interests giving separate rights of occupation.

Section 30 amended (Disposal of antecedent documents of title)

10—Section 30 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) (b) (iii) “destroy” and substituting “sell or destroy”;
- (b) by omitting from subsection (3) “destroying” and substituting “selling or destroying”;

- (c) by omitting from subsection (4) “returning” and substituting “selling, returning”;
- (d) by inserting after subsection (3) the following subsection:

(3A) If an application is made by a person who had an estate or interest in the land specified in a document at the time that document was lodged or deposited with the Recorder, the Recorder shall, if the Recorder considers that the document is of no value for the purpose of the Register, give possession of the document to that person free of charge.

Section 32 amended (Land may be described by a verbal description where no survey available)

11—Section 32 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (2)—

“Where, pursuant to subsection (1), land is described by a verbal description—

(a) an action shall not be brought against the Recorder”
and substituting—

“Where, pursuant to subsection (1), land is described by a verbal description, or where, under section 143E (1), a balance plan has been prepared from information contained in a verbal description—

(a) an action shall not be brought against the Recorder or the Surveyor who prepared the plan”;

- (b) by inserting after subsection (4) the following subsection:—

(4A) A balance plan prepared from information contained in a verbal description shall be endorsed “sketch by way of illustration only”.

Section 34A inserted

12—After section 34 of the Principal Act, the following section is inserted:—

Power to sell, destroy or otherwise dispose of certain documents

34A—(1) The Recorder may, with the written permission of the State Archivist given in accordance with section 20 (2) (b) of the *Archives Act 1983*, sell, destroy or otherwise dispose of any document or any class of document in the possession of the Recorder which the Recorder considers to be of no value for the purposes of the Register.

(2) Before selling or disposing of a document the Recorder shall mark it as no longer valid.

(3) For the purposes of this Act the Recorder is the Head of Agency for the purpose of section 3 of the *Archives Act 1983*.

(4) If an application is made by a person who had an estate or interest in the land specified in a document at the time that document was lodged or deposited with the Recorder, the Recorder shall, if the Recorder considers that the document is of no value for the purpose of the Register, give possession of the document to that person free of charge.

(5) In this section “**document**” includes an instrument, a dealing, map, plan and transparency made in accordance with section 34.

Section 36 amended (Searches of public records)

13—Section 36 of the Principal Act is amended as follows:—

(a) by omitting “or rejected.” from paragraph (d) and substituting “or rejected;”;

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

(e) any index of unregistered dealings kept in the office of the Recorder.

Section 37 amended (Copies of public records)

14—Section 37 of the Principal Act is amended as follows:—

(a) by omitting from subsection (2) (b) “such photocopying process” and substituting “such photocopying, facsimile or electronic transmission process”;

(b) by omitting from the definition of “certified copy” in subsection (3) everything after “that public record” and substituting the following:—

“that—

(a) is certified by the Recorder or some officer acting on the Recorder’s behalf to be a copy of the public record; or

(b) in the case of a copy created by a facsimile or electronic transmission process—has recorded upon it by that process an indication that the transmission creating the copy was initiated in an office of the Recorder and a record of the time and date of the transmission;”.

(c) by adding at the end the following subsection:—

(4) A certified copy created by a facsimile or electronic transmission process is to be taken for the purposes of section 68B of the *Evidence Act 1910* to be a machine copy bearing a certificate purporting to be signed by the Recorder that the copy is a reproduction of an original document in the custody of the Recorder.

Section 38 amended (Evidence of Register when kept in computer)

15—Section 38 of the Principal Act is amended as follows:—

- (a) by inserting in subsection (1) “or a certified copy of that print-out” after “public record” (third occurring);
- (b) by omitting subsection (2) and substituting the following subsection:—

(2) Where the Recorder is served with legal process to produce in court or before a person acting judicially a public record stored in a computer, it is sufficient answer to that process if the Recorder sends by prepaid post, or causes to be delivered, or transmits by a facsimile or electronic transmission process, to the registrar or proper officer of the court, or to the person concerned a document purporting to be—

- (a) a print-out of that public record certified to be a true reproduction of that public record; or
- (b) a certified copy of that print-out.
- (c) by inserting after the definition of “certified” in subsection (3) the following definition:—

“**certified copy**”, in respect of a print-out, has the same meaning as in section 37 as if the print-out were a public record;

Section 52 amended (Priority notices)

16—Section 52 of the Principal Act is amended by omitting from subsection (2) (b) “30 days” and substituting “60 days”.

Part XA inserted

17—The Principal Act is amended by inserting the following Part after section 143:—

PART XA**APPROVAL OF PLANS****Recorder may specify format, &c., of certain plans**

143A—A plan deposited or lodged with the Recorder in accordance with this or any other Act shall comply with the requirements of the Recorder, expressed generally or for the particular case, and the plan shall, if the Recorder so requires, be made from an actual survey and certified as correct by a surveyor registered and certified under the *Land Surveyors Act 1909*.

Recorder may require information, &c., in respect of plans, &c.

143B—(1) Where—

- (a) in accordance with this or any other Act a plan is deposited or lodged with the Recorder; and
 - (b) the Recorder is of the opinion that the plan does not comply with the requirements of this or any other Act—
- the Recorder may by notice in writing require—
- (c) the plan or any accompanying document to be amended; or
 - (d) additional information specified by the Recorder to be supplied—

within 3 months of the receipt of the notice or within such further period as the Recorder may allow.

(2) Where the Recorder requires a person to amend a plan or accompanying document or to supply additional information a prescribed fee is payable unless the Recorder is satisfied that—

- (a) no error was made by anyone; or
- (b) any error made was minor in nature.

(3) If a person fails—

- (a) to comply with a requirement specified in a notice; or
- (b) to pay the prescribed fee—

within 3 months of the receipt of the notice or such further period as the Recorder may allow the Recorder may reject the plan and any accompanying document.

Recorder may correct errors on plans

143C—(1) The Recorder may, of the Recorder's own motion, correct a patent error on a plan or accompanying document deposited or lodged with the Recorder in accordance with this or any other Act.

(2) The Recorder may, before correcting an error, give, to such people as the Recorder considers appropriate, at least 7 days written notice of the Recorder's intention to correct the error.

(3) A person may—

(a) on payment of any prescribed fee; and

(b) before the end of the period specified in a notice—

object to the correction proposed to be made by the Recorder.

(4) On receipt of an objection the Recorder may—

(a) decide not to make the proposed amendment; or

(b) amend the plan or accompanying document in accordance with the objection; or

(c) reject the plan and any accompanying document.

(5) If the Recorder amends a plan without the approval of the person who deposited or lodged it the Recorder shall add to the plan a note to the effect that it has been amended by the Recorder.

Recorder may require substitute plans

143D—(1) If the Recorder is of the opinion that a plan or accompanying document deposited or lodged with the Recorder in accordance with this or any other Act is, by reason of an amendment made in accordance with this Part inconvenient for subsequent use, the Recorder may by written notice require a fresh plan or accompanying document to the same effect as the original plan or accompanying document to be deposited or lodged with the Recorder within 30 days or such further period as the Recorder may allow.

(2) A fresh plan or accompanying document deposited or lodged with the Recorder has effect as if it had been deposited or lodged in place of, and at the same time as, the original plan or accompanying document.

(3) If a person fails to comply with a requirement specified in a notice within the time specified in that subsection the Recorder may reject the plan or accompanying document, or both such plan and document.

Balance plans to be provided

143E—(1) Where a plan deposited or lodged with the Recorder in accordance with this Part relates to—

- (a) part of the land included in a folio in the Register; or
- (b) part of the land included in a title—

the Recorder may refuse to accept the plan unless there is also deposited or lodged with the Recorder a plan of the remainder of the land included in that folio or title, as the case may be.

(2) A reference in subsection (1) to a plan deposited or lodged with the Recorder includes a plan lodged or deposited with the Recorder by or on behalf of the Crown.

Notice of rejection of plan to be given

143F—If, in accordance with this Part, the Recorder rejects a plan or any accompanying document the Recorder shall give notice accordingly and shall retain one-half of any prescribed fee paid when the plan or accompanying document was deposited or lodged with the Recorder.

Giving of notice

143G—(1) Where the Recorder is required to give a written notice under this Part the notice is sufficiently given for the purposes of this Part if it is given to—

- (a) the person required to deposit or lodge the plan or accompanying document with the Recorder; or
- (b) the person who actually deposited or lodged the plan or accompanying document with the Recorder; or
- (c) a person who the Recorder is satisfied is authorized to receive the notice.

(2) Where the Recorder gives notice under this Part in respect of a sealed plan, stratum plan or a building title plan the Recorder shall serve a copy of the notice on the municipal corporation that sealed the plan.

(3) Where, in accordance with this or any other Act, a sealed plan, stratum plan or a building title plan is deposited or lodged with the Recorder and—

- (a) the Recorder rejects the plan in accordance with this Part; or

(b) the Recorder is informed that the plan has been withdrawn—

the Recorder shall forward the plan to the municipal corporation that sealed it so that the plan may be cancelled.

(4) If a person upon whom a notice is to be served in accordance with this Part is a facsimile service subscriber or a subscriber to any electronic transmission service the notice is sufficiently served if a copy of the notice is sent via that service to that person's service number.

Accompanying document defined

143H—(1) A reference in this Part to an accompanying document is a reference to any document that is required by this or any other Act to be annexed to, attached to or deposited or lodged or presented with any plan that is required to be deposited or lodged with the Recorder under this or any other Act.

(2) When, in accordance with this Part, the Recorder rejects a plan the Recorder shall be taken to have rejected any accompanying document deposited or lodged with that plan.

PART 3

AMENDMENT TO LOCAL GOVERNMENT ACT 1962*

Amendment to *Local Government Act 1962*

18—Section 464 of the *Local Government Act 1962* is amended as follows:—

(a) by omitting from subsection (9) paragraph (c) and substituting the following paragraph:—

(c) the amount of the fees payable to the Corporation and, unless the plan is marked “Early Issue”, the prescribed fees payable to the Recorder of Titles in accordance with the *Land Titles Act 1980*.

(b) by inserting after subsection (10) the following subsection:—

* No. 67 of 1962. For this Act as amended to 1 February 1989 see the continuing Reprint of Statutes. Subsequently amended by Nos. 3 and 5 of 1990.

(10A) Where an owner has lodged a final plan at a municipal office in accordance with subsection (9) and the plan has been marked “Early Issue” that owner shall, within 7 days after lodging that plan, or such extension of that period as the Recorder of Titles may allow, lodge with the Recorder of Titles a copy of each document referred to in subsection (9) (a) and (b) together with the prescribed fee payable under the *Land Titles Act 1980* and any other documents the Recorder may require for the purposes of that Act.

(c) by inserting after subsection (11) the following subsections:—

(11A) Where the Corporation is not satisfied that a final plan marked “Early Issue” complies with all statutory requirements and accordingly declines to fix its seal to the plan, the Corporation shall, within 7 days after so declining to fix its seal inform the Recorder of Titles accordingly.

(11B) Where a plan has been lodged with the Recorder of Titles in accordance with subsection (10A) and—

(a) the Recorder of Titles has been informed, in accordance with subsection (11A), that the Corporation has declined to seal the plan; or

(b) a year or such extension of that period as the Recorder may allow has expired since the plan was lodged with the Recorder—

the Recorder shall—

(c) reject the plan; and

(d) return to the person who lodged the plan with the Recorder one half of the prescribed fee paid to the Recorder in accordance with subsection (10A).

PART 4

AMENDMENTS TO REGISTRATION OF DEEDS ACT 1935*

Principal Act (Part 4)

19—In this Part, the *Registration of Deeds Act 1935* is referred to as the Principal Act.

* 26 Geo. V No. 24. For this Act as amended to 1 September 1977 see the continuing Reprint of Statutes. Subsequently amended by No. 19 of 1980, No. 29 of 1984 and No. 5 of 1990.

Section 5 amended (Interpretation)

20—Section 5 of the Principal Act is amended by omitting the definition “Registrar”.

Section 7 substituted

21—Section 7 of the Principal Act is repealed and the following section is substituted:—

Administration of Act

7—(1) The administration of this Act is vested in the Recorder of Titles appointed under section 4 (1) of the *Land Titles Act 1980* (in this Act referred to as “**the Registrar**”).

(2) The provisions of sections 6, 7 and 8 of the *Land Titles Act 1980* relating to things done by the Deputy Recorder or an Assistant Recorder under that Act have effect in respect of any thing done by the Deputy Recorder or an Assistant Recorder under this Act.

(3) A reference to the Registrar of Deeds in this or any other Act or document shall be read as a reference to the Recorder of Titles.

Part III substituted

22—Part III of the Principal Act is repealed and the following Part is substituted:—

PART III**REGISTRATION OF PLANS****Plans to be lodged with Recorder of Titles**

28—Where in accordance with this or any other Act a plan is required to be lodged, deposited or registered with the Registrar it shall be lodged or deposited with the Recorder of Titles in accordance with the *Land Titles Act 1980*.

Section 43A amended (Searches by, and copies of documents, &c., for, the public)

23—Section 43A of the Principal Act is amended as follows:—

(a) by omitting subsections (2) and (3) and substituting the following subsections:—

(2) The Registrar shall, on application and payment of the prescribed fee, furnish a person with a certified copy of an instrument, will, letters of administration, probate, document, survey plan or record kept by the Registry, including any such document awaiting registration.

(3) A copy for the purpose of subsection (2) may, in the Registrar's discretion, be—

(a) in writing; or

(b) made by such photocopying, facsimile or electronic transmission process as the Registrar determines; or

(c) made partly in accordance with paragraph (a) and partly in accordance with paragraph (b).

(b) by inserting before the definition “machine copy” in subsection (4) the following definition:—

“**certified copy**”, in relation to a document of a type referred to in subsection (2), means a copy of that document, that—

(a) is certified by the Registrar or some officer acting on behalf of the Registrar to be a copy of that document; or

(b) in the case of a copy created by a facsimile or electronic transmission process—has recorded upon it by that process an indication that the transmission creating the copy was initiated in an office of the Registrar and a record of the time and date of the transmission;

(c) by adding at the end the following subsection:—

(5) A certified copy created by a facsimile or electronic transmission process is to be taken for the purposes of section 68B of the *Evidence Act 1910* to be a machine copy bearing a certificate purporting to be signed by the Registrar that the copy is a reproduction of an original document in the custody of the Registrar.