

(12) This section applies to and in relation to industrial awards made before or after the commencement of this Act.

(13) Nothing in this section applies to or in relation to an industrial award or any provision of an industrial award that is applicable to employees who are engaged in work essentially or usually performed by females but in which male employees may also be engaged.

Regulations.

4 The Governor may make regulations under this Act.

THE SCHEDULE.

(Section 3.)

FIRST COLUMN.	SECOND COLUMN.
Year.	Percentage of basic wage for adult males which is to be paid to females.
Year commencing on 1st January 1968	Eighty per cent
Year commencing on 1st January 1969	Eighty-five per cent
Year commencing on 1st January 1970	Ninety per cent
Year commencing on 1st January 1971	Ninety-five per cent
Year commencing on 1st January 1972 and each subsequent year	One hundred per cent

REAL PROPERTY.

No. 61 of 1966.

AN ACT to amend the *Real Property Act 1862*, the *Real Property Act 1886*, and certain other enactments. [22 December 1966.]

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—(1) This Act may be cited as the *Real Property Act 1966*.

Short title,
citation, and
commence-
ment.

(2) The *Real Property Act* 1862, as subsequently amended, is in this Act referred to as the Principal Act.

(3) This Act shall commence on the first day of February 1967.

2 Section five of the Principal Act is amended—

Land Titles'
Commis-
sioners.

- (a) by omitting therefrom the words “for the bringing of land under this Act” and substituting therefor the words “which (subject to subsection (2) of section eleven) they are authorized by this Act or any other Act to investigate and deal with”;
- (b) by omitting therefrom the words “specified in Part I of the second schedule” and substituting therefor the word “prescribed”; and
- (c) by adding at the end thereof the following subsection:—

“(2) At a meeting of the Commissioners two Commissioners constitute a quorum, and the Recorder, if present, shall preside at the meeting.”.

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

“9 Notwithstanding anything contained elsewhere in this Act—

Facsimile
signature of
Recorder or
Deputy
Recorder.

(a) the Recorder may—

- (i) himself attach a facsimile of his signature; or
- (ii) authorize any officer or clerk to attach a facsimile of his signature or of the signature of the Deputy Recorder,

to any certificate of title or any memorial or other entry in the register book or any registered instrument or duplicate thereof, and the facsimile so attached has the same force and effect as if the Recorder or Deputy Recorder, as the case may be, had personally signed the certificate, memorial, entry, instrument, or duplicate;

- (b) a certificate of title or a memorial or other entry in the register book or a registered instrument or duplicate thereof bearing a facsimile of the signature of the Recorder or Deputy Recorder shall be received as evidence that the facsimile was attached by the Recorder or Deputy Recorder as his signature or by an officer or clerk authorized by the Recorder so to do, unless the contrary is shown; and
- (c) it is not necessary for the signature of the Recorder or Deputy Recorder to be witnessed, whether it is written by himself or attached in facsimile by him or by any officer or clerk who is authorized by the Recorder so to do.

Certain officers not to engage in private practice.

“10 No person, while holding the office of Recorder, Deputy Recorder, Commissioner, or solicitor, shall engage in private practice as a legal practitioner.”

4 After section twelve of the Principal Act the following sections are inserted:—

Unalienated land, when alienated in fee, to be subject to this Act.
26 Vict., Sess. 2, No. 1, s. 3. Cf. No. 6399 (Vic.), s. 8.

“13 Except as provided in subsections (3) and (4) of section fourteen, all unalienated lands of the Crown, when alienated in fee, become subject to the provisions of this Act.

Transfers to be used instead of grant deeds.

“14—(1) Except as provided in subsections (3) and (4) of this section, land of the Crown that is not under the provisions of this Act shall not be granted by letters patent but shall be granted by transfer in the prescribed form as if it had already been brought under this Act.

“(2) The Recorder, upon receiving a transfer under subsection (1) of this section, shall register a certificate of title in the name of the transferee, and thereupon the transfer shall be deemed to be duly registered.

“(3) If the Recorder is of opinion that a piece of land—

- (a) proposed to be granted by the Crown; or
- (b) of which a transfer under this section has been lodged,

is too small to be a separate parcel and cannot conveniently be included with other land under this Act in a consolidated title, he may require the grant of that piece of land to be effected by letters patent as if this section had not been enacted.

“(4) When the Crown grants an easement to be appurtenant only to land that is not under the provisions of this Act, the grant of that land shall be effected by letters patent as if this section had not been enacted.

“(5) Where land is granted by letters patent in pursuance of subsection (3) or subsection (4) of this section—

- (a) the letters patent shall be delivered to the grantee; and
- (b) a memorial of the letters patent, in such form as may be prescribed under the *Registration of Deeds Act 1935*, shall be registered in the Registry of Deeds.

“(6) On the registration of letters patent as provided in subsection (5) of this section, the letters patent shall be deemed to have been duly enrolled of record.”

5 Sections fifteen to twenty-nine of the Principal Act are repealed and the following sections are substituted therefor:—

“15—(1) Subject to subsection (2) of this section, land may be brought under the provisions of this Act on the application in writing in the prescribed form of any of the following persons, namely:—

- (a) The person claiming to be the owner of the fee simple in possession either at law or in equity;
- (b) The person claiming to be entitled to a grant in fee from the Crown of any land under or by virtue of a contract with the Crown (other than a contract under the *Crown Lands Act 1935*), or in equity and good conscience;
- (c) The person claiming a life estate in possession, not being a lease for life or lives;
- (d) The guardian of an infant or the committee of the estate of a patient appointed under Part VI of the *Mental Health Act 1963*, if—
 - (i) the infant or patient would have been entitled, if not under disability, to apply under paragraph (a), or paragraph (b), or paragraph (c) of this subsection; and
 - (ii) the application contains a direction that the certificate of title is to be registered in the name of the infant or patient; or
- (e) An agent holding power of attorney authorizing the sale of a freehold estate in any land in the name of the proprietor of that land, unless the power expressly prohibits his making such an application.

Applications to bring land under this Act.
26 Vict., Sess. 2, No. 1, ss. 4, 9.
Cf. No. 6399 (Vic.), s. 9.

“(2) No application under this section shall be made by—

- (a) a person claiming to be entitled to an undivided share of any land, unless the person who appears to be entitled to the other undivided shares of the land joins in the application with a view to bringing the entirety under the provisions of this Act;
- (b) a mortgagor, unless the mortgagee consents thereto;
- (c) a mortgagee, unless at the date of his application the mortgagor is in default in the payment of the interest or principal sum secured by the mortgage and the mortgagee directs that the certificate of title shall be registered in the mortgagor's name, subject to the mortgage; or
- (d) a person claiming a life estate in possession unless he is selling or exchanging the fee simple pursuant to a provision of the *Settled Land Act 1884* or of the *Settled Land Act 1911* and directs

that the certificate of title shall be registered in the name of the purchaser or person to whom the fee simple is given in exchange, or unless—

- (i) where there is a vested estate in expectancy in the land (other than an estate vested in an infant), the application contains a direction that a certificate of title shall also be registered in the name of the person entitled to that estate; and
- (ii) where there is a vested estate in expectancy in the land to which an infant is entitled, or there is an estate in expectancy in the land capable of taking effect on the happening of a future event, the application contains a direction that a certificate of title to the estate in expectancy shall be registered in the name of the trustee of the settlement under which the estate in expectancy was created,

so that upon the granting of the application and compliance with the direction, the whole fee simple in the land is brought under the provisions of this Act.

“(3) For the purposes of paragraph (c) of subsection (2) of this section, a statement by a mortgagee in his application that the mortgagor is in default in the payment of the interest or principal sum secured by the mortgage may be accepted by the Recorder, without further proof, as sufficient evidence that the mortgagor is in default.

“(4) The applicant and his mortgagee (if any) shall leave with the Recorder all instruments in his possession, or under his control, constituting, or in any way affecting, his title and also, if required, an abstract of his title.

“(5) The applicant or mortgagee shall present with the instruments referred to in subsection (4) of this section an itemized list thereof in duplicate with a form of receipt thereon, and the Recorder shall cause one copy of the list to be signed as an acknowledgement that he has received the instruments, and return that copy to the person by whom the instruments were lodged.

“(6) No fee is payable on lodging an application under this section.

“(7) A chamber in a building standing on land that is not under the provisions of this Act shall not be brought under those provisions except where the land itself, with the building, is being brought under those provisions.

“16—(1) The Recorder may—

- (a) do or require to be done such things as will, in his opinion, justify him in bringing the land to which an application under section fifteen relates under the provisions of this Act; and

How applica-
tion dealt
with.

26 Vict.,
Sess. 2, No.
1, s. 8.

- (b) subject to sections seventeen and eighteen, bring the land under the provisions of this Act by registering a certificate of title thereto in accordance with section nineteen.

“(2) Subsection (1) of this section applies whether or not the land to which an application under section fifteen relates has been alienated from the Crown and, where there appears to be no deed of grant or transfer from the Crown, no such deed or transfer is necessary before the Recorder registers a certificate of title.

“(3) In considering an application under section fifteen in respect of land unalienated in fee from the Crown the Recorder shall be guided by equity and good conscience only and by the best evidence that can or may be procured, although not such as he might require in other cases.

“(4) Where an application under section fifteen relates to land in respect of which a judgment has been registered under the *Registration of Deeds Act 1935*, the Recorder, upon registering a certificate of title thereto, shall enter a caveat to protect the interest of the judgment creditor, and shall give notice of the entry of the caveat to the judgment creditor, or to the solicitor who registered the judgment, and to the applicant.

“(5) A caveat entered pursuant to subsection (4) of this section—

- (a) may be withdrawn by the Recorder upon proof to his satisfaction that the judgment has been satisfied, or by the person to whom the money payable under the judgment is payable, or by his solicitor for him and on his behalf;
- (b) unless sooner withdrawn or lapsed, lapses at the expiration of five years after the date of the first registration of the judgment, or the latest re-registration thereof before the registration of the certificate of title, whichever is the later date; and
- (c) is otherwise subject to the same provisions as if it were a caveat entered by a judgment creditor.

“(6) When land is brought under the provisions of this Act pursuant to an application under section fifteen, the Recorder shall request the Registrar of Deeds to make an entry of that fact in the index kept under the *Registration of Deeds Act 1935* and the Registrar of Deeds shall comply with that request.

“17—(1) Where an application under section fifteen is based on a claim by possession under the *Limitation of Actions Act 1836* or the *Limitation of Actions Act 1875* or is in respect of land unalienated in fee from the Crown, the applicant shall post on the land or at such place as the Recorder

Notices.
25 Vict. No.
16, s. 19.
57 Vict., No.
5, s. 3.
No. 6399
(Vic.), s. 11.

directs and keep so posted for not less than twenty-one days before the granting of the application a notice of the application in such form as the Recorder directs.

“(2) The Recorder may refuse to register a certificate of title in a case to which subsection (1) of this section applies until it has been proved to his satisfaction that the requirements of that subsection have been complied with.

“(3) A notice under this section shall specify a time (being not less than twenty-one days) after the expiration of which the Recorder may, unless a caveat is lodged forbidding it, bring the land under the provisions of this Act.

Caveats by persons interested.

25 Vict., No. 16, ss. 22-24. No. 6399 (Vic.), s. 12.

“18—(1) A person who claims an estate or interest in land that is the subject of an application under section fifteen may, before the registration of the certificate of title, lodge a caveat with the Recorder in accordance with the prescribed form forbidding the bringing of the land under the provisions of this Act.

“(2) The Recorder, upon lodgment of a caveat pursuant to subsection (1) of this section, shall notify the applicant thereof and shall not proceed with the application until—

- (a) the caveat has been withdrawn or has lapsed as provided in subsection (4) of this section; or
- (b) a judgment or order in the matter has been obtained from the Supreme Court or a judge.

“(3) The applicant may, if he thinks fit, summon the caveator to attend before the Supreme Court or a judge to show cause why a caveat lodged pursuant to subsection (1) of this section should not be removed, and the Court or judge may make such order in the matter, either *ex parte* or otherwise, and such order as to costs, as the Court or judge thinks fit.

“(4) Upon the expiration of a period of thirty days after the lodgment thereof a caveat lodged pursuant to subsection (1) of this section lapses and ceases to have any effect unless the caveator has, within that period, commenced proceedings in a court of competent jurisdiction to establish his title to the estate or interest specified in the caveat and has given written notice thereof to the Recorder, or has obtained and served on the Recorder an injunction or order of the Supreme Court or a judge restraining the Recorder from bringing the land under the provisions of this Act.

“(5) After a caveat lodged pursuant to subsection (1) of this section has lapsed, no caveat shall be lodged by or on behalf of the same person in respect of the same estate or interest, except by leave of the Supreme Court or a judge.

Form and effect of certificate of title.

25 Vict., No. 16, s. 11 (5). No. 6399 (Vic.), s. 23. 15 Geo. 5 c. 21, s. 13 (Imp.).

“19—(1) On the making of an application under section fifteen, if, in the opinion of the Recorder—

- (a) the applicant is entitled to the estate he claims; or
- (b) the applicant's title is open to objection, but is nevertheless a title the holding under which will not be disturbed,

the certificate of title to be registered pursuant to section sixteen shall be a certificate of title in form III in the first schedule (in this section referred to as 'an ordinary certificate of title').

"(2) Where on an application under section fifteen the applicant claims a life estate in possession, the Recorder may refuse to register a certificate of title for that estate unless he also approves the title to, and registers such certificates of title for, the estates in expectancy in the land as are necessary to ensure that the whole fee simple therein is under the provisions of this Act.

"(3) On the making of an application under section fifteen, if the applicant—

- (a) fails to satisfy the Recorder that he is entitled to the estate he claims;
- (b) fails to do or prove to the Recorder's satisfaction such things or matters as the Recorder may have required him to do or prove in order to justify the registration of an ordinary certificate of title; or
- (c) requests the Recorder to register a qualified certificate of title,

the Recorder may, in his discretion, refuse the application, or bring the land under the provisions of this Act by registering a qualified certificate of title in accordance with subsection (5) of this section.

"(4) Where on an application under section fifteen the applicant requests the Recorder to register a qualified certificate of title, the Recorder may comply with that request without causing the title of the applicant to be investigated.

"(5) A qualified certificate of title shall be a certificate of title in form III in the first schedule, but bearing one of the following cautions, namely:—

- (a) A caution that the registered proprietor holds his estate subject to all estates and interests in the land created before the land was brought under the provisions of this Act (in this section referred to as 'a general caution'); or
- (b) A caution that the registered proprietor holds his estate subject to any defect in title or the estate or interest of any person the existence or probable or possible existence of which is indicated in a minute signed by the Recorder and filed in his office (in this section referred to as 'a particular caution').

"(6) Except—

- (a) where an applicant under section fifteen has requested the Recorder to register a qualified certificate of title; or

- (b) where land is being brought under the provisions of this Act pursuant to any provision of section four hundred and seventy-seven A of the *Local Government Act 1962*,

the Recorder, if he proposes to register a qualified certificate of title pursuant to subsection (3) of this section, shall notify the applicant of his proposal and, if the applicant is aggrieved by that proposal, section one hundred and ten applies as if the Recorder's proposal were a refusal mentioned in paragraph (a) of subsection (1) of that section.

“(7) The Recorder's minute for the purpose of paragraph (b) of subsection (5) of this section—

- (a) shall set forth any defect in the title or any estate or interest or probable or possible estate or interest of any person in the land and the acts or matters that ought to be done or proved and the requisitions that ought to be complied with in order to justify the cancellation of the caution entered on the certificate of title;
- (b) does not form part of the register book; and
- (c) shall be made available for inspection by any person on payment of the prescribed fee.

“(8) The Recorder may revise and amend a minute under subsection (5) of this section so as to indicate which of the defects, estates, or interests referred to in the minute have been removed or resolved and which of the acts, matters, or requisitions so referred to have been done, proved, or complied with.

“(9) Where a certificate of title bears a general caution, the Recorder may at any time cancel that caution and substitute therefor a particular caution.

“(10) Except as otherwise provided in this section, the provisions of this Act relating to certificates of title and to land comprised in a certificate of title, so far as the circumstances of the case will admit, apply not only with respect to ordinary certificates of title but also with respect to qualified certificates of title and to the land comprised therein, and to the registration of instruments and other matters affecting qualified certificates of title, and a qualified certificate of title is evidence as to title in all respects as if it were an ordinary certificate of title except that, in every such case—

- (a) if the qualified certificate bears a general caution, the land comprised therein is subject to every estate and interest therein created before the date on which the land was brought under the provisions of this Act; and
- (b) if the qualified certificate bears a particular caution, the land comprised therein is subject to any defect in title or any estate or interest of any person the existence or probable or possible existence of which is indicated in the Recorder's minute,

and the provisions of this Act shall, with such adaptations as are necessary, be construed and have effect accordingly.

“(11) The Recorder may, upon production to him of such evidence of title as he deems sufficient, cancel the caution appearing on a qualified certificate of title.

“(12) Where it appears to the Recorder that the proprietor of an estate or interest in the land comprised in a qualified certificate of title has suffered judgment for the recovery of the land or a declaration, injunction, or other judgment destructive of that proprietor’s estate or interest wholly or in part, the Recorder shall call in (in accordance with subsection (15) of this section) and cancel or correct that certificate of title, as the circumstances may require.

“(13) Subject to subsection (14) of this section, a person who claims an estate of freehold in the whole or any part of the land comprised in a qualified certificate of title of which some other person is the registered proprietor may apply to have the land brought under the provisions of this Act as if that certificate had not been registered, and the Recorder, if satisfied of the grounds of his claim, shall—

- (a) cancel or correct the folium of the register book constituted by the qualified certificate of title;
- (b) register a certificate of title in the name of the applicant; and
- (c) call in (in accordance with subsection (15) of this section) the duplicate qualified certificate of title and cancel or correct it in the same way as that in which he has cancelled or corrected the folium of the register book pursuant to paragraph (a) of this subsection.

“(14) Where a qualified certificate of title bears a particular caution, a person may apply under subsection (13) of this section only if he claims an estate or interest the existence or probable or possible existence of which is indicated in the Recorder’s minute or arising from a defect in title indicated in the minute.

“(15) The Recorder may at any time by written notice require a person having the possession or control of an instrument constituting, or in any way affecting, the title to any land that the Recorder has brought or proposes to bring under the provisions of this Act to surrender those instruments to the Recorder within a reasonable time to be specified in the notice, and if that person refuses or neglects to comply with the notice the Recorder may proceed to enforce the notice as provided in section eighteen of the *Real Property Act 1893*.

“(16) Where a certificate of title to any land bears a general caution or a particular caution, the Recorder, after the expiration of thirty years from the date on which that land was brought under the provisions of this Act, shall, when the certificate is produced to him for any purpose, cancel the caution thereon but the Recorder shall first inquire whether any person is in possession of the land adversely to the title

of the registered proprietor and, if he is not satisfied that no person is so in possession, may refrain from or delay cancelling the caution.

“(17) An instrument that affects any land brought under the provisions of this Act by the registration of a qualified certificate of title and that might have been registered under the *Registration of Deeds Act 1935* if the land had not been brought under those provisions may, in the discretion of the Recorder, be registered under this Act notwithstanding that it is not an instrument in a form prescribed by or under this Act, and when registered has effect as if it were such an instrument.

“(18) The Recorder may, if he thinks fit, notify a person by whom an application to bring land under the provisions of this Act is made that he will not register an ordinary certificate of title unless the applicant makes a contribution to the assurance fund of so much as the Recorder states to be sufficient by reason of—

- (a) the non-production of a document affecting title;
- (b) the imperfect nature of the evidence of title; or
- (c) any uncertain or doubtful claim or demand arising on the title,

and the applicant may either so contribute and receive an ordinary certificate of title or not so contribute and receive a qualified certificate of title or withdraw his application.

Other estates and interests when land brought under the provisions of this Act.

“20—(1) When land is brought under the provisions of this Act subject to a common law mortgage in fee, the Recorder shall—

- (a) register the mortgage under this Act notwithstanding that it is not an instrument in the form of a memorandum of mortgage under this Act, and when registered it has effect as if it were such an instrument; and
- (b) return the mortgage deed, if produced to him, to the mortgagee.

“(2) Where, upon the bringing of land under the provisions of this Act, it appears to the Recorder that an instrument registered under the *Registration of Deeds Act 1935* creates an estate or interest in that land (other than the estate claimed by the applicant) that could have been created by an instrument registered under this Act if at the time of its creation the land were under the provisions of this Act, he may register that instrument as if it were the appropriate instrument under this Act to create the estate or interest, notwithstanding that—

- (a) it is not in the form of an appropriate instrument; and
- (b) it discloses the existence of other estates or interests that may not otherwise be registered under this Act.

“(3) Subsection (2) of this section allows the registration of an equitable mortgage or charge as a legal mortgage or incumbrance.

“(4) Where an instrument is registered pursuant to this section—

(a) the Recorder shall—

(i) write across the head of the instrument the words ‘Registered under the Real Property Act 1862 in respect of the land described (identifying it by reference to the instrument) and in certificate of title Volume Folio ’ and his signature and office and the date;

(ii) make a photographic copy of the instrument, which shall be dealt with as, and for all purposes be deemed to be, a duplicate of the instrument; and

(iii) return the instrument to the person from whom he received it;

(b) dealings with the estate or interest so registered are subject to this Act; and

(c) the proprietor of the estate or interest so registered has all the rights of a registered proprietor of such an estate or interest instead of any rights of a like nature enjoyed by him before that registration.

“(5) Where an instrument is registered in the Registry of Deeds the Recorder—

(a) is not bound to require production of the instrument for the purposes of paragraph (a) of subsection (4) of this section;

(b) may comply sufficiently with that paragraph by dealing with the memorial of the instrument in the Registry of Deeds as if it were the instrument itself; and

(c) shall give written notice that the instrument has been registered to the person taking an estate or interest thereunder, so far as his knowledge of the address of that person may enable him, and need not comply with sub-paragraph (iii) of that paragraph.

“(6) In registering instruments under this section the Recorder shall, in the absence of proof to the contrary, preserve such priority as they appear to have by virtue of the *Registration of Deeds Act 1935* and for that purpose may assume all instruments registered thereunder to have been executed or taken in good faith by the purchasers.

“(7) No person shall exercise a power of sale over land that is under the provisions of this Act unless—

(a) the estate or interest giving rise to the exercise of the power of sale is registered under this Act; and

(b) the estate or interest sold in exercise of the power of sale is assured by an instrument registered under this Act,
and a purported exercise of a power of sale in contravention of this subsection is void.

“(8) Where a person is aggrieved by a decision of the Recorder—

(a) to register or refrain from registering an instrument under subsection (1) or subsection (2) of this section; or

(b) on the priority of an instrument so registered, section one hundred and ten of this Act applies as if the decision were a refusal as mentioned in paragraph (a) of subsection (1) of that section.

Withdrawal of application to bring land under Act.
25 Vict., No. 16, s. 25.
No. 6399
(Vic.), s. 13.

“21 An applicant may withdraw his application to bring land under the provisions of this Act at any time before the registration of the certificate of title, whereupon the Recorder shall return to the applicant or to the person who produced them the muniments of title lodged in support of the application.

Disposal of documents lodged in support of application.
25 Vict., No. 16, s. 26.

“22—(1) Where land is brought under the provisions of this Act, the Recorder—

(a) shall return to the person from whom he received them documents relating to any property other than the land included in the certificate of title; and

(b) may, in relation to any other documents—

(i) retain them in his office;

(ii) transfer them to the Tasmanian Library Board, to be dealt with as if they were public records for the purposes of the *Archives Act 1965*; or

(iii) if a period of at least twelve years has expired since the registration of the first ordinary certificate of title to that land, destroy them.

“(2) Instead of destroying a document under the authority of subsection (1) of this section, the Recorder may deliver it to any person who satisfies the Recorder that he intends to preserve the document for historical purposes.

“(3) Before returning or delivering a document pursuant to this section, the Recorder shall mark the document as cancelled so far as it relates to land brought under the provisions of this Act.

“(4) This section applies to instruments relating to land brought under the provisions of this Act whether before or after the commencement of this section.

“(5) In this section, ‘document’ means an instrument constituting, or in any way affecting, the title to any land brought under the provisions of this Act, being an instrument that is

left with or surrendered to the Recorder by the applicant or any other person, other than an instrument that is registered and dealt with in accordance with section twenty.

“23 Registration of a certificate of title or other instrument, in a case where the registered proprietor of the certificate or the person taking an estate or interest under the instrument died before the date of registration, is as valid and effectual, and the estate and interest of that registered proprietor or person devolves in like manner, as if registration had been effected before the death of that registered proprietor or person.

Validity of registration in name of deceased person.

“24—(1) Upon the registration of the title to an estate of freehold in possession of land that is under the provisions of this Act pursuant to an application under section eighty or to an application under section one hundred and forty-six, there shall be paid to the Recorder the sum prescribed, calculated on the value of the land, which shall be established by such valuation or evidence as the Recorder may require.

Provisions relating to the assurance fund.

“(2) All sums of money received by the Recorder under this section shall be paid by him to the Treasurer, who shall invest those sums together with all interest accruing thereon in Government securities to constitute an assurance fund for the purposes of this Act.”.

6 Section thirty-one of the Principal Act is amended—

Recorder to keep register book.

(a) by omitting subsection (1) thereof and substituting therefor the following subsection:—

“(1) The Recorder shall keep a series of records to be called the ‘register book’, which shall consist of one part of each grant and certificate of title registered under this Act.”; and

(b) by adding at the end thereof the following subsection:—

“(5) The Recorder may at any time, for office convenience, cancel a subsisting folium of the register book numbered in a volume thereof preceding volume 2001 and replace the folium so cancelled by a new folium, and when he does so—

(a) he shall cancel the subsisting folium by entering thereon the words ‘Cancelled—replaced for the purposes of further dealings by Certificate of Title Volume Folio ’, and specify the appropriate number of the volume and folio;

(b) he shall enter on the new folium the words ‘Registered for office convenience to replace Certificate of Title (or Purchase Grant) Volume Folio ’ and specify the appropriate number of the volume and folio; and

- (c) registration of the new folium bearing the last-mentioned entry does not affect the right of a person to acquire a title by possession pursuant to an application under section one hundred and forty-six.”.

Certificate of title to be in duplicate and bound up in register.

7 Section thirty-two of the Principal Act is amended by omitting from subsection (3) thereof all the words after the word “him” to the end of that subsection.

Certificate conclusive evidence of title, &c.

8 Section thirty-three of the Principal Act is amended by omitting, from subsection (3) thereof, the words “by the Commissioners or”.

Memorial to be recorded on duplicate grant or other instrument.

9 Section thirty-eight of the Principal Act is amended by omitting from subsection (1) thereof the word “hereinafter” and by inserting in that subsection, after the word “provided”, the words “by paragraph (g) of subsection (1) of section eleven”.

10 Section fifty-two A of the Principal Act is repealed and the following section is substituted therefor:—

Postponement of mortgages and incumbrances.

No. 52 of 1952 (N.Z.), s. 103.

“52A—(1) The priority between themselves of the mortgages or incumbrances appearing by the register book to affect any land may from time to time be varied by an instrument in the prescribed form registered under this Act.

“(2) An instrument under this section shall be executed by the registered proprietor of every mortgage and incumbrance that, by the instrument, is postponed to any mortgage or incumbrance over which it previously had priority.

“(3) An instrument under this section shall be registered by entering a memorial thereof in the register book and upon any mortgage or incumbrance the priority of which is varied by the instrument.”.

11 Section sixty-one of the Principal Act is repealed and the following section is substituted therefor:—

Determination or variation of leases, mortgages, &c.

15 Geo. 5, c. 21, s. 46. Cf. No. 380 of 1886 (S.A.), s. 148, No. 6, 1919 (N.S.W.), s. 98.

“61—(1) The Recorder, on proof to his satisfaction—

(a) ~~that all moneys secured by a mortgage registered~~ under this Act have been paid;

(b) that an estate or interest in land registered under this Act has been varied; or

(c) that by the operation of any Act, either directly or by reason of anything done in pursuance thereof, or by the defeasance of an estate of a person registered as proprietor under this Act, any land that is under the provisions of this Act has become vested in some person other than the registered proprietor (either alone or jointly or in common with the registered proprietor) or some such person has become entitled to have any such land so vested,

may notify in the register book the discharge of that mortgage, ~~the variation of that estate or interest, or the registration of the person in whom that land is vested or who has become so entitled as the proprietor of such estate therein as is appropriate.~~

“(2) Upon entering a notification under subsection (1) of this section, the Recorder may make such entries, cancellations, and corrections in the register book and issue such certificates of title as appear to him to be necessary or proper.

“(3) A notification entered in the register book under this section has the same effect as the registration of the most effectual instrument to effect the purpose of the notification, being an instrument executed by all proper parties.

“(4) In any of the cases mentioned in subsection (5) of this section, the Recorder may, if he considers that there is sufficient cause for so doing—

(a) upon proof to his satisfaction of the amount of the debt owing under a mortgage registered under this Act, direct that amount to be paid to the Treasurer; and

(b) upon production to him of the receipt of the Treasurer for that amount,

proceed as if he had been satisfied, under paragraph (a) of subsection (1) of this section, that all moneys secured by that mortgage had been paid.

“(5) The cases in which the Recorder may act under the authority of subsection (4) of this section are—

(a) when—

(i) a person who is entitled to receive payment of money secured by a mortgage—

(A) is out of the State;

(B) cannot be found; or

(C) is unknown; or

(ii) it is uncertain who is so entitled; and

(b) when the mortgagee or one of several mortgagees is dead, and there is no person within the State presently entitled to discharge the mortgage.

“(6) Between the person who is liable to pay money by reason of a mortgage or other interest affected by a notification entered in the register book pursuant to this section and the person entitled to be paid it, any amount in fact outstanding at the time of the entry of the notification shall be deemed to be a specialty debt created by the instrument under which, but for the operation of this section, it would be payable.

“(7) The Recorder may, if he thinks fit, hold an inquiry in order to satisfy himself as to any fact or matter of which he may require proof for the purposes of this section, and may make such order as to the costs of any person attending such an inquiry as he thinks fit.

“(8) An order as to costs made under subsection (7) of this section may be registered in the Supreme Court, and, on being so registered, is enforceable as if it were a judgment of that Court.”.

Notice of
caveat to
be given.

12 Section eighty-three of the Principal Act is amended—

- (a) by omitting from subsection (1) thereof the words “to bring land under the provisions of this Act, or”; and
- (b) by omitting from subsection (2) the word “proprietor” (first occurring).

13 Section one hundred and five of the Principal Act is repealed and the following section is substituted therefor:—

Certified
photographic
copies as
evidence.

“105—(1) A photographic copy of any instrument, document, or record that is or at any time was in the custody or under the control of the Recorder shall, if the copy bears a certificate purporting to be signed by the Recorder or the Deputy Recorder that it is a photographic copy of that instrument, document, or record, be received in evidence as *prima facie* proof of the contents and due execution of the instrument, document, or record of which it is certified to be a copy.

“(2) Where a photographic copy, certified as mentioned in subsection (1) of this section, bears a certificate purporting to be signed by the Recorder or the Deputy Recorder that the instrument, document, or record of which it is certified to be a copy has been lost or destroyed while in the custody or under the control of the Recorder, that certificate shall be received in evidence as *prima facie* proof that the instrument, document, or record has been lost or destroyed.

“(3) The Recorder, upon application and payment of the prescribed fee, shall furnish to a person a certified photographic copy of any instrument registered under this Act.

“(4) In this section, ‘photographic copy’, in relation to any instrument, document, or record, includes—

- (a) a print or enlargement from—
 - (i) an original transparent photograph; or
 - (ii) an image made on transparent film from another image made on transparent film, being an image made by a machine or process prescribed for the purposes of this section; or
- (b) a copy made of the instrument, document, or record by a machine or process prescribed for the purposes of this section,

whether or not the print, enlargement, or copy is the same size as the instrument, document, or record.”.

14 The first schedule to the Principal Act is amended— The first schedule.

- (a) by omitting therefrom forms I, II, and VIIA; and
 (b) by omitting therefrom form III and substituting therefor the following form:—

“ Form III.
 (Section 19.)
 (Royal Arms.)

Tasmania.

CERTIFICATE OF TITLE.

I certify that the person described in the First Schedule is the registered proprietor of an estate (in fee simple *or, as the case may be*) in the land within described together with such interests and subject to such encumbrances and interests as are shown in the Second Schedule.

In witness whereof I have hereunto signed my name and affixed my seal.

Recorder of Titles (*L.S.*)

The first schedule.

The second schedule.”.

15 The second schedule to the Principal Act is amended The second schedule. by omitting Parts I and II thereof.

16 Section eleven of the *Real Property Act 1886* is amended by omitting subsection (2) thereof and substituting therefor the following subsections:— Deals may be registered prior to issue of Crown grants.

“(2) Upon registering an instrument pursuant to subsection (1) of this section the Recorder shall retain the receipt and instrument in his office until a transfer granting the land by the Crown is lodged and a certificate of title is registered pursuant to that transfer.

“(3) When a certificate of title is so registered, the Recorder shall enter thereon a memorial of every dealing endorsed upon the receipt and issue a certificate of title to the transferee (if any) of the land.

“(4) The Recorder is not bound to register under subsection (1) of this section any instrument dealing with part of the land to which the receipt relates.

“(5) The Recorder is not obliged to register any instrument pursuant to this section in a case where he proposes to require letters patent to be used pursuant to subsection (3) of section fourteen of the Principal Act.”.

Dealings
with lands of
the Crown
under the Act.

17 Section twenty-three D of the *Real Property Act 1886* is amended—

- (a) by omitting from subsection (1) thereof the word “Governor” and substituting therefor the words “Commissioner of Crown Lands”; and
- (b) by inserting in subsection (1) thereof, after the word “therefor” the words “or by the Surveyor-General, or by a legal practitioner employed in the Solicitor-General’s Department.”.

18 Section thirty-four of the *Real Property Act 1886* is repealed and the following section is substituted therefor:—

Destruction
of records
permitted in
certain cases.

“34 Subject to the provisions of the *Archives Act 1965* and to such conditions as may be prescribed, the Recorder may, with the approval of the Attorney-General, destroy any records as defined by that Act that are in the possession or custody of the Recorder and that have been wholly superseded by entries in the register book, or the retention of which, in the Recorder’s opinion, serves no useful purpose.”.

Rectifica-
tion of
easements,
&c., in old
subdivisions.

19 Section sixteen of the *Real Property Act 1893* is amended—

- (a) by omitting subsection (1) thereof and substituting therefor the following subsections:—

“(1) In this section, ‘plan of subdivision’ includes—

- (a) a previously approved plan or a sealed plan within the meaning of section four hundred and sixty-two of the *Local Government Act 1962*; and
- (b) a plan of subdivision that does not require the approval of the corporation under section four hundred and sixty-nine of that Act.

“(1A) This section does not authorize the Recorder to make an order that will have the effect of altering or destroying easements or profits a prender or covenants set forth in the schedule of easements attached to a sealed plan.”;

- (b) by omitting from subsection (2) thereof the words “previously approved”, and by inserting therein, after the word “plan” (first occurring), the words “of subdivision”; and
- (c) by omitting from subsection (11) thereof the words “previously approved”, and by adding at the end of that subsection the words “of subdivision”.

20—(1) The *Real Property Act 1863* is repealed.

Amendments
and repeals of
certain
enactments.

(2) Sections twenty and twenty-one of the *Real Property Act 1886* are repealed.

(3) The schedule to the *Real Property Act 1886* is amended by omitting therefrom forms I, II, and IIA.

(4) Section three of the *Real Property Act 1893* is repealed.

21 The Acts that are specified in the first column of the schedule to this Act are amended as respectively specified in the second column of that schedule.

Consequen-
tial amend-
ments.

THE SCHEDULE.

(Section 21.)

FIRST COLUMN. Act amended.	SECOND COLUMN. How amended.
<i>Crown Lands Act 1935</i>	<p>Section 70 is amended—</p> <p>(a) by omitting from subsection (1) thereof the words “in accordance with the provisions of this Act”; and</p> <p>(b) by omitting subsections (2) and (3) thereof and substituting therefor the following subsection:—</p> <p>“(2) The alienation of land pursuant to this section shall, subject to subsections (3) and (4) of section fourteen of the <i>Real Property Act 1862</i>, be effected by transfer in accordance with the provisions of that section.”.</p>
<i>Education Act 1932</i>	<p>Section 16 is amended by omitting from subsection (3) thereof all the words after the word “shall” (first occurring) to the end of that subsection and substituting therefor the words “, subject to subsections (3) and (4) of section fourteen of the <i>Real Property Act 1862</i>, be effected by transfer in accordance with the provisions of that section.”.</p>
<i>Forestry Act 1920</i>	<p>Section 16 is amended by omitting from subsection (5) thereof all the words after the word “shall” (first occurring) to the end of that subsection and substituting therefor the words “, subject to subsections (3) and (4) of section fourteen of the <i>Real Property Act 1862</i>, be effected by transfer in accordance with the provisions of that section.”.</p>
<i>Hydro-Electric Commission Act 1944</i>	<p>Section 39 is amended—</p> <p>(a) by omitting from subsection (2) thereof the words “by deed of grant in accordance with the provisions of the <i>Crown Lands Act 1935</i>”; and</p> <p>(b) by inserting after that subsection the following subsection:—</p> <p>“(2A) The alienation of land pursuant to subsection (2) of this section shall, subject to subsections (3) and (4) of section fourteen of the <i>Real Property Act 1862</i>, be effected by transfer in accordance with the provisions of that section.”.</p>
<i>Industrial Development Act 1954</i>	<p>Section 10 is amended by omitting from paragraph (b) of subsection (1) thereof the words “by deed of grant”.</p>
<i>Railway Management Act 1935</i>	<p>Section 35A is amended by inserting after subsection (1) thereof the following subsection:—</p> <p>“(1A) Where land is granted to the Minister in fee pursuant to subsection (1) of this section, the grant thereof shall, subject to subsections (3) and (4) of section fourteen of the <i>Real Property Act 1862</i>, be effected by transfer in accordance with the provisions of that section.”.</p>