



TASMANIA

LAND TITLES AMENDMENT ACT 1996

No. 21 of 1996

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LAND TITLES AMENDMENT ACT 1996

No. 21 of 1996

An Act to amend the *Land Titles Act 1980* and to make consequential and miscellaneous amendments to the *Conveyancing and Law of Property Act 1884*, the *Land and Income Taxation Act 1910*, the *Land Valuation Act 1971*, the *Local Government Act 1993*, the *Public Trusts Act 1882* and the *Stamp Duties Act 1931*

[Royal Assent 30 August 1996]

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 *Land Titles Amendment Act 1996*.

Commencement

2. This Act commences on a day or days to be proclaimed.

Principal Act

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

Section 3 amended (Interpretation)

4. Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting before the definition of "Assistant Recorder of Titles" the following definition:

"approved form" means a form approved by the Recorder under section 169A;

- (b) by omitting the definition of "land" and substituting the following definition:

"land" includes –

- (a) messuages, tenements and hereditaments, corporeal and incorporeal, of every kind and description (whatever may be the estate or interest in them), together with all paths, passages, ways, waters, watercourses, liberties, privileges, easements, plantations, gardens, mines, minerals and quarries and all trees and timber on land

* 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, Nos. 5, 11 and 48 of 1990, Nos. 43 and 46 of 1991, No. 26 of 1992, Nos. 24, 73 and 100 of 1993, Nos. 28 and 68 of 1994 and Nos. 20, 30, 71 and 77 of 1995.

or lying or being under land;
and

- (b) any structure which is above land but permanently anchored to, or otherwise kept in place above, the land;

Section 23 amended (Certain informal dealings may be registered on qualified title)

5. Section 23 of the Principal Act is amended by omitting "a form prescribed by or under this Act," and substituting "an approved form,".

Section 33 amended (The Register, certificates of title and registration)

6. Section 33(3) of the Principal Act is amended by omitting "prescribed", wherever occurring in paragraphs (a) and (b), and substituting "approved by the Recorder".

Section 36 amended (Searches of public records)

7. Section 36(1)(b) of the Principal Act is amended by omitting "registrable;" and substituting "registrable and instruments and documents lodged, deposited or filed in support of a dealing or instrument;".

Section 48 amended (Dealings to be attested; order of registration; priority of dealings)

8. Section 48 of the Principal Act is amended as follows:

- (a) by inserting after subsection (1) the following subsection:

(1A) A dealing or instrument is taken to be lodged with the Recorder when a record is made in a device for storing or processing information approved under section 33(3)(b) or 143A(3)(b).

- (b) by omitting from subsection (3) "land and are awaiting registration," and substituting "land, the person who lodges the second or subsequent dealing must advise the Recorder in writing of the order in which the dealings are to be registered and";
- (c) by omitting from subsection (4) "in the prescribed manner." and substituting "in the order in which a record is made in a device for storing or processing information approved under section 33(3)(b) or 143A(3)(b).".

Sections 48A, 48B and 48C inserted

9. After section 48 of the Principal Act, the following sections are inserted:

Lodgment of priority notices, caveats and plans

48A. A priority notice, caveat or plan may be lodged with the Recorder –

- (a) by delivery of the original document; or

- (b) if so authorised by the Recorder, by transmission to the Recorder of a copy of the original document –
 - (i) as a transparency or print from a transparency or from a machine copy; or
 - (ii) by facsimile process; or
 - (iii) in any other manner approved by the Recorder; or
- (c) by the preparation and lodgment of the priority notice, caveat or plan in any form other than as a document –
 - (i) by any device used for the storage or transmission or processing of information approved by the Recorder; or
 - (ii) in any other manner approved by the Recorder.

Authority for lodgment by electronic process

48B. (1) The Recorder may make an agreement with a person authorising him or her to lodge a priority notice, caveat or plan otherwise than by production of the original document.

(2) An agreement must provide that the procedures to be followed –

- (a) are comparable with the normal procedures adopted by the Recorder and will not adversely affect the register of title referred to in section 33 or the register of plans; and

- (b) will ensure the accurate transmission of the priority notice, caveat or plan.

(3) The Recorder may require a person seeking to lodge a priority notice, caveat or plan by electronic means to produce documentary evidence that he or she is authorised to do so.

Lodgment of supporting documents

48C. The application of sections 48A and 48B extend to the lodgment by electronic means of any document required by the Recorder in support of a priority notice, caveat or plan.

Section 55 substituted

10. Section 55 of the Principal Act is repealed and the following section is substituted:

Effect of reference to plan

55. (1) Where land is described in a folio of the Register by reference to a plan filed, lodged or deposited with the Recorder under Division 3 of Part 3 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*, the *Registration of Deeds Act 1935* or any other law, a transfer, mortgage, encumbrance or lease of that land or any other dealing, instrument or plan is taken to import a statement that the land is similarly described by reference to that plan.

(2) For the purposes of subsection (1), a document is taken to be a plan if it incorporates by reference any information contained in another plan

or document filed, deposited or lodged with the Recorder under this Act.

(3) The application of this section extends to a plan prepared by the Recorder.

Section 126 amended (Registration of acquiring authority as proprietor)

11. Section 126(1) of the Principal Act is amended by omitting "such form as may be prescribed under this Act" and substituting "an approved form".

Section 134 amended (Caveat may be lodged by judgment creditor)

12. (1) Section 134 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) "the form prescribed under section 133" and substituting "an approved form";
- (b) by inserting "or order" after "judgment" in subsection (2)(a).

(2) Section 134 of the Principal Act is further amended by inserting after subsection (7) the following subsection:

(8) Where a judgment creditor lodges a caveat under section 48B, he or she must provide such particulars of the judgment or order on which the caveat is founded as the Recorder may require and in such manner as the Recorder may require.

Section 142 amended (Rectification of boundaries, &c.)

13. Section 142(8)(b) of the Principal Act is amended by omitting "the application as prescribed of –" and substituting "an application in the approved form by –".

Section 143A amended (Recorder may specify format, &c., of certain plans)

14. (1) Section 143A of the Principal Act is amended by omitting "A" and substituting "(1) A".

(2) Section 143A of the Principal Act is further amended by adding at the end the following subsections:

(2) Regulations may prescribe the manner in which a plan filed, deposited or lodged with the Recorder is to be kept.

(3) A plan or accompanying document may be deposited or lodged with the Recorder and kept wholly or partly –

(a) on paper, on microfilm or in or on such other medium as may be approved by the Recorder; or

(b) in such device for storing or processing information as may be so approved.

Section 143I inserted

15. After section 143H of the Principal Act, the following section is inserted in Part XA:

Power of Recorder to rearrange plans

143I. (1) The Recorder may rearrange parts of any plan held by him or her by creating a new plan containing the whole or part of any other plan or plans or in such other manner as may appear to the Recorder to be convenient.

(2) In the exercise of his or her powers under subsection (1), the Recorder must not create a new plan so as to permit the subdivision of land contrary to the *Local Government (Building and Miscellaneous Provisions) Act 1993*.

Section 160 amended (General powers of Recorder)

16. Section 160 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) "him," and substituting "him under this or any other Act,";
- (b) by inserting "or relating to" after "affecting" in subsection (2);
- (c) by omitting from subsection (2) "him;" and substituting "him under this or any other Act,";
- (d) by omitting from subsection (2) "dealing." and substituting "dealing under this or any other Act."

Section 169 repealed, sections 169A, 169B, 169C, 169D and 169E inserted, section 170 substituted and sections 170A and 170B inserted

17. Sections 169 and 170 of the Principal Act are repealed and the following sections are substituted:

Power of Recorder to approve forms

169A. (1) The Recorder may approve forms for use under this Act, Parts XIA and XVA of the *Conveyancing and Law of Property Act 1884*, Division 1 of Part II of the *Powers of Attorney Act 1934*, the *Public Trusts Act 1882*, the *Registration of Deeds Act 1935* and any other law which requires documents to be lodged with the Recorder.

(2) An approval of a form does not have effect until 14 days after notice of the approval is given and published in accordance with subsection (3).

(3) Where the Recorder approves a form under subsection (1) –

- (a) the Recorder must give written notification of the approval to the Law Society of Tasmania and cause notice of the approval to be published –
 - (i) in the publication known as the Land Titles Office Practice Book published by the Recorder and in any other publication published by the Recorder relating to the practice and procedure of the Land Titles Office; and
 - (ii) in each daily newspaper circulating generally in Tasmania

with a statement that any new or amended form is available from the Land Titles Office; and

- (iii) in such other manner as the Recorder thinks fit; and
- (b) the Recorder may supply the form bearing the seal of office used under section 6, free of charge or at a moderate charge; and
- (c) the Recorder may license persons to print and sell the form bearing the seal of office used under section 6; and
- (d) any previous approval under subsection (1) of a form for the same purpose ceases to have any force or effect.

(4) Where the Recorder approves a form under subsection (1), the Recorder may register, record or grant, as the case may be, any dealing or instrument that is lodged within a period of 12 months after the approval and takes the form required immediately before the approval.

(5) The Recorder may, on receipt of the prescribed fee –

- (a) approve a form that has been prepared by a person with the object of selling it for use by other persons; and
- (b) license that person to print and sell the form bearing the seal of office used under section 6.

(6) Subject to subsection (11), where the Recorder approves a form under subsection (5), any previous approval under that subsection of a form

for the same purposes ceases to have any force or effect.

(7) Where the Recorder approves a form under subsection (5), the Recorder may register, record or grant, as the case may be, any dealing or instrument that is lodged within a period of 12 months after the approval and takes the form required immediately before the approval.

(8) The Recorder may, on receipt of the prescribed fee –

- (a) approve a form under subsection (1); and
- (b) authorise a person to print the form, bearing the seal of office used under section 6, for use by that person.

(9) Subject to subsection (11), where the Recorder approves a form under subsection (8) for use by a person, any previous approval under that subsection of a form for use by that person for the same purpose ceases to have effect.

(10) Where the Recorder approves a form under subsection (8), the Recorder may register, record or grant, as the case may be, any dealing or instrument that is lodged within the period of 12 months after the approval and takes the form required immediately before the approval.

(11) A form approved under subsection (1), (5) or (8) is to specify –

- (a) the full names of the parties to the dealing to which the form relates; and
- (b) a description of the land affected by the dealing; and

- (c) the nature of the transaction to be effected by the dealing –

and on any such approval, the Recorder may register, record or grant, as the case may be –

- (d) any dealing or instrument that the Recorder is satisfied –
 - (i) takes the form required by this Act at the time of its execution; or
 - (ii) is in accordance with a form previously approved under this section; or
- (e) any dealing or instrument that contains departures, otherwise than in matters of substance, from an approved form but is sealed with the seal of office used under section 6 as if it were in an approved form.

False representation as to approved forms

169B. (1) If a person falsely represents that a form has been approved for use as mentioned in section 169A, that person must indemnify any other person who suffers loss, damage or deprivation in relying on the form.

(2) An indemnity under subsection (1) does not create any right to compensation from the assurance fund.

Recording of common provisions

169C. (1) A person may lodge with the Recorder a memorandum in the approved form containing one or more provisions which are intended for inclusion in dealings and instruments to be lodged subsequently for registration.

(2) The Recorder may retain a memorandum lodged under subsection (1).

(3) The Recorder may prepare and retain a memorandum containing any provisions which seem appropriate for inclusion in dealings and instruments to be lodged subsequently for registration.

(4) A memorandum retained by the Recorder pursuant to this section is to be taken, for the purposes of section 36, to be part of the Register.

Incorporation of common provisions

169D. A dealing or instrument lodged with the Recorder may incorporate a common provision lodged with the Recorder by reference to the provision in a way sufficient to identify it clearly.

Payment of prescribed fees

169E. Payment of a prescribed fee may be made –

- (a) to an agent appointed by the Recorder;
and
- (b) in any manner approved by the Recorder –

and a person may, if so authorised by an agreement made with the Recorder or by an agent appointed for the purpose, pay a prescribed fee after the transaction to which it relates.

Regulations

170. (1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting subsection (1), the regulations may –

- (a) prescribe the manner in which dealings are to be lodged for registration and the circumstances in which the Recorder may refuse to accept dealings for lodgment; and
- (b) provide for the conduct of official searches of the Register, including provision for compensation from the assurance fund for a person suffering loss or damage arising from an error in an official search and exonerating a solicitor or other person in respect of loss that may arise from an error in an official search; and
- (c) require any form prescribed by the regulations to be in the form of, or to have the same effect as, a statutory declaration; and
- (d) require the substantiation by statutory declaration of all or any information given in an approved form which is not in the form of a statutory declaration; and

- (e) provide for the meaning to be attached to a provision specified in a particular form in a dealing; and
- (f) prescribe the fees, charges and expenses recoverable by the Recorder in the administration of this Act; and
- (g) prescribe the amount to be paid for lodging an instrument of transfer of land, whether fixed by reference to the consideration expressed in the transfer or otherwise and whether or not relating to the cost of providing the service; and
- (h) prescribe the amount to be paid for lodging any other instrument or document, for making an application or search or for the doing of any act by the Recorder; and
- (i) prescribe the fees, charges and expenses to be paid by persons licensed to print and sell approved forms, whether fixed by reference to the period of the licence, the number of forms sold or to be sold, or otherwise; and
- (j) provide for the approval and sealing of forms for use under this Act, including fees to be paid for the approval and sealing.

(3) Subsection (2)(e) does not apply to a conveyance or other deed referred to in section 75A of the *Conveyancing and Law of Property Act 1884* so far as the conveyance or deed contains the short provisions specified in Schedule 6 to that Act.

Combination of forms

170A. (1) An approved form may be combined with, or may be lodged simultaneously with, a form approved by the Recorder for the purposes of section 51 of the *Land Valuation Act 1971*, section 13A or 13B of the *Land and Income Taxation Act 1910* or section 121 of the *Local Government Act 1993*.

(2) If a form under any such Act does not comply with that Act, the dealing to which it relates is taken to be not in accordance with this Act.

(3) The Recorder may, of his or her own motion, correct a patent error in a form under any such Act by notation in the margin of the form and, after an error is so corrected, the dealing has the same validity as if the error had not been made.

Duty of Recorder to transmit notices

170B. The Recorder must, as soon as practicable after receiving notice of a transaction under section 13A of the *Land and Income Taxation Act 1910*, section 51 of the *Land Valuation Act 1971* or section 121 of the *Local Government Act 1993*, transmit details of the notice to the Commissioner of Taxes, the Valuer-General or the general manager of the relevant council, as the case may require.

Section 172 amended (Transitional provision)

18. Section 172 of the Principal Act is amended as follows:

- (a) by omitting "Where" and substituting "(1) Where";
- (b) by adding at the end the following subsection:

(2) Where, immediately before the commencement of this subsection, a form was prescribed and in force under the regulations, that form continues to be in force until the Recorder approves another form to be used in its place under section 169A.

Consequential amendments relating to prescribed forms

19. (1) The following provisions of the Principal Act are each amended by omitting "the prescribed" and substituting "an approved":

Sections 10(1), 11(1), 14(1), 17(1)(c), 19(1)(b), 33(9) (firstly occurring), 52(2)(a), 52(10), 58(1), 61(3), 63(1), 64(1), 65(1), 70(1), 70(4), 72, 75(1), 76(1), 88(1), 89(1), 91(2)(a), 92(1), 97(2), 97(5), 98(1)(a), 99(1)(a), 102(7), 104(1), 107(1), 108(1), 112(3), 117(3), 118(2), 120, 124(2), 131(1)(i), 133(1) and 134(6) (firstly occurring).

(2) Section 105(1) of the Principal Act is amended by omitting "prescribed" (wherever occurring) and substituting "approved".

Consequential and miscellaneous amendments

20. The Acts specified in Schedule 1 are amended in the manner specified in that Schedule.

**SCHEDULE 1 – CONSEQUENTIAL AND
MISCELLANEOUS AMENDMENTS**

Section 20

Conveyancing and Law of Property Act 1884

(47 Vict. No. 19)

1. Section 84H(3)(a) is amended by omitting "and forms".

Land and Income Taxation Act 1910

(1 Geo. V No. 47)

1. (1) Section 13A is amended by omitting subsections (1), (2) and (3) and substituting the following subsections:

(1) Where land is sold or otherwise disposed of, the purchaser or other person to whom the land is transferred must give notice of the transaction in writing to the Recorder of Titles.

(2) Where land is compulsorily acquired under the authority, or for the purposes, of any Act, the person by whom the land is so acquired must give notice of the acquisition in writing to the Recorder of Titles.

(3) A notice under subsection (1) or (2) –

- (a) is to contain such particulars relating to the description of the land, the parties to the transaction and details of the transaction and use of the land as are required for the purposes of this Act, the *Local Government Act 1993*, the *Land*

Valuation Act 1971 and any other Act prescribed by the regulations; and

- (b) is to be included in any dealing lodged with the Recorder of Titles relating to the sale, disposition or acquisition as may be required by the *Land Titles Act 1980*.

(3A) Without limiting the preceding provisions of this section, where a person has been aggrieved by a failure to comply with subsection (1) or (2), the Recorder of Titles must accept for the purposes of this Act a copy of the notice of the transaction or acquisition produced by that person containing all the particulars required to be included in the notice as evidence that the transaction for which the notice is required has been completed.

(3B) A person or authority which is required to give notice under this section must at the request of a person disposing of any land for which the notice is required provide that person with a copy of the notice required under subsection (1) or (2).

(3C) Where –

- (a) a person by whom the relevant land was sold or otherwise disposed of or whose land was compulsorily acquired has been aggrieved by a failure to comply with subsection (1) or (2); and
- (b) the Recorder of Titles has received from that person a copy of the notice required under subsection (1) or (2) –

the parties to the relevant transaction are to be treated for the purposes of this Act as if the notice had been duly given to the Recorder of Titles.

(2) Section 13A is further amended by omitting from subsection (4) "Commissioner" and substituting "Recorder of Titles".

Land Valuation Act 1971

(No. 59 of 1971)

1. Section 12(6) is amended by omitting paragraph (a) and substituting the following paragraph:

- (a) In the case of any such parcel subdivided in accordance with a stratum plan registered under Part XIA of the *Conveyancing and Law of Property Act 1884* –
 - (i) the land value of the parcel is to be divided between all such parts in accordance with the unit entitlement of each part under section 75U of that Act; or
 - (ii) if the Valuer-General is satisfied that the valuation of a parcel under subparagraph (i) would be inaccurate, the land value of the parcel is to be divided between all such parts in ratio of the land value of each part to the total land value of the parcel;

2. Section 51 is repealed and the following section is substituted:

Notice of sale, &c., of land

51. (1) Where any land is sold or otherwise disposed of or is surrendered to the Crown, the purchaser or other person to whom the land is transferred must

give notice in writing to the Recorder of Titles of the transaction.

(2) Where land is compulsorily acquired under the authority, or for the purposes, of an Act, the authority responsible for the acquisition must give notice in writing to the Recorder of Titles of the acquisition of that land.

(3) A notice under subsection (1) or (2) –

- (a) is to contain such particulars relating to the description of the land, the parties to the transaction and details of the transaction and use of the land as are required for the purposes of this Act, the *Land and Income Taxation Act 1910*, the *Local Government Act 1993* and any other Act prescribed by the regulations; and
- (b) is to be included in any dealing lodged with the Recorder of Titles relating to the sale, disposition or acquisition as may be required by the *Land Titles Act 1980*.

(4) Without limiting the preceding provisions of this section, where a person has been aggrieved by a failure to comply with subsection (1) or (2), the Recorder of Titles must accept for the purposes of this Act a copy of the notice of the transaction or acquisition produced by that person containing all the particulars required to be included in the notice as evidence that the transaction for which the notice is required has been completed.

(5) A person or authority which is required to give notice under this section must at the request of a person disposing of any land for which the notice is

required provide that person with a copy of the notice required under subsection (1) or (2).

(6) Where –

- (a) a person by whom the relevant land was sold or otherwise disposed of or whose land was compulsorily acquired has been aggrieved by a failure to comply with subsection (1) or (2); and
- (b) the Recorder of Titles has received from that person a copy of the notice required under subsection (1) or (2) –

the parties to the relevant transaction are to be treated for the purposes of this Act as if the notice had been duly given to the Recorder of Titles.

3. Sections 52 and 53 are repealed.

Local Government Act 1993

(No. 95 of 1993)

1. (1) Section 121(1) is amended by omitting "general manager within 30 days after the completion of the sale, disposal or acquisition," and substituting "Recorder of Titles".

(2) Section 121 is further amended by omitting subsection (2) and substituting the following subsections:

(2) The owner of land in respect of which an occupier is the ratepayer must give written notice to the Recorder of Titles of a change of occupancy.

(2A) Where the change of occupancy arises from a transaction in respect of which it is not

intended to lodge a dealing with the Recorder of Titles, the notice is to be given within 30 days of the change of occupancy.

(2B) A notice under this section –

- (a) is to contain such particulars relating to the description of the land, the parties to the transaction and details of the transaction and use of the land as are required for the purposes of this Act, the *Land and Income Taxation Act 1910*, the *Land Valuation Act 1971* and any other Act prescribed by the regulations; and
- (b) is to be included in any dealing lodged with the Recorder of Titles relating to the sale, disposition or acquisition as may be required by the *Land Titles Act 1980*.

(2C) Without limiting the preceding provisions of this section, where a person has been aggrieved by a failure to comply with subsection (2) or (2A), the Recorder of Titles must accept for the purposes of this Act a copy of the notice of the transaction or acquisition produced by that person containing all the particulars required to be included in the notice as evidence that the transaction for which the notice is required has been completed.

(2D) An owner who is required to give notice under this section must at the request of a person disposing of any land for which the notice is required provide that person with a copy of the notice required under subsection (2) or (2A).

(2E) Where –

- (a) a person by whom the relevant land was sold or otherwise disposed of or whose

land was compulsorily acquired has been aggrieved by a failure to comply with subsection (2) or (2A); and

- (b) the Recorder of Titles has received from that person a copy of the notice required under subsection (2) or (2A) –

the parties to the relevant transaction are to be treated for the purposes of this Act as if the notice had been duly given to the Recorder of Titles.

Public Trusts Act 1882

(46 Vict. No. 16)

1. Section 2 is amended by inserting before the definition of "document of title" the following definition:

"approved form" means a form approved by the Recorder under section 169A of the *Land Titles Act 1980*;

2. Section 7 is amended by omitting "form I in the first schedule," and substituting "the approved form".

3. Section 9 is amended by omitting "in form II in the first schedule," and substituting "in the approved form".

4. Section 26 is amended by omitting "form III in the first schedule," and substituting "the approved form".

5. Section 40(1) is amended by omitting "form IV in the first schedule," and substituting "the approved form".

6. The first schedule is omitted.

Stamp Duties Act 1931

(22 Geo. V No. 19)

1. Schedule 2 is amended as follows:

- (a) by omitting item 2 from Part I;
- (b) by omitting "otherwise" from item 21 in Part I and substituting "otherwise, which is not intended to be registered under the *Registration of Deeds Act 1935*";
- (c) by inserting "which is not intended to be registered under the *Land Titles Act 1980* or the *Registration of Deeds Act 1935*" in item 22 in Part I after "judgment".

*[Second reading presentation speech made in:-
House of Assembly on 18 June 1996
Legislative Council on 26 June 1996]*