

(3) Notwithstanding the amendment of the Principal Act effected by paragraph (b) of section two of this Act—

- (a) the person who, on the appointed day, is holding office as Director of Education continues to be; and
- (b) any person who is thereafter appointed as the Director of Education shall be,

the permanent head of the Education Department for the purposes of the *Public Service Act* 1923 as if he were an officer to whom the provisions of that Act apply.

(4) Any council, committee, or other body created under Part IIA of the Principal Act (as in force immediately before the appointed day), being a council, committee, or body in existence on that day, shall, notwithstanding the amendments of the Principal Act effected by this Act, continue to exist and, until otherwise prescribed, shall continue to have the same name, constitution, powers, and procedure as it had immediately before that day.

(5) In this section “appointed day” means such day as the Governor may, by proclamation, declare to be the appointed day for the purposes of this section.

REAL PROPERTY (No. 2).

No. 85 of 1963.

AN ACT to amend the *Real Property Act* 1862, the *Real Property Act* 1863, the *Real Property Act* 1893, and the *Real Property Act* 1962.

[17 December 1963.]

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* (No. 2) 1963. Short title and commencement.

(2) This Act commences on the same day as the *Local Government Act* 1962.

Powers of
Recorder.

2 Section eleven of the *Real Property Act 1862* is amended by inserting, after subsection (1), the following subsections:—

“(1A) For the purposes of any inquiry that the Recorder is by this or any other Act authorized or required to make, he shall be deemed to have been commissioned by the Governor, by letters patent, under the seal of the State, to make the inquiry.

“(1B) Any hearing that the Recorder is by this or any other Act authorized or required to hold shall be deemed to be an inquiry for the purposes of subsection (1A) of this section.”.

3 After section ten of the *Real Property Act 1863* the following section is inserted:—

Qualified
certificates
of title.

“11—(1) Where an application to bring land under the Principal Act is made so that the applicant may deal with the land or a part thereof together with land already under the Principal Act, the Recorder may, if in his opinion the evidence of title supplied by the applicant is imperfect, with the consent of the applicant bring the first-mentioned land under the Principal Act as provided in section twenty thereof, except that the certificate of title shall be qualified in accordance with subsection (3) of this section.

“(2) Where by any provision of section four hundred and seventy-seven A of the *Local Government Act 1962* the Recorder is directed to bring any land under the Principal Act, he shall, unless some person has made an application in that behalf and is entitled to receive an ordinary certificate of title, bring the land under the Principal Act by issuing a qualified certificate of title in accordance with subsection (3) of this section to the person who appears to him by any assurance registered in the Registry of Deeds to be entitled to an estate of freehold in possession therein (either at law or in equity).

“(3) A certificate of title issued pursuant to subsection (1) or subsection (2) of this section shall be known as a qualified certificate of title, and may be—

- (a) qualified as to title, in which case the Recorder shall enter thereon a caution that the registered proprietor holds his estate subject to every estate and interest in the land created before the date on which it is brought under the Principal Act;
- (b) qualified as to description of land, in which case the Recorder shall enter thereon a caution that the boundaries of the land are uncertain; or
- (c) qualified as to both title and description of land.

“(4) Land in a qualified certificate of title may be the subject of a consolidated certificate of title with land in an ordinary certificate of title if the consolidated certificate of title distinguishes the part that is qualified.

“(5) Except as otherwise provided in this section—

- (a) the provisions of the Principal 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 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
- (b) a qualified certificate of title shall be evidence as to title in all respects as if it were an ordinary certificate of title, save that—
 - (i) if it is qualified as to title, it shall be subject to every estate and interest in the land comprised therein created before the date on which it is brought under the Principal Act; and
 - (ii) if it is qualified as to description of land, it shall not be taken for any purpose to guarantee the position or measurements of the boundaries stated therein,

and the provisions of the Principal Act shall with such adaptations as are necessary be read and construed and take effect accordingly.

“(6) Nothing is payable under section twenty-eight of the Principal Act where land is brought under that Act with a qualified title, and money lodged for the purpose of that section shall be refunded.

“(7) A person claiming an estate of freehold in the whole or any part of the land comprised in a qualified certificate of title may apply to have the land brought under the Principal Act as if the qualified certificate of title had not been issued, and the Recorder, if satisfied as to the grounds of the applicant's claim, shall issue an ordinary certificate of title as provided in section twenty of that Act.

“(8) Where—

- (a) land has been brought under the Principal Act as provided in subsection (7) of this section; or
- (b) 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 (11) of this section) and cancel or correct the relevant qualified certificate of title, as the circumstances may require.

“(9) The registered proprietor of land comprised in a qualified certificate of title may at any time apply to the Recorder for cancellation of the caution entered thereon under subsection (3) of this section, and thereupon the Recorder—

- (a) if the certificate is qualified as to title, upon proof to his satisfaction that there are no outstanding interests which are not notified on the certificate of title; or
- (b) if the certificate is qualified as to description of land, upon proof to his satisfaction (supported by a plan certified by a registered surveyor) of the correct boundaries of the land comprised in the certificate,

shall cancel the caution, and the certificate shall cease to be qualified in that respect.

“(10) Where a certificate of title qualified as to title has been issued for a life estate in any land, no person entitled in reversion or remainder to that land shall deal with his estate except by an instrument registered in accordance with the provisions of the Principal Act, and any instrument made in contravention of this subsection shall be of no effect, unless made without notice that the land has been brought under the Act.

“(11) The Recorder may at any time by written notice require any person having possession or control of any instruments constituting, or in any way affecting, the title to any land which the Recorder has brought or proposes to bring under the Principal Act pursuant to this section, 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*.”.

4 After section fourteen of the *Real Property Act 1893* the following sections are inserted:—

“15—(1) Where it appears to the Recorder that—

- (a) the boundaries, area, or position of the land described in a certificate of title differ from the boundaries, area, or position of the land actually and *bona fide* occupied by the registered proprietor as being land included in the certificate; or
- (b) the description of land in the certificate is based on erroneous or imperfect information,

he may act as provided in subsection (2) of this section.

Rectification
of certifi-
cates.

Cf. No. 380
of 1886 (S.A.)
ss. 223a-223l.

“(2) For the purposes of this section the Recorder may, if in his opinion the case is proper to be dealt with under this section, rather than by an application under section one hundred and forty-six of the Principal Act, give notice that—

- (a) he proposes to make such amendments as are specified in the notice unless before a time so specified, not being less than fourteen days from the completion of notification, a caveat is lodged forbidding the amendments; or
- (b) he proposes to hold an inquiry into the rectification of specified titles on a day to be specified in the notice, not being less than fourteen days from the completion of notification and that all persons interested should attend.

“(3) The Recorder shall give notice under subsection (2) of this section—

- (a) in the case of land under the Principal Act which it is proposed to affect or which may be affected, to every person appearing by the register book to have any interest in that land, which notice shall be accompanied by a plan showing the extent to which the land is proposed to be or may be affected;
- (b) in the case of land not under the Principal Act which it is proposed to affect or which may be affected, to every person whom the Recorder has found by searching the register of deeds to have an interest in the land, which notice shall be accompanied by a plan showing the extent to which the land is proposed to be or may be affected; and
- (c) in the case of land subject to a highway which it is proposed to affect or which may be affected, to the highway authority concerned, which notice shall be accompanied by a plan showing the extent to which the highway is proposed to be or may be affected,

and shall publish the notice in the *Gazette*.

“(4) Notice under subsection (2) shall in all cases be given to the corporation together with a plan of the land which is proposed to be or may be affected and the corporation shall be deemed to have an interest therein.

“(5) Notification is completed for the purposes of subsection (2) of this section when the notice is published in the *Gazette*, which shall not be done until all notices have been given as provided in subsections (3), (4), and (6).

“(6) Where a person entitled to notice under subsection (3) of this section cannot be ascertained or found in this State the Recorder may give his notice to the Public Trustee who may act on his behalf and have a lien on his interest for his expenses.

“(7) Any person claiming any estate or interest in any land which it is proposed to affect under this section may, within the time specified in the notice, lodge a caveat forbidding the amendments specified therein.

“(8) A caveat under this section shall in all other respects—

- (a) be in the same form;
- (b) be subject to the same provisions; and
- (c) have the same effect with respect to the application against which it is lodged,

as a caveat against bringing land under the provisions of the Principal Act.

“(9) Upon an inquiry under this section the Recorder may make a provisional order accompanied by and referring to a plan and shall forthwith give copies thereof to all persons who attended the inquiry and stated that they wanted a copy and to all other persons who have applied as prescribed before the conclusion of the inquiry for copies.

“(10) The Recorder may for the purposes of this section—

- (a) amend any certificate of title or registered instrument;
- (b) order any person benefited by any such amendment to pay compensation to any person adversely affected by this section;
- (c) order payment of compensation out of the assurance fund under the Principal Act;
- (d) order the rectification of any deed registered in the Registry of Deeds;
- (e) order the execution and registration of any deed or instrument;
- (f) vary, and order the registration of, any unregistered easement;
- (g) re-define the boundaries of a highway; and
- (h) make such order as to the costs of a person attending an inquiry as he thinks fit.

“(11) The Recorder may proceed under this section—

- (a) of his own motion; or
- (b) on the application as prescribed of—
 - (i) all persons interested;
 - (ii) some of those persons with the written consent of the others; or
 - (iii) a single person interested,

and the applicants shall pay the prescribed fee on application and supply the Recorder with such evidence in support of the application as he requires.

“(12) The Recorder may refuse to proceed or to proceed further under this section—

- (a) if he thinks that a party ought to bring an action, suit, or other proceeding or to apply under section one hundred and forty-six of the Principal Act or that he cannot bring the matter to a satisfactory conclusion; or

- (b) until a plan has been amended under section four hundred and eighty-one of the *Local Government Act* 1962 or an action, suit, or other proceeding has been carried through.

“(13) Unless what he proposes to do does not require it, the Recorder shall include in the notice under paragraph (a) of subsection (2) of this section or the provisional order, as the case may be, a plan prepared by a registered surveyor in the form as nearly as possible of a final plan under section four hundred and sixty-nine of the *Local Government Act* 1962, including, where appropriate, a schedule of easements.

“(14) Where persons have adverse claims to the same land, the Recorder shall exercise his powers under subsection (9) of this section so as to do what is most equitable and convenient.

“(15) At any time within thirty days after the making of a provisional order any person entitled to a copy may in writing apply to be heard against it, stating in his application the nature of his objection, and the Recorder shall give copies of the application to such persons as he thinks fit and appoint a time to hear the objection.

“(16) If during the thirty days referred to in subsection (15) no objection is received the Recorder may confirm the provisional order, giving notice of confirmation to all persons given copies of the provisional order, and the provisional order shall then become a final order.

“(17) If during those thirty days an objection is received, when the Recorder has heard it and any others, he may act as provided in subsection (16) of this section or may make a final order differing from the provisional order in the light of the objections, giving copies forthwith to all concerned.

“(18) A final order may be registered in the Supreme Court and shall then be enforceable, subject to subsection (19) of this section, as if it were a judgment of that Court.

“(19) A final order shall not be acted on for thirty days and in that time a person affected by the order may appeal to the Supreme Court which may—

- (a) stay proceedings on the order wholly or in part;
- (b) quash or vary the order; or
- (c) make any order that the Recorder might have made.

“(20) Every amendment of a certificate of title made pursuant to this section shall be made by making the requisite alterations in the original of the certificate, or by cancelling it and making a new one with the requisite alterations.

“(21) The Recorder shall also make the requisite alterations in the duplicate certificate when it is produced to him for that purpose, or for the purpose of any dealing with the land included therein or cancel it and issue a new one, as the case requires, and he may detain the duplicate until the amendment thereof has been completed, and may refuse to

register any dealing with the land or any estate or interest therein until the duplicate has been produced for amendment or cancellation.

“(22) Upon amending or replacing the original of a certificate pursuant to this section, the Recorder shall give notice in writing to the registered proprietor of, and to all persons appearing by the register book to have an interest in, the land included in that certificate informing him of the amendment.

“(23) Where in the opinion of the Recorder it is expedient and desirable so to do, he may, with the consent of every person appearing by the register book to have any interest, make any correction or amendment to any certificate of title for the purpose of reconciling the boundaries shown in the certificate with the boundaries of the land occupied.

“(24) The powers conferred by this section are in addition to, and shall not be deemed to be substituted for, any powers of correction or amendment conferred by any other provision of the Principal Act.

“(25) Any correction or amendment made under this section shall be deemed to have been made prior to the registration of any instrument registered on any certificate of title so corrected or amended and extant at the time of correction or amendment.

Rectification
of easements,
&c., in old
subdivisions.

“16—(1) In this section the expression ‘previously approved plan’ has the same meaning as in Division II of Part XVI of the *Local Government Act 1962*.

“(2) The Recorder may, with the consent of all persons having registered estates or interests in the land shown in a previously approved plan comprising land which is under the provisions of the Principal Act or which he proposes to bring under those provisions, make an order setting forth in respect of each lot or other piece of land shown in the plan—

- (a) the easements and profits a preponder to be appurtenant thereto or to which it is to be subject; and
- (b) the covenants the benefit or burden of which is to run therewith.

“(3) Where some but not all the lots or other pieces shown in the plan are to be affected, the Recorder may make an order such as is mentioned in subsection (2) of this section, with the consent of all persons having registered estates or interests in the lots or other pieces which are to be affected by the order.

“(4) The Recorder may, of his own motion or upon the application of any person interested, give notice in accordance with subsection (6) of this section that he proposes to make such an order as is mentioned in subsection (2) of this section.

“(5) In particular, but without limiting the generality of subsection (4) of this section, the Recorder may act as provided in subsection (4) in any case in which the plan shows the position of drainage easements but either—

- (a) no easements have been granted to the purchasers of lots; or
- (b) in the opinion of the Recorder, the easements granted by registered assurances of lots shown in the plan are not in accordance with a reasonable scheme of easements for the subdivision.

“(6) The Recorder shall give notice under subsection (4) of this section—

- (a) in the case of land under the Principal Act which it is proposed to affect, to every person appearing by the register book to have any interest in that land;
- (b) in the case of land not under the Principal Act which it is proposed to affect, to every person whom the Recorder has found by searching the register of deeds to have an interest in the land; and
- (c) to the corporation of the municipality in which the land is situate, which shall be deemed to have an interest in the land affected,

and every such notice shall include a copy of the proposed order and be accompanied by a plan showing the position of the easements referred to in the proposed order, and shall specify a time (being not less than fourteen days from the giving of the notice) within which written objections to the proposed order may be lodged with the Recorder.

“(7) After the expiration of the time limited by notice under subsection (6) of this section, the Recorder—

- (a) if no written objections have been lodged with him, may make an order in terms of the proposed order; or
- (b) if written objections have been lodged with him, may either—
 - (i) vary his proposed order in the light of the objections, and give notice of his new proposal in accordance with subsection (6) of this section; or
 - (ii) give notice to such persons as he thinks proper that he will hear any person wishing to support or oppose the proposed order on a day to be specified in the notice, and at the conclusion of that hearing may make an order in terms of the proposed order or differing from it in the light of the objections, giving copies forthwith to all concerned.

“(8) The Recorder shall not give effect to an order made after hearing objections for thirty days, and in that time a person affected by the order may appeal to the Supreme Court which may—

- (a) stay proceedings on the order wholly or in part;
- (b) quash or vary the order; or
- (c) make any order that the Recorder might have made.

“(9) Subject to subsection (8) of this section, and to any order of the Supreme Court made thereunder, the Recorder may give effect to an order made under this section by—

- (a) registering it in the Registry of Deeds, if any land affected by the order is not subject to the Principal Act; and
- (b) entering a memorandum referring to the order in the register book upon the grant or certificate of title to any land affected by the order.

“(10) Upon completion of the acts required by subsection (9) of this section—

- (a) the easements specified in the order to be in favour of the Crown or of any public or local authority constituted by or under any Act or appurtenant to a highway vest accordingly without further assurance;
- (b) the other easements and the profits a prender and covenants specified therein come into being and continue as if created by the most effectual instruments made between proper parties, and are not affected by—
 - (i) the unity of seisin of the lands having the burden and benefit of the easement or profit a prender; or
 - (ii) identity of the parties to the covenant, except that during such unity or identity they are in abeyance, to revive by force of this section when it is broken or destroyed;
- (c) any easements or profits a prender or covenants created by any instrument registered before the completion of those acts, and which are not continued by the order, are destroyed;
- (d) any subsequent assurance of a block comprised in the plan to which the order relates shall, without any express mention and notwithstanding any contrary expression, assure that land together with and subject to any easements and profits a prender which by the order exist upon or in favour of that land;
- (e) any obligation set forth in the order that could be notified under section twenty-seven B of the *Real Property Act 1886* shall have effect as if embodied in an appropriate instrument notified in respect of titles of all affected lands; and

(f) the Recorder shall amend any certificate of title affected by the order and shall make the same amendments to the duplicate certificate when it is produced to him for any purpose, or may call in the duplicate for amendment as containing a misdescription pursuant to section one hundred and thirty-six of the Principal Act.

“(11) The Recorder may proceed concurrently under this section and section fifteen, if in his opinion it is necessary or convenient so to do, notwithstanding that the proceedings under section fifteen may concern a plan which is not a previously approved plan.

“(12) The Recorder may make orders as to the payment of costs of the parties attending a hearing under this section, and such orders shall be filed in the Supreme Court and proceeded upon like similar orders of a judge in chambers.

“16A—(1) Where the grantor of land in fee subject to a condition has re-entered and recovered possession of the land upon condition broken, the Recorder, upon proof thereof to his satisfaction of the breach and re-entry, shall note the re-entry in the register book and the estate of the registered proprietor in the land shall thereupon determine and the estate of the grantor shall revive, and may in accordance with section one hundred and thirty-six of the Principal Act call in and cancel or amend the duplicate certificate of title.

Re-entry
determining
fee.
Cf. 25 Vict.
No. 16, s. 51.

“(2) In this section ‘grantor’ includes a transferor and the successors in title of a grantor.

“16B Any correction or amendment of an instrument under the Principal Act pursuant to section nine D or section seventeen A of the *Roads and Jetties Act 1935*, section three hundred and forty-two, section three hundred and fifty-five, section four hundred and eighty-one, or section six hundred and fifty of the *Local Government Act 1962*, shall be deemed to have been made before the registration of any instrument that is—

Effect of
certain
corrections.

- (a) registered on a certificate of title so corrected or amended; and
- (b) extant at the time of the correction or amendment.”.

5 Section three of the *Real Property Act 1962* is amended by omitting the section therein contained and substituting therefor the following section:—

“33A Every transfer, mortgage, incumbrance, or lease of land described therein as comprised in a certificate of title in which the land is described by reference to a sealed plan lodged with the Recorder under Division II of Part XVI of the *Local Government Act 1962* shall be deemed to import a statement that the land is similarly described by reference to that plan.”.

Effect of
reference to
sealed plan.

DEFACEMENT OF PROPERTY.

No. 86 of 1963.

AN ACT to amend the *Defacement of Property Act 1898.* [17 December 1963.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title and citation.

1—(1) This Act may be cited as the *Defacement of Property Act 1963.*

(2) The *Defacement of Property Act 1898*, as subsequently amended, is in this Act referred to as the Principal Act.

Exemptions.

2 Section eight A of the Principal Act is amended by omitting from sub-paragraph (ii) of paragraph (e) the words “having a population of not less than five thousand persons” and substituting therefor the words “containing not less than four hundred occupied dwellings”.

SUPERANNUATION.

No. 87 of 1963.

AN ACT to amend the *Superannuation Act 1938.* [17 December 1963.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title and citation.

1—(1) This Act may be cited as the *Superannuation Act 1963.*

(2) The *Superannuation Act 1938*, as subsequently amended, is in this Act referred to as the Principal Act.

Interpretation.

2 Section three of the Principal Act is amended—

(a) by omitting from subsection (1) thereof the definition of “Actuary” and substituting therefor the following definitions:—

“ ‘Actuary’ means—

(a) the Commonwealth Actuary; or