

TASMANIA

LAND TITLES AMENDMENT BILL 2012

CONTENTS

1. Short title
2. Commencement
3. Principal Act
4. Section 3 amended (Interpretation)
5. Section 11 amended (Applications to bring land under this Act)
6. Section 13 amended (Notices)
7. Section 14 amended (Caveat forbidding the bringing of land under this Act)
8. Section 17 amended (Land may be brought under this Act on registration of instruments under the *Registration of Deeds Act 1935*)
9. Section 19 amended (Land may be brought under this Act at the instance of the Recorder)
10. Section 25 amended (Caution to lapse after 20 years)
11. Section 27A amended (Certain Crown land may be brought under this Act)
12. Section 33 amended (The Register, certificates of title and registration)
13. Section 36 amended (Searches of public records)
14. Section 40 amended (Estate of registered proprietor indefeasible)
15. Section 46 amended (Folio of the Register void in certain cases)

16. Section 48 amended (Dealings to be attested; order of registration; priority of dealings)
17. Section 48A substituted
48A. Lodgment of dealings and instruments
18. Section 48B amended (Authority for lodgment by electronic process)
19. Section 48C amended (Lodgment of supporting documents)
20. Section 50 amended (Dealings not to be registered except in accordance with this Act)
21. Section 51 amended (Recording of dealing on certificate of title, &c.)
22. Section 54 amended (Delivery of certificate of title or duplicate registered dealing)
23. Section 58 amended (Transfer)
24. Section 61 amended (Sale under writ)
25. Section 63 amended (Severance of joint tenancy)
26. Section 71 amended (Folio of the Register for a leasehold estate)
27. Section 76 amended (Postponement of mortgages and encumbrances)
28. Section 78 amended (Power to sell and appropriation of proceeds)
29. Section 102 amended (Covenants which run with freehold registered land)
30. Section 104A inserted
104A. Discharge of covenants in gross
31. Section 108 amended (Release and extinguishment of easements and *profits à prendre*)
32. Section 110 amended (Rectification of easements, &c., in old subdivisions)
33. Section 136A inserted
136A. Cancellation of caveat on application of proprietor of estate or interest
34. Section 137 amended (No registration affecting land in respect of which caveat lodged)
35. Section 138D amended (Recorder may make vesting order in certain circumstances when purchaser in possession)

36. Section 138E amended (Caveat forbidding granting of application under section 138D)
37. Section 138F amended (Restriction on renewal of caveats)
38. Section 138H substituted
138H. Application to unregistered land
39. Section 138J substituted
138J. Acquisition of easements by possession
40. Section 138K amended (Applicant to notify owner of servient tenement)
41. Section 138L amended (Requirements for application)
42. Section 138V amended (Requirements for title by possession)
43. Section 138W amended (Registered proprietor to hold land on trust)
44. Section 138X amended (Power of Recorder to make vesting order)
45. Section 142 substituted
142. Rectification of boundaries, area or position of land
46. Section 143C amended (Recorder may correct errors on plans)
47. Section 144 amended (Proprietor if dissatisfied may summon Recorder to show cause)
48. Section 146 amended (Mortgagee, encumbrancee or lessor may obtain possession in certain cases)
49. Section 150 amended (The assurance fund)
50. Section 153 amended (When action may lie against Recorder as nominal defendant)
51. Section 154 amended (Date of deprivation in certain cases)
52. Section 155 amended (Person sustaining loss may apply for compensation)
53. Section 158 amended (Limitation of actions)
54. Section 162 amended (Recorder may require map to be deposited)
55. Section 168 amended (Service, &c., of notices)
56. Section 170 amended (Regulations)
57. Repeal of Act

LAND TITLES AMENDMENT BILL 2012

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*

*(Brought in by the Minister for Primary Industries and Water,
the Honourable Bryan Alexander Green)*

A BILL FOR

An Act to amend the *Land Titles Act 1980*

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. Short title

This Act may be cited as the *Land Titles Amendment Act 2012*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Principal Act

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

*No. 19 of 1980

Land Titles Amendment Act 2012
Act No. of

s. 4

4. Section 3 amended (Interpretation)

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

- (a) by inserting the following definitions after the definition of *duplicate registered dealing*:

electronic communication has the same meaning as in the *Electronic Transactions Act 2000*;

electronic dealing means a dealing that is an electronic communication;

- (b) by omitting “the” second occurring from the definition of *encumbrance* and substituting “a current, future or contingent”;
- (c) by inserting “survey,” after “plan,” in the definition of *instrument*;
- (d) by inserting the following definitions after the definition of *mortgagor*:

newspaper does not include a newspaper published solely in electronic form;

office copy, in relation to an order, means a copy of the order that is certified by a legal practitioner, a justice or a Commissioner for

Land Titles Amendment Act 2012
Act No. of

s. 5

Declarations to be a true copy of
the order;

5. Section 11 amended (Applications to bring land under this Act)

Section 11(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (e) “application.” and substituting “application;”;
- (b) by inserting the following paragraph after paragraph (e):
 - (f) the legal practitioner acting for a person referred to in paragraph (a), (b), (c), (d) or (e).

6. Section 13 amended (Notices)

Section 13 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) Where an application under section 11 is based on a claim by possession under a statute of limitations (other than a claim against the Crown), the applicant is to –
 - (a) post on the land, or at such place as the Recorder directs, and keep so posted for not less than one month before the granting of the application; and

Land Titles Amendment Act 2012
Act No. of

s. 7

- (b) publish, not less than one month before the granting of the application, in at least one newspaper that is published, and circulating generally, in Tasmania and that is available in the locality in which the relevant land is situated –

a notice of the application in such form as the Recorder directs.

7. Section 14 amended (Caveat forbidding the bringing of land under this Act)

Section 14 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(b) “the Supreme Court.” and substituting “a court of competent jurisdiction.”;
- (b) by omitting from subsection (3)(b) “the Supreme Court” and substituting “a court of competent jurisdiction”;
- (c) by omitting subsection (4) and substituting the following subsection:
 - (4) Unless permitted by a Supreme Court order, a caveat that has lapsed under subsection (3) may not be renewed and a new caveat may not be lodged by or on behalf of the same person in

Land Titles Amendment Act 2012
Act No. of

s. 8

respect of the same estate or
interest.

8. Section 17 amended (Land may be brought under this Act on registration of instruments under the *Registration of Deeds Act 1935*)

Section 17 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Except as may be otherwise prescribed under subsection (4), a person who on or after the appointed day lodges for registration under the” and substituting “A person who lodges for registration under the”;
- (b) by omitting from subsection (1)(b) “simple –” and substituting “simple; or”;
- (c) by inserting the following paragraph after paragraph (b) in subsection (1):
 - (ba) any other instrument that affects land –
- (d) by omitting from subsection (1) “Registrar of Deeds” and substituting “Recorder”;
- (e) by omitting from subsection (1A) “Registrar of Deeds” and substituting “Recorder”;
- (f) by omitting from subsection (2) “Registrar of Deeds” and substituting “Recorder”;

Land Titles Amendment Act 2012
Act No. of

s. 8

- (g) by omitting from subsection (2) “fee simple” and substituting “fee simple, another instrument that affects land”;
- (h) by omitting from subsection (3) “mortgage” first occurring and substituting “mortgage, other instrument”;
- (i) by omitting from subsection (3) “Registrar of Deeds shall give it, and the statement and instruments referred to in subsection (1) or (1A), to the Recorder, who may then” and substituting “Recorder may”;
- (j) by omitting from subsection (3)(a) “mortgage” and substituting “mortgage, other instrument”;
- (k) by omitting from subsection (3)(b) “retain” and substituting “return”;
- (l) by omitting from subsection (3)(b) “mortgage or forestry right and” and substituting “mortgage, other instrument or forestry right and any”;
- (m) by omitting from subsection (3)(b) “custody.” and substituting “custody to the lodging party.”;
- (n) by omitting subsection (4).

9. Section 19 amended (Land may be brought under this Act at the instance of the Recorder)

Section 19(3) of the Principal Act is amended by omitting “Act within 10 years after the appointed day.” and substituting “Act.”.

10. Section 25 amended (Caution to lapse after 20 years)

Section 25(3) of the Principal Act is amended by omitting “section 117(4), or section 119(4)” and substituting “section 138W(4) or section 138X(4)”.

11. Section 27A amended (Certain Crown land may be brought under this Act)

Section 27A of the Principal Act is amended as follows:

(a) by omitting subsection (6) and substituting the following subsection:

(6) In an application made under subsection (2), the Director-General of Lands may –

(a) create any easement, covenant, limitation, exception, reservation, condition or restriction that he or she considers appropriate; and

Land Titles Amendment Act 2012
Act No. of

s. 12

(b) request the Recorder to note the creation of that new interest on the relevant folio of the Register for the land and any other limitation, exception, reservation, condition or restriction to which the land is subject in accordance with the *Crown Lands Act 1976*.

(b) by inserting in subsection (8) “easement, covenant,” after “any”.

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

Section 33 of the Principal Act is amended as follows:

- (a) by omitting from subsection (6) “for –” and substituting “for any of the following:”;
- (b) by omitting from subsection (6)(c) “or” second occurring;
- (c) by omitting from subsection (6)(d) “land.” and substituting “land;”;
- (d) by inserting the following paragraph after paragraph (d) in subsection (6):
 - (e) any other estate or interest in land.

- (e) by omitting from subsection (8) “he shall” and substituting “the Recorder may”;
- (f) by omitting from subsection (10) “shall number it with a distinctive number, or letter and number” and substituting “is to ensure it is marked with a distinctive number, letter or code or marked in some other manner approved by the Recorder”.

13. Section 36 amended (Searches of public records)

Section 36(1)(d) of the Principal Act is amended by omitting “maps and plans” and substituting “maps, plans and surveys”.

14. Section 40 amended (Estate of registered proprietor indefeasible)

Section 40(3) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (e)(i) “land; and” and substituting “land; or”;
- (b) by omitting subparagraph (ia) from paragraph (e) and substituting the following subparagraphs:
 - (ia) an easement created by deed but unintentionally omitted from the folio of the Register for the servient land when that servient land was brought under this Act or the repealed Act; or

Land Titles Amendment Act 2012
Act No. of

s. 15

- (ib) an easement that has been created under this Act but unintentionally omitted from the folio of the Register for the servient land; or
- (c) by omitting from paragraph (h) “section 117,” and substituting “section 138W,”.

15. Section 46 amended (Folio of the Register void in certain cases)

Section 46 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “section 10;” and substituting “section 10; or”;
- (b) by omitting from paragraph (b) “section 117(3)” and substituting “section 138W(4)”;
- (c) by omitting from paragraph (b) “section 119 –” and substituting “section 138X; or”;
- (d) by omitting from paragraph (c) “section 123” and substituting “section 138D”.

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

Section 48(3) of the Principal Act is amended by omitting “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”.

17. Section 48A substituted

Section 48A of the Principal Act is repealed and the following section is substituted:

48A. Lodgment of dealings and instruments

A dealing or instrument that may be lodged with the Recorder under this or another Act may be so lodged –

- (a) by delivery of the original dealing or instrument; or
- (b) if authorised by the Recorder, by the transmission, by electronic communication, of a copy of the original dealing or instrument; or
- (c) by the lodgment of an electronic communication that –
 - (i) is set out in a format approved by the Recorder; and
 - (ii) allows the Recorder to produce the appropriate dealing or instrument in the approved form, the form approved by the Recorder or other form required by, or allowed under, this or another Act; or

Land Titles Amendment Act 2012
Act No. of

s. 18

- (d) in any other manner approved by the Recorder.

18. Section 48B amended (Authority for lodgment by electronic process)

Section 48B of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsection:
- (1) The Recorder may make an agreement with a person authorising the person to prepare, lodge or prepare and lodge any dealing or instrument that may be lodged with the Recorder under this or another Act otherwise than by production of the original dealing or instrument.
- (b) by omitting from subsection (2)(b) “of the priority notice, caveat, plan, withdrawal of priority notice or withdrawal of caveat.” and substituting “by electronic communication of the dealing or instrument.”;
- (c) by omitting from subsection (3) “priority notice, caveat, plan, withdrawal of priority notice or withdrawal of caveat” and substituting “dealing or instrument”.

19. Section 48C amended (Lodgment of supporting documents)

Section 48C of the Principal Act is amended as follows:

- (a) by inserting “preparation and” after “to the”;
- (b) by omitting “a priority notice, caveat, plan, withdrawal of priority notice or withdrawal of caveat” and substituting “the dealing or instrument”.

20. Section 50 amended (Dealings not to be registered except in accordance with this Act)

Section 50 of the Principal Act is amended as follows:

- (a) by omitting from subsection (6) “in the margin of the dealing”;
- (b) by omitting subsection (11) and substituting the following subsections:
 - (11) The Recorder is not to register a dealing that purports to be executed under or in pursuance of a power of attorney unless he or she is satisfied that –
 - (a) the power of attorney is registered under the *Powers of Attorney Act 2000*; or

Land Titles Amendment Act 2012
Act No. of

s. 21

(b) in the case of a foreign power of attorney within the meaning of the *Powers of Attorney Act 2000*, the foreign power of attorney is registered under, or taken to be registered in Tasmania for the purposes of, that Act.

(11A) If satisfied as specified in subsection (11), the Recorder is entitled to assume that the execution of the dealing is within the powers conferred on the attorney by the relevant power of attorney or foreign power of attorney.

21. Section 51 amended (Recording of dealing on certificate of title, &c.)

Section 51 of the Principal Act is amended as follows:

(a) by inserting the following paragraph after paragraph (b) in subsection (2):

(ba) in respect of the registration of a transfer on the exercise of a power of sale by a mortgagee or encumbrancee under section 78, the memorandum of mortgage or the memorandum of encumbrance;

Land Titles Amendment Act 2012
Act No. of

s. 22

- (b) by omitting from subsection (2)(e) “section 119, section 120, section 121, or section 123.” and substituting “section 138A, section 138B, section 138D or section 138X;”;
- (c) by inserting the following paragraph after paragraph (e) in subsection (2):
 - (f) any other dealing where the Recorder considers that the production of the certificate of title, grant or registered dealing is not required.
- (d) by omitting from subsection (4) “certify” and substituting “note”;
- (e) by omitting from subsection (4) “certificate” and substituting “notation”.

22. Section 54 amended (Delivery of certificate of title or duplicate registered dealing)

Section 54(2) of the Principal Act is amended by omitting “The Recorder may assume that a person who lodges any dealing or other document with him has” and substituting “A person who lodges any dealing or other document with the Recorder is taken to have”.

23. Section 58 amended (Transfer)

Section 58(2) of the Principal Act is amended by omitting “and privileges” and substituting “privileges, requirements and liabilities”.

Land Titles Amendment Act 2012
Act No. of

s. 24

24. Section 61 amended (Sale under writ)

Section 61 of the Principal Act is amended by omitting subsection (6) and substituting the following subsection:

- (6) After a writ is issued but before it is recorded in accordance with subsection (3), a person dealing with the registered proprietor or with a mortgagee or encumbrancee exercising a power of sale may lodge a transfer for registration and, if that transfer is registered, the person is entitled to take his or her interest in priority even if the person had actual or constructive notice of the issue of the writ.

25. Section 63 amended (Severance of joint tenancy)

Section 63 of the Principal Act is amended by inserting after subsection (3) the following subsections:

- (4) On the registration of a declaration of severance of a joint tenancy under this section, the joint tenants become tenants in common with equal shares in the land.
- (5) Nothing in subsection (4) prevents the tenants in common referred to in that subsection executing a transfer so as to provide that the shares in the land are held by them in other than equal shares.

26. Section 71 amended (Folio of the Register for a leasehold estate)

Section 71 of the Principal Act is amended as follows:

- (a) by omitting paragraphs (a), (b) and (c) from subsection (1) and substituting the following paragraphs:
 - (a) is to record the creation of that folio on the folio of the Register evidencing the lessor's title; and
 - (b) is to register on that leasehold folio all dealings with the lease.
- (b) by omitting from subsection (2) "Register for the leasehold estate," and substituting "Register, or the edition of the folio of the Register, for the leasehold estate,";
- (c) by omitting from subsection (2) "folio of the Register for the leasehold estate" second occurring and substituting "folio, or the edition of the folio, of the Register for the leasehold estate".

27. Section 76 amended (Postponement of mortgages and encumbrances)

Section 76 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

Land Titles Amendment Act 2012
Act No. of

s. 28

- (2) An instrument referred to in subsection (1) that postpones the priority of a mortgage or encumbrance must be executed by the registered proprietor of the mortgage or encumbrance that is postponed.

28. Section 78 amended (Power to sell and appropriation of proceeds)

Section 78 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “one month” and substituting “30 days”;
- (b) by omitting from subsection (2)(e) “covenants.” and substituting “covenants; and”;
- (c) by inserting the following paragraph after paragraph (e) in subsection (2):
- (f) enter into an agreement under Part 5 of the *Land Use Planning and Approvals Act 1993*.

29. Section 102 amended (Covenants which run with freehold registered land)

Section 102(9) of the Principal Act is amended by omitting “containing the titles of” and substituting “for”.

30. Section 104A inserted

After section 104 of the Principal Act, the following section is inserted in Division 8:

104A. Discharge of covenants in gross

A covenant that is a covenant in gross within the meaning of the *Conveyancing and Law of Property Act 1884* may be discharged by a dealing in a form approved by the Recorder.

31. Section 108 amended (Release and extinguishment of easements and *profits à prendre*)

Section 108 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “by the person having the benefit of that easement or *profit à prendre*” after “partly”;
- (b) by inserting in subsection (2) “in whole or in part,” after “the easement or *profit à prendre*,”;
- (c) by omitting subsection (3) and substituting the following subsection:
 - (3) In considering whether an easement or *profit à prendre* has been abandoned, the Recorder, if satisfied on evidence that the easement or *profit à prendre* has not been used for a period of at

Land Titles Amendment Act 2012
Act No. of

s. 32

least 20 years, is to treat that failure to use as conclusive evidence that the easement or *profit à prendre* has been abandoned.

32. Section 110 amended (Rectification of easements, &c., in old subdivisions)

Section 110 of the Principal Act is amended as follows:

- (a) by omitting from subsection (6) “subsection (4) –” and substituting “subsection (4) or (14) –”;
- (b) by inserting the following subsections after subsection (12):
 - (13) The Recorder may, of his own motion or on the application of any person interested, cancel an order made under this section after it has been registered or recorded and make a fresh order.
 - (14) Before taking action under subsection (13), the Recorder must give notice of the intention to cancel the order and make a fresh order in accordance with subsection (6).
 - (15) If a fresh order is made under subsection (13), that fresh order is

taken to be an order made under this section.

33. Section 136A inserted

After section 136 of the Principal Act, the following section is inserted in Division 1:

136A. Cancellation of caveat on application of proprietor of estate or interest

- (1) On application by a registered proprietor against whom a caveat is lodged, the Recorder is to serve on the caveator a notice in accordance with subsection (3).
- (2) An application under subsection (1) is to be in a form approved by the Recorder.
- (3) A notice under subsection (1) is to state that the Recorder will cancel the caveat on the expiry of 28 days after the day on which the notice is served unless –
 - (a) an order is made by the Supreme Court extending the operation of the caveat –
 - (i) for such further period as is specified in the order; or
 - (ii) until the further order of that Court; and

Land Titles Amendment Act 2012
Act No. of

s. 34

- (b) that order, or an office copy of that order, is lodged with the Recorder.
- (4) If an order referred to in subsection (1) has not been obtained and lodged with the Recorder before the expiry of the 28-day period referred to in subsection (3), the Recorder is to cancel the caveat on the expiry of that 28-day period.

34. Section 137 amended (No registration affecting land in respect of which caveat lodged)

Section 137(3) of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (b):
 - (ba) a declaration of severance of a joint tenancy pursuant to section 63;
- (b) by omitting paragraph (e) and substituting the following paragraphs:
 - (e) if the caveat lapsed pursuant to section 136 so as to allow registration of a lease, mortgage or encumbrance, a subsequent dealing by the proprietor of the lease, mortgage or encumbrance (including a dealing that is an extension or variation of that lease, mortgage or encumbrance);

Land Titles Amendment Act 2012
Act No. of

s. 35

- (ea) if the caveator consented to the registration of a lease, mortgage or encumbrance, a subsequent dealing by the proprietor of the lease, mortgage or encumbrance (other than a dealing that is an extension or variation of that lease, mortgage or encumbrance);
- (c) by omitting from paragraph (o) “section 119, section 121, or section 123;” and substituting “section 138B, section 138D or section 138X;”;
- (d) by omitting from paragraph (p) “section 120;” and substituting “section 138A;”.

35. Section 138D amended (Recorder may make vesting order in certain circumstances when purchaser in possession)

Section 138D of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (1):
 - (1A) An order under subsection (1) may be made only with respect to the whole of the land described in a folio of the Register.
- (b) by omitting paragraph (a) from subsection (5) and substituting the following paragraph:

Land Titles Amendment Act 2012
Act No. of

s. 36

- (a) direct that notice be given in a form approved by the Recorder in at least one newspaper that is published, and circulating generally, in Tasmania and that is available in the locality in which the relevant land is situated; and

36. Section 138E amended (Caveat forbidding granting of application under section 138D)

Section 138E of the Principal Act is amended as follows:

- (a) by omitting subsections (3) and (4) and substituting the following subsections:
 - (3) The Recorder must not proceed with the application to which the caveat relates unless –
 - (a) the caveat has been withdrawn; or
 - (b) the caveat has lapsed; or
 - (c) if grounds for the caveat have been lodged within the time specified in subsection (2), the Recorder has carried out an investigation of the caveat.
 - (4) In investigating the caveat, the Recorder may make such

investigations as the Recorder considers necessary for the proper determination of the caveat, including conducting an inquiry under section 160(2).

(4A) On completing the investigation of the caveat, the Recorder may grant or refuse to grant the application to which the caveat relates.

(b) by omitting from subsection (5) “of the Recorder or”.

37. Section 138F amended (Restriction on renewal of caveats)

Section 138F of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

(1) Unless permitted by a Supreme Court order, a caveat that has lapsed or been withdrawn under section 138E may not be renewed and a new caveat may not be lodged by or on behalf of the same person in respect of the same estate or interest.

38. Section 138H substituted

Section 138H of the Principal Act is repealed and the following section is substituted:

138H. Application to unregistered land

This Part applies to a dealing with land that is not registered land where that dealing with that land is not otherwise covered by this Act.

39. Section 138J substituted

Section 138J of the Principal Act is repealed and the following section is substituted:

138J. Acquisition of easements by possession

- (1) A person who has exercised rights which may amount to an easement at common law for a period of not less than 15 years, or not less than 30 years if the owner of the land is a person under disability, may apply, in accordance with Division 3, to the Recorder for an order vesting an easement in respect of those rights in the person.
- (2) An application is to be in a form approved by the Recorder.
- (3) The Recorder may make an order referred to in subsection (1) in favour of –
 - (a) an applicant who, after giving notice under section 138K(1), continues to exercise rights which the Recorder considers may amount to an easement; or

- (b) an applicant who, after giving notice under section 138K(1), has been prevented or hindered in the exercise of rights which the Recorder considers may amount to an easement by the direct or indirect action of the owner of the servient tenement; or
- (c) an applicant who has exercised rights in accordance with subsection (1) which the Recorder considers may amount to an easement but, before giving notice under section 138K(1), has been prevented or hindered in the further exercise of those rights by the direct or indirect action of the owner of the servient tenement if the applicant gives notice under section 138K(1) within 6 months after first becoming so prevented or hindered in the further exercise of those rights.

40. Section 138K amended (Applicant to notify owner of servient tenement)

Section 138K(1) of the Principal Act is amended by omitting “claim” and substituting “claim, in the approved form,”.

Land Titles Amendment Act 2012
Act No. of

s. 41

41. Section 138L amended (Requirements for application)

Section 138L of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “other” second occurring and substituting “disinterested”;
- (b) by omitting from subsection (2) “field” and substituting “survey”.

42. Section 138V amended (Requirements for title by possession)

Section 138V of the Principal Act is amended by omitting “other” second occurring and substituting “disinterested”.

43. Section 138W amended (Registered proprietor to hold land on trust)

Section 138W of the Principal Act is amended as follows:

- (a) by omitting from subsection (7) “field” and substituting “survey”;
- (b) by omitting paragraph (a) from subsection (8) and substituting the following paragraph:
 - (a) publish, in at least one newspaper that is published, and circulating generally, in Tasmania and that is

available in the locality in which the relevant land is situated, a notice that –

- (i) is in a form approved by the Recorder; and
 - (ii) states that the applicant intends to make the application; and
- (c) by omitting from subsection (8)(b) “an approved form” and substituting “a form approved by the Recorder”;
 - (d) by omitting from subsection (8)(c) “in writing”;
 - (e) by inserting in subsection (8)(c) “in a form approved by the Recorder” after “application”;
 - (f) by inserting in subsection (8)(d) “referred to in paragraph (a)” after “notice”.

44. Section 138X amended (Power of Recorder to make vesting order)

Section 138X(2) of the Principal Act is amended by inserting “conclusive” after “as”.

45. Section 142 substituted

Section 142 of the Principal Act is repealed and the following section is substituted:

142. Rectification of boundaries, area or position of land

- (1) An interested person may apply to the Recorder for the taking of action or the making of an order under subsection (14).
- (2) The application is to be –
 - (a) in the approved form; and
 - (b) accompanied by the prescribed fee; and
 - (c) accompanied by such evidence in support of the application as the Recorder requires.
- (3) On receipt of an application, or on the Recorder's own motion, the Recorder may give notice as specified in subsections (5) and (6) if the Recorder is satisfied that the case can properly be dealt with under this section, rather than by an application under section 138W(4), and if –
 - (a) it appears to the Recorder that the boundary, area or position of the land described in a folio of the Register –
 - (i) was established without the benefit of a survey or a survey that the Recorder considers sufficient; and

Land Titles Amendment Act 2012
Act No. of

s. 45

- (ii) differs from the actual boundary, area or position of the land as shown in the supporting evidence accompanying the application or, if no better evidence is available, as shown by the occupation of the land in good faith by the registered proprietor as being the land described in that folio; or
- (b) it appears to the Recorder that the description of land in that folio is based on erroneous or imperfect information; or
- (c) it appears to the Recorder that the boundary, area, position or description of the land contained in a forestry right –
 - (i) was established without the benefit of a survey or a survey that the Recorder considers sufficient; and
 - (ii) differs from the actual boundary, area or position of the land contained in the forestry right as shown in the supporting evidence accompanying the application or, if no

Land Titles Amendment Act 2012
Act No. of

s. 45

better evidence is available, as shown by the use of the land in good faith by the registered proprietor as being the land contained in that forestry right; or

- (d) it appears to the Recorder that the boundary, area, position or description of the land contained in a forestry right is based on erroneous or imperfect information.
- (4) The Recorder may only act on his or her own motion if it appears to the Recorder that there is no interested person to make the application.
- (5) If the Recorder gives notice under subsection (3), he or she is to give the notice to the council of the municipal area in which the land is situated and also –
 - (a) in the case of registered land which it is proposed to affect or which may be affected, to every person appearing by the Register to have an interest in the land; and
 - (b) in the case of land, other than registered land, which it is proposed to affect or which may

Land Titles Amendment Act 2012
Act No. of

s. 45

be affected, to every person whom the Recorder has found by searching the Registry of Deeds to have an interest in the land; 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.

(6) The notice is to be accompanied by –

(a) in the case of notice given to a council and to a person referred to in subsection (5)(a) or (b), a plan showing the extent to which the land is proposed to be or may be affected; and

(b) in the case of notice given to a highway authority, a plan showing the extent to which the highway is proposed to be or may be affected.

(7) If, after reasonable enquiry, an address for a person entitled to notice under subsection (5) cannot be ascertained, the Recorder may give the notice and relevant plan to The Public Trustee.

(8) On receipt of a notice under subsection (7), The Public Trustee may –

(a) act on that person's behalf; and

Land Titles Amendment Act 2012
Act No. of

s. 45

- (b) have a lien on that person's interest for expenses incurred in so acting.
- (9) A person who has received a notice under subsection (5) may lodge a written objection with the Recorder within the period of not less than 21 days specified in the notice.
- (10) An objection must specify the grounds on which it is based.
- (11) If an objection has been lodged, the Recorder may conduct such investigations as he or she considers necessary for the proper determination of the matter.
- (12) In conducting an investigation under subsection (11), the Recorder –
 - (a) may hold a hearing for the purpose of receiving evidence and representations; and
 - (b) may require a person to attend a hearing; and
 - (c) at a hearing, may require a person –
 - (i) to make an oath or affirmation to answer relevant questions truthfully; and

Land Titles Amendment Act 2012
Act No. of

s. 45

- (ii) to answer relevant questions; and
- (d) at a hearing, may require a person to produce documents; and
- (e) may retain documents produced at a hearing for such reasonable time as the Recorder thinks appropriate for the purposes of the investigation and make copies of those, or parts of those, documents; and
- (f) is to proceed as expeditiously and with as little formality and technicality as is consistent with the requirements of this Act and the proper investigation of the matter; and
- (g) is not bound by the rules of evidence and may gather information in any way the Recorder considers appropriate; and
- (h) may, subject to this Act and the rules of natural justice, determine the procedures to be followed; and
- (i) may enter on relevant land for the purpose of the investigation at any reasonable time after giving reasonable notice to the owner or occupier of that land.

Land Titles Amendment Act 2012
Act No. of

s. 45

- (13) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made under subsection (12).
- (14) If no objection has been lodged within the specified time, or on the completion of an investigation, the Recorder is to decide the matter and may do one or more of the following:
- (a) amend any plan, folio of the Register, certificate of title, grant or registered dealing;
 - (b) order any person benefited by an amendment of a folio of the Register, certificate of title, grant or registered dealing to pay compensation to any person adversely affected by this section;
 - (c) order payment of compensation out of the assurance fund;
 - (d) order the rectification of an instrument registered in the Registry of Deeds;
 - (e) order the execution and registration of an instrument;
 - (f) vary, and order the registration of, an unregistered easement;
 - (g) redefine the boundaries of a highway;

Land Titles Amendment Act 2012
Act No. of

s. 45

- (h) amend a sealed plan of subdivision under the *Local Government (Building and Miscellaneous Provisions) Act 1993* if the amendment does not materially change the scheme of the subdivision;
 - (i) determine that no further action is to be taken in respect of the boundaries, area, position or description of the relevant land in a folio of the Register or a forestry right;
 - (j) make such order as to the costs of a person attending a hearing under subsection (12) as he or she thinks fit;
 - (k) take any other action necessary or convenient to give effect to his or her decision.
- (15) The Recorder is to give a copy of his or her decision under subsection (14) to each person to whom notice has been given under subsection (5).
- (16) The Recorder may refuse to proceed or to proceed further under this section –
- (a) if the Recorder considers that –
 - (i) a party ought to bring an action, suit or other proceeding; or

Land Titles Amendment Act 2012
Act No. of

s. 45

- (ii) a party ought to apply for an order under section 138W(4); or
 - (iii) the Recorder cannot bring the matter to a satisfactory conclusion; or
 - (b) until a plan has been amended under Part 3 of the *Local Government (Building and Miscellaneous Provisions) Act 1993* or an action, suit or other proceeding has been finalised.
- (17) A decision under subsection (14) may be registered in the Supreme Court and may be enforced, subject to subsection (18), as if it were a judgment of that Court.
- (18) A decision under subsection (14) is not to be acted on for 30 days and within that period a person affected by the decision may appeal to the Supreme Court which may do any one or more of the following:
 - (a) stay proceedings on the decision wholly or in part;
 - (b) quash or vary the decision;
 - (c) substitute for the decision any other decision that the Recorder was entitled to have made and do any thing that the Recorder could do under that subsection;

Land Titles Amendment Act 2012
Act No. of

s. 45

- (d) order the Recorder to amend any plan, folio of the Register, certificate of title, grant or registered dealing or do any other thing that he or she was entitled to do under that subsection.
- (19) The powers conferred by this section are in addition to, but are not substituted for, any powers of correction, rectification or amendment conferred by any other provision of this Act.
- (20) A rectification or amendment made under this section is to be taken to have been made prior to the registration of the instrument that is so rectified or amended.
- (21) In this section –
- interested person* includes, but is not limited to –
- (a) the registered proprietor, mortgagee, lessee or encumbrancee of the relevant land; and
 - (b) the council of the municipal area in which the relevant land is situated; and
 - (c) if the relevant land is a highway, the highway

Land Titles Amendment Act 2012
Act No. of

s. 46

authority for that land;
and

(d) the Crown in right of
Tasmania; and

(e) any other person the
Recorder considers to be
an interested person.

46. Section 143C amended (Recorder may correct errors on plans)

Section 143C of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “a patent error” and substituting “an error”;

(b) by omitting subsection (3) and substituting the following subsections:

(3) A person may object to the correction proposed to be made by the Recorder before the end of the period specified in the notice given under subsection (2).

(3A) An objection must be in writing and state the grounds on which it is based.

(c) by inserting the following paragraph after paragraph (b) in subsection (4):

- (ba) amend the plan in accordance with the notice given under subsection (2); or

47. Section 144 amended (Proprietor if dissatisfied may summon Recorder to show cause)

Section 144 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) A requirement under subsection (1) must be lodged with the Recorder within 3 months after the relevant refusal, direction or order is given by the Recorder, or such longer period as the Recorder allows.

48. Section 146 amended (Mortgagee, encumbrancee or lessor may obtain possession in certain cases)

Section 146 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(c) “landlord” and substituting “lessor”;
- (b) by omitting from subsection (3)(a) “landlord” and substituting “lessor”;
- (c) by omitting from subsection (5)(c) “landlord” and substituting “lessor”;
- (d) by omitting from subsection (8) “landlord” and substituting “lessor”.

Land Titles Amendment Act 2012
Act No. of

s. 49

49. Section 150 amended (The assurance fund)

Section 150(3) of the Principal Act is amended as follows:

- (a) by omitting “\$250 000,” and substituting “\$2 000 000,”;
- (b) by omitting “under section 169” and substituting “in Schedule 3”.

50. Section 153 amended (When action may lie against Recorder as nominal defendant)

Section 153(1)(b) of the Principal Act is amended by omitting “section 119 or section 123” and substituting “section 138D or section 138X”.

51. Section 154 amended (Date of deprivation in certain cases)

Section 154 of the Principal Act is amended as follows:

- (a) by omitting “section 119 or section 123,” and substituting “section 138D or section 138X,”;
- (b) by omitting from paragraph (a) “section 119,” and substituting “section 138X,”;
- (c) by omitting from paragraph (b) “section 123,” and substituting “section 138D,”.

52. Section 155 amended (Person sustaining loss may apply for compensation)

Section 155 of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:

- (2) If the Recorder admits the claim, or any part of the claim, and the Minister certifies the claim, or part of the claim, as so admitted –
 - (a) in a case where the claim, or part of the claim, that is so admitted and certified is less than \$10 000, the Minister may, in his or her discretion, issue a warrant to the Treasurer for payment of the amount so certified out of the assurance fund; or
 - (b) in a case where the claim, or part of the claim, that is so admitted and certified is \$10 000 or more, the Governor may, in his or her discretion, issue a warrant to the Treasurer for payment of the amount so certified out of the assurance fund.
- (3) The Treasurer is to pay the amount so certified in accordance with a warrant issued under subsection (2).

Land Titles Amendment Act 2012
Act No. of

s. 53

53. Section 158 amended (Limitation of actions)

Section 158(2) of the Principal Act is amended by omitting “section 119 or section 123,” twice occurring and substituting “section 138D or section 138X,”.

54. Section 162 amended (Recorder may require map to be deposited)

Section 162(1) of the Principal Act is amended as follows:

- (a) by inserting “applying under section 108 for the release or partial release of an easement or *profit à prendre*,” after “Act,”;
- (b) by omitting “*Land Surveyors Act 1909.*” and substituting “*Surveyors Act 2002.*”.

55. Section 168 amended (Service, &c., of notices)

Section 168 of the Principal Act is amended by inserting after subsection (5) the following subsection:

- (6) If the Recorder considers it desirable in the interests of procedural fairness and the administration of this Act, he or she may require a person depositing or lodging an application, dealing, instrument or other document to do one or more of the following:

- (a) advertise in one or more newspapers published and circulating in Tasmania, as determined by the Recorder;
- (b) give notice to a person the Recorder considers to have an interest in the application, dealing, instrument or other document;
- (c) post notice of the application, dealing, instrument or other document on the relevant land.

56. Section 170 amended (Regulations)

Section 170(2)(c) of the Principal Act is amended by omitting “any form prescribed by the regulations” and substituting “any approved form or other form approved by the Recorder”.

57. Repeal of Act

This Act is repealed on the ninetieth day from the day on which it commences.