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Abandoned Lands Act 1973

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Abandoned Lands Act 1973

An Act to repeal the Abandoned Lands Act 1965 and to make fresh provision for the reversion and revesting in Her Majesty of lands that have been abandoned

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 Abandoned Lands Act 1973 .

2. Repeal

The Abandoned Lands Act 1965 is repealed.

3. Interpretation

In this Act, unless the contrary intention appears –

abandoned land notice means such an abandoned land notice as is referred to in section 4 ;

Director means the Director-General of Lands;

Recorder means the Recorder of Titles;

Register has the same meaning as it has in the Land Titles Act 1980 ;

registered, when used in relation to an abandoned land notice, means registered in accordance with this Act.

4. Abandoned land notices

(1) Where the Minister is satisfied as respects any land –

(a) that during the last preceding 6 years no payments by way of land tax or rates have been made in respect of the land;

(b) that no person is occupying the land; and

(c) that it has not been possible, after reasonable inquiry, to find any person who, by reason of an estate or interest vested in him, has a right to occupy the land –

he may cause an abandoned land notice in respect of the land to be published in accordance with this section.

(2) An abandoned land notice in respect of any land is a notice that specifies the land and states –

(a) that the Minister is of opinion that the land should be treated as having been abandoned by the owner thereof;

(b) that, subject to the determination of any objections that may be made to the notice, it is the intention to register the notice;

(c) that, on the registration of the notice, the land will revert to and re-vest in the Crown freed and discharged from all estates and interests subsisting in any other person, save only such as may expressly be excluded from the operation of the notice; and

(d) that objections with respect to the registration of the notice may be made to the Director before such date as may be specified therein.

(3) The date specified in an abandoned land notice for the purposes of subsection (2) (d) shall not be earlier than 3 months after the notice has been published in accordance with this section, nor, if a copy of the notice is required to be furnished to the Recorder under subsection (6) , earlier than 3 months after being so furnished.

(4) An abandoned land notice in respect of any land shall be published by causing it –

(a) to be published in the *Gazette*;

(b) to be published twice in a newspaper or newspapers circulating in the district in which the land is situated; and

(c) to be posted at the municipal office of the municipality in which the land is situated in some conspicuous place on or near the outer door of that office.

(5) A notice in a newspaper stating that, pursuant to an abandoned land notice published in a specified issue of the *Gazette*, it is intended to acquire specified land in accordance with this Act shall, if an abandoned land notice is so published with respect to that land, be deemed for the purposes of this section to constitute the publication of that abandoned land notice in that newspaper with respect to that land.

(6) Where an abandoned land notice relates to land that is subject to the Land Titles Act 1980 the Director shall furnish to the Recorder a copy of the notice together with a notification of the folio of the Register to which it refers, and the Recorder shall record the notice on that folio.

(7) Where a recording has been made in respect of any land under subsection (6) , the rights under the abandoned land notice to which that entry relates shall be deemed to be an interest for the purposes of section 40 of the Land Titles Act 1980 .

5. Exclusion of certain estates, from operation of abandoned land notice

(1) Where the Minister is satisfied that a person has or is entitled to any estate or interest in the land to which an abandoned land notice relates he may exclude from the operation of the notice those rights or, by agreement with that person, some other rights in substitution therefor.

(2) Where under this section the Minister excludes any estate or interest from the operation of an abandoned land notice he shall cause to be endorsed on any copy or memorial of the notice required for the purpose of the registration of that notice a memorandum specifying that estate or interest and stating that it is excluded from the operation of the notice.

6. Withdrawal of abandoned land notice

(1) At any time before the registration of an abandoned land notice in respect of any land the Minister may withdraw the notice in relation to that land, and, on being so withdrawn, the notice ceases to be of any further effect with respect to that land.

(2) Where the Minister withdraws an abandoned land notice with respect to any land he shall, if –

(a) any objection has been made to the registration of the abandoned land notice in respect of that land; or

(b) the land is land subject to the Land Titles Act 1980 –

cause the Recorder to be furnished with a certificate that the notice has been withdrawn with respect to that land.

(3) On receiving a certificate under subsection (2) with respect to any land subject to the Land Titles Act 1980 the Recorder shall record the certificate on the relevant folio of the Register.

7. Objections to registration of abandoned land notices

(1) An objection with respect to the registration of an abandoned land notice shall be in writing delivered to the Director on or before the date specified in that behalf in the notice and shall state –

(a) the name and the address of the place of abode or business of the person by or on whose behalf the objection is made; and

(b) the nature of the estate or interest that that person claims in the land the subject of the notice –

and contain such other particulars as may be prescribed.

(2) In relation to an abandoned land notice references in this Act to an objection shall be construed as references to an objection to the registration of that notice made in accordance with subsection (1) .

(3) Forthwith on the receipt of an objection with respect to an abandoned land notice the Director shall forward it to the Recorder and the Recorder shall make an inquiry into the objection, and, on that inquiry, make such determination on the objection as is required by this section.

(4) An objection with respect to an abandoned land notice may be withdrawn by the person by whom it was made by notice in writing served on the Recorder.

(5) Where on the hearing of an objection in respect of an abandoned land notice the Recorder is of the opinion that the person by whom the objection was made has, or is entitled to, an estate or interest in the land to which the notice relates, that estate or interest shall in accordance with this Act be excluded from the operation of the notice.

(6) In respect of each objection made in respect of an abandoned land notice the Recorder shall issue his certificate either –

(a) that the objection has been withdrawn; or

(b) that the objection has been heard and that either –

(i) no estates or interests are required to be excluded from the abandoned land notice as a consequence of the objection; or

(ii) such estate or interest as is specified in the certificate is, in accordance with subsection (5), to be excluded from the operation of the notice in consequence of the objection.

(7) After the date specified in subsection (1) the Director shall issue his certificate specifying the persons who have made objections with respect to the registration of the abandoned land notice and stating that no other objections have been made with respect to the registration, or, if no such objections have been made, his certificate to that effect.

8. Appeals against decisions of Recorder

(1) A person aggrieved by a certificate issued by the Recorder under section 7 (6) may summon the Recorder to appear before the Supreme Court to substantiate and uphold the certificate.

(2) An application for a summons under subsection (1) shall be made to a judge within 30 days of the issue of the certificate.

(3) Subject to this section the like proceedings shall be had on a summons issued under this section as may be had on a summons issued under section 144 of the Land Titles Act 1980 and the provisions of that section apply and have effect accordingly.

(4) For the purposes of this section the order that the Court may make under section 144 of the Land Titles Act 1980 shall be deemed to include an order revoking a certificate issued by the Recorder and directing him to issue a certificate in such form as the Court may specify.

9. Registration of abandoned land notices

- (1) The Minister may cause an abandoned land notice to be registered in accordance with this section in respect of any land to which it relates –
 - (a) within 6 months of the date referred to in section 7 (1) ; or
 - (b) within 30 days of the disposal of all the objections to the registration of the notice.
- (2) For the purposes of this section an objection shall be deemed to be disposed of when a certificate has been issued by the Recorder under section 7 in respect of the objection and no proceedings or further proceedings may be taken under section 8 in respect of that certificate.
- (3) No abandoned land notice shall be registered in respect of any land unless, as a consequence of its registration, there will be vested in the Crown a fee simple estate in that land.
- (4) The registration of an abandoned land notice in respect of any land is effected –
 - (a) if the land is land under the Land Titles Act 1980 , by causing the relevant documents to be lodged in the office of the Recorder; or
 - (b) if the land is not land under that Act, by causing those documents to be registered under the Registration of Deeds Act 1935 in like manner as a judgment may be so registered.
- (5) In relation to an abandoned land notice the relevant documents are –
 - (a) a certified copy of the notice;
 - (b) the certificates (if any) issued by the Recorder under section 7 (6) in respect of the notice; and
 - (c) the certificate issued by the Director under section 7 (7) in respect of the notice.
- (6) Where the relevant documents are lodged in the office of the Recorder under subsection (4) he shall register the Crown as proprietor of the land to which the documents refer.
- (7) For the purpose of registering the relevant documents pursuant to this section under the Registration of Deeds Act 1935 those documents shall be deemed to be an instrument to which the Minister is a party.
- (8) Subsection (4) does not apply to land that is not subject to the Land Titles Act 1980 and has not been conveyed or alienated for a legal estate by or on behalf of the Crown and registration of an abandoned land notice in respect of any such land is effected by the endorsement of a certified copy of that notice with a certificate signed by or on behalf of the Minister stating that the notice has been registered under this section.

(9) Where an abandoned land notice has been registered under subsection (8) the relevant documents shall be filed and kept by the Director in such manner as the Director thinks fit.

(10) For the purposes of this section an abandoned land notice shall be deemed to affect any estates or interests excluded from the operation thereof.

10. Effect of registration of abandoned land notices

(1) Where an abandoned land notice has been registered the land specified therein reverts to and reverts in the Crown absolutely freed and discharged from all estates and interests, save only such rights as may have been excluded from the operation of the notice pursuant to section 5 or section 7 .

(2) Where under this section any land reverts to and reverts in the Crown there also vests in the Crown all estates and interests appurtenant thereto.

(3) Where there is excluded from the operation of an abandoned land notice an estate or interest that was not subsisting immediately before the notice was registered, that estate or interest shall be deemed to have been created on the registration of that notice.

(4) Subject to subsection (5) , upon registering the Crown as proprietor of land pursuant to section 9 , the Recorder shall issue a certificate of title in the Crown's name to the Director.

(5) Subsection (4) does not apply in respect of any land if at the time of the registration of the abandoned land notice there is lodged at the office of the Recorder a direction by the Director that the land is to cease to be subject to the Land Titles Act 1980 ; and if such a direction is so lodged the land ceases to be so subject and the Recorder shall make in the Register such cancellations and entries as he considers necessary as a consequence thereof.

11. Compensation in respect of registration of abandoned land notices

(1) A person who, consequent upon the registration of an abandoned land notice is deprived, wholly or in part, of an estate or interest in any land is entitled to claim compensation under this Act, but no such claim shall be made after the expiration of 12 years from the registration of the notice.

(2) A claim for compensation under this section shall be made in writing to the Director.

(3) Where a claim has been made under this section the Minister, on behalf of the Crown, may enter into such agreement with the claimant as he considers just and reasonable in the circumstances in settlement of the claim, and this Act authorizes the doing of such things as may be necessary to carry out the agreement.

(4) Where a claim is made under this section the Minister may, by written notice given to the claimant, reject the claim.

(4A) If no agreement in settlement of the claim is reached within 60 days of the claim being made to the Minister, the claim is taken to have been rejected by the Minister at the expiration of that period.

(5) If the Minister rejects a claim or the claim is taken to have been rejected by the Minister, the person who made the claim may apply to the Magistrates Court (Administrative Appeals Division) for a review of the rejection of the claim.

(6) Where the Magistrates Court (Administrative Appeals Division) on the review of the rejection of a claim awards compensation in respect of any estate or interest of which a person has been deprived under this Act the amount of that compensation is recoverable by that person from the Minister as a debt due from the Crown.

(7) The compensation payable under this section as a consequence of the registration of an abandoned land notice shall be determined as at the date of the registration of the notice.

(8) A certificate signed by the Valuer-General or the Deputy Valuer-General as to the value of any land or of any estate or interest in land at a date specified in the certificate is, in any proceedings pursuant to this section, *prima facie* evidence that that was the value of that land at that date.

(9) Subject to this section the provisions of Division 2 of Part 3 of the Land Acquisition Act 1993 so far as they are applicable apply to the determination of compensation under this Act as they apply to the determination of compensation under that Act.

(10) Compensation under this section bears interest at the rate of 5 per cent per annum from the date on which the claim therefor was made until payment thereof is made.

(11) No compensation is payable to any person under this section in respect of any estate or interest in land unless that estate or interest was vested in him immediately before the registration of the abandoned land notice or that estate or interest would have devolved on him by operation of law if that notice had not been registered, and that compensation shall not be paid unless –

(a) the grant or certificate of title to the land has been lodged with the Recorder; or

(b) the last conveyance of, or document of title to, the land has been delivered to the Crown Solicitor.

(12)

12. Subsequent dealings with revested lands

(1) Subject to this Act where any land is vested in the Crown under this Act that land may be disposed of or otherwise dealt with in like manner as if it

were Crown land within the meaning of the Crown Lands Act 1976 .

(2) Notwithstanding anything in subsection (1) , where any land is vested in the Crown pursuant to the registration of an abandoned land notice the Minister may in the name and on behalf of the Crown grant or transfer to any person any estate or interest in that land that would have been vested in that person or to which he would have been entitled if that notice had not been registered.

(3) The Minister shall not exercise his powers under subsection (2) in respect of any land if –

(a) any compensation has been paid under this Act in respect of the registration of the abandoned land notice in respect of that land; or

(b) there is subsisting in the land any estate or interest vested in any person other than the Crown, not being an estate or interest that was excluded from the operation of the notice.

(4) Where any estate or interest is vested in any person under subsection (2) all rights to compensation under this Act in respect of that estate or interest are extinguished.

13. Restrictions on subsequent abandoned land notice

Where an objection has been made to the registration of an abandoned land notice with respect to any land and is not withdrawn and that abandoned land notice is not subsequently registered in respect of that land no further abandoned land notice shall be published in respect of that land until after the expiration of a period of 6 years from the date of the certificate issued by the Director under section 7 (7) in respect of the abandoned land notice.

14. Saving for certain rights to resume land

Nothing in this Act affects any right of the Crown to resume land by virtue of a right reserved in the grant thereof or under any other Act, but the existence of any such right in respect of any land does not prevent the exercise in relation to that land of any of the powers conferred by this Act.

15. Expenses of Act

The expenses incurred in the administration of this Act (including the payment of any compensation thereunder) shall be defrayed out of money provided by Parliament for the purpose.

16. Regulations

The Governor may make regulations for the purposes of this Act.

