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**WATER AMENDMENT ACT 1988**

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**No. 63 of 1988**

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PRINCIPAL ACT**





## WATER AMENDMENT ACT 1988

No. 63 of 1988

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**AN ACT to amend the Water Act 1957.**

**[Royal Assent 22 December 1988]**

**B**E 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**—This Act may be cited as the *Water Amendment Act* Short title. 1988.

**2**—This Act shall commence on the day on which it receives Commencement. the Royal assent.

**3**—In this Act, the *Water Act 1957\** is referred to as the Principal Act. Principal Act.

**4**—After section 100E of the Principal Act, the following Insertion of new section 100EA in Principal Act. section is inserted:—

\* No. 39 of 1957. For this Act, as amended up to and including 1st March 1983, see the continuing Reprint of Statutes. Subsequently amended by No. 62 of 1976, Nos. 4, 29, and 54 of 1984, Nos. 10, 51, 68, and 85 of 1985.

Power to restrict  
unlawful taking  
of water.

100EA—(1) Where—

- (a) water is taken from a river or lake for irrigation of land in respect of which there is in force a commissional water right or a right in force pursuant to section 100C or 100D that expressly permits irrigation of that land; and
- (b) the quantity of that water exceeds the amount that may for the time being be taken pursuant to that right, having regard to any order or direction that may be in force for the time being under this Act,

or in any other circumstances water is taken from a river or lake for irrigation without lawful authority, a person authorized for the purpose under the Commission's common seal may, without any previous notice, enter on any land and direct the owner or occupier of the land—

- (c) to cease forthwith the taking of water from the river or lake for irrigation on that land; or
- (d) to modify forthwith the valves, pipes, or other equipment used for the taking of that water or carry out such other works as may be so directed to ensure that any water so taken will be restricted to such amount as may be permitted having regard to any order or direction in force under this Act.

(2) Where an owner or occupier of land who has been given a direction as provided by subsection (1) fails to comply with the terms of the direction as required by that subsection—

- (a) a person authorized for the purposes of that subsection may, without any previous notice, enter on any land for the purposes of seizing a pump used in the taking of water to which the direction relates or any part of such a pump so as to make the pump inoperable; and
- (b) if the authorized person considers it necessary for the exercise of his powers under paragraph (a), he may be accompanied by a tradesman who shall, for the purposes of this section, have the same powers to enter on land and may exercise those powers accordingly.

(3) Where a pump or part of a pump has been seized under subsection (2) as a result of the failure of an owner or occupier of land to comply with a direction given to him under subsection (1) (d), that owner or occupier is not entitled to the return of that pump or part of a pump until he has complied with that direction.

(4) Where an owner or occupier of land has been given a direction as provided by subsection (1), a person authorized for the purposes of that subsection may affix a seal to any valves, pipes, or other equipment used for the taking of water or, as the case may be, any works carried out pursuant to that subsection.

(5) On the conviction of a person for an offence against this Part, the court by which he is convicted may, in addition to any other penalty that may be imposed, order that that person shall pay to the Commission the amount of any expense reasonably incurred by it in carrying out any works pursuant to subsection (2).

(6) An amount ordered to be paid to the Commission under subsection (5) is recoverable in any court of competent jurisdiction as a debt due to the Commission by the person against whom the order is made.

(7) Nothing in this section shall be construed as affecting any liability for an offence under section 100G.

**5**—Section 100F of the Principal Act is amended by omitting “100E” and “that section” and substituting “100E or 100EA” and “either of those sections”, respectively.

Amendment of section 100F of Principal Act (Police to render assistance).

**6**—After section 100G of the Principal Act, the following section is inserted in Division 2A of Part IV:—

Insertion of new section 100GA in Principal Act.

**100GA**—For the purposes of section 100G, where water is taken for use on any land to which, or to an estate in which, a commissional water right is annexed, it shall be presumed, unless the holder of that right can show that the water was taken without his authority and in circumstances beyond his control, that the water was taken by that holder.

Presumption that water taken by holder of commissional water right, &c.

**7**—(1) Section 170 of the Principal Act is amended as follows:—

Amendment of section 170 of Principal Act (Offences).

(a) by omitting from subsection (1) “No person shall interfere” and substituting “A person who interferes”;

(b) by omitting from that subsection “Act. Penalty \$40.” and substituting “Act is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.”;

(c) by omitting from subsection (3) “liable to a penalty of \$500” and substituting “guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.”;

(d) by omitting from subsection (4) “liable to a penalty of \$500 and a daily fine of \$100” and substituting “guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units and a daily fine not exceeding 2 penalty units”.

(2) Section 170 of the Principal Act is further amended by inserting after subsection (3) the following subsections:—

(3A) A person who obstructs, harasses, or otherwise interferes with a person authorized under section 100EA in the exercise of his powers under that section is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units or imprisonment for a term not exceeding 6 months.

(3B) A person who—

(a) breaks a seal affixed by a person authorized for the purposes of section 100EA in the exercise of his powers under that section; or

(b) interferes with any modifications or other works carried out by any such person in the exercise of those powers,

is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units or imprisonment for a term not exceeding 6 months.

**8**—The Principal Act is amended as set out in Schedule 1.

SCHEDULE 1

Section 8

MISCELLANEOUS AMENDMENTS OF PRINCIPAL ACT

COLUMN 1 Provision of Principal Act amended	COLUMN 2 Amendments
Section 61.....	Omit "\$20" and substitute "Fine not exceeding 10 penalty units".
Section 78 (4) .....	Omit "penalty of \$10 and a daily penalty of \$4" and substitute "fine not exceeding 1 penalty unit and a daily fine not exceeding 0.5 penalty units".
Section 98.....	Omit "\$100" and substitute "Fine not exceeding 5 penalty units".
Section 99.....	Omit "\$1 000" and substitute "Fine not exceeding 10 penalty units".
Section 100G (a) .....	Omit "a penalty".
Section 100G (a) .....	Omit subparagraphs (i) and (ii) and substitute the following subparagraphs:— (i) a fine not exceeding 10 penalty units for a first offence; and (ii) a fine not exceeding 20 penalty units, or imprisonment for a term not exceeding 12 months, for a second or subsequent offence;
Section 100G (b) .....	Omit "a penalty".
Section 100G (b) .....	Omit subparagraphs (i) and (ii) and substitute the following subparagraphs:— (i) a fine not exceeding 5 penalty units for a first offence; and (ii) a fine not exceeding 10 penalty units or imprisonment for a term not exceeding 6 months, for a second or subsequent offence;
Section 100G (c) .....	Omit "a penalty".
Section 100G (c) .....	Omit subparagraphs (i) and (ii) and substitute the following subparagraphs:— (i) a fine not exceeding 10 penalty units for a first offence; and (ii) a fine not exceeding 20 penalty units, or imprisonment for a term not exceeding 12 months, for a second or subsequent offence.
Section 113 (4) (c) .....	Omit "\$20" and substitute "a fine not exceeding 2 penalty units".
Section 116 (3) .....	Omit "penalty of \$500 or 18 months' imprisonment" and substitute "fine not exceeding 20 penalty units or to imprisonment for a term not exceeding 12 months".

COLUMN 1 Provision of Principal Act amended	COLUMN 2 Amendments
Section 147 (2) .....	Omit "\$50" and substitute "Fine not exceeding 2 penalty units".
Section 152 (1) .....	Omit "\$100" and substitute "Fine not exceeding 10 penalty units".
Section 152 (2) .....	Omit "\$250" and substitute "Fine not exceeding 10 penalty units".
Section 172 (3) .....	Omit "\$200 or a daily penalty of \$20" and substitute "a fine not exceeding 10 penalty units or a daily fine not exceeding 2 penalty units".