

draught, or pack animals, oxen, sheep, pigs, geese, or other livestock, or vehicles (other than bicycles, wheelbarrows, and baby-carriages) to and from the said dominant tenement or any such part thereof.

**Right of drainage** A right of drainage (including the right of construction of drains) for every person who is at any time entitled to an estate or interest in possession in the land herein indicated as the dominant tenement or any part thereof with which the right shall be capable of enjoyment for the purpose of carrying away storm water and other surplus water from the dominant tenement or any such part thereof over or under the land herein indicated as the land over which the right is to subsist, and through all sewers and drains which may hereafter be made or passing under, through, and along the last-mentioned land and the right for every such person and his surveyors and workmen from time to time and at all times hereafter if he or they should think fit to enter into and upon the last-mentioned land and to inspect, repair, cleanse, and amend any such sewer or drain without doing unnecessary damage to the said land.”

---

## WATER.

---

### No. 68 of 1964.

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

[17 December 1964.]

**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,  
citation, and  
commence-  
ment.

**1**—(1) This Act may be cited as the *Water Act 1964.*

(2) The *Water Act 1957*, as subsequently amended, is in this Act referred to as the Principal Act.

(3) This Act shall commence on a date to be fixed by proclamation.

Modification  
of riparian  
rights.

**2** Section ninety-one of the Principal Act is amended by inserting, after subsection (3), the following subsection:—

“(3A) In an action for damages for infringement of the right first-mentioned in this section, only the plaintiff’s pecuniary loss may be awarded.”

**3** Section ninety-four of the Principal Act is repealed and the following sections are substituted therefor:—

“94—(1) The Commission may grant under its common seal rights to take water from rivers and lakes at such places for such purposes, at such times, in such quantities and subject to such conditions as it thinks fit. Commis-  
sional water  
rights.

“(2) Such rights shall—

- (a) be known as commissional water rights;
- (b) be annexed to specified land or a specified estate or interest therein by being granted to a named person and his heirs or his assigns or as the case may be while holding the specified land or the specified estate or interest;
- (c) unless the Hydro-Electric Commission has given written approval to omit it, be subject to a condition that the water taken thereunder shall not be used to generate electricity; and
- (d) normally be for five years but may be—
  - (i) for a lesser term; or
  - (ii) for a longer term or in fee, if the Commission considers that the land in respect of which the right is granted will not otherwise be developed properly and that such development is in the public interest.

“(3) Non-riparian land to which a commissional water right is annexed shall be deemed, for the purpose only of exercising that right, to be riparian land at the place from which water may be taken by virtue of that right.

“(4) The Commission shall do its best not to grant commissional water rights in excess of the quantity which it may lawfully take, but if it does grant in excess it is under no legal liability therefor.

“(5) For the purpose of ensuring that water which the Hydro-Electric Commission is or will be entitled to take for generating electricity reaches the generating station, that Commission may request the Commission so to use its powers under this section that the flow at the intake of the generating station is reduced by no more than a specified quantity, and the Commission shall use its powers to grant or renew commissional water rights in accordance with every such request.

“(6) Where a request under subsection (5) of this section relates to a generating station not yet existing or an increase of water for an existing generating station, a date on which it is to take effect shall be specified therein, and then, while the Commission is not affected by the request in granting or renewing commissional water rights expiring before that date, it—

- (a) shall put on the grants of such rights not intended to be renewed beyond that date, a note to that effect; and
- (b) may within five years of that date grant or renew such rights—
  - (i) for a shorter period than five years; or
  - (ii) determinable at the will of the Hydro-Electric Commission.

“(7) Every request under subsection (5) of this section shall be transmitted to the Minister forthwith and by him published in the *Gazette*.

“(8) The Commission shall charge for commissional water rights by a lump sum or periodical payments at the rates set forth in the regulations, which—

- (a) for that purpose shall be made only on the recommendation of the Commission; and
- (b) may differentiate between grantees in respect of the place from which, the use for which, and the quantity in which, water is to be taken.

Variation of  
commissional  
water rights.

“94A—(1) Where in the opinion of the Commission, there is not enough water in a river or lake to satisfy all persons entitled thereto, whether by commissional water rights or otherwise, the Commission to secure the rights of persons otherwise entitled, may—

- (a) refuse to renew commissional water rights or renew them in a less favourable form; or
- (b) by order authenticated as prescribed, forbid the holder of a commissional water right to take—
  - (i) more than a specified quantity of water, being less than the quantity; or
  - (ii) any water,

that the right entitles him to take, during a specified period, or to take water except at specified times, or otherwise cut down the right.

“(2) If the Commission acts under paragraph (a) of subsection (1) it shall, subject to any considerations of fairness that seem good to it, give preference in renewal to uses of longer duration.

“(3) If the Commission acts under paragraph (b) of subsection (1), it may differentiate between holders as it thinks just.

“(4) While an order under paragraph (b) of subsection (1) is in force the right to which it applies shall be deemed to be varied in accordance with the order.”.

**4** After section one hundred of the Principal Act the following Division is inserted:—

“ Division IIA—Irrigation.

“ 100A In this Division, “ the appointed day ” means the first day of January 1965. Interpretation.

“ 100B For the purposes of this Division— Legal rules.

(a) a riparian owner has only a liberty to take water from a river or lake for irrigation, which liberty becomes a right only by express grant, prescription, or presumption of a lost grant from enjoyment of the liberty; and

(b) there is a conclusive presumption that water taken from a river or lake and used in irrigation does not return to that river or lake.

“ 100C—(1) Subject to this section, but notwithstanding any other provision of this Act or any other Act or rule of law to the contrary, on and after the appointed day no person may take water from a river or lake for irrigation except as provided in this section. Control of irrigation.

“(2) A person who as against the Commission has a right to take water from a river or lake for irrigation may continue to do so for two years commencing on the appointed day, and thereafter his right to do so shall cease and be extinguished unless he has registered it as provided in section one hundred D.

“(3) The Supreme Court or a judge in chambers may extend the time for applying for registration under that section at any time within or after the two years commencing on the appointed day.

“(4) While an application for registration under that section is pending or if it has been refused while proceedings are pending to establish the applicant’s right to registration by an action for a declaration, *mandamus*, or otherwise, while an appeal may be commenced of right from a judgment or order in such proceedings, and until such an appeal having been commenced of right or by leave is determined, the right claimed by the applicant shall not be interfered with under this Division without the leave of the Supreme Court or of the court in which such an appeal is pending.

“(5) An authority taking water from a river or lake for a public supply of water, including an irrigation trust under Division IV of Part III and the corporation created under section ten A of the *War Service Land Settlement Act 1950*, may take such water for irrigation as if this section had not been enacted.

“(6) The occupier of land to which a commissional water right expressed to permit irrigation is annexed is entitled to take water for irrigation in accordance with that right so far as the Commission has the right to grant it.

“(7) This section does not prejudice or affect any duty, obligation, or right to supply, make available, or take, water

that is imposed or created by an enactment in relation to a river or lake specified in that enactment or in relation to any irrigation works so specified.

Registration.

“100D—(1) A person who as against the Commission has a right to take water from a river or lake for irrigation may register that right in the office of the Commission free of charge.

“(2) To obtain registration a person shall apply in writing setting forth the right claimed and stating where, when, and in what quantity it may be exercised, and shall accompany it—

- (a) with evidence by way of statutory declaration that he has the right claimed; and
- (b) with a map or sketch plan showing—
  - (i) the land for which the right is claimed;
  - (ii) the place whence the water is taken; and
  - (iii) any permanent waterworks used to irrigate the land.

Right of entry.  
Cf. 8 & 9  
Geo. VI  
No. 22, s. 43.

“100E Any person authorized thereunto under the Commission's common seal may, without any previous notice, enter upon any land for the purposes of—

- (a) inspecting any waterworks or use of water;
- (b) gauging the level or flow of a river or lake; or
- (c) ascertaining whether or in what quantity water is being taken from a river or lake.

Police to render assistance.  
Cf. 1 Geo. V  
No. 47, s. 181.

“100F When required so to do by the Commission or a person authorized for the purposes of section one hundred E, all constables shall—

- (a) obtain and furnish information as required;
- (b) serve any notices or documents; and
- (c) accompany such a person entering land for the purposes of that section.

Penalty for illegal irrigation.

“100G A person who takes water from a river or lake for irrigation contrary to section one hundred C—

- (a) without any right so to do as provided in that section is liable to a penalty—
  - (i) for a first offence, of fifty pounds; and
  - (ii) for a second or subsequent offence, of one hundred and fifty pounds or six months' imprisonment;
- (b) in excess of any such right is liable to a penalty—
  - (i) for a first offence, of twenty-five pounds; and
  - (ii) for a second or subsequent offence, of fifty pounds or three months' imprisonment; or

(c) contrary to an order under section ninety-four A, is liable to a penalty—

- (i) for a first offence, of fifty pounds; and
- (ii) for a second or subsequent offence, of one hundred and fifty pounds or six months' imprisonment."

**5** After section one hundred and fourteen of the Principal Act the following Part is inserted:—

“PART V.

“DAMS.

“115 In this Part, unless the contrary intention appears, <sup>Interpretation.</sup> ‘storage works’ means—

- (a) a dam or weir across a river;
- (b) any other dam to hold back water that is more than eight feet high, measuring from the lowest part of the foot or toe of the dam on the side away from the water held back to the top of the dam above that part; or
- (c) any works to hold back more than 500,000 gallons of water.

“116—(1) An owner or occupier of land shall not make <sup>Construction of storage works.</sup> storage works thereon—

- (a) without the permission in writing of the Commission; and
- (b) without such valves, compensation pipes, spillways, and surface protection as the Commission may require.

“(2) A person making or altering storage works shall—

- (a) before beginning, give the Commission sixty days' notice in writing of his intention, or in an emergency, the longest notice that he can; and
- (b) do so to the satisfaction of the Commission.

“(3) A person who contravenes any provision of this section is liable to a penalty of two hundred and fifty pounds or eighteen months' imprisonment.

“(4) Nothing done by the Commission under this section makes it liable for damage caused by the making or breaking of storage works or by water escaping therefrom.

“116A—(1) If storage works are made in contravention <sup>Powers of the Commission.</sup> of section one hundred and sixteen, the Commission may under its common seal order the owner or occupier of the land whereon they are to empty or modify them or to break down the dam thereof, and may if default is made for such time as may be specified in the order enter by its officers servants and workmen, do what was ordered, and recover its expenses of so doing from the person in default as a debt.

“(2) If any storage works are—

(a) dangerous; or

(b) used to take water which the owner or occupier of the works is not entitled to take,

the Commission may exercise the powers conferred by subsection (1) of this section but any person aggrieved by the order may have the order removed into the Supreme Court by *certiorari* if the Court or a judge thinks fit and the Court if it thinks that the order should not have been made may quash it.

Exclusion  
of certain  
storage  
works.

“116B Nothing in this Part applies to—

(a) any storage works of the Crown or the Hydro-Electric Commission;

(b) any storage works approved under the *Water, Sewerage, and Drainage Board Act 1944* or under Division III of Part III; or

(c) any dam or reservoir to which section thirty-nine, section forty, or section forty-one of the *Mines and Works Regulation Act 1915* applies.”

**6** After section one hundred and seventeen of the Principal Act the following section is inserted:—

Procedure  
and evidence.

“117A—(1) If on a complaint under paragraph (a) or paragraph (b) of section one hundred G or under a regulation made under subsection (3) of section one hundred and eighteen, title to land (including water rights) is in issue either party is entitled to have the complaint removed by *certiorari* into the Supreme Court and determined therein, for which purpose the Court may use any of its powers on a motion to review.

“(2) In any proceedings, criminal or civil, a person who relies on a right alleged to be kept in existence by subsection (2) of section one hundred C or to be protected by subsection (4) of that section has the burden of proving that right.”

Regulations.

**7** Section one hundred and eighteen of the Principal Act is amended by adding, at the end thereof, the following subsection:—

“(3) The regulations may prohibit, generally, from specified rivers or lakes, or in specified places, the taking of water without any right or liberty or any taking of water against which the Commission might obtain an injunction, under a penalty of one hundred pounds or a daily penalty of ten pounds.”

Miscellaneous  
amendments.

**8** The sections of the Principal Act that are specified in the first column of the schedule are amended as respectively set forth in the second column of the schedule.

9 Every licence in force at the commencement of this Act under section ninety-four of the Principal Act as repealed by this Act shall be deemed to be a commissional water right under section ninety-four of the Principal Act as enacted by this Act of the same duration, and granted to the same person for the same taking and use of water.

Transitory  
provision.

## THE SCHEDULE.

(Section 8.)

Section.	How amended.
66	By omitting the word "eighty-four" and substituting therefor the word "eighty-three".
95	(a) By omitting from subsection (2) the word "licence" and substituting therefor the words "grant a commissional water right for"; (b) By omitting from subsection (5) the word "licence" (first occurring) and substituting therefor the words "commissional water right"; and (c) By omitting from that subsection the word "licence" (last occurring) and substituting therefor the word "right".
97	By omitting paragraph (c) of subsection (1) and substituting therefor the following paragraphs:— “(c) one within a right registered under section one hundred c; “(ca) one within a commissional water right; or”.

## MIGRANT TEACHERS (FINANCIAL ASSISTANCE).

No. 69 of 1964.

AN ACT to encourage the migration to this State from countries outside Australia of teachers and persons desirous of becoming teachers, and to make provision for matters incidental thereto.

[17 December 1964.]

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 This Act may be cited as the *Migrant Teachers (Financial Assistance) Act 1964.* Short title.