

Hon. Mark Brown

To Tatou Vai Authority Bill 2020

Contents

1	Title	3
2	Commencement	3
3	Application	3
Part 1		
Preliminary matters		
4	Purpose	3
5	Interpretation	4
6	Act binds the Crown	5
Part 2		
To Tatou Vai Authority		
7	Authority established	6
8	Functions of Authority	6
9	Powers of Authority	6
10	Power to borrow and charge property	6
Part 3		
Landowners		
Landowners and catchment committees		
11	Relationship with landowners	7
Catchment committees		
12	Purpose of catchment committees	7
13	Catchment committees and their members	7
14	Eligibility for appointment to catchment committee	8
15	Role of CEO	8
16	Rotation of voting members of catchment committee	8
17	Other provisions about membership	8
18	Payment of fees and various costs	8
19	No personal liability	8
20	Meetings of catchment committees	9
21	Quorums, etc	9
22	Minutes	9
23	Functions of catchment committees	9
24	Approval required of catchment committee	9
25	Works undertaken by Authority in Rarotonga or Aitutaki	10

Part 4		
Operations		
26	Tariffs and Not-for-profit	10
27	Limitation of water supply	11
28	No transfer of Authority reserves	12
29	Customer participation compulsory	12
30	Obligation to manage fair allocation of available water	12
31	Directions as to supply of water	13
Part 5		
Governance		
<i>Policy setting</i>		
32	Authority's strategic plan	13
<i>Membership and procedures of Board</i>		
33	Board of Directors of Authority	14
34	Term of office of directors	14
40	Meetings of Board	16
41	Procedures at meeting	17
42	Disclosure of interests	17
43	Remuneration of directors	18
44	No personal liability	18
45	Secretary	18
46	Directors' general duties	19
47	Human resources of Authority	19
48	Delegations	19
<i>Financial reporting</i>		
49	Statement of corporate intent	19
50	Annual report	20
51	Bank accounts	20
52	Financial reporting disciplines	21
53	Risk management reports	21
54	Accounts and records	21
55	Audit	22
Part 6		
Offences and civil liability		
56	Wasting water	22
57	Fraudulent dealings with Authority	22
58	Damage to works of Authority	22
59	Failure to obtain consent	22
60	Resale of water prohibited	22
Part 7		
Water quality		
61	Testing water	23
62	Public notice	23
Part 8		
General and miscellaneous provisions		
63	Liability of Authority limited	23
64	Exemption from taxation	24
65	Subsidiary of CIIC	24
<i>Regulations</i>		
66	Regulations	24

67	Amendments to other enactments	24
	<i>Transitional and savings provisions</i>	
68	Transfers from To Tatou Vai Limited to Authority	24
	Schedule 1	
	Amendments to other enactments	
	Schedule 2	
	Catchments	
	Schedule 3	
	Titles	

An Act to establish To Tatou Vai Water Authority.

The Parliament of the Cook Islands enacts as follows—

- 1 Title**
This Act is the To Tatou Vai Authority Act 2020.
- 2 Commencement**
This Act comes into force on the day after the date it is assented to by the Queen’s Representative.
- 3 Application**
 - (1) This Act applies to Rarotonga on the day it comes into force.
 - (2) This Act applies in Aitutaki on and after a date appointed as the date of application to Aitutaki by an Order in Executive Council.

Part 1
Preliminary matters

- 4 Purpose**
The purposes of this Act are to—
 - (a) establish the To Tatou Vai Authority to provide water as a public service for the people of Rarotonga and Aitutaki; and
 - (b) recognise the Government’s social responsibility in the supply of water; and
 - (c) provide the Authority with financial independence so it can operate in an economically sustainable way as a not-for-profit utility; and
 - (d) recognise and embrace the ongoing role played by landowners of the Rarotonga and Aitutaki catchments in making sure those areas provide clean, unpolluted water; and
 - (e) encourage informed management and decision-making that reconciles the Authority’s need to be financially sustainable with the public need for water supplies to be affordable; and
 - (f) maintain the water distribution network for the islands of Rarotonga and Aitutaki with standards of reliability that will underpin economic growth and increase the resilience of the Rarotonga and Aitutaki communities to disasters and the impacts of climate change; and

(g) require the Authority to be accountable to the CIIC.

5 Interpretation

In this Act, unless the context otherwise requires,—

access agreement means any agreement entered into before the commencement of this Act between the landowners in a valley (whether all or some in a representative capacity), and the Crown or CIGPC, and relating to the management of roads, water, sewage, or any combination of them, in the valley

Authority means To Tatou Vai Authority

Board means the Board of the Authority established by section 33

boil-water notice means a notice advising the reader that the water is not fit for drinking and should be boiled first

catchment committees means the committees established under Part 3

catchments mean the lands or parts of those lands, including the subsurface, from which water is collected in the wells, dams, intakes, galleries and other collection points used by the Authority to gather water in Rarotonga and Aitutaki, as more particularly set out and identified by crossed lines on the plans in Schedule 2

CEO means the Chief Executive Officer of the Authority appointed under section 47(1)

chairperson means the chairperson of the Board, appointed under section 33

CIGPC means the Cook Islands Government Property Corporation established under the Cook Islands Government Property Corporation Act 1969

CIIC means the Cook Islands Investment Corporation established under the Cook Islands Investment Corporation Act 1998

community water station means any place where the general public is invited to draw water from the network for the purposes of consumption

consumer means a person, whether or not a customer, who consumes or uses water that is supplied by the Authority

Crown land has the same meaning as in section 2(1) of the Cook Islands Act 1915

customary land has the same meaning as in section 2(1) of the Cook Islands Act 1915

customer means—

- (a) a person who receives from the Authority,—
 - (i) water;
 - (ii) any other service; and
- (b) a person who is named (and has agreed, in writing, to be named) as the holder of a water connection of any sort to the network; and
- (c) in the case of any vessel that receives water or any other service from the Authority,—
 - (i) for any supply provided on credit, the person who has, in writing, agreed to the terms of that supply on credit; and

- (ii) for any supply paid for in advance or on delivery to the vessel, the master of the vessel

digital format has the same meaning as in section 3 of the Digital Registers Act 2011

emergency means any event that requires an emergency response from the Authority, whether by way of construction, rehabilitation, or repair, to avoid or prevent the threat of—

- (a) contamination to the water supply; or
- (b) loss of water to an extent that it may materially disrupt the service or the public; or
- (c) the destruction of property or loss of life, arising from that event

full service zone means all areas of an island that are situated at an elevation that is less than 30 metres above the mean high water mark

hard copy format has the same meaning as in section 3 of the Digital Registers Act 2011

landowner means a person with an interest in native freehold land

mean high water mark has the same meaning as in section 2 of the Environment Act 2003

Minister means the Minister responsible for CIIC

native freehold land has the same meaning as in section 2(1) of the Cook Islands Act 1915

network means the network of dams, intakes, galleries, other collection points, water mains, and associated infrastructure used by the Authority to collect and distribute water on the islands of Rarotonga and Aitutaki

potable has the same meaning as in section 3(1) of the Public Health Act 2004

Te Mato Vai means the comprehensive programme of works to upgrade the Rarotonga intakes, treatment facilities, and water mains, as commenced in 2014

title, in relation to a catchment, means the lands in that catchment identified by order on investigation of title or order of partition made by the Land Court under the Cook Islands Act 1915, and set out in Schedule 3

uninvestigated land means customary land and, where land is not customary land, Crown land

valley is an area between peaks that naturally cause water to flow into that area (as shown, in the case of Rarotonga, in Schedule 2)

works, in the case of activities carried out by the Authority, means waterworks and associated works, whether or not forming part of the network, that—

- (a) are controlled and managed by the Authority under this Act; or
- (b) the Authority may undertake in the future, either itself or by using contractors of the Authority; or
- (c) may be acquired by the Authority in the future.

6 Act binds the Crown

This Act binds the Crown.

Part 2 To Tatou Vai Authority

7 Authority established

- (1) The Authority is established as a body corporate with perpetual succession and a common seal.
- (2) The functions of the Authority are, except where this Act specifies otherwise, limited to the islands of Rarotonga and Aitutaki.

8 Functions of Authority

The Authority has the following general functions:

- (a) to collect, treat, and reticulate water for public supply in a reliable, efficient, and cost-effective way:
- (b) to operate, build, and maintain systems, facilities and networks, as needed for that purpose:
- (c) to meet any prescribed water supply and water quality standards:
- (d) to consult with catchment committees to ensure the preservation and conservation of catchments for the continued supply of water:
- (e) to promote public education and awareness of the need to preserve and conserve catchments:
- (f) to identify new sources of water to meet future anticipated demand and, together with those who have rights in respect of the land over which that water sits or runs, develop those sources for the public good:
- (g) to acquire or enter into agreements with CIIC to assume active management of CIGPC's rights to collect water and for the acquisition or use of systems and facilities owned by CIGPC and needed for the reticulation, filtration, and storage of water:
- (h) any other functions given to the Authority by the Minister.

9 Powers of Authority

- (1) Subject to the provisions of this Act and any other Act, the Authority has the powers of a natural person.
- (2) The powers of the Authority must be used only to perform its functions under this Act.

10 Power to borrow and charge property

The Authority may, in the manner provided in, and subject to, sections 53 and 59 of the Ministry of Finance and Economic Management Act 1995-96,—

- (a) enter into, execute, and be bound by contracts to borrow money; and
- (b) grant security of any sort over all or any of its undertakings (except a security over any fixture that is located on or in the subsoil of native land) where that is needed to secure money borrowed or obligations lawfully entered into or owed by the Authority.

Part 3 Landowners

Landowners and catchment committees

11 Relationship with landowners

- (1) The Authority may enter into agreements with each catchment committee for the better preservation and conservation of the environment of that catchment, and to better secure the co-operation of those landowners in ensuring the continued supply of water.
- (2) The Authority must comply with the terms and not do anything, or fail to do anything, in breach of—
 - (a) any access agreement:
 - (b) any agreement entered into with a catchment committee under this section.

Catchment committees

12 Purpose of catchment committees

- (1) Catchment committees are established for the primary purpose of ensuring that no future structure, building, development or other activity within each catchment adversely affects the water quality or the water supply operations of the Authority.
- (2) Catchment committees are expected to achieve this purpose by—
 - (a) monitoring the catchment and maintaining oversight of activities within their catchment; and
 - (b) considering applications for activity within the catchment in accordance with sections 24 and 25.

13 Catchment committees and their members

- (1) There shall be a catchment committee for each catchment.
- (2) The landowners on each title included in a catchment all or part of which included in the catchment, must, during the required period, appoint a person to represent their interests on the catchment committee for that catchment.
- (3) Appointments to catchment committees must follow the procedure set out in the Land Facilitation of Dealings) Act 1970.
- (4) In this section, **required period** means—
 - (a) in the case of a catchment committee in Rarotonga, the period ending 4 months after this Act comes into force:
 - (b) in the case of a catchment committee on Aitutaki, the period ending 4 months after this Act begins to apply to Aitutaki:
 - (c) in the case of a vacancy in any catchment committee, a period of 4 months after the vacancy occurs.
- (5) If the landowners on a title fail to appoint a person to be a member of a catchment committee within the required period, the Authority may appoint a person to the catchment committee to represent the interests of those landowners.

14 Eligibility for appointment to catchment committee

- (1) Any person is eligible to be appointed as a member of a catchment committee.
- (2) However, if the Authority appoints a member to a catchment committee under section 13(5), the Authority may only appoint a person who is a landowner on the title that the person represents.

15 Role of CEO

- (1) The CEO is a non-voting member of each catchment committee.
- (2) The catchment committee in respect of any catchment where the whole of the land subject to the catchment is uninvestigated land (even if the land is customary land) is—
 - (a) the CEO; or
 - (b) any other person appointed by the Minister by notice to the CEO, and that appointment has effect until revoked by the Minister.

16 Rotation of voting members of catchment committee

- (1) The members of every catchment committee (other than the CEO) hold office in accordance with this section.
- (2) The original members of each catchment committee must retire as follows:
 - (a) one-third of the members must retire on the expiry of the third year after they come into office;
 - (b) the same number of members must retire on the expiry of the fourth year after they come into office;
 - (c) the remaining members must retire on the expiry of the fifth year after they come into office.
- (3) The members required to retire after 3 years or 4 years must, where necessary, be determined by lot.
- (4) Where the total number of members of a committee is not divisible by 3, one-third of the members must for the purposes of this section be deemed to be one-third of the next-highest number that is a multiple of 3.

17 Other provisions about membership

- (1) All members of a catchment committee appointed to fill vacancies caused by the retirement or resignation of any member must be appointed for a term of 3 years.
- (2) Any member who vacates office under this section is eligible for re-election by the landowners on the title that the person represents.
- (3) Despite anything to the contrary in section 16 or this section, every member of a catchment committee continues in office until a successor is appointed.

18 Payment of fees and various costs

- (1) The Authority must pay the members of catchment committees (other than the CEO) the prescribed fees and allowances due to them.
- (2) The costs of and incidental to holding a meeting of assembled landowners to elect the members of a catchment committee must be met by the Authority.

19 No personal liability

A member of a catchment committee is not personally liable for—

- (a) anything done (or not done) in good faith in the performance or exercise, or intended performance or exercise, of a function or power under this Act:
- (b) anything done (or not done) in reliance on advice from the CEO:
- (c) any action or omission to act by the Authority.

20 Meetings of catchment committees

- (1) A catchment committee must at its first meeting appoint a chairperson who holds office as chairperson for that member's term of appointment.
- (2) A catchment committee must meet if the chairperson or any 2 catchment committee members give to the other members of the catchment committee present in the Cook Islands not less than 7 days' notice.
- (3) Any member of the catchment committee may call a meeting after 6 months has elapsed since the last meeting.

21 Quorums, etc

- (1) The quorum for a meeting of the catchment committee is a majority of the voting members of the committee.
- (2) If it is impracticable for a member of a catchment committee to attend a meeting of that catchment committee in person, that member is to be treated as in attendance at the meeting while that member can by telecommunication hear all words spoken by other members in attendance and all other members in attendance are able to hear anything that member says.
- (3) Subject to the provisions of this section and section 24(2), each catchment committee must regulate its own procedure as it sees fit.

22 Minutes

- (1) Minutes must be taken at all meetings of a catchment committee.
- (2) Minutes may be stored in digital format as long as hard copy format can be easily produced from digital format.

23 Functions of catchment committees

A catchment committee has the following functions:

- (a) to consider and determine applications made under section 24(1):
- (b) to decide whether to approve the undertaking of works under sections 24(1) and 25(1):
- (c) any functions delegated to that committee by the Authority.

24 Approval required of catchment committee

- (1) No person may undertake any improvement, place any structure, construct any building, undertake horticultural or pastoral farming, or undertake any other activity on or over any land within a catchment that may adversely affect the water quality or water supply operations of the Authority without applying to the catchment committee and obtaining its approval to proceed with that activity.
- (2) Approval for the purposes of subsection (1) or section 25(1) requires the consent of both of the following:

- (a) a majority of the members of a catchment committee attending a meeting;
 - (b) the person representing the landowners on the title where the activity is proposed to be undertaken.
- (3) However consent must not be unreasonably withheld.
 - (4) No decision on an application made under subsection (1) or section 25(1) may be made before the CEO has been given an opportunity to give advice to the catchment committee.
 - (5) The CEO must ensure that all members of the catchment committee are provided in a timely manner with all information necessary to make an informed decision on any application.

25 Works undertaken by Authority in Rarotonga or Aitutaki

- (1) The Authority may not carry out works that go beyond routine maintenance in any catchment without prior consultation with, and the approval of, the relevant catchment committee, except in the case of an emergency.
- (2) In the event of an emergency, the Authority must notify all members of the catchment committee as soon as is reasonably practicable of what measures have been taken or will be taken in response to that emergency.
- (3) If any works intended to be carried out by the Authority, other than works that are subject to the Infrastructure Act 2019, require the occupation of native freehold land, or any part of such land,—
 - (a) the prior consent of the majority of landowners of that land residing on Rarotonga or Aitutaki (as the case may be) must be obtained by the Authority; and
 - (b) if the works are to be carried out in a catchment, the prior approval of the catchment committee must be obtained by the Authority.
- (4) The landowners may ask for compensation as a condition to any such approval.

**Part 4
Operations**

26 Tariffs and Not-for-profit

- (1) The Authority must operate the Rarotonga network and the Aitutaki network on a not-for-profit basis.
- (2) The Authority may—
 - (a) set and charge tariffs to customers for the supply of water; and
 - (b) set and impose charges for the connection of a water supply.
- (3) The Authority may set tariffs and charges that differentiate between customers on the basis of—
 - (a) the amount of water used; and
 - (b) what the water will be used for.
- (4) In setting tariffs, the Authority must take account of the need—
 - (a) for consumers to have supplies of a reasonable quantity of affordable water;

To Tatou Vai Authority Bill 2020

- (b) for the Authority to meet its actual and anticipated liabilities as they fall due; and
 - (c) to maintain the infrastructure on both Rarotonga and Aitutaki for water supply.
- (5) The Authority must set charges with a view to—
- (a) the costs of ongoing maintenance (including preventative maintenance), repair, replacement, and provision for upgrade of its waterworks in all aspects of infrastructure and service delivery; and
 - (b) servicing any loans taken out to meet those expenses (but excluding loans used to pay for Te Mato Vai); and
 - (c) prudently managing financial risks; and
 - (d) having regard for any reserves held by the Authority; and
 - (e) allowing for depreciation.
- (6) If the Authority imposes tariffs or charges they must be reviewed in advance on an annual basis. Once set, tariffs and charges may not be changed until the following year, except in accordance with section 31.
- (7) Any funds received allocated to depreciation must be held in a reserve account established under the Ministry of Finance and Economic Management Act 1995-96 and any withdrawal from that account—
- (a) requires—
 - (i) the signature of the Financial Secretary; and
 - (ii) the prior approval of Cabinet; and
 - (b) may only be used to carry out the objectives of this Act.
- (8) The funds of the Authority shall be derived from:
- (a) charges for water connections;
 - (b) tariffs;
 - (c) the Crown;
 - (d) advances or capital contributions from CIIC;
 - (e) income from the performance of contracts related to water supply.

27 Limitation of water supply

- (1) The Authority may limit the supply of water to any customer if the customer fails to pay any sum to the Authority by the time it falls due for payment.
- (2) However, the Authority must not restrict the water supply to a customer unless—
- (a) the Authority has given to that customer, either by personal delivery or by leaving it in a prominent place on the relevant land to which the connection relates, a notice stating that payment is overdue and giving the customer not less than 1 months' notice to pay; and
 - (b) the invoice remains unpaid after that 1-month period expires.
- (3) The Authority may only suspend the supply of water to any person where the Authority reasonably believes the supply of water to that person may—
- (a) compromise the quality of the water in the network or any part of it; or
 - (b) damage the network or any part of it; or

- (c) cause too much water to be removed from the network.

28 No transfer of Authority reserves

- (1) No reserves of the Authority may be transferred to any government bank account, other than to carry out the objectives of this Act or where the payment is made to meet an obligation that the Authority has to pay money to the Crown.
- (2) The Authority has no obligation to the Crown to meet all or any part of the costs of Te Mato Vai.

29 Customer participation compulsory

- (1) A person who is the owner or occupier of unimproved land may apply to the Authority for a connection to service that land.
- (2) At least 1 owner of a building must apply to the Authority for a connection to service that building unless the building is—
 - (a) derelict; or
 - (b) a structure associated with another building on the same land that already has a connection to the Authority’s network; or
 - (c) neither designed nor used for occupation by persons; or
 - (d) used exclusively for storage purposes; or
 - (e) situated outside the full service zone.
- (3) The Authority may establish 1 or more connections to any land or building.
- (4) If 2 or more connections are established, the Authority must separately meter those connections and may charge rates that reflect any differing use of each connection.
- (5) The Authority may make a periodic charge, regardless of whether a customer uses water from a connection, for the availability of water to that connection.
- (6) In this section, **owner** means, in respect of—
 - (a) Crown land, CIIC;
 - (b) native freehold land that is neither leased nor the subject of an occupation right, each adult person who actually occupies the building on that land;
 - (c) leased land, each of the lessees named in the lease or, if that lease has been assigned, each of the assignees named in the most recent deed of assignment;
 - (d) an occupation right having 5 registered landowners or fewer, each of those landowners;
 - (e) an occupation right having 6 or more registered landowners, each of those landowners who resides in the Cook Islands, or, if no registered landowner resides in the Cook Islands, each adult who occupies the building on that land.
- (7) A person who fails, without reasonable excuse, to comply with subsection (2) commits an offence punishable on conviction by a fine not exceeding \$5,000.

30 Obligation to manage fair allocation of available water

- (1) The Authority must not abuse its dominant position in the marketplace in the supply of water.

- (2) The Authority must make sure its supplies of water are made available to its customers on a fair basis.
- (3) No person has the right to draw unlimited amounts of water from the Authority's network.
- (4) The Authority may restrict the flow of water to—
 - (a) any agricultural connection where other uses, in the reasonable opinion of the Authority, take priority:
 - (b) any other connection that is, in the reasonable opinion of the Authority,—
 - (i) taking amounts of water that are unfair in relation to the needs of consumers as a whole; or
 - (ii) taking amounts of water that are adversely affecting other consumers in the vicinity of that connection.
- (5) The Authority may, if it has reasonable grounds to believe that any customer has wasted a significant amount of water, terminate or limit the supply of water to that customer, on 24 hours' notice.
- (6) The Authority may, if drought or other circumstances warrant it, impose restrictions on the use of water.

31 Directions as to supply of water

- (1) Despite **section 26(2)** the Authority must supply to all eligible customers with an eligible connection a free allocation of water up to the maximum amount specified in regulations for their domestic use.
- (2) The sums that would have been payable to the Authority but for the supply of water without charge under **subsection (1)** are—
 - (a) a debt due to the Authority by the Crown; and
 - (b) payable to the Authority on the date that charge would have been payable by customers but for the requirement in **subsection (1)** to supply free water.
- (3) In this section,—

domestic use means the non-commercial consumption and use of water in any occupied dwelling by the occupants of that dwelling

eligible connection means the registered connection that a person uses for the person's own domestic use

eligible customer means a person who has a registered connection with the Authority for that person's own domestic use.

Part 5 Governance

Policy setting

32 Authority's strategic plan

- (1) The Board must set and adopt a strategic plan not less than once every 2 years.
- (2) In developing its strategic plan, the Board must—

- (a) publish, on an Internet site maintained by or on behalf of the Authority and in any other way it considers appropriate, a draft strategic plan for public comment, allowing in every case no less than 21 days for written submissions to be made; and
 - (b) deliver to the chairperson of each catchment committee a draft strategic plan for comment, and allow each catchment committee no less than 42 days for written submissions to be made; and
 - (c) consider the written submissions received, before deciding the final form of the policies and plans included in the strategic plan.
- (3) The final version of each strategic plan prepared under this section must be published on an Internet site maintained by or on behalf of the Authority and in any other way it considers appropriate, and copies must be made available for public inspection at the head office of the Authority.

Membership and procedures of Board

33 Board of Directors of Authority

(1) The Board has—

- (a) overall control of the Authority; and
- (b) exercises the powers and performs the functions of the Authority.

The Board consists of not less than 5 nor more than 7 members who are appointed, subject to subsection (7), by the board of the CIIC.

One of the members of the Board who satisfies the criteria in section 37 must be appointed as chairperson by the board of the Corporation.

The members of the Board may at any time choose 1 person to be vice-chairperson and that person may perform all the functions of the chairperson in the chairpersons absence.

The members of the Board must include persons of different gender.

The Board must have directors who collectively satisfy all the criteria listed in section 35(3).

The board of the CIIC must, if the Minister recommends the appointment of a person (other than a public servant) with the area of expertise specified in section 35(3)(f) (socio-economic expertise) as a director, appoint that person as a director.

Subsections (2), (3) and (7) are subject to sections 35, 36, and 37.

34 Term of office of directors

- (1) On the first appointment at least 2 directors must be appointed for terms of 2 years and at least 3 directors must be appointed for terms of 3 years.
- (2) All appointments after the first appointments must be for a term not exceeding 3 years.
- (3) However, no person may serve for more than 12 successive years as a director of the Board.
- (4) A director whose term of office expires continues in office until—
 - (a) his or her successor is appointed; or
 - (b) he or she is given notice in writing from the Chairperson of the board of the CIIC that he or she will not be reappointed.

- (5) A director is not entitled to compensation, severance or other benefits on, or because of, ceasing to be a director for any reason.

35 Qualification for appointment as director

- (1) A person must be at least 21 years old before he or she can be appointed as a director of the Board.
- (2) A person must be registered on a database maintained by the CIIC under a profile that makes the person suitable for appointment as a director of the Board before he or she can be appointed as a director.
- (3) Each director of the Board should preferably satisfy at least one of the following criteria:
- (a) knowledge and experience in either the management of a—
 - (i) sewerage reticulation network; or
 - (ii) water supply network;
 - (b) experience in governing organisations or policy expertise, and preferably in an organisation that performs public reticulation services;
 - (c) a degree with a major in accounting or finance;
 - (d) former or current experience as a lawyer, preferably with knowledge and experience in commercial law;
 - (e) former or current experience as the owner of 1 or more private sector businesses, with a track record of successfully operating those businesses;
 - (f) a good understanding of relevant socio-economic matters such as land tenure in the Cook Islands and social impacts on Cook Islanders.

36 Disqualifications for appointment as director

A person must not be appointed as a director of the Board if the person—

- (a) has a medical or other condition that impairs his or her judgment, skills, or intellectual capacity;
- (b) is a member of Parliament;
- (c) has been convicted of an offence committed in any country punishable by a maximum term of imprisonment of 2 years or more;
- (d) has a history of failing to repay debts on time to statutory entity;
- (e) he or she has had more than a 30% shareholding or has been a director or manager of a company at the time when it entered into receivership or liquidation;
- (f) is a shareholder, director, or manager of company or other business that—
 - (i) conducts similar activities to the business of the Authority; and
 - (ii) is likely to involve the person in recurring conflicts of interest.

37 Qualification for appointment as chairperson of the Board

A person must not be appointed as a chairperson of the Authority unless, in addition to satisfying at least one of the criteria in section 35, the person—

- (a) has at least 2 years' experience as a director of a statutory corporation or

- a state owned enterprise;
- (b) has their primary place of residence in the Cook Islands.

38 Extraordinary vacancies

- (1) Any director, including the chairperson, may at any time be removed from office by the Chairperson of the board of the CIIC for disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Chairperson.
- (2) The Chairperson must not remove any Director under subsection (1) without first consulting the Minister.
- (3) A director ceases to hold office by operation of law if—
 - (a) he or she is elected as a member of Parliament;
 - (b) he or she is convicted of an offence in any country punishable by a maximum term of imprisonment of 2 years or more;
 - (c) he or she has more than a 30% shareholding or is a director or manager of a company that enters into receivership or liquidation;
 - (d) he or she becomes a shareholder, director or manager of a company or other business and is informed by the Chairperson of the board of the CIIC that—
 - (i) the company or other business conducts similar activities to those of the Authority; and
 - (ii) the director's involvement in that business is likely to lead to recurring conflicts of interest with his or her duties as a director of the Board.

A director may at any time resign from office by giving written notice to the Chairperson of the board of the CIIC.

If a director dies, resigns, is removed from office, or ceases to hold office by operation of law, the vacancy created is an extraordinary vacancy.

An extraordinary vacancy must be filled in the same manner as the appointment of the vacating member.

Every person appointed to fill an extraordinary vacancy must be appointed for the balance of the term for which that vacating member was appointed.

For the purposes of subsection (1), misconduct, without limitation, includes conduct by a director that brings the Authority into disrepute.

39 Authority not affected by vacancies in membership

The powers of the Authority are not affected by a vacancy in the membership of its Board.

40 Meetings of Board

- (1) Meetings of the Board may be held at times and places that the Board or the chairperson appoints.
- (2) However—
 - (a) the Board must meet at least once every 3 months; and
 - (b) the Board must meet more often if the directors think that is necessary to make sure the Board has proper oversight and control of the Authority.

- (3) A special meeting must be called by the chairperson whenever 2 or more directors, in writing, request a meeting.
- (4) A Board meeting may only be held if a quorum of the directors is present at the time and place appointed for the meeting.
- (5) The quorum for a meeting of directors is 3 persons present in person, but those quorum requirements are deemed to be satisfied if 3 directors can simultaneously hear and speak to each other although they may not all be in the same place.
- (6) A resolution signed by all directors, whether on 1 or more copies of that resolution, is deemed to be a resolution duly passed at a meeting.

41 Procedures at meeting

- (1) At any Board meeting—
 - (a) decisions may be made by a simple majority of directors present and voting on the matter; and
 - (b) the chairperson of that meeting has a deliberative vote and a casting vote; and
 - (c) proper minutes must be kept of proceedings.
- (2) The Board may regulate its procedure as it thinks fit, subject to—
 - (a) the provisions of this Act and other applicable laws; and
 - (b) written directives issued by the board of CIIC under section 23 of the Cook Islands Investment Corporation Act 1998.
- (3) A copy of that written resolution may be in either or both of the following:
 - (a) digital format; or
 - (b) hard copy format.

42 Disclosure of interests

- (1) This section applies to—
 - (a) each director of the Board;
 - (b) the CEO;
 - (c) the secretary of the Board;
 - (d) every officer and employee of the Authority or CIIC who attends a Board meeting.
- (2) A person to whom this section applies must keep information discussed by the Board confidential unless—
 - (a) the Board has authorised the disclosure of that information; or
 - (b) that information is disclosed under any applicable law; or
 - (c) it is in the commercial interests of the Authority for that information to be disclosed; or
 - (d) a court orders that information be disclosed; or
 - (e) there is an obligation to disclose that information under the Official Information Act 2008.
- (3) The directors must maintain an interests register setting out all other interests, including all directorships and shareholding interests held in the Cook Islands.

- (4) A person must disclose to a Board meeting any conflict of interest (direct or indirect) in matters discussed, or resolutions put, at that Board meeting.
- (5) A disclosure must be recorded in the Board minutes and, unless all directors present decide otherwise, the person making that disclosure must leave the meeting while the Board discusses the matter.
- (6) That absence does not affect the quorum of the Board.

43 Remuneration of directors

- (1) The board of the CIIC must determine the remuneration to be paid for services as a director of the Board.
- (2) Directors are also entitled to reimbursement of actual and reasonable travelling and other expenses where those have been incurred in performing functions and duties as a director.
- (3) That remuneration and reimbursement must be paid from the operating budget of the Authority.
- (4) Despite subsection (1), if a director of the Board is a public servant—
 - (a) his or her service as a director is not private sector work or service for the Government under sections 37 and 38 of the Public Service Act 2009; but
 - (b) his or her remuneration for services as a director must be determined under that Act.

44 No personal liability

- (1) A director of the Board, the CEO and the officers and employees of the Authority are not personally liable for—
 - (a) anything done (or not done) in good faith in the performance or exercise, or intended performance or exercise, of a function or power under this Act or the Infrastructure Act 2019; and
 - (b) any debt of the Authority.
- (2) Each director must be indemnified by the Authority—
 - (a) for costs and damages for any civil liability or claim arising from any action brought by the Crown or a third party, if the director acted or failed to act in good faith in the performance of, or intended performance of, any function or power under this Act or the Infrastructure Act 2019; or
 - (b) successfully defending any criminal prosecution if the prosecution arose in the course of operations of the Board or the Authority.

45 Secretary

- (1) The CEO must arrange for an appropriately qualified employee to act as secretary to the Board.
- (2) The secretary must keep full and accurate—
 - (a) minutes of all Board meetings (including a record of attendance); and
 - (b) details of resolutions passed; and
 - (c) details of voting on resolutions.
- (3) The CEO must make sure copies of minutes are available to all directors within 7 days after a meeting.

- (4) The secretary has care of the Authority's common seal, which must—
- (a) be used only as directed by a Board resolution; and
 - (b) when used, be accompanied by the signatures of 2 directors.

46 Directors' general duties

A director must, when acting for the Authority, do so in a way that—

- (a) is consistent with this Act and all other relevant laws; and
- (b) takes into account directions that are properly given by CIIC; and
- (c) otherwise advances the best interests of the Authority.

47 Human resources of Authority

- (1) The Board must appoint a CEO of the Authority to carry out, under the supervision of the Board, the Authority's functions and exercise the Authority's powers.
- (2) The CEO may—
 - (a) employ personnel;
 - (b) contract on behalf of the Authority with independent contractors.
- (3) The CEO must approve policies and procedures, not inconsistent with all applicable laws, to make sure—
 - (a) that he or she acts in all respects as a good employer; and
 - (b) that he or she uses independent contractors in an open, transparent, and fair way; and
 - (c) that the Authority's human resources policies are efficient and cost-effective.

48 Delegations

- (1) The Board may delegate any of the functions or the powers of the Authority to the following subject to any conditions that it thinks fit:
 - (a) the CEO;
 - (b) a catchment committee.
- (2) The CEO may delegate any of his or her functions or powers (including any functions or powers delegated to the CEO under subsection (1)) to another employee of, or a contractor to, the Authority, subject to any conditions the CEO thinks fit.
- (3) The Board may at any time revoke a delegation under subsection (1).
- (4) The CEO may at any time revoke a delegation under subsection (2).
- (5) The powers of the Board and the CEO to delegate under this section may not be delegated.

Financial reporting

49 Statement of corporate intent

- (1) No later than 1 month before the start of each financial year, the Board must deliver the Authority's statement of corporate intent to CIIC and to each catchment committee for its consideration and approval.
- (2) The Authority must not implement its statement of corporate intent until—

- (a) each catchment committee has had a reasonable opportunity to comment on the statement (or any amended version of it); and
 - (b) the statement (or any amended version of it) has been approved by the board of CIIC.
- (3) The Board must amend a statement if—
- (a) CIIC requests an amendment; and
 - (b) that request is not contrary to this Act or any other law; and
 - (c) CIIC has given the Board an opportunity to explain why the amendment should not be made and, having done so, has confirmed its request.
- (4) Each statement of corporate intent must adopt CIIC's policies that are set out in CIIC's own, current, statement of corporate intent.
- (5) Each statement of corporate intent must specify, in respect of the next financial year and each of the 2 immediately following financial years,—
- (a) the Authority's objectives; and
 - (b) the nature and scope of its activities; and
 - (c) measurable targets by which the Authority's performance can be assessed; and
 - (d) the Authority's intentions regarding the sale and purchase of assets; and
 - (e) what appropriation by Parliament (if any) is required; and
 - (f) any other matters that CIIC and the Authority have agreed should form part of a statement of corporate intent.

50 Annual report

- (1) No later than 3 months after the end of each financial year, the Board must deliver to CIIC and each catchment committee a report of the Authority's operations during that financial year.
- (2) That report must include—
- (a) statements, current to the end of that financial year, of—
 - (i) financial position; and
 - (ii) financial performance; and
 - (iii) cashflows; and
 - (iv) borrowings; and
 - (v) other financial commitments:
 - (b) the auditor's report on those statements;
 - (c) an assessment of specific fiscal risks identified by the Board;
 - (d) a comparison of the Authority's performance with the statement of corporate intent applicable to the reporting period.

51 Bank accounts

- (1) The Authority may open and maintain bank accounts, in accordance with, and subject to, section 43 of the Ministry of Finance and Economic Management Act 1995-96, for the purposes of its operations.
- (2) Every officer and employee of the Authority who receives money for the Authority must pay that money into one of those accounts as soon as practicable after receiving it.

- (3) Without limiting subsection (2),—
 - (a) the Board, by resolution, may authorise any 2 of its officers, jointly, to operate any account; and
 - (b) at any time, and without the need for a resolution, the CEO and the chairman of the Board, jointly, may operate any account.

52 Financial reporting disciplines

- (1) This section applies to—
 - (a) the financial data and forecasting that the Authority may choose to include in any statement of corporate intent; and
 - (b) each annual report.
- (2) The Authority must make sure that when it provides financial data and forecasting, that information is accurate, full, and transparent.
- (3) Without limiting subsection (2), each statement and report must—
 - (a) be prepared using generally accepted accounting practices and presented in a form that is consistent with those practices; and
 - (b) give full details of those practices and any related policies of the Authority; and
 - (c) include full and detailed estimates of—
 - (i) the value of the Authority’s assets; and
 - (ii) the amount of the Authority’s liabilities (actual and contingent); and
 - (iii) the value of CIGPC’s investment in the Authority; and
 - (d) give full details of the way those estimates are assessed; and
 - (e) demonstrate compliance with the provisions of section 26; and
 - (f) separately identify payments received and charged under section 31; and
 - (g) so far as practicable, identify any other costs to the Authority in recognising the Government’s social policy in its provision of water.

53 Risk management reports

- (1) The Board must deliver quarterly risk management reports to the CIIC as soon as practicable after they are prepared.
- (2) Each risk management report must—
 - (a) outline significant events occurring in the quarter covered by the report that may or will have a significant financial impact; and
 - (b) assess the nature and degree of risk caused by these events; and
 - (c) include advice on how these risks may be mitigated.
- (3) The Board must immediately advise the CIIC of any event likely to create a significant financial risk for the Authority.

54 Accounts and records

The Authority must—

- (a) keep proper accounts and records; and
- (b) make sure payments are correctly made and properly authorised; and
- (c) keep proper control of both its assets (and assets of others held by it) and its liabilities; and

- (d) retain all records for a period of not less than 7 years.

55 Audit

- (1) The accounts and records of the Authority must be audited annually by auditors appointed under Article 71 of the Constitution of the Cook Islands.
- (2) The auditors must supply a report of the audit to—
 - (a) the Authority; and
 - (b) CIIC; and
 - (c) the Minister; and
 - (d) each catchment committee.

**Part 6
Offences and civil liability**

56 Wasting water

- (1) A person commits an offence if the person intentionally or recklessly wastes water under the control of the Authority or supplied by the Authority to the person.
- (2) A person who commits an offence under subsection (1) is liable on conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$10,000, or to imprisonment for a term not exceeding 3 months, or both; or
 - (b) in any other case, to a fine not exceeding \$50,000.

57 Fraudulent dealings with Authority

A person who, by false pretence or representation, defrauds the Authority of any charge, rental, or fee properly payable to the Authority for goods supplied or services rendered by the Authority commits an offence and is liable on conviction,—

- (a) in the case of an individual, to a fine not exceeding \$50,000, or to imprisonment for a term not exceeding 2 years, or both; or
- (b) in any other case, to a fine not exceeding \$200,000.

58 Damage to works of Authority

A person who intentionally or negligently damages any works of the Authority is liable for the cost of all necessary repair and replacement.

59 Failure to obtain consent

Any person who carries out any activity that requires the consent of a catchment committee without obtaining that consent is liable on conviction,—

- (a) in the case of an individual, to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years, or both; or
- (b) in any other case, to a fine not exceeding \$300,000.

60 Resale of water prohibited

- (1) A customer must not resell any water received by that customer from the Authority.

- (2) A customer must not supply any water received by that customer from the Authority to any third party if the customer knows, or suspects, that the third party is reselling that water.
- (3) Subsections (1) and (2) do not apply to a customer who has received the prior written permission of the Authority to undertake reselling activity.
- (4) The Authority may give or withhold permission in its discretion and if permission is granted, may impose conditions (including tariffs and charges) on that permission.
- (5) A person commits an offence punishable on conviction by a fine not exceeding \$100,000, if the person acts—
 - (a) contrary to this section:
 - (b) contrary to the terms of any permission granted.

Part 7

Water quality

61 Testing water

The Authority must, not less than monthly, test the water—

- (a) it supplies to the public; and
- (b) at any community water station.

62 Public notice

If at any time the quality of the water tested is not potable, the Authority must—

- (a) in the case of a public supply, ensure that a boil-water notice in respect of the area or areas affected is published not less than once a month in a newspaper available for purchase on Rarotonga; and
- (b) in the case of a community water station, place a boil-water notice in a prominent place at the community water station.

Part 8

General and miscellaneous provisions

63 Liability of Authority limited

The Authority must use its best efforts to provide continuous service but is not liable (even if it has been negligent)—

- (a) for any interruptions in service, or damage that a customer suffers because of any of the following, however caused:
 - (i) the failure or partial failure of the water supply;
 - (ii) variation in service characteristics; or
- (b) for injury or damage suffered by using any pipes, valves, fittings, connections, instruments, service, or appliances installed by or for a customer; or
- (c) for injury or damage suffered as a result of the presence of the Authority's personnel or property on a customer's premises; or
- (d) for injury resulting from the consumption of water.

64 Exemption from taxation

- (1) The Authority is exempt from all taxes, duties, and levies (except VAT) and any other fees.
- (2) To avoid doubt, subsection (1) does not apply to or in relation to any remuneration, benefits or expenses paid out of the funds of the Authority to a member of the Authority.

65 Subsidiary of CIIC

The Authority is a statutory corporation to which section 8 of the Cook Islands Investment Corporation Act 1998 applies.

Regulations

66 Regulations

The Queen's Representative may, by Order in Executive Council on the recommendation of the Minister, make regulations for 1 or more of the following purposes:

- (a) to set or alter the boundaries of any catchment, and to amend or replace Schedule 2 accordingly:
- (b) to set or alter the boundaries of any valley:
- (c) to prohibit or create rules about the installation and use of any well, artesian water supply, desalination plant, underground water table, rainwater, water tank, river, or stream:
- (d) to prescribe the maximum amount of water which over any specified period or periods of time must be supplied by the Authority at no cost under section 31(1).
- (e) to prescribe fines for the breach of any regulations not exceeding \$5,000, and for an ongoing offence not exceeding \$1,000 per day:
- (f) to prescribe the fees and allowances of members of each catchment committee and an annual operating budget for each catchment committee:
- (g) to provide guidance and regulation in any matter that is properly a function or power of the Authority under this Act:
- (h) to provide for any other matters contemplated by this Act, necessary for its full administration, or necessary for giving it full effect.

67 Amendments to other enactments

The enactments listed in Schedule 1 are amended as set out in that schedule.

Transitional and savings provisions

68 Transfers from To Tatou Vai Limited to Authority

On the date this Act comes into force,—

- (a) the assets and liabilities of To Tatou Vai Limited, a company incorporated under the Companies Act 1970-71, become the assets and liabilities of the Authority:
- (b) the chief executive of To Tatou Vai Limited is deemed to be appointed as CEO of the Authority under section 47(1):

To Tatou Vai Authority Bill 2020

- (c) the staff and other officers of To Tatou Vai Limited are deemed to be employees of the Authority:
- (d) the Authority becomes a party to any contract or deed that To Tatou Vai Limited was a party to, in place of To Tatou Vai Limited:
- (e) To Tatou Vai Limited is deemed to be dissolved under section 92 of the Companies Act 1970-71.

Schedule 1

Amendments to other enactments

Cook Islands Investment Corporation Act 1998 (1998 No 3)

In section 2(1), definition of **statutory corporation**, insert after paragraph (e):

“(f) To Tatou Vai Authority established under the To Tatou Vai Authority Act 2020.”

Public Health Act 2004 (2004 No 13)

Replace sections 21 and 22 with:

“21 Sampling and analysis of swimming pools

- “(1) A health inspector may at any time take a sample of water for analysis from any pool or place used for public swimming.
- “(2) The Secretary may make arrangements for any employee of the Ministry of Health to forward that sample to an approved analyst for analysis.
- “(3) On receiving the results of the analysis, the employee receiving them must immediately forward those results to the Secretary. If the pool or place is privately owned, the Secretary must give prompt written notice of the results to that owner.

“22 Monitoring of reticulated water networks

- “(1) The Secretary must establish procedures for health inspectors—
 - (a) to take samples of water from any network of reticulated water; and
 - (b) to inspect water reticulation infrastructure for contamination risks that may be presented—
 - “(i) by that infrastructure:
 - “(ii) by the action or inaction of any person.
- “(2) The Secretary must make sure those procedures provide monitoring and oversight of public health risks in a way that is both—
 - (a) regular and routine, and of a scale and extent that appropriately reflect the risks of contamination from intakes and other sources and from treatment plants and other infrastructure; and
 - (b) random, of a sort that is designed to defeat the efforts of any person to hide or disguise contamination or any failure of or non-compliance with appropriate procedures.

“22A Sampling and analysis of reticulated water

- “(1) A health inspector may at any time take a sample of water for analysis from any part of a reticulated water supply.
- “(2) The Secretary may make arrangements for any employee of the Ministry of Health to forward that sample to an approved analyst for analysis.
- “(3) On receiving the results of the analysis, the employee receiving them must immediately forward those results to the Secretary. The Secretary

must give prompt written notice of the results to the manager of that reticulated water supply.

“22B Verification of samples

- “(1) A health inspector who takes a sample must, at the time of taking the sample or as soon afterwards as is practicable, make a written record of the date, time, and place at which the sample was taken. That record may take the form of 1 or more images stamped with date and time.
- “(2) Every employee of the Ministry of Health and every analyst who has custody of the sample must keep a record with details that are sufficient to establish the chain of custody of the sample.

“22C Publication of results and enforcement

The Secretary must publish in a newspaper that is published not less than weekly and available for purchase by the general public in Rarotonga the results of any analysis, indicating whether or not, on the basis of the sample taken, the water is potable.”

Land (Facilitation of Dealings) Act 1970 (1970 No 7)

After new section 26, insert:

“26A Body corporate to appoint members to catchment committees

A body corporate under this part of this Act may appoint members to catchment committees established under the To Tatou Vai Authority Act 2020.”

After section 51(1)(h), insert:

- “(i) That the owners of the land establish and/or appoint a member to a catchment committee pursuant to the To Tatou Vai Authority Act 2020.”

Replace section 51(2) with:

- “(2) Other than a resolution passed under subsection (1)(i), a resolution passed by the assembled owners pursuant to this section does not have any force or effect unless it is confirmed by the Court in accordance with this Act.
- “(3) A resolution passed under subsection (1)(i) does not have any force or effect unless a copy of it is endorsed by the Registrar as conforming to the provisions of this Act.”

Rarotonga Waterworks Ordinance 1960 (1960 No 11)

Repeal sections 6, 7, 8, 8A, and 10.

To Tatou Vai Authority Bill 2020