



PARLIAMENT OF THE COOK ISLANDS

PARLIAMENT PAPER NO. 107

Rarotonga.

Mr Speaker,

I have the honour to present the Report on the review of the To Tatou Vai Authority Bill 2020

Sir,

Hon. Mark Brown
Chairman



Parliament of the Cook Islands

To Tatou Vai Bill Select Committee

Committee Report

**Report on the review of the To Tatou Vai
Authority Bill 2020**

**Parliament Paper No. 107
Presented on 22 November 2021**

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COMMITTEE MEMBERSHIP

Members of the To Tatou Vai Select Committee:

Hon. Mark Brown, Member for Takuvaine-Tutakimoa - Chairperson
Hon. Selina Napa, Member for Titikaveka - Vice Chairperson
Hon. Patrick Arioka, Member for Murienua
Hon. Te Hani Brown, Member for Tengtangi-Areora-Ngatiarua
Hon. Albert Nicholas, Member for RAPP
Hon. Agnes Armstrong, Member for Ivirua
Hon. Terepii Maoate, Member for Amuri-Ureia

To Tatou Vai Team

Mr Brian Mason, Chairman, To Tatou Vai Board
Mr Greg Longman, Former CEO, To Tatou Vai
Mr Terepii Timoti, CEO, To Tatou Vai

Secretariat

Mr Tangata Vainerere, Clerk
Mrs Tai Manavaroa, Acting Deputy Clerk
Ms Margret Numanga, Committee Secretary
Mr Unuia Unuia, Technical Operations Coordinator
Ms Janette P. Browne, Executive Assistant to the Speaker/FTR Operator

Contact Details

To Tatou Vai Select Committee
Parliament of the Cook Islands
P O Box 13
Rarotonga

Telephone: (682) 26500

Email: tangata.vainerere@cookislands.gov.ck

Website: www.parliament.gov.ck

TERMS OF REFERENCE



The Parliamentary Select Committee for the To Tatou Vai Authority Bill 2020 was established by motion in Parliament on Wednesday 8th July 2020 and was directed to report to Parliament no later than September 2020.

The To Tatou Vai Authority Bill Select Committee shall:

- 1 review the, To Tatou Vai Authority Bill 2020
- 2 hold discussions with relevant entities, communities and key stakeholders concerned with water issues
- 3 take note of potential legislative changes that may be necessary to put into effect any policy recommendations; then
- 4 consider and report recommendations to Parliament.

CHAIRPERSON'S FOREWORD

REPORT OF THE TO TATO VAI SELECT COMMITTEE



Hon. Mark Brown, Prime Minister, Chairperson

Mr Speaker,

Pursuant to the Terms of Reference of the To Tatou Vai Select Committee as ordered by Parliament on Wednesday 8th July 2020, it is an honour and pleasure for me Sir, to present the Report of the To Tatou Vai Select Committee on its review of the To Tatou Vai Authority Bill 2020, for laying before Parliament.

Honourable Mark Brown, Prime Minister
Chairperson
To Tatou Vai Select Committee

Date _____ 2021.

EXECUTIVE SUMMARY



“WATER IS A UNIVERSAL RESOURCE THAT IS PROVIDED TO US FROM NATURE. IT HAS NO OWNERSHIP. HOWEVER IT IS VALUABLE TO ALL PEOPLE AS IT IS REQUIRED FOR LIFE. IT IS A BASIC NEED SECOND ONLY TO AIR.”

To Tatou Vai

This report presents the findings and resolution of the Select Committee appointed by Parliament to review the **To Tatou Vai Authority Bill 2020**.

The Bill was presented to Parliament on Wednesday 8 July 2020 for its First Reading and the Second Reading of the Bill was taken forthwith.

The Bill proposes an enactment to—

- (a) establish the To Tatou Vai Authority to provide water as a public service for the people of Rarotonga; 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 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 island of Rarotonga with standards of reliability that will underpin economic growth and increase the resilience of the Rarotonga communities to disasters and the impacts of climate change; and
- (g) require the Authority to be accountable to the CIIC.

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 recognise the rights and interests of landowners in the valleys through its compliance with the terms of access agreements:
- (f) to promote public education and awareness of the need to preserve and conserve catchments:
- (g) 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:
- (h) 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:
- (i) any other functions given to the Authority by the Minister.

After some time spent by Members debating the Principles and Merits of the Bill at its Second Reading, the Bill was referred to the To Tatou Vai Select Committee established by Parliament at the end of the debate.

Public meetings were convened by the Committee at the Sinai Hall, Avarua, Calvary Hall, Arorangi and Sunday School Hall in Avana on July 28th, 29th and 30th of 2020 respectively.

The landowner meetings for Taipara, Papua, Totokoitu and Turangi were held at the Avana Sunday School School Hall; Ngatoe at the Calvary Hall, Avana at the Avana Sunday School Hall, Matavera, Tupapa, Avatiu at the Sinai Hall and Takuvaine at the Takuvaine Meeting House between 24 August 2020 and 3 September 2020.

Written submissions and presentations to the Select Committee were received from a wide group of people.

The Committee thanks all those people who attended the Vaka Meetings, the landowners, and all the various organisations and individuals who made submissions to the Committee. As a result of their submissions and contributions, important amendments have been made to the Bill.

TO TATOU VAI SELECT COMMITTEE 2020-2021

1. INTRODUCTION



TO TATOU VAI IS RESPONSIBLE FOR THE COLLECTION, TREATMENT AND TRANSPORT OF POTABLE WATER TO THE RAROTONGA COMMUNITY. IT IS AN ESSENTIAL SERVICE AND CRITICAL TO THE PUBLIC HEALTH AND ECONOMIC DEVELOPMENT OF OUR COUNTRY.

TO TATOU VAI'S PRIMARY PURPOSE IS TO MANAGE AND OPERATE THE PUBLIC WATER SUPPLY FOR RAROTONGA, AND FOR AN IMPROVED LEVEL OF CUSTOMER SERVICE (RESPONSE, RELIABILITY, AFFORDABILITY, ASSET STEWARDSHIP AND PUBLIC HEALTH) TO BE CONSISTENTLY ACHIEVED AND DELIVERED.

The **To Tatou Vai Authority Bill 2020** was presented to Parliament on Wednesday 8 July 2020 for its First Reading and the Second Reading of the Bill was taken forthwith.

After some time spent by Members debating the Principles and Merits of the Bill, it was referred to the To Tatou Vai Select Committee established by Parliament at the end of the debate.

Public meetings were convened by the Committee at the Sinai Hall, Avarua, Calvary Hall, Arorangi and Sunday School Hall in Avana on July 28th, 29th and 30th of 2020 respectively.

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Written submissions and presentations to the Select Committee were received from a wide group of people including:

- Growers Committee
- the Proprietors of Uruau
- Koutu Nui
- Te Vai Ora Maori (twice)
- Kainuku Kopu Ariki
- Natural Kuki Airani
- Landowners Represented by Tai Nicholas
- Terry Hagan
- Pa Ariki
- Vaine Teremoana Tui from Australia.

The Committee thanks all those people who attended the Vaka Meetings, the landowners, and all the various organisations and individuals who made submissions to the Committee. As a result of their submissions and contributions, important amendments have been made to the Bill.

2. BACKGROUND

2.1 Completion of Te Mato Vai Project

While speaking on the Principles and Merits of the Bill in Parliament in 2020, the then Deputy Prime Minister Hon. Mark Brown in his capacity as Minister of Finance and Minister responsible for the Te Mato Vai project reminded the Members of the nearing of completion of the Te Mato Vai water project. The Minister confirmed that once the project was completed and commissioned, it will be handed over to the Crown.

2.2 Managing the new water network

Managing this new water network will be a very complex task. That's because the quality of the water will be far better than what we currently have and it will be constantly monitored and tested by qualified people. For this reason, the Government through the Cook Islands Investment Corporation established the wholly owned subsidiary To Tatou Vai Limited.

To Tatou Vai will be the entity that will be responsible for the operation and maintenance of our water network here on Rarotonga. The company has been in operation for nearly two years or more than two years Madam Speaker. We have employed a significant number of Cook Islanders most of them returning from overseas who are well qualified and experience in water management.

We have also taken on those people previously employed under ICI who were responsible for water. The formation of the company TTV was only intended for an interim purpose and it was always intended by the Government to convert this company into a statutory corporation or into a state owned enterprise. So it will have similar authorities, obligations that our other SOEs have like Te Aponga Uira, Airport Authority and the Ports Authority.

It is to establish the, To Tatou Vai Authority. It will be a self-funding not for profit statutory corporation governed by a Board and a CEO.

2.3 Engagement with Landowners

Over the last 6 and 7 years the Government has taken great pains to engage with the landowners of our water intake valleys. Every step of the way the Minister and his Team have consulted with landowners and sought their consent and approvals to take the next step from the initial idea to the planning, to the mapping to actual construction. Governments' engagement with our landowners is captured in this Bill. Not just the landowners of where the structures are built but also the landowners of the wider catchment area.

2.4 New Water Intakes

There are ten valleys where Government has built new water intakes. And it has been pointed out to our people the largest infrastructure project our country has embarked on since the construction of our international airport. And rightfully so because we have for the last 30 years heard the cries of our people wanting improved water into their homes.

Our people are sick of having air running through our water when it is dry weather and sick of having mud run through our taps when it starts raining. So, the system that we have up and running is world class and it is considered best fit for purpose for our country.

Above the actual intakes and the tanks is what is considered the catchment area. When it rains water runs through these lands to the stream and the stream runs down to the intake where the water is captured.

2.5 Catchment Committees

This Bill will establish a catchment committee for each valley made up of persons appointed by the landowners of those catchments. So these catchment committees made up of landowners will in effect allow the landowners to regulate their own lands to preserve the quality of the water derived from these lands to benefit everyone living on Rarotonga.

So the Minister and his Team met a number of the governance committees from the landowners during previous consultations quite a number of years back. But the Government will not take the land, it still belongs to the landowners and that people are entitled to free water.

2.6 Charges for Water

This Bill acknowledges that water is a fundamental human right. It will be captured in the Bill that each person, every domestic household will be entitled to a free allocation of water, and that will be determined by the Authority once it has the formula or appropriate measure to determine what that allocation will be.

However, again as a result of consultations with stakeholders and landowners anybody who makes money from this water network should be prepared to pay for that water and anybody who waste water and lets water run without control should also be prepared to pay for that water.

This move was a result of the Ministers attendance at a Koutu Nui meeting some 5 years ago at the Pukapuka hostel. When the question was asked about the people who let their water run and waste it, the overwhelming response from the Koutu Nui was that they should pay for that water.

To Tatou Vai does not expect to be charging for any water for at least two years.

2.7 Monitoring of Usage

The first thing that needs to be done is to install meters at every water outlet. These has two purposes:

- a) it lets the household know how much water is being used
- b) it will also identify if there are leaks that are occurring on their property, either in their house or under the ground in the pipe leading to their house.

And it will have three outcomes:

- a) to encourage people to conserve their water
- b) it will encourage people to attend to any leaking pipes or taps on their property
- c) this legislation will fall under the mandate of the Competition and Regulatory Authority.

2.8 Anti-chemical Treatment of the Water Supply Petition

The public petition organised by Te Vai Ora Maori Group – ‘*Anti-chemical Treatment of the Water Supply of Rarotonga*’ - was tabled in Parliament on 17 June 2020 and disposed of in accordance with parliamentary rules.

The petition called for the Cook Islands Government and its associated agencies responsible for the water supply of Rarotonga to:

1. Cease immediately any action to use chemicals to treat the water supply of Rarotonga.

2. Undertake genuine meaningful analysis, consultation, evaluation and decision making processes that will result in sustainable and locally-relevant water supply system(s) for Rarotonga.
3. Ensure that the domestic supply of water remains free for the people of Rarotonga.

3. THE COMPETITION AND REGULATORY AUTHORITY

In 2019, Parliament passed the Competition and Regulatory Authority Act and we have appointed a Regulator, Mr Bernard Hill, who is now part of the Authority. His first task was to play the role of Regulator for the telecommunications pricing. An added responsibility of the Regulator is to examine the electricity pricing by Te Aponga Uira, to make sure that the pricing that is being applied to consumers is fair and reasonable. The To Tatou Vai charging regime will also fall under the umbrella of the Regulator.

4. WATER TESTING STANDARDS

The quality of our water will be determined under the Public Health Act. Every water test so far from our water outlets has indicated our water is contaminated with e-coli. The Ministry of Health has put out an official bulletin saying that the water is not safe to drink unless you either boil it or treat it.

Those same water standards, will need to be adhered to by To Tatou Vai Authority. At the end of the day, we all want clean water running into our homes. We all want consistent supply of water running into our homes.

The Government recalls in the 1980's, the continuous power blackouts that we used to have with the Power Company which essentially forced the Government of the day to invest heavily in upgrading our electricity power system.

Today, we have the same situation with our water but the Minister was very pleased to report to the House in July 2020 that the consultations with landowners to commence the trialing of our sedimentation tanks and chemical treatment options will mean that this investment that our country has put in to provide clean drinking water to all of our households.

5. DISINFECTION OF THE WATER SUPPLY

The Government is aware that there are people who are against the water supply system that we are proposing with To Tatou Vai and there will always be fundamental opposition by people who do not believe in the use of any chemical. However, the Government has based our decision making on the best Select Committee available on the advice of our medical and health authorities on what we believe is the best thing to do for our people.

It is well known that some of the detractors of this water system that we are proposing, are people that can filter their own water at home and that's fine, they can do that.

6. OPTIONAL CONNECTION TO THE WATER SUPPLY

This Bill does not compel anybody, any household to compulsorily link up to the Government water supply but if the Government water supply runs on to your land you will have a meter on that pipe but there is nothing to stop people turning off their water and having their own water tank and catching their own water.

The way that this water system is operating, and from what we have been able to obtain from our experts, people will be able to connect to the Government water system far more cost effectively than setting up their own private water system and if people do not want chlorine in their water. It's a very simple matter to do what people in New Zealand do and install a very simple chlorine filter at their kitchen tap which takes the chlorine out of the water.

7. REALITIES IN THE COMMUNITY

Of major concern is that in many communities a number of elderly people who rely on the Government's water rely on family members to run to the Water Station and fill up their water bottle. When there is no one to run and get their water they rely on their stove to boil their water and use their gas to boil their water.

We want to be able to provide clean drinking water into all our households particularly the households of our vulnerable so they do not compromise their health by drinking water contaminated with e-coli and that they can be assured that every time they turn their tap on they get clean water and not muddy water.

These are the people we do this project for, and the Government is confident that with the advice that have been received, the Government is doing the right thing and it's about doing the right thing, not doing the popular thing.

8. THE COMMITTEE PROCESS

8.1 Committee Strategy

Following the referral of the Bill to the To Tatou Vai Bill 2020 Select Committee on 8 July 2020 the Committee began its work with meetings with officials and stakeholders on Monday July 27 and again on Tuesday July 28 to determine the Committee's strategy for the public meetings.

8.2 Public Consultation Meetings

The first public meeting for Te-Au-O-Tonga was held at the Sinai Hall in Avarua on the evening of Tuesday, July 28. This was followed by a meeting for Vaka Puaikura at the Calvary Hall in Arorangi on the evening of Wednesday, July 29.

And a further meeting which was held at the Sunday School Hall in Avana behind the Ngatangia CICC Church on the evening of Thursday, July 30.

The Committee sat on the afternoon of Monday, 24 August, 2020 to hear from three groups who had filed written submissions. Two were formed only very recently – the Organic Growers' Association and Te Vai Ora and are informal (i.e. not incorporated societies). The third was a representation from landowners led by Manavaroa Philip Nicholas.

This was followed by meetings with landowner groups in the valleys. Those meetings were with landowners and officials which was Chaired by the Chairman of the TTV Board Mr Brian Mason. The landowners were from the catchments of Taipara, Papua, Totokoitu and Turangi at the Avana Sunday School Hall on the evening of Monday 24 August; Ngatoe at Calvary Hall on 25 August; Avana at the Avana Sunday School Hall on 26 August; Matavera/Tupapa/Avatiu at the Sinai Hall on 2 September; and Takuvaive at the Takuvaive Meeting House on 3 September.

All meetings were well attended. These were separate from the Select Committee meetings.

After the revisions of the Bill in the last half of 2020 and the first half of 2021 based on the outcomes of the public consultations, the Committee then conducted further public meetings in Te-Au-O-Tonga (Nikao Hall – Wednesday 2nd June 2021), Puaikura (Calvary Hall – Thursday 3rd June 2021) and Takitumu (Titikaveka Sunday School Hall – 9th June 2021). The meetings were convened to enable the Committee to share the revised Bill with the community before it is recommitted to Parliament.

8.3 Written Submissions

Written submission were also received from:

1. Growers Committee (Andy Kirkwood, Diana Tshan, Junior Areai, Teariki Matenga & Danny Mataroa).
2. The Proprietors of Urua (Inc.)
3. Koutu Nui
4. Te Vai Ora (Justine Flanagan)
5. Kainuku Kopu Ariki
6. Te Vai Ora (Andy Kirkwood)
7. Natura-Kuki-Airani (Andy Kirkwood, Brian Tairea, Missy Vakapora, Iototoro Vakapora, Makiroa Beniamina)
8. Landowners (represented by Tai Nicholas)
9. Terry Hagan
10. Pa Ariki
11. Vaine Teremoana Tui (Australia)

8.4 Two preliminary issues

A small number of people questioned the need for a separate statutory authority. Two main points were raised.

1. The first is that as a small country we have too many statutory authorities and we should go back to the 1994/95 ADB Urban Infrastructure Report which recommended having a single utilities authority to obtain economies of scale on administration.
2. The second argument raised against having a separate authority is the claim that under ICI water was managed at \$800,000 per annum and now it is \$2.8 million.

8.5 Aronga Mana/Govt joint management versus Catchment Committees

Some aronga mana, and particularly Manavaroa, advocate valley wide co-management committees with Aronga Mana and Government agencies which would obviate the need for Catchment Committees. However, it is clear this does not have the support of the landowners who own the catchment lands. They favour Catchment Committees thereby retaining control of their own lands.

8.6 Tariffs

The most controversial part of the Bill is the ability of the Authority to charge tariffs. This has received a mixed reception. Some object to paying for their water but no one is being asked to pay for their water. The Act establishes the principle that no one owns the water and no one should profit from it which is why the Bill requires TTV to be a non-profit organisation. What the public will pay for are the costs incurred by TTV in managing the network and bringing water to the door. However, two matters need to be emphasized. The first is that the cost of actually building the network will be borne by the Crown – i.e. the general taxpayers. The second is ‘water is fundamental for human life’. Consequently, there will be a free allocation for all domestic households.

It will be some two to three years before tariffs can be introduced. This is because meters need to be installed. Also, well before any tariffs are imposed it is Government’s intention to bring TTV under the Competition and Regulatory Authority so there is some oversight of its operations and its tariffs have to be properly justified or determined by an independent organisation.

8.7 Open Communication

To promote open Parliamentary strategies and initiatives based on the principles of transparency, integrity, accountability and stakeholder participation, the revised Bill was posted on the Parliament Website and Facebook Page before the final rounds of consultations on the Bill took place in June 2021.

Notices were issued to the general public on the availability of the revised Bill on the websites and Facebook so those who wish to examine the revised Bill may do so at their leisure.

9. REVISIONS TO THE BILL AFTER PUBLIC CONSULTATION

9.1 Name of the Bill

- The Committee agreed that this be changed from “To Tatou Vai Authority Bill” to simply “To Tatou Vai Bill”.

9.2 Preamble (Clause 3)

The Committee in response to the question by the Member of Parliament for Aitutaki about the inclusion of Aitutaki in the Bill learnt that there was provision that this Bill can apply to Aitutaki at a later date under some executive order that will be required to bring it into effect. The Committee considered that Aitutaki should not be included in the current Bill as the Aitutaki reticulation system is nowhere near as integrated as what is being proposed for Rarotonga. With the marked difference in the nature of the Aitutaki water reticulation system, the Committee in consultation with the To Tatou Vai Board Chairman and CEO agreed that the Bill will apply only to Rarotonga.

9.3 Part 1 (Clause 5)

- Definition of “access agreement” (*Clause 5*) – The Committee agreed that this be amended to refer to agreements entered into “before or after” the commencement of the Act. It was anticipated these would be signed and finalised before the Bill was passed but they remain outstanding. “Access agreement” should also refer to “enduring agreements” mentioned in the Infrastructure Act 2019 and be broadened to include not just agreements with network operators but also agreement with the Cook Islands Government Property Corporation/the Crown.
- The Committee agreed that a definition of “native custom” as defined in the Cook Islands Act 1915 needs to be inserted (see below in regard to uninvestigated land).
- The Committee agreed that a definition of “returning officer” used for MOAO under the Land (Facilitation of Dealings) Act 1970 needs to be inserted (see below in regard to conduct of meetings).

A couple of people complained that the full definition should be in TTV Bill and people shouldn't have to look at a lot of different Acts. The reason NZPCO do it this way is because you get into problems when you change a definition in one Act and then forget that the same definition is in others. The advantage of referring back to the one definition is that when it is amended you don't have to worry about looking for it in other Acts. By changing the definition in one Act it is thereby changed to have the same meaning in all other relevant Acts.

9.4 Part 2

- It was requested by Pa Ariki through her counsel Tim Arnold that there be added as a function (*Clause 8*) “to recognise the rights and interests of landowners in the valleys

through compliance with the terms of access agreements". It states the obvious. It was requested by Pa Ariki and the Committee agreed with the request.

- Similarly, TTV should have the power (*Clause 9*) to enter into agreements with landowners of valleys. This is a similar request from Pa Ariki. It is rather vague but unobjectionable. The Committee agreed.

Some issue was made about the ability to charge property. However, this quite clearly excludes native land and the subsoil and TTV cannot, in any event, mortgage what it does not own.

9.5 Part 3

- *Clause 13 (2)*: It has been submitted that 1 landowner per title will not work with the catchments that have only one or two titles. It is suggested that the number of landowners per title be increased where appropriate so that each catchment committee will not be less than 5 members. Suggestion for each title: Avana – 2 members (total 6); Turangi 1 (total 8); Matavera 2 (total 6); Tupapa 1 (total 7); Takuvaine 1 (total 13); Avatiu (total 7); Ngatoe 6 (total 6); Papua 2 (total 6); Taipara 6 (total 6); Totokoitu 6 (total 6). The Committee agreed with the suggestion.
- *Clause 13 (3)* With some titles appointing more than 1 committee member there needs to be some procedural provisions additional to what the Land (Facilitation of Dealings) Act 1970 currently provides – e.g. notice of MOAO states purpose electing members to catchment committee; returning officer takes nominations from the floor; the persons with the highest votes are elected until the quota is complete. The Committee agreed.
- *Clause 13 (4)* Suggestion from public - change 4 months for holding meeting of assembled owners to choose representative on catchment committee to 24 months. Reason big backlog of applications for MOAO arising from Covid 19 (and absence of Vero Papatua at MoJ for health reasons. The Committee agreed.
- *Clause 15 (2)* The landowners did not like this clause and wanted it deleted. Ngatoe is wholly uninvestigated land. It is therefore customary land and has owners under native custom but not yet identified by the court. It has been suggested those persons appoint the committee. Another suggestion is that the 7 mataiapo (Kaimarama; Tiotekai; Makirau; Tui; Matatua; Taoro & Pota) in Rutaki be the catchment committee. A third suggestion is a hybrid. The landowners choose the committee but if there is no agreement who the landowners are and no committee is established after 24 months then the 7 mataiapo choose a committee of persons from those they believe to be landowners in that uninvestigated land. Following further discussions in June 2021, the seven Mataiapo (Nga Tokoitu o Rutaki) agreed to be the Catchment Committee. The Committee agreed with this as a way forward.
- Further to *Clause 15 (2)* That leaves Matavera which is made up of investigated and uninvestigated land. In respect to uninvestigated land the Bill currently provides the

appointment will be made by the persons who are the owners under native custom. There is no obvious fall-back position if this is not agreed but given other lands are titled this should not delay operation of the committee. The Committee agreed that customary owners appoint a representative to catchment committee for uninvestigated land in Matavera.

- *Clause 16* Some say the provisions in Clause 16, although they follow the procedure for Incorporations under the Land (Facilitation of Dealings) Act 1970, are far too complicated and cumbersome. They are designed to ensure continuity of experience but the reality is often members will be elected back on to the catchment committee and that gives the continuity of experience needed. A simple procedure of 3 year terms with re-election should be adopted with casual vacancies to be filled by MOAO at the direction of the catchment committee and their appointments lasting for the balance of the period of the period of the person they replaced. The Committee agreed.
- *Clause 18 (2)* Landowners said not only should TTV pay for MOAO. It should also do the filings for calling those meetings. The Committee agreed.
- It was pointed out that landowners could seek by partition to control the catchment committee. Consequently in the event of partition the number of committee meeting that can be elected by the landowners post partition should remain the same as it was before partition. The Committee agreed.
- A decision has to be made about what to do with the Takuvaine Management Committee established under the Environment (Takuvaine Water Catchment Management Plan) Regulations 2006. One option is to make the current management committee the catchment committee until the landowners appoint the catchment committee, and when that happens make the catchment committee the management committee as well. The Committee agreed.

9.6 Part 4

- *Clause 26 (5) (e)* Koutu Nui objected to allocation for depreciation (which would in effect mean the payment for infrastructure by another means). It is suggested that this be resolved by a requirement TTV sets charges with a view to replacing items which have a life of 5 years or less. This takes the big capital works out of the tariff equation. The Committee agreed with the solution.
- *Clause 27 (1)* TTV may limit supply if customers don't pay. Public suggest that limit should be prescribed by regulation and not be discretionary for TTV. The Committee agreed.
- *Clause 29 (2) & (7)* Public suggest compulsory connection be done away with. Good competition for TTV to know that if it does not provide good service people will make their own arrangements. The Committee agreed.

- *Clause 29 (5)* Public objection to ability of TTV to set periodic charge unrelated to use of water. They say this runs counter to the free allocation. That provision should be removed. The Committee agreed.
- *Clause 30 (4) (a)* Growers object to being singled out and say there should be no suggestion they are at the lowest priority (e.g. they might be below drinking water for the public but they would expect to be higher than swimming pools). They say reference to “any agricultural connection” should be removed. The Committee agreed.
- There is in the bill a definition of “full service zone”. The purpose behind this is to help people understand that the head of pressure in the system is compromised if delivery is made 30m or more above sea level. Consequently, it is intended TTV have an obligation to service properties within the full service zone but not above it. TTV will of course assist where it can. It is proposed amendments be made to Clause 29 to make this clear. The Committee agreed.

9.7 Part 5

Clause 35 Some landowners said they should have representation on the Board of the Authority & others that they should have a majority of members on the Board. (Chair of select committee noted need qualified persons but hard to imagine there aren't landowners with the expertise and noted Sam Napa Snr is on the Board). The Committee noted that this clause seems redundant because it is inevitable that at least one of the board members will be a landowner of these intakes considering the large number of landowners.

Secondly the CIIC Act has in place criteria for eligibility as a board member across all SOEs. These criteria of board membership is merit based and relies on attracting the capacity and skills required to operate as a good board. One of the CIIC generic criteria reflects the need to have someone experienced in cultural and social fabric of our society. Specifying a landowner may cause undue distortion in board membership on the other SOEs. The Committee preferred to maintain consistency and not support the suggestion to include a landowner.

- *Clause 44.* Objection to exemption from personal liability being too broad. The limitation of liability for directors should be the same as it is for other statutory corporations as is set out in amendments to their statutes made at the end of last year? It is important there be consistency between the statutory corporations. This means directors will be exempted from liability in the course of the operations of the Board but a director will be liable if that director acts in bad faith or without reasonable care. The Committee agreed.
- Bill Moore of the New Zealand Parliamentary Law Office has advised that it would not be inappropriate to have a provision that exempts officers or employees from personal liability except where they act in bad faith. Such an exemption currently exists for workers at the airport under section 19, Airport Authority Act 1985 (but there are now

two contradictory provisions relating to directors). In the Ports Authority Act 1995-96 it appears the 2019 amendment removed the exemption for employees and retained it for directors. But there is no reason why directors should enjoy an exemption and not employees. Indeed, directors should be held to a higher standard. The Committee agreed that the Bill have an exemption clause for employees.

9.8 Part 6

- There were several complaints against the penalties set out in the offence provisions. Crown Law was asked to look at these. Crown Law advises the penalties are not excessive in comparison to other contemporaneous Acts but there were inconsistencies in penalties between the provisions themselves. The Committee agreed.
- *Clause 56* recommend maximum 12 months' imprisonment not 3 months. The Committee agreed.
- *Clause 57* recommend fine maximum \$10,000 or maximum 12 months' imprisonment or maximum \$50,000 fine if not an individual. Also introduce ability to order compensation to amount of loss to TTV caused by the fraud. The Committee agreed.
- *Clause 58* The reference to negligent damage be deleted because it is accommodated in the Infrastructure Act 2019 and, in any event, should not appear in offence provisions as negligence is not a crime. The Committee agreed.
- *Clause 59* include not just "carries out" but also "causes to be carried out". The Committee agreed.
- *Clause 60* Resale of water - reduce fine from \$100,000 to \$5,000. The Committee agreed.

Some queried why there was nothing to deal with poisoning the water. This is dealt with in the Crimes Bill – penalty up to 10 years imprisonment.

9.9 Part 7

No changes were recommended for Part 7.

9.10 Part 8

- *Clause 63* Concern has been expressed about the breadth of the Authority's exemption from liability. Some say the Authority should have no exemption from liability. For example, if people are told the water is safe to drink but there is an outbreak of disease arising from the water supply, as occurred in Havelock North in New Zealand in 2015, then the Authority should be liable for the consequences. The injured have in the Cook Islands no redress, such as the availability of ACC in New Zealand. On the other hand the absence of a safety net like ACC could expose the Authority, and vicariously the

Crown, to near unlimited liability. It should be noted that such faults in water systems, even the best of them, do occur from time to time. A small error can have significant consequences. People have also complained that the Authority is under the current clause exempted from even minor damage. For example, a private person would not be able to recover if the Authority's staff were on their private land and caused damage to their property. They say this is unfair. However, it should be noted this provision is almost an exact replica of section 33 in the Te Aponga Uira O Tumu-Te-Varovaro 1991 which has been law for nearly 30 years. On the question of whether the Authority should have any exemption from liability? The Committee agreed and these are outlined in the revised Bill.

- Should Clause 66 (a) and (b) be amended so valley and catchment boundaries cannot be altered but any landowners inadvertently omitted be included? The Committee agreed.
- Should Clause 66 (c) be amended so the ability of the Authority to make rules is restricted to where such rules are reasonably required to preserve the water in the network? Some argue that this can for the present only logically apply to the catchments and regulations shouldn't interfere with the work of catchment committees. CEO TTV says this clause is still needed because extraction of water from below the catchment can affect water supply in the catchment. The Committee agreed.
- Should Clause 66 be amended to allow for regulations that exempt persons from the prohibition on resale of water (e.g. hotels)? The Committee agreed.
- Should Clause 66 be further amended to all regulations to prescribe a minimum amount of water that must always be supplied to a customer when section 27(1) applies? The Committee agreed.
- The infrastructure for the water project is on private land. Those landowners could be subject to liability should an accident happened. An indemnity from the Crown to those landowners has been proposed but this could expose the Crown to a large liability. It would be better for the legislation to exonerate the landowners from any liability for any accident arising from the water infrastructure where it was not caused by their own negligence. The Committee agreed.

10. RESOLUTION OF THE COMMITTEE

1. WHEREAS, the Committee was directed to report on its findings to Parliament upon completion of its review of the Bill; and
2. WHEREAS, the Committee, in pursuance of its Terms of Reference did conduct its formal review and consultations on the Bill during the period July 2020 to June 2021; and

WITH THE COMMITTEE HAVING COMPLETED ITS DELIBERATIONS ON THE, "TO TATOU VAI AUTHORITY BILL 2020" in July 2021, NOW, THEREFORE, BE IT RESOLVED THAT:

1. the Committee hereby presents its report to Parliament; and
2. the Committee also attaches as an accompanying document a revised Bill aptly named the "To Tatou Vai Bill 2021" which incorporates the changes to the original Bill, resulting from the public consultations; and
3. hereby commends the revised "To Tatou Vai Bill 2021" to Parliament; and
4. **further recommends that Parliament adopt the Committee's report and consider and adopt the attached "To Tatou Vai Bill 2021" through the prescribed Parliamentary procedures.**