



PARLIAMENT OF THE COOK ISLANDS

TO TATOU VAI AUTHORITY BILL 2020

EXPLANATORY NOTE

This note is not part of the Bill. It is intended to indicate its general effect.

The Te Mato Vai water network project is nearing completion. After initial commissioning, management of the network will be handed over to the Crown.

Managing the new water intakes is a complex task. This is because the quality of the water will be far better and so it will need to be constantly monitored and tested by qualified persons. For this reason, the Cook Islands Investment Corporation (CIIC) established a wholly owned subsidiary, To Tatou Vai Limited, to take on this role.

To Tatou Vai Limited has employed a number of Cook Islanders, most of them returning from overseas, who are well qualified and experienced in water management. Persons formerly employed with Infrastructure Cook Islands (ICI) have also been engaged.

The formation of a company was an interim measure only and it is intended that the company be converted into a statutory corporation with powers and responsibilities similar to other statutory corporations. Consequently, this Bill will establish the To Tatou Vai Authority (**the Authority**), a self-funding not-for-profit statutory corporation governed by a board and with a CEO.

There are 10 valleys where the new water network has been installed. Each of those has a catchment and the Bill will establish a catchment committee for each valley made up of persons appointed by the landowners of those catchments. Catchment committees will, in effect, allow landowners to regulate their own lands to preserve the quality of the water derived from the lands to benefit everyone living on Rarotonga.

Under the Bill, the board of the Authority will have the power to impose tariffs but these will be subject to a number of restrictions. The Authority will not be allowed to make a profit, which is consistent with the principle that water is a community resource owned by the collective. While the Authority is permitted to impose tariffs it is anticipated that the imposition of tariffs will not occur until 2022 at the earliest. Meters need to be installed and this will take some time. Prior to the introduction of tariffs it is anticipated there will be an amendment to the legislation so To Tatou Vai falls within the mandate of the Competition and Regulatory Authority appointed under the Competition and Regulatory Authority Act 2019.

Under the Bill, the Authority will be required to comply with any standard for water supply in force under the Public Health Act 2004.

It is intended that the Authority will in time be responsible for managing the water supply on Aitutaki and reticulated sewage on both Rarotonga and Aitutaki.

The Bill only concerns water supply and will allow Aitutaki to be covered by the Authority at some future time, when appropriate.

Clause 1 specifies the short title of the Bill.

Clause 2 provides that the Bill comes into force on the day it is assented to by the Queen's Representative.

Clause 3 provides the Act only applies to Rarotonga but can by Order in Executive Council extend to include Aitutaki.

Part 1 Preliminary matters

Clause 4 sets out the purposes of the Bill, which are—

- to establish the Authority; and
- to recognise the Government's social responsibility in the supply of water; and
- to make the Authority financially independent so it can balance the need to be economically sustainable against the public's need for water by operating as a not for profit utility; and
- to recognise and embrace the role of the native landowners of catchments; and
- to encourage informed management and decision-making that balances the need for financial sustainability against the public need for water to be affordable; and
- to maintain a reliable and resilient water distribution network; and
- to require the Authority to be accountable to the CIIC.

Clause 5 defines terms used in the Bill. Catchments and valley are specifically defined by reference to plans that are set out in Schedule 2 of the Bill.

Clause 6 provides that the Act binds the Crown.

Part 2 To Tatou Vai Authority^{SEP}

Clause 7 establishes the Authority.

Clause 8 sets out the functions of the Authority. These are in line with the purposes of the Bill and include planning and making contingency for future demand for water.

Clause 9 gives the Authority the powers of a natural person as long as they are exercised for the performance of its functions.

Clause 10 gives the Authority the power to borrow money subject to the provisions of the Ministry of Finance and Economic Management Act 1995–96. This is line with other statutory corporations. The Authority can grant security in return for a loan but this is limited as no security can be granted over any structure built on native land and most of the network is built on native land.

Part 3 Landowners

Landowners and catchment committees

Clause 11 allows the Authority to enter into agreements with landowners and binds the Authority to the terms of any access agreement entered into by the Crown with landowners under the Infrastructure Act 2019.

Catchment committees

Clause 12 provides for the purpose of catchment committees, which is, in essence, to consider applications in accordance with *clauses 24 and 25*, and maintain oversight of the catchment to ensure that there is no development or act undertaken in the catchment that might adversely affect the water supply.

Clause 13 provides that there is a catchment committee for each catchment. The landowners of each title in a catchment may appoint one member to the catchment committee. The Authority may make an appointment if the landowners fail to do so.

Clause 14 provides that any person is eligible for appointment to a catchment committee but if the Authority makes the appointment the appointee must be a landowner on the relevant title.

Clause 15 provides that the CEO of the Authority is an ex-officio non-voting member of each catchment committee and the CEO is the catchment committee where the whole of the land is uninvestigated land.

Clause 16 provides that directors do not have to all resign at the same time, to ensure continuity of experience. A system of rotation similar to that for committees of management of incorporations established under the Land (Facilitation of Dealings) Act 1970 is provided for.

Clause 17 provides that appointments arising from vacancies are for 3 years and members are eligible for re-election.

Clause 18 requires the Authority to pay to members of catchment committees fees and allowance as prescribed by regulation.

Clause 19 provides that members of catchment committees are not liable for their acts or omissions when acting in good faith and in the discharge of their functions.

Clause 20 provides that a catchment committee must, at its first meeting, elect a chairperson. The catchment committee must meet if the chairperson or any 2 members call for a meeting or, if the catchment committee has not met for 6 months, if any member calls a meeting.

Clause 21 provides that the quorum for a meeting of a catchment committee is a majority of its members. It also provides for meetings by teleconference and expressly allows a catchment committee to regulate its own procedure, subject to requirements in the Bill.

Clause 22 requires minutes to be taken and kept.

Clause 23 sets out the functions of the catchment committees, which reflect the purpose of the catchment committees set out in clause 12.

Clause 24 provides that any person who wishes to undertake an activity that might adversely affect the quality of the water in the catchment must first obtain an approval from the catchment committee. That consent may be given if the majority of the members of the catchment committee approves, so long as one of the members approving is the representative of the land title on which the development is to take place. However, consent may not be unreasonably withheld. The CEO of the Authority has an opportunity to give advice on any application but if the CEO fails to give that advice in a timely manner the catchment committee may proceed to reach a decision without it.

Clause 25 provides that the Authority may not carry out works that go beyond routine maintenance in a catchment without prior consultation with, and approval of, the relevant catchment committee. The clause extends to any work the Authority may need to do that falls outside of the Infrastructure Act 2019 and expressly provides a right of compensation for the landowners. In an emergency, the Authority may carry out works without consultation or approval but must inform the catchment committee as soon as possible about what work has been done.

Part 4 Operations

Clause 26 permits the Authority to set and charge tariffs for the supply of water and impose charges for the connection of a water supply. Tariffs and charges must be set in advance on an annual basis. The clause allows a variation in charges based on the amount of water supplied to a customer and what it will be used for, thereby allowing differential charges for domestic, agricultural, and commercial users. In setting tariffs, the Authority must take account of the need for consumers for a reasonable quantity of affordable water and the need for the Authority to be self-funding. Further, any funds allocated to depreciation must be allocated to a specific account and only be used for water infrastructure. This is to ensure the Authority does not become a “back-door” generator of profit for the Crown.

Clause 27 allows the Authority to limit the water supply provided to a customer in the event that they do not pay the charges levied to them. However, there are strict procedures that must be followed first. Recognising that water is fundamental to life, the Authority may limit, but may

not terminate, supply for non-payment. It may only suspend supply if the connection is damaging the network or the quality of water in the network, or it is causing too much water to leak from the network.

Clause 28 reinforces clause 26 in ensuring money collected for the supply of water is only used in the provision of that supply.

Clause 29 requires all households, subject to some exceptions, to be connected to the network.

Clause 30 obliges the Authority to act fairly in the allocation of water. If the Authority believes any consumer is taking an unfair amount of water to the detriment of other users, it may restrict the flow of water to that consumer. If the wastage is significant the Authority may, on 24 hours' notice, terminate or limit the supply. In the event of drought water restrictions may be imposed by the Authority.

Clause 31 provides for the supply of a free allocation of water to eligible customers. The allowance will be determined by Regulations. In the case of supply of free allocation it is anticipated the Crown will meet the difference between the fee the Authority would have received and the fee, if any, it actually receives.

Part 5 Governance

Policy setting

Clause 32 requires the Authority to have a strategic plan and publish it in draft to allow public comment and deliver it to catchment committees for their comment. The final version must be made available to the public on the internet and at the office of the Authority.

Membership and procedures of Board

Clause 33 provides that there is to be a board of directors of the Authority "the Board" consisting of between 5 and 7 members. With one exception, these directors are to be appointed by the Board of the Cook Islands Investment Corporation. The exception is a person with socioeconomic experience who is appointed by the Board of the Cook Islands Investment Corporation on the recommendation of the Minister. The members of the Board must include persons of different gender. Collectively, the members of the Board must satisfy all the criteria described in *clause 35(3)*. The Chairperson of the Board is one of the directors appointed as the Chairperson by the board of the Cook Islands Investment Corporation.

Clause 34 (1) and (2) provides for the term of director appointments. Initially, 2 directors are to be appointed for 2 years and 3 directors for 3 years. This is to ensure that the experience of the entire board is not lost at once. All future appointments are for 3 years.

Clause 34(3) provides that a director may not serve for more than 12 successive years on the Board.

Clause 34(4) clarifies that a director whose term of office expires continues in office until—

- his or her successor is appointed; or
- he or she is given notice in writing that he or she will not be re-appointed.

Clause 34(5) provides that a director is not entitled to compensation or other benefits just because he or she has ceased to be a director.

Clause 35 sets out the qualifications needed in order to be appointed as a director. A person must be at least 21 years old and must be registered on a database maintained by the Cook Islands Investment Corporation under a profile that makes the person suitable for appointment as a director of the Board.

Also, a person should preferably satisfy at least one of the following 6 criteria, which are:

- knowledge and experience in the management of either a —
 - sewage reticulation network; or
 - a water supply network;
- experience in governing organisations or policy expertise, and preferably in an organisation that performs public reticulation services;
- a degree with a major in accounting or finance;
- former or current experience as a lawyer, preferably with knowledge and experience in commercial law;
- former or current experience as the owner of 1 or more private sector businesses, with a track record of successfully operating those businesses;
- a good understanding of relevant socio-economic matters such as land tenure in the Cook Islands and social impacts on Cook Islanders.

Clause 36 sets out disqualifications for appointment as a director of the Board. A person must not be appointed as a director of the Board if he or she:

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

Clause 37 sets out additional qualifications for appointment as Chairperson of the Board.

In addition to satisfying the requirement of *section 35*, to be eligible to be appointed as Chair of the Authority, the person must:

- have previously been a company director for at least 2 years of a statutory corporation or state owned enterprise; and
- have their primary place of residence in the Cook Islands.

Clause 38 largely mirrors the disqualification provisions in new section 36 and deals with extraordinary vacancies.

Clause 39 provides that the powers of the Authority are not affected by a vacancy in the membership of its Board.

Clause 40 to 42 set out rules for meetings of the board, procedures at meetings, the confidentiality of information discussed at board meetings, how conflicts are dealt with throughout the Authority – board, CEO, and staff and an interests register (which all directors must fill in).

Clause 43 provides that CIIC must determine the remuneration to be paid to directors and directors are entitled to out-of-pocket expenses.

Clause 44 deals with the personal liability of directors. It relieves the directors, CEO, officers and employees from personal liability when performing their functions under the Act in good faith.

Clause 45 requires the CEO to employ a suitably qualified secretary.

Clause 46 requires directors to act within the law, in compliance with any directions given by the CIIC, and in the best interests of the Authority.

Clause 47 requires the Board to appoint a CEO and allows for the CEO to appoint staff and contractors. The CEO must approve policies to ensure that the CEO acts as a good employer, that human resources policies are effective, and that contractors are engaged in an open, fair, and transparent way.

Clause 48 allows the Board to delegate its powers to the CEO and the CEO, in turn, to delegate powers to an employee or contractor.

Financial reporting

Clause 49 provides that annually the Authority must produce a statement of corporate intent subject to any lawful amendment required by the CIIC.

Clause 50 requires the Authority to produce an annual report within 3 months after the end of each financial year. This must be delivered to the CIIC and each catchment committee. That report must include—

- financial statements;
- an auditor's report;
- a fiscal risk assessment;
- a comparison of performance against the previous reporting period.

Clause 51 allows the authority to open bank accounts in accordance with the provisions of the Ministry of Finance and Economic Management Act 1995–96.

Clause 52 sets out the parameters of the Authority's financial reporting and the standards they must comply with.

Clause 53 requires the Authority to provide quarterly reports to the CIIC with respect to risk

Clause 54 details the Authority's record-keeping obligations.

Clause 55 requires the Authority's accounts to be audited and to be supplied to the CIIC, the Minister, and each catchment committee.

Part 6 Offences and civil liability

Clause 56 makes it an offence to recklessly waste water.

Clause 57 makes it an offence to, by false pretence or representation, defraud the Authority of a fee due to it.

Clause 58 requires a person who intentionally or negligently damages any works of the Authority to make good the cost of repair.

Clause 59 makes it an offence to carry on an activity that requires the consent of a catchment committee without that consent being obtained.

Clause 60 prohibits reselling of water without the consent of the Authority and makes it an offence to do so.

Part 7 Water quality

Clause 61 requires the Authority to test the water it supplies to the public and at water stations. Testing must be carried out at least monthly.

Clause 62 requires the Authority to issue public notices to boil drinking water if tests show that it is not fit to drink without boiling.

Part 8 General and miscellaneous provisions

Clause 63 relieves the Authority from liability for—

- interruptions in supply; and
- injury or damage from using pipes or other equipment installed by or for a customer; and
- injury or damage caused by Authority staff or property on a customer's premises; and
- injury from using water.

Clause 64 exempts the Authority from tax other than VAT.

Clause 65 confirms the Authority's status as a subsidiary of CIIC.

Regulations

Clause 66 permits the Queen's Representative by Order in Executive Counsel to make regulations dealing with certain matters related to the Act.

Clause 67 makes the consequential amendments to other Acts set out in Schedule 1.

Transitional and savings provisions

Clause 68 transfers all the staff, assets and obligations of To Tatou Vai Limited to the new Authority created by the Act.

Schedule 1 sets out amendments to the following legislation:

- the Cook Islands Investment Corporation Act 1998;
- the Public Health Act 2004;
- the Land (Facilitation of Dealings) Act 1970 to allow for meetings to appoint catchment committees;
- the Rarotonga Waterworks Ordinance 1961.

Schedule 2 sets out maps of the valleys and the boundaries of each catchment.

Schedule 3 sets out the land titles for each catchment.
