



Tonga

# **WATER RESOURCES BILL 2016**





## WATER RESOURCES BILL 2016

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## WATER RESOURCES BILL 2016

### A BILL FOR AN ACT TO PROVIDE FOR THE MANAGEMENT, PROTECTION AND CONSERVATION OF THE WATER RESOURCES OF THE KINGDOM

**BE IT ENACTED** by the King and the Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

#### PART I - PRELIMINARY

##### 1 Short Title

This Act may be cited as the Water Resources Act 2016.

##### 2 Interpretation

In this Act, unless the context otherwise requires –

“**aquifer**” means any naturally occurring underground source of freshwater;

“**Chief Executive Officer**” means the Chief Executive Officer responsible for lands and natural resources;

“**climate change**” means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global

atmosphere and which is in addition to natural climate variability observed over comparable time periods;

“**Committee**” means the National Water Resources Committee established under section 10;

“**disaster**” means an actual event, or a high probable risk, involving serious disruption to the functioning of a community causing widespread human, material, economic or environmental loss and which exceeds the ability of the affected community to cope using its own resources;

“**discharge**” means to throw, place, put, pump, allow, pour, permit or otherwise cause any pollutant to enter or affect the water resource, either directly, indirectly or through run-off;

“**groundwater**” means water naturally stored or flowing beneath the surface of the ground and which is not apparent on the surface of the ground;

“**lens**” means an underground sheet of freshwater suspended above saline water;

“**Minister**” means the Minister for Lands and Natural Resources;

“**Ministry**” means the Ministry of Lands and Natural Resources or such Ministry with that primary responsibility;

“**overdraft**” means the extraction of water within a particular geographic area at such a rate or in such a quantity that the extraction exceeds the sustainable rate of extraction of water from the groundwater aquifer from which the water is extracted;

“**pollutant**” means any liquid, gaseous or solid substance that contaminates the water so as to change the physical or chemical condition of it in such a manner as to make the water unclean, noxious, offensive or impure, or so as to be detrimental to the health, safety or welfare of persons using, consuming or residing in the vicinity of the water;

“**Principal Hydrogeologist**” means the person holding, from time to time, the office of Principal Hydrogeologist in the Ministry or such other person nominated by the Minister to conduct such duties and functions of the most senior hydrogeologist officer;

“**resilience**” means the capacity of a system to withstand external shocks and retain its essential characteristics;

“**salinity**” means the total dissolved salts in water. Salinity is most conveniently monitored by measuring the electrical conductivity of the water;

“**Tonga Water Board**” means the Tonga Water Board established under the Tonga Water Board Act 2000, and includes any other body that might later assume the role of the Tonga Water Board under law;

“**water resource officer**” means a public servant whose job is to monitor and manage water resources;

“**water resources**” means the surface and ground waters in aquifers, lakes, streams and springs, vested in the control of the Ministry by section 5(2);

“**water source**” includes all sources of water from wells, aquifers, streams, springs and any other source of freshwater within the Kingdom which is or may be used for water supply purposes, excluding domestic and communal rain water tanks for private use; and

“**vulnerability**” means a condition resulting from physical, social, economic, and environmental factors or processes, which increases the susceptibility of a community to the impact of a climate change and disaster risk.

### **3 Act binds the Crown**

This Act shall bind the Crown.

## **PART II - OWNERSHIP AND MANAGEMENT OF THE WATER RESOURCE**

### **4 Vesting water resources in the Crown**

- (1) The water resources of the Kingdom are vested in the Crown.
- (2) Nothing in this section shall prevent any person from claiming ownership of water which has been lawfully taken and stored on any land or premises.

### **5 Ministry to manage the water resources**

- (1) The management of the water resources of the Kingdom is the responsibility of the Ministry, in conjunction with the other agencies of the Government provided for under this Act, and any other law, or where necessary.
- (2) The right to use or to permit the use of water in aquifers, lakes, streams and springs, excluding rain water tanks for private use in the Kingdom for the purpose of supplying water for domestic, agricultural, pastoral, industrial or commercial uses is vested in the Ministry.
- (3) The granting of rights to take or use water referred to in sub-section (2) shall only be done in accordance with the provisions of this Act.

### **6 The Rights of State Utilities to take water**

The Tonga Water Board and any other ministry or agency of the Government shall be entitled to take and use water for serving the purpose of their respective functions

in accordance with law, but they shall comply with any conditions, standards, requirements or procedures imposed in the exercise of any power under this Act.

## **PART III - POWERS OF THE MINISTRY OVER THE WATER RESOURCES**

### **7 Objectives of water resources management**

The Ministry shall implement this Act and manage the water resource so as to achieve the following objectives –

- (a) the sustainable management of the water resource through coordinated and scientifically sound planning of water resource development and regulated water use for all lawful purposes;
- (b) the avoidance of overdrafts of available water supplies through the establishment of an inventory of water resources and the regular monitoring, assessment and reporting to the Minister of extracted volumes of water per reporting period, groundwater salinity (electrical conductivity) and water levels;
- (c) the improvement of the chemical, physical and biological integrity of the water resource by -
  - (i) regular monitoring, assessment and reporting to the Minister of water quality;
  - (ii) promoting coordination amongst all agencies of government having roles and functions associated with the testing and monitoring of water quality and supply;
  - (iii) recording the results of monitoring and maintaining records of other matters associated with the management of the water resource; and
  - (iv) the control of pollutant discharges;
- (d) the proper assessment of the impacts of proposed developments on the water resource, and the implementation of effective urban and rural planning regimes that take account of water supply and water quality issues;

### **8 Powers of the Minister**

- (1) In order to meet the objectives stated in section 7, the Minister shall have the power to -
  - (a) consider applications for the taking and use of water in accordance with Part IV of this Act;

- (b) grant approvals, and to vary and revoke any approval, in accordance with Part IV of this Act;
  - (c) consider competing claims for the taking and use of water and make determinations in relation to disputes between water users, such determinations being binding and final on the parties competing for the use of water;
  - (d) place restrictions on the right to take or use water, either in relation to particular users or so as to apply generally, if circumstances require that water conservation measures be imposed;
  - (e) set standards applying to any activity or equipment associated with the taking of water or the development of the water resource, and regulate or prohibit any such activity or the use of any such equipment;
  - (f) declare any area to be a water source protection zone on the recommendation of the Committee, and determine that the designated area shall be managed in accordance with a management plan approved by the Committee to apply to the water source protection zone;
  - (g) regulate and control the use of water, and any activity that may affect the quality of water or the quantity of water supply;
  - (h) give notice to persons to cease activities or practices having a detrimental effect on the quality of water or the quantity of the water resource, including the power to require the removal of any structure or thing having such an impact;
  - (i) arrange for the removal of any structure or thing not having been removed in accordance with a notice given under paragraph (h), and to recover the cost from the person in default; and
  - (j) require that certain matters relating to the water resource be considered in the assessment of environmental impacts of proposed developments required under the Environmental Impact Assessment Act 2003.
- (2) The Minister may, by written notice, require any person who has drilled any borehole or who has been taking water prior to the commencement of this Act to comply with any requirement imposed by the Minister under sub-section (1), and the written notice delivered to that person shall state a date by which compliance with any power exercised under this Act is to be achieved.
- (3) The powers of the Minister under this section may be exercised –
- (a) by the making of written determinations and orders under the hand of the Minister; or
  - (b) in accordance with regulations made by the Minister with the consent of Cabinet to give effect to the objectives stated in section 7, and to facilitate the exercise of the powers conferred by this section.
- (4) The Minister may delegate, by instrument in writing, any of the powers provided for by this section to the Chief Executive Officer or any other officer of the Government.

## 9 Offences against this Part

Any person, group of persons, company or corporate body who -

- (a) fails to comply with a determination made by the Minister under section 8(1)(c) in relation to competing uses of the water resource;
- (b) fails to comply with any restriction placed by the Minister under section 8(1)(d);
- (c) fails to comply with any standard set under section 8(1)(e) while undertaking any activity or using any equipment associated with the taking of water;
- (d) unlawfully undertakes any activity or uses any equipment which has been regulated or prohibited under section 8(1)(e);
- (e) fails to comply with any notice given by the Minister under section 8(1)(h);
- (f) fails to meet the cost of complying with the requirement of any notice given by the Minister under section 8(1)(h); or
- (g) fails to comply with a notice given under section 8(2),

commits an offence and shall upon conviction be liable to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 3 years, or both, if the offence is committed by an individual person or group of persons, or fine not exceeding \$10,000 if the offence is committed by a company or a corporate body.

## PART IV – NATIONAL WATER RESOURCES COMMITTEE

### 10 The National Water Resources Committee

- (1) The National Water Resources Committee is hereby established under the leadership of the Ministry and shall be responsible to and report to the Minister.
- (2) The membership of the Committee shall comprise -
  - (a) the Chief Executive Officer; who shall be Chairperson;
  - (b) the Chief Executive Officer for Health; who shall be Vice-Chairperson;
  - (c) the General Manager of the Tonga Water Board;
  - (d) the General Manager of the Waste Authority Limited;
  - (e) the Chief Executive Officer for Finance and National Planning;
  - (f) a representative of a relevant Non-Government Organisation; and
  - (g) the Principal Hydrogeologist who shall be the Secretariat.
- (3) Meetings of the Committee shall be held at such times and at such places as the Chief Executive Officer shall determine.

- (4) Every meeting of the Committee shall be presided over by the Chief Executive Officer or any person deputising in the absence of the substantive Chief Executive Officer.
- (5) The Committee may regulate its proceedings in such manner as it thinks fit.

## **11 Functions and Powers of the Committee**

The functions of the Committee are to -

- (a) advise the Minister on any matter affecting the quantity and quality of the water resource;
- (b) promote coordination amongst government ministries and agencies having responsibilities relating to the water resource;
- (c) ensure that there is effective monitoring of the water resources by the responsible ministries and agencies and that records of such monitoring are maintained and made accessible;
- (d) establish a multi-agency National Water Resources Technical Committee chaired by the Principal Hydrogeologist to carry out monitoring and analysis of the condition and use of the Kingdom's water resources, and to review and make recommendations to the Committee on applications for water resource development and extraction;
- (e) ensure that an annual report detailing the condition and use of the Kingdom's water resources is presented to the Minister;
- (f) promote the dissemination of information about the water resource to government agencies and the general community;
- (g) recommend to the Minister that an area be declared to be a water source protection zone in accordance with section 8(1)(f);
- (h) approve a management plan to be applied to any designated water source protection zone in accordance with section 8(1)(f);
- (i) arrange for the preparation, confirmation and implementation of the Tonga Water Management Plan in accordance with Part V, and for regular reporting to the Minister of progress against the planned objectives and the periodic review and amendment; and
- (j) identify, review and, where appropriate, endorse projects to be undertaken with the aim of protecting, conserving and improving the water resource.

## PART V - TONGA WATER MANAGEMENT PLAN

### 12 Elements of the Tonga Water Management Plan

- (1) The Tonga Water Management Plan shall address the following matters –
  - (a) an assessment of the available water supply and the sources of the water supply;
  - (b) an inventory of the groundwater resources for each island or island group;
  - (c) a determination of the average quantity of water pumped from existing wells on a daily, monthly and annual basis;
  - (d) a determination of the average quantity of water consumed on each island or island group on a daily, monthly and annual basis;
  - (e) a determination of the losses of water that occur between the water source and the consumer;
  - (f) a consideration of water wasted by domestic, commercial, industrial and agricultural users, and also by the reticulated water schemes;
  - (g) water conservation measures and a timetable for their implementation;
  - (h) a projection of demand for water by domestic, commercial, industrial and agricultural users;
  - (i) mandatory well construction standards, including provisions for the sealing and fencing of wells;
  - (j) a water quality monitoring programme of existing and proposed wells, and the clear identification of the role in such a programme for the responsible government agencies;
  - (k) procedures for the recording and assessment of information about water quality and quantity, for the sharing of this information amongst the responsible government agencies and for its public disclosure;
  - (l) contingency plans to be used in the event of threats to the quantity and quality of the water resource; and
  - (m) appropriate cost recovery proposals to redress problems of salinity and other adverse environment effects that arise from the taking of water from the water resource.
- (2) When preparing and approving the Tonga Water Management Plan, the Committee shall apply the following principles –
  - (a) the extraction of water from any groundwater lens shall not exceed the sustainable rate of extraction of the lens;
  - (b) wastage of water by any person, company or corporate body shall be kept to a minimum;
  - (c) water use shall be beneficial and based on principles of sustainability;

- (d) use of water for domestic purposes is the highest priority, and in the case of competing uses of the water resource, the domestic use shall prevail;
- (e) the water resource shall be safeguarded from all types of pollutants; and
- (f) conditions may arise when the water resource shall be safeguarded by the imposition of restrictions applying to all or to specific water users.

### **13 Environment Impact Assessment and Planning Schemes**

- (1) The provisions of the Tonga Water Management Plan shall be considered and reported upon in relation to all assessments of impacts to the environment from proposed developments undertaken under the Environmental Impact Assessment Act 2003.
- (2) All urban and rural planning schemes prepared in accordance with any law shall be consistent with the provisions of the Tonga Water Management Plan, and all such planning schemes shall have the objective of protecting and conserving the water resources in accordance with the objectives stated in section 7 of this Act.
- (3) No approval may be given under the Environmental Impact Assessments Act 2003 or any law making provision for urban and rural planning schemes if the effect of the approval is to breach any provision of the Tonga Water Management Plan.

## **PART VI - REGULATING THE TAKING OF WATER**

### **14 Permits to take water**

- (1) No person, group of persons, company or corporate body may –
  - (a) drill for water;
  - (b) make or use a bore for the purpose of taking water from the water resource; or
  - (c) take water from the water resource of the Kingdom,unless he is the holder of a valid licence to do so issued by the Ministry in accordance with this Act.
- (2) Categories of permit may be prescribed by regulations.
- (3) The regulations may exempt from the requirements of sub-section (1) any person, group of persons, company or corporate body, either individually or collectively, in all areas or specific areas, and for specified activities or categories of extraction, either completely, or subject to conditions specified in the regulations.

- (4) Every application for a licence under sub-section (1) shall –
  - (a) be made in writing to the Chief Executive Officer in a form prescribed by regulation made under this Act;
  - (b) be accompanied by an application fee as prescribed by regulations made under this Act;
  - (c) include such additional information in relation to the proposed drilling or the proposed or current water taking activities, as may be required by the Chief Executive Officer; and
  - (d) be accompanied by a signed undertaking by, or on behalf of the applicant, that the drilling or water taking activities shall be in accordance with the provisions of the Tonga Water Management Plan and the requirements of this Act.
- (5) All applications made under this section shall be referred to the Principal Hydrogeologist for confirmation that the drilling or water taking activities shall –
  - (a) be in accordance with the provisions of the Tonga Water Management Plan;
  - (b) not contravene any standards, control, prohibition or requirement determined by the Minister; and
  - (c) not adversely affect the water quality of the water resource or any aspect of the water supply in the Kingdom.
- (6) Upon confirmation of the matters specified in sub-section (3), the Chief Executive Officer may authorise that a permit be granted.
- (7) A permit granted under this section –
  - (a) may impose any conditions as to the means of extraction, quantity of water to be extracted, placement of the bore and any other matter that may assist in the protection, conservation and sound management of the water resource;
  - (b) shall, if the permit authorises the taking of water, state –
    - (i) the category of the permit, if specified;
    - (ii) the quantity of water that may be extracted;
    - (iii) the rate at which the water may be extracted; and
    - (iv) the permissible means by which the water may be extracted; and
  - (c) permits the right for a water resource officer to enter the property where the licence is applicable for the sole purpose of monitoring the borehole and extract water whenever required for the purpose of the Act.
- (8) A licence granted under this section shall be valid for a period of 3 years, but may be varied, suspended or revoked by the Minister for any purpose that is consistent with the protection, conservation or sound management of the water resource.

- (9) All drillers of water bores are required to be licensed by the Ministry and shall demonstrate their competence and knowledge of and adherence to this Act, its intent and their understanding of prevailing geological conditions.

## **15 Requests for review of decisions**

- (1) An applicant who is aggrieved by a decision of the Chief Executive Officer made under section 14 may, within 28 days of the decision being made, request the Minister or Chief Executive Officer to reconsider of the application by –
  - (a) giving written notice to the Chief Executive Officer stating the grounds upon which the request is made and providing evidence in support; and
  - (b) paying any fee prescribed by regulations made under this Act.
- (2) The notice and supporting evidence given under sub-section (1) shall be referred to the Committee for consideration in such manner as the Committee determines, and the Committee shall then advise the Minister to either dismiss the application, vary the Chief Executive Officer's decision or grant the application and grant the permit.
- (3) The Minister may make a decision in relation to a request made under this section based upon the recommendation of the Committee.

## **16 Environment and health standards applying to water**

- (1) Environmental standards relating to –
  - (a) the taking of water; and
  - (b) any activity that may affect water quality or the integrity of any water source, including waste management operations and any commercial enterprise;may be prescribed by the Minister, and the Ministry shall be responsible for the monitoring and enforcement of the approved standards.
- (2) Public health standards relating to the taking of water and any aspect of water quality may be prescribed by the Minister of Health in consultation with the Principal Hydrogeologist, and the Ministry of Health shall be responsible for the monitoring and enforcement of the approved standards.
- (3) Standards imposed under this section may be applied to any ministry or agency of Government whose activities relate to, or impact upon, the water resource and their contractors, and to any other persons identified in the applicable standard.
- (4) Any person to whom an approved standard applies who fails or refuses to comply with the standard commits an offence and shall be liable upon conviction to a fine not exceeding \$2,000.

- (5) In addition to any fine imposed under sub-section (4), the failure to observe or comply with an approved standard shall be grounds for –
- (a) suspending or revoking any registration or licence applying to the person in breach;
  - (b) refusing any subsequent registration or licence sought by the person in breach; and
  - (c) shutting down access to the water resources either on a temporary or permanent basis;

## 17 Offences against this Part

Any person who -

- (a) gives any false particular in an application made to the Ministry for a permit under this Part;
- (b) takes water from the water resource of the Kingdom without a permit given under this Part;
- (c) fails to comply with conditions imposed in relation to a permit given under this Part;
- (d) fails to comply with any aspect of the undertaking to observe the provisions of the Tonga Water Management Plan,

commits an offence and shall upon conviction be liable to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 3 years, or both, if the offence is committed by an individual person or group of persons, or fine not exceeding \$10,000 if the offence is committed by a company or a corporate body.

## PART VII - MISCELLANEOUS PROVISIONS

### 18 General offences

- (1) Any person, group of persons, company or corporate body who -
- (a) discharges any pollutant into the water resource of the Kingdom;
  - (b) causes or permits any pollutant to be discharged into the water resource of the Kingdom; or
  - (c) does any act which is inconsistent with any provision of an approved management plan applying to a water source protection zone,

commits an offence and shall upon conviction be liable to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 7 years, or both, if the offence is committed by an individual person or group of persons, or fine not exceeding \$50,000 if the offence is committed by a company or a corporate body.

- (2) If a director of any company which commits an offence under sections 9, 17 or this section, is found to have knowingly authorised the commission of that offence, then he, as well as the company, shall be guilty of the offence.

## 19 Regulations

- (1) The Minister may, with the consent of Cabinet, make regulations for the effective implementation of this Act and the protection, conservation and proper management of the water resource.
- (2) Without limiting the generality of sub-section (1), regulations may be made which -
- (a) provide for additional functions and powers of the National Water Resources Committee;
  - (b) facilitate the exercise of any power of the Minister under this Act;
  - (c) impose fees relating to the taking of water including –
    - (i) application fees;
    - (ii) licence fees;
    - (iii) extraction fees based on the duration of the licence or the quantity of water taken; and
    - (iv) special fees and levies to address salinity and other adverse environmental effects; and
  - (d) provide transitional arrangements to ensure continuity of water supply.
- (3) The regulations made under this section may prescribe offences and impose penalties being fines not exceeding \$2,000 or imprisonment for a period not exceeding 1 year, or both.

Passed by the Legislative Assembly on this                      day of                      2016.

### Explanatory Notes

(This note does not form part of the Bill and is intended only to explain its purpose and effect)

This Act makes comprehensive provision in relation to the ownership, management and regulation of water resource of the Kingdom of Tonga.

- Section 1** This section sets out the short title of the Act.
- Section 2** This provides for definitions of certain words and terms used in the Act.
- Section 3** This section provides that the Act shall bind the Crown.
- Section 4** The water resource of the Kingdom of Tonga is vested in the Crown. Individuals may claim ownership of water that has been legally taken and stored by them.
- Section 5** Management of the water resource is a responsibility of the Ministry of Lands and Natural Resources. The Ministry may grant rights to take and use water from aquifers, lakes, streams and springs.
- Section 6** The Water Board and other water supply agencies have a right to take water for their functions. They must comply with restrictions and requirements imposed under this Act.
- Section 7** The objectives of sound water resource management are stated and must be observed by the Ministry.
- Section 8** A wide range of powers are given to the Minister of Lands and Natural Resources to manage, protect and conserve the water resource. The powers cover the following matters –
- Approvals for the taking of water
  - Determination of competing claims to the water resource
  - Placing restrictions on taking and using water
  - Setting standards applying to the taking of water
  - Declaring water source protection zones and providing for their management
  - Regulating and controlling the use of water and activities which affect the quantity and quality of water
  - Ordering that activities which adversely affect the water resource cease.

These powers may be exercised by Determinations, Orders or the making of Regulations.

- Section 9** Breaching any requirement imposed by the Minister is an offence. Fines of up to \$5,000 apply to individuals and \$10,000 to companies. Terms of imprisonment for up to 3 years can be imposed.
- Section 10** A National Water Resources Committee comprising representatives of the key government agencies is to be established as part of the Ministry of Lands and Natural Resources.
- Section 11** The functions of the National Water Resource Committee to promote the effective management of the water resource are stated.
- Section 12** The Tonga Water Management Plan must address a wide range of management issues and practices applying to the water resource.
- Section 13** The provisions of the Tonga Water Management Plan must be considered and applied in all processes involving the assessment of environmental impacts (EIA) and urban and rural planning.
- Section 14** Persons who drill for water, use boreholes or who take water must have a licence under this Act. Provision is made in relation to applications for licences. Applications must be considered by the Principal Hydrogeologist and may be granted if the proposed water taking activities are in accordance with the Tonga Water Resources Plan. Licences to take water must state the quantity of water that may be extracted and the rate at which it can be extracted.
- Section 15** Persons who are aggrieved by decisions concerning licence applications may request a review of the decision by providing additional information.
- Section 16** Environmental and health standards applying to the water resource may be imposed by the Ministry and the Ministry of Health.
- Section 17** Offences for breaching the licensing provisions of this Act are imposed.
- Section 18** General offences are provided for.
- Section 19** A general power to make regulations is provided for, and some specific regulations are identified.

**Lord Ma'afu**

**Minister for Lands and Natural Resources**