



*Tonga*

# **WATER RESOURCES ACT**

**Chapter 20.08**

**2020 Revised Edition**





# WATER RESOURCES ACT

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## WATER RESOURCES ACT

### AN ACT TO PROVIDE FOR THE MANAGEMENT, PROTECTION AND CONSERVATION OF THE WATER RESOURCES OF THE KINGDOM<sup>1</sup>

Commencement [16 November 2020]<sup>2</sup>

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## PART I - PRELIMINARY

### 1 Short Title

This Act may be cited as the Water Resources Act.

### 2 Interpretation

In this Act, unless the context otherwise requires –

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

“**borehole**” means a drilled well used to extract groundwater;

“**Chief Executive Officer**” means the Chief Executive Officer of 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;

“**Director**” means the person holding the office of Director of Hydrology and Water Resources in the Ministry or such other person nominated by the Minister;

“**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;

“**gallery**” means an infiltration gallery or skimming well used to extract groundwater;

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

“**License**” means a legally binding contract specifying terms and conditions that allows a company, corporate body, agencies or authority to do or perform an action;

“**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 at such a rate or in such a quantity that the extraction exceeds the sustainable rate of extraction from the water source;

“**Permit**” means an official document specifying terms and conditions which gives a person or group of people permission to carry out an activity;

“**pollutant**” means any liquid, gaseous or solid substance that contaminates the water so as to change the physical, chemical or biological 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;

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

“**salinity**” means the amount of dissolved salts in water.;

“**spatial plans**” has the same meaning as prescribed by the National Spatial Management Act;

“**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;

“**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.

“**water resources**” means the surface and ground waters in aquifers, lakes, streams and springs;

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

“**water source**” includes all natural sources of freshwater from aquifers, lakes, streams, springs and excludes domestic and communal rainwater storages for private and communal use; and

“**well**” means a dugged well used to extract groundwater;

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

This Act shall bind the Crown.

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

### **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 is the responsibility of the Ministry, in conjunction with the other agencies of the Government provided for under this Act, and any other law.
- (2) The right to use or to permit the use of water sources, for the purpose of supplying water for domestic, agricultural, pastoral, industrial or commercial uses is vested in the Ministry, excluding rain water storages for private or communal use.
- (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 WATER RESOURCES

### 7 Objectives of water resources management

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

- (a) the sustainable management of the water resources;
- (b) the avoidance of overdrafts;
- (c) the improvement of the chemical, physical and biological integrity of the water; resources;
- (d) control of pollutant discharges;
- (e) implementation of urban and rural planning regimes that take account of water management; and
- (f) assessment of the impacts of proposed developments on the water resources.

### 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 VI of this Act;
  - (b) grant ,to vary and revoke any permits or licences, in accordance with Part VI 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 water sources, 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;



- (h) give notice to persons to cease activities or practices having a detrimental effect on the quantity and quality of water, 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 water resources be considered in the assessment of environmental impacts of proposed developments required under the Environmental Impact Assessment Act.
- (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 and publication 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 water resources;
- (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 \$100,000 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 Chief Executive Officer of the Tonga Water Board;
  - (d) the Chief Executive Officer of the Waste Authority Limited;
  - (e) the Chief Executive Officer for the Ministry of Finance;
  - (f) the Chief Executive Officer of the Ministry of Environment and Climate Change;
  - (g) two representatives from Non-Government Organisations appointed by the Minister with the consent of Cabinet; and
  - (h) the Director 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 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 and powers of the Committee are to -

- (a) advise the Minister on any matter affecting the quantity and quality of water resources;
- (b) promote coordination amongst government ministries and agencies having responsibilities relating to water resources;
- (c) ensure that there is effective monitoring of 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 Director to carry out monitoring and analysis of the condition and use of the water resources, and to review and make recommendations to the Committee on applications for water resources development and extraction;
- (e) ensure that an annual report detailing the condition and use of the water resources is presented to the Minister;
- (f) promote the dissemination of information about water resources 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 National 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 resources.

## **PART V - NATIONAL WATER MANAGEMENT PLAN**

### **12 Elements of the National Water Management Plan**

- (1) The National Water Management Plan shall be consistent with the National Water Policy and shall address the following matters –
  - (a) an assessment of available water sources for beneficial use;
  - (b) an inventory of the water resources for each island;
  - (c) a determination of the average quantity of water extracted on each island on a daily, monthly and annual basis;
  - (d) a determination of the average quantity of water consumed on each island by the domestic, commercial, industrial and agricultural sectors on a daily, monthly and annual basis;
  - (e) a determination of the water losses on each island that occur between the water sources and the consumers;
  - (f) an estimate of waste water generated by domestic, commercial, industrial and agricultural users;
  - (g) water conservation measures and a timetable for their implementation;
  - (h) a projection of future water demand by domestic, commercial, industrial and agricultural users, taking into account impact of climate change;

- (i) mandatory borehole, well and gallery construction standards, including provisions for the sealing and fencing of extraction facilities;
  - (j) a water quality monitoring programme for water sources, and clear identification of roles for relevant government agencies;
  - (k) procedures for the recording and assessment of information about water quantity and, for the sharing of this information amongst the relevant government agencies and for its public disclosure;
  - (l) contingency plans to be used in the event of disasters or threats to the quality and quantity of water resources to reduce vulnerability and increase resilience; and
  - (m) appropriate cost recovery proposals to redress problems of salinity and other adverse environment effects that arise from the taking of water..
- (2) When preparing and approving the National Water Management Plan, the Committee shall apply the following principles –
- (a) the extraction from any water source shall not exceed its sustainable extraction rate;
  - (b) wastage of water by any person, company, agency, authority 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, the domestic use shall prevail;
  - (e) water resources shall be safeguarded from all types of pollutants; and
  - (f) conditions may arise when water resources shall be safeguarded by the imposition of restrictions applying to all or to specific water users.

### **13 Environment Impact Assessments and Spatial Plans**

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

## PART VI - REGULATING THE TAKING OF WATER

### 14 Permits and Licenses to take water

- (1) No person, group of persons, company, corporate body, agency or authority may –
  - (a) drill for water;
  - (b) make or use a borehole, well or gallery for the purpose of taking water; or
  - (c) take water from any water resource of the Kingdom,unless he is the holder of a valid permit or licence to do so issued by the Ministry in accordance with this Act.
- (2) Categories of permit or licences may be prescribed by regulations.
- (3) The regulations may exempt from the requirements of sub-section (1) any person, group of persons, company, corporate body, agency or authority, 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 National Water Management Plan and the requirements of this Act.
- (5) All applications made under this section shall be referred to the Director for confirmation that the drilling or water taking activities shall –
  - (a) be in accordance with the provisions of the National Water Management Plan;
  - (b) not contravene any standards, control, prohibition or requirement determined by the Minister; and
  - (c) not adversely affect the quality of the water resources 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 or license be granted.
- (7) A permit or licence granted under this section –

- (a) may impose any conditions as to the means of extraction, quantity of water to be extracted, placement of the borehole, well or gallery and any other matter that may assist in the protection, conservation and sound management of the water resources;
  - (b) shall, if the permit or license authorises the taking of water, state –
    - (i) the category of the permit or license, if specified;
    - (ii) the quantity of water that may be extracted in a specified period;
    - (iii) the maximum 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 resources officer to enter the property where the permit or licence is applicable for the sole purpose of monitoring the water source and extract water whenever required for the purpose of the Act.
- (8) A permit or 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 resources.
- (9) All drillers of boreholes must 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 to reconsider of the application by –
- (a) giving written notice to the Minister 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 permit or license.
- (3) The Minister may make a decision in relation to a request made under this section based on 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, drilling, quarrying and any other 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 Director, and the Ministry of Health shall be responsible for the monitoring and enforcement of the approved public health standards.
- (3) Standards imposed under this section may be applied to any ministry or agency of Government and their contractors, and any persons whose activities relate to, or impact upon, the water resources.
- (4) Any person, group of people, company or corporate body 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 \$5,000 for a person or group of people and not exceeding \$100,000 for a company or corporate body.
- (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 permit or licence applying to the person, group of people, company or corporate body in breach;
- (b) refusing any subsequent permit or licence sought by the person, group of people, company or corporate body 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, group of people, company or corporate body who -

- (1) gives any false particulars in an application made to the Ministry for a permit or licence ;
- (2) takes water from the water resources of the Kingdom without a permit or licence ;
- (3) fails to comply with conditions imposed in relation to a permit or licence;
- (4) fails to comply with any provision of the National 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 a person or group of persons, or a fine not exceeding \$100,000 if the offence is committed by a company or 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 resources of the Kingdom;
  - (b) causes or permits any pollutant to be discharged into the water resources 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 a fine not exceeding \$500,000 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 resources.
- (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;
    - (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 a fine not exceeding \$2,000 or imprisonment for a period not exceeding 1 year, or both if the offence is committed by a person or group of persons, or a fine



not exceeding \$50,000 if the offence is committed by a company or corporate body.

## 20 Transitional provision

Notwithstanding section 8(2), any person, group of persons, agency or authority that immediately before the commencement of this Act –

- (a) drills for water;
- (b) makes or uses a borehole, well or gallery for the purpose of taking water; or
- (c) takes water from any water resource of the Kingdom,

shall continue to drill for, use or take water as if permitted or licensed to do so under this Act.

Provided that the person, group of persons, agency or authority, whichever is applicable, shall apply for a permit or license under section 14 of this Act no later than 3 months from the date of commencement of this Act.

## ENDNOTES

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<sup>1</sup> Act 2 of 2020

<sup>2</sup> GE 156/2020 dated 16 November 2020