



## WATER ACT 2012

No. 317

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### **A BILL FOR AN ACT TO MAKE PROVISION FOR THE INVESTIGATION, EXTRACTION, USE, CONTROL, PROTECTION AND MANAGEMENT OF WATER AND FOR RELATED MATTERS.**

#### **PART 1- PRELIMINARY**

##### **1. Name**

This is the Water Act 2012.

##### **2. Interpretation**

(1) In this Act-

"activity" includes an industrial, agricultural or commercial activity or an activity of any other nature whatever (including the keeping of a substance or an animal, and the extraction of water);

"bore" means any bore, well, gallery, cave or drive or any artificially constructed or improved underground cavity;

"Crown land" has the meaning assigned to it under the Niue Amendment Act (No 2) 1968;

"environment" has the meaning assigned to it under the Environment Act 2003;

"Environment Director" means the Director of the public authority responsible for the environment;

"groundwater" means any water occurring in or obtained from any geological structure or formation permeated or capable of being permeated usually or occasionally with water and includes any matter dissolved or suspended in such water

“Health Director” means the Director of the public authority responsible for health;

“impactor pays principle” means the principle that any person using water or undertaking activities that has the potential to impact on the water shall pay for the impact on the water;

“meter” means any device approved by the Public Works Director for measuring the amount of water extracted or used or the rate at which it is extracted or used, and includes such fittings and ancillary equipment as may be necessary or desirable to so measure;

“Minister” means the Minister responsible for the water supply;

“occupier” in relation to any land includes any lessee, licensee, or other occupant of the land and includes the owner or the agent, or representative of the owner where there is no apparent occupier;

“pollution” means any direct or indirect alteration of the physical, thermal, chemical, biological or radioactive properties of any water so as to render such water less fit for any beneficial purpose for which it is, or may reasonably be used, or to cause a condition which is hazardous or otherwise detrimental or potentially hazardous or otherwise detrimental to public health, safety or welfare, or to persons, animals, birds, wildlife, fish or aquatic life, or plants;

“premises” includes any structure, building or part of building, or land with or without buildings, or a mobile plant, vehicle, vessel or aircraft;

“private” in the expressions “private water works” and “private sewerage works” includes any works owned or operated by any person, Village Council or Public Authority;

“private water works” includes the pipes and all fittings, including taps, which extend from the main public water supply pipe to or within any premises;

“private sewerage works” shall include the soak hole disposal trench, disposal mound (to cover other possible effluent disposal methods) septic tank, vents, drain pipes, toilet pan, sink, shower, wash and hand basins;

“Public Works Director” means the Director of the public authority responsible for water supply;

“public water supply” means any waterworks constructed or operated by the Public Works Director for the purpose of supplying water under section 19;

“public authority” means any Ministry, Department, Division, Board, agency, authority, statutory body, statutory corporation, or administrative office and

includes a member of staff or other person who exercises functions on behalf of a public authority;

“rainwater capture works” includes roofing, spouting, downpipes, rain water holding tank, piping and taps used for the purpose of capture and use of rainwater;

“service provider accommodation” means such places that offer accommodation for a fee including and without limiting the foregoing, a hotel, a motel, a guest house, a resort and a hostel;

“sewage” means any matter, or any water contaminated by any matter in solution or suspension or carried along, that is derived from the use of water in connection with the life or vocations of mankind;

“sewerage works” includes all sewers, pipes, conduits, tanks, receptacles or other appliances and any works incidental there to be used or intended to be used for the reception, discharge, retention, removal, treatment or disposal of sewage;

“sustainable yield” of the water resource means the amount of water that can be taken from a groundwater source without depleting the resource in the long term, or changing the water quality, or having any significant impacts on groundwater dependent ecosystems. The sustainable yield is usually expressed as a volume per year, but can additionally be expressed as an extraction ‘regime’, that may vary from time to time, and takes into account the location and distribution of extraction points and the local rates of extraction;

“system yield” in relation to a public water supply system means the maximum rate of extraction over a specified time period (typically per day) from an existing water supply work or group of works that can be maintained indefinitely without depleting the supply or changing the chemical composition (including salinity) of the water so supplied;

“Village Council” means a Village Council established under the Village Councils Act 1967;

“water” includes all groundwater, aquifers, cave waters, seawater and rainwater;

“water works” includes any bores, catchments, reservoirs, tanks, cisterns, conduits, mains, pipes, meters, valves, hydrants, pumps, engines and all other structures or appliances used or constructed for the storage, treatment, conveyance, supply, measurement or regulation of water;

“wellhead” includes a bore and any pump, valve, pipe, duct, channel, drain or any other means used or intended to be used to withdraw any water from a bore.

### **3. Objective**

(1) The objective of this Act is to provide an administrative and regulatory framework for the sustainable, efficient and coordinated development, extraction, protection, management and use of the water resources of Niue for the benefit of both present and future generations, and in particular:

(a) to provide for the sustainable and efficient management and development of water resources to meet current and future uses, including domestic use, watering of animals, irrigation and agricultural uses, rural, commercial, and industrial uses, and recreation uses;

(b) to protect, and where necessary restore, water quality, so as to reduce the risks to human health and prevent the degradation of the environment;

(c) to prevent and control pollution of water;

(d) to protect ecosystems that depends on water;

(e) to provide for the orderly, efficient, open and equitable sharing of water resources;

(f) to improve awareness and understanding of water resource issues;

(g) to encourage best practice in the extraction, management, protection and use of water;

(h) to provide opportunities for public participation in decisions regarding water resource allocation and protection;

(i) to assist the coordination and integration of the management of water resources with the regulation and management of other activities and natural resources which may influence the quality, quantity, distribution, use and management of water; and

(j) to ensure the application of appropriate standards and techniques for the investigation, use, control, protection, management and administration of water resources.

### **4. Water Management Principles**

The Cabinet, any public authority and any person exercising powers under this Act shall take all reasonable steps to do so in accordance with, and so as to promote, the following principles of the Act:

- (a) the social and economic benefits to the community of water use should be recognised;
- (b) extraction of water resources should remain within the assessed sustainable yield;
- (c) extraction of water resources should remain within the assessed system yield of each water supply system;
- (d) pollution of water resources should be minimised, and if necessary, water quality should be restored;
- (e) prevention of the discharge or seepage into the water of substances likely to cause harm to public health or environment should be prevented or reduced to harmless levels;
- (f) habitats, animals and plants that benefit from water should be protected and, if necessary, restored;
- (g) the cumulative impacts on water resources and their dependent ecosystems of water licences and pollution control licences and of other activities, should be considered and minimised;
- (h) geographical and other features of major cultural, heritage or spiritual significance that are dependent on water should be protected;
- (i) the principles of adaptive management should be applied, and should be responsive to monitoring and improvements in understanding of the water resource and dependent ecosystems;
- (j) public water supply catchment areas should be protected;
- (k) high conservation areas dependent on groundwater should be protected;
- (l) any impacts on other any existing activities that intercept or alter water flow must be avoided or minimised;
- (m) to apply the principle of impactor pays; and
- (n) multilateral environment agreements to which Niue is a party should be complied with.

## **5. Vesting of groundwater in the Crown**

- (1) The right to the use, flow, piping, storage, sale and control to all groundwater is vested in the Crown.

(2) Subject to subsection (1), the Crown's water rights prevail over any authority conferred by or under any other Act or law, except to the extent to which this or any other written law expressly provides.

## PART 2 - FUNCTIONS AND POWERS OF DIRECTORS

### 6. Functions of Public Works Director

(1) The Public Works Director shall be responsible to the Minister responsible for water supply and subject to this Act, shall be responsible for the construction, management, regulation and protection of water supply, and shall have the following functions;

- (a) to investigate groundwater resources and collect data and disseminate information relating to it;
- (b) to design, construct, alter, operate, repair, maintain, decommission, manage, control and administer all public water supplies and all water works comprising such supplies;
- (c) to construct, maintain and operate water monitoring equipment;
- (d) to license, inspect, oversee and control the extraction and use of water from any bore or public water supply;
- (e) to manage, protect and treat by chemical or by other means water contained in water supply works, provided that the Public Works Director shall not so treat any such water without the prior consent of the Health Director;
- (f) to distribute and sell water from any public water supply;
- (g) to collect any fees, charges, or rates which may be imposed or levied in connection with the construction, alteration, repair or maintenance of any bore, any licence for the extraction of water, or any connection to or use of water from a public water supply;
- (h) to promote education and awareness of water supply issues;
- (i) to do anything to expedite the enabling the provisions of this Act and any regulations made under it to be attained.



## **7. Functions of Environment Director**

The Environment Director shall be responsible to the Minister responsible for the environment and subject to this Act, shall be responsible for water quality and its protection, and shall have the following functions;

- (a) to protect and mitigate the quality of groundwater;
- (b) to license, inspect, oversee and regulate activities that have the potential to pollute water;
- (c) to collect any fees, charges, or rates which may be imposed or levied in connection with pollution control licences;
- (d) to maintain and operate water quality monitoring equipment, and monitor the quality of groundwater;
- (e) to promote education and awareness of environmental issues concerning water management and conservation;
- (f) to do anything to expedite the enabling the provisions of this Act and any regulations made under it in relation to the environment, water quality and its protection to be attained.

## **8. Functions of the Health Director**

(1) The Health Director shall be responsible to the Minister responsible for the health and subject to this Act, shall be responsible for the monitoring of the quality of water in public water supply systems and to monitor the quality of water in any supply system.

(2) The monitoring of the quality of water in the public water supply systems shall be carried out every three months of each year.

## **9. Powers of Directors to Delegate**

(1) A Director with functions under this Act may delegate to any authorised officer any of their functions and powers under this Act.

(2) In this section "authorised officer" means a member of staff of any government department or public authority who has been delegated authority pursuant to subsection (1).

## 10. Powers of entry

- (1) A Director or an authorised officer may enter any land or premises for:
  - (a) the purpose of inspecting any water works situated on the premises, or
  - (b) the purpose of monitoring the extraction or use of water on the premises, or
  - (c) the purpose of monitoring any activity occurring on the premises, or
  - (d) the purpose of carrying out any surveys for the purposes of this Act, or
  - (e) the purpose of taking measurements of any matter, or for reading any meter, for the purposes of this Act, or
  - (f) the purpose of investigating the need for, or the serving of, a direction on the occupier, or
  - (g) the purpose of investigating any alleged contravention of this Act or the regulations; or
  - (h) the purpose of carrying out on those premises any function or work that by this Act the Director or an authorised officer is authorised to carry out.
- (2) At all times while on premises under the power conferred by this section, an authorised officer must carry, and produce on demand, evidence of his or her authority to be on the premises.
- (3) Except in the case of cyclone, earthquake, or any other emergency, or in the case of entry for the purpose of investigating any alleged contravention of this Act or the regulations, the powers conferred by this section may only be exercised during daylight hours, and on informing the occupier if possible.
- (4) Where the land is expressly required for a bore site and/or reservoir site the Public Works Director must consult with the occupier of the land and seek written agreement for the proposed site of the water bore and/or reservoir site.
- (5) A Director or an authorised officer may not enter a private residential dwelling house except:
  - (a) with the verbal or written consent of the occupier; or

(b) under the authority of a search warrant issued under subsection (6).

(6) Where a judicial officer is satisfied on evidence in writing made under oath by an authorised officer that:

(a) there are reasonable grounds to believe that it is appropriate for the administration of this Act for the authorised officer to do anything set out in subsection (1), and

(b) the authorised officer may not be able to carry out duties under this Act effectively without a search warrant issued under this subsection because:

i). no person is present to grant access to a place that is locked or is otherwise inaccessible, or

ii). a person has denied the authorised officer access to a place or there is reasonable ground for believing that a person may deny the authorised officer access to a place, or

iii). a person has prevented the authorised officer from doing anything set out in subsection (1), or

iv). there are reasonable grounds to believe that an attempt by the authorised officer to do anything set out in subsection (1) without the order might defeat the purpose of the inspection or cause an adverse effect, the judicial officer may issue an order authorising the authorised officer to do anything set out in subsection (1) that is set out in the order, and the order must be exercised within 14 days from the date of issue.

## **11. Power to impose fees**

(1) Subject to any regulations made under this Act, the Cabinet may impose fees or charges for the doing of any act, the considering of any application or the issuing of any licence or approval under this Act on any person, public authority or Village Council:

(a) who or which extracts any water under an extraction licence granted under this Act;

(b) served by the construction, alteration, repair, maintenance or operation of any bore or any public water supply;

(c) to whom or which the Director of Public Works supplies or sells any water under this Act.

(2) Subject to any regulations made under this Act, the Cabinet may impose fees or charges on any person, public authority or Village Council for:

(a) the doing of any act, the considering of any application, or the issuing of any pollution control licence or approval under this Act;

(b) whom or which a pollution control licence or an extraction licence is granted under this Act.

### **PART 3 - WATER INVESTIGATION, MONITORING, AND COMPLIANCE PROGRAMME**

#### **12. Directors may conduct programmes**

(1) The Public Works Director may cause a programme of investigation and monitoring of water resources to be prepared, which may provide for the collection, collation and analysis of data including, without limitation -

(a) the location, levels, pressure, composition and movement of groundwater;

(b) the properties of groundwater or of the rock or coral containing groundwater or through which such groundwater percolates;

(c) any other matters in connection with the availability of groundwater or its suitability for use or its protection from depletion, wastage or pollution or its replenishment.

(2) The Environment Director may cause a programme of investigation and monitoring of water quality to be prepared, which may provide for the collection, collation and analysis of data including, without limitation, the quality of water resources.

(3) The Health Director may cause a programme of investigation and monitoring of public water supply quality to be prepared, which may provide for the collection, collation and analysis of data including, without limitation, the quality of water in the public water supply system.

(4) The responsible Director may do anything necessary or expedient for or in connection with the carrying out of the programmes.

#### **13. Village inspections**

For the purpose of minimising water wastage, and protecting public health and water quality, a Director of Water Supply, Environment or Health may conduct a Village inspection on-

- (a) connections to a public water supply system,
- (b) private water works, or
- (c) private sewerage works.

#### **14. Power to require samples**

- (1) The Public Works Director may require any person who is the holder of any licence issued under the Mining Act 1977 to supply the Public Works Director with such samples from the core or water of any bore constructed under such licence and any details concerning such bore and its operation.
- (2) The Public Works Director or the Environment Director may require any person who is the holder of any licence issued under Parts 4 or 5 of this Act to provide such samples of water and analysis of such sample of water.

### **PART 4 - WATER SUPPLY**

#### **Division 1 - Construction of bores**

#### **15. Power to construct bores**

- (1) No person other than the Public Works Director or an authorised officer shall construct, alter, repair or maintain, or decommission any bore for the purpose of extracting water or cause any such bore to be constructed, altered, repaired or maintained.
- (2) The Public Works Director may, with the consent of the Environment Director as to the proposed location of it, construct any bore for the extraction of water for the purposes of Part 4, Division 4.
- (3) Any person, public authority or Village Council may apply to the Public Works Director to have a proposed bore constructed, or any bore altered or maintained, in the manner provided for in the Regulations.
- (4) The Public Works Director, with the consent of the Environment Director, may grant an application under subsection (3) subject to such terms and conditions as the Public Works Director thinks fit or may refuse to grant such an application.
- (5) The costs associated with any construction, alteration or maintenance of a bore applied for under subsection (3), and any conditions associated with an approval to construct, alter or maintain such a bore, will be borne by the applicant.
- (6) Where any person holding a licence under Part 4 of the Mining Act 1977 has constructed or proposes to construct a bore which has encountered or may encounter any groundwater, the person must notify the Public Works Director, and

the Public Works Director may require such precautions to be taken or work to be done in relation to such bore as he or she deems necessary for the protection of such groundwater and may exercise the powers conferred by Part 4 Division 5 in relation to any such bore.

### **Division 2 - Water source sustainable yield and water supply system yield**

#### **16. Determination of sustainable yield**

(1) From time to time, the Public Works Director may, by Order in writing, determine the sustainable yield of the total groundwater resources of Niue.

(2) Before making a determination under subsection (1), the Public Works Director must obtain the consent of the Environment Director.

#### **17. Determination of water supply system yield**

(1) From time to time, the Public Works Director may, by order in writing, determine the system yield of each public water supply system.

(2) Before making a determination under subsection (1), the Public Works Director must consult with the Environment Director.

### **Division 3 - Extraction and use of water**

#### **18. Extraction licence**

(1) No extraction or use of water or natural depositories of water by any person, public authority or Village Council holding a licence under Part 4 of the Mining Act 1977 shall be deemed lawful, except as authorised by the Minister responsible for water supply and with Cabinet's approval and under the conditions of an extraction licence issued under this Division 3 of Part 4 of this Act.

(2) No person, public authority or Village Council shall cause or permit any water to be extracted or used from any water works, other than public water supply water works or rainwater capture works, except as authorised by the Minister responsible for water supply and with Cabinet's approval and under the conditions of an extraction licence issued under this Division.

(3) No person, public authority or Village Council shall cause or permit water to be extracted or used from any public water supply water works if the extraction exceeds the volumes, or is proposed to be used for the activities, specified in Schedule 1 to this Act, except as authorised by the Minister responsible for water supply and with Cabinet's approval and under the conditions of an extraction licence issued under this Division.

(4) Subject to any conditions specified in the licence and the provisions of this Act, an extraction licence entitles its holder to:

(a) extract the volume of water over the time, from the work, and at the location specified in the licence, and

(b) use the water so extracted for the purpose specified in the licence.

#### **19. Applications for granting of an extraction licence**

(1) An occupier of premises may make an application for a licence to extract and use water.

(2) An application for an extraction licence shall be made in writing and lodged with the Public Works Director in the prescribed form, with the prescribed fee and accompanied by the prescribed plans and descriptions, together with a statement of the purposes for which it is proposed to use the water.

(3) The Public Works Director with the approval of the Minister responsible for water supply may:

(a) require an applicant for an extraction licence to provide additional information within a specified time.

(b) delay consideration of the application until the information is provided or, if the information is not provided within the time specified, may refuse to consider the application.

(4) The Public Works Director may refuse to accept an application for an extraction licence if it appears to the Public Works Director that the application is incomplete.

#### **20. Objections to granting of extraction licences**

(1) On receipt of an application, the Public Works Director shall advertise for two weeks in the Gazette and in the media including radio, or public notice:

(a) providing a brief description of the application, and

(b) requesting all interested persons to inform the Public Works Director whether they support the application or object to it, and if they do so object, the reasons for that objection, and

(c) stating the last day on which such information will be received and the name or official designation and address of the person to whom it should be sent.

(2) The Public Works Director may:

(a) require an objector or an applicant to provide additional information within a specified time.

(b) delay consideration of the objection or response until the information is provided or, if the information is not provided within the time specified, may refuse to consider the objection or response.

(3) Before making a determination on an application for an extraction licence in respect of which any objection has been made, the Public Works Director must endeavour to resolve the issues raised by the objection by means of consultation with the applicant and the objector, with a view to reaching agreement on the matters raised by the objection.

## **21. Determination of an application for an extraction licence**

(1) The Minister responsible for water supply may, on an application made under section 19 and with Cabinet's approval determine an application for an extraction licence by granting or refusing to grant the licence.

(2) An extraction licence is not to be granted unless the Minister responsible for water supply is satisfied that:

(a) the applicant is a fit and proper person;

(b) the granting of the extraction licence will not exceed the sustainable yield of the system;

(c) the granting of the extraction licence will not exceed the system yield of the water supply system;

(d) the granting of the extraction licence will not result in unacceptable impacts on existing uses, groundwater levels, or groundwater quality in the vicinity of the extraction to which the application relates; and

(e) adequate arrangements and conditions are in place to ensure the purpose and principles of this Act are upheld.

(3) After determining an application under this Division, the Public Works Director must cause notice of the determination to be given to the applicant and to each person who has made an objection in connection with the application.



## **22. Conditions of an extraction licence**

(1) An extraction licence is subject to such conditions as the Minister responsible for water supply may direct the Public Works Director to impose on the extraction licence from time to time, including but not limited to the following conditions:

- (a) to give effect to any agreement between an applicant and objector;
- (b) to give effect to the purpose and principles of this Act; and
- (c) relating to the monitoring and reporting of water extraction and use.

(2) Conditions may not be imposed on an extraction licence after it has been granted unless the Minister has:

- (a) given written notice to the holder of the extraction licence that the Public Works Director proposes to impose such conditions; and
- (b) given the holder of the extraction licence a reasonable opportunity to make submissions to the Public Works Director with respect to the proposed conditions, and
- (c) considered such submission.

## **23. Duration of extraction licences**

An extraction licence granted in accordance with Division 3 of Part 4 of this Act will remain in force for 3 years from the date it was granted.

## **24. Renewal of extraction licences**

A licence may be renewed from time to time by the Minister responsible for water supply and with Cabinet's approval on application by the holder of the licence in the manner prescribed by the Regulations to this Act.

## **25. Amendment of an extraction licence**

(1) An extraction licence may be amended at any time during its currency on application by the holder of the licence or on the initiative of the Public Works Director as approved by the Minister responsible for water supply.

(2) Subject to section 21(2), the Minister responsible for water supply, may amend any extraction licence, and may, without limitation, add to, vary or revoke:

- (a) the specified volume of water authorised by the extraction licence, or

(b) the specified work or location at which the extraction licence may be exercised, or

(c) the specified purpose for which the water may be used, or

(d) any conditions under the extraction licence.

(3) The holder of an extraction licence may apply in writing and lodged with the Public Works Director for approval to amend an extraction licence in the manner provided for in the Regulations.

(4) Section 24 applies to an application for amendment made under this section.

(5) The Minister responsible for water supply shall grant such an application subject to such conditions as the Public Works Director thinks fit or as provided for in the Regulations or may refuse to grant such an application.

(6) No person or public authority or any person who has constructed a bore under a licence granted under Part 4 of the Mining Act 1977 shall amend the purpose for which any bore is used unless written approval has been obtained from the Minister responsible for water supply under this section.

(7) The Minister responsible for water supply shall not amend any extraction licence if such an amendment is inconsistent with the requirements of section 21(2).

## **26. Suspension and cancellation of an extraction licence**

(1) The Minister responsible for water supply may direct the Public Works Director to suspend or cancel an extraction licence on any one or more of the following grounds:

(a) that the holder of the licence has failed to comply with the conditions to which the licence is subject,

(b) that the holder of the licence has been convicted of an offence against this Act or the regulations,

(c) if any fees, charges or civil penalties in respect of the licence have not been paid,

(d) that the water extracted pursuant to the licence is polluted or likely to cause pollution.

(2) During any period of suspension of an extraction licence:

- a) the holder of the extraction licence is not authorised by such licence or otherwise to extract or use any water as authorised by such licence, and
- b) fees and charges payable under this Act in respect of the extraction licence will continue to apply.

#### **Division 4 - Public water supply**

##### **27. Power to supply water**

- (1) The Public Works Director may, subject to this Act, extract and collect water from any bore constructed for the purpose of supplying water, and may store, supply and sell any such water to any person, public authority or any Village Council.
- (2) The Public Works Director shall not be obliged to supply or sell water to any person, public authority or any Village Council and may refuse the supply of it to any person, public authority or Village Council if any fees, rates or charges have not been paid.

##### **28. Public water supply connections to be approved and registered**

- (1) No person, public authority or Village Council, other than the Public Works Director shall make, alter or repair a connection to a public water supply system.
- (2) All works provided by the Public Works Department pursuant to the subsection (1) and any meter connected thereto shall be and remain the property of the Department.
- (3) The Public Works Director must cause to be kept a register of connections to the public water supply.
- (4) The Public Works Director may enter into agreements to supply water from the public water supply to consumers, including any person, Village Council or public authority, and such agreements shall specify the rights and obligations of consumers.

##### **29. Application for approval of private water works**

- (1) Before the fitting of any private water works on any premises the owner or occupier shall apply to the Public Works Director for approval.
- (2) Any such application shall contain a full description of the private water works proposed and any other information or drawings as may be required of the Public Works Director.

(3) The Public Works Director may grant such an application subject to such conditions as the Public Works Director may see fit, or refuse such an application.

(4) No fitting of any private water works on any premises shall commence or proceed except in accordance with a permit granted by the Public Works Director pursuant to this section, and all such private water works shall be carried out in accordance with the provisions of the National Building Code for Niue.

### **30. Power to install meters**

The Public Works Director may install meters for the purpose of measuring any water extracted, supplied or sold under this Act and where water is supplied without any meter being installed, the measurement of water supplied shall be calculated by such means as the Public Works Director may determine.

- (1) The Public Works Director may install meters for the purpose of measuring any water extracted, supplied or sold under this Act and where water is supplied without any meter being installed, the measurement of water supplied shall be calculated by such means as the Public Works Director may determine.
- (2) Any person or body corporate undertaking any commercial activity such as but not limited to accommodation providers, commercial farming and animal husbandry and any swimming pool may be charged a levy for the supply and use of water and may be subject to any regulations prescribed under this Act.
- (3) Any levy charged under subsection (2) shall be measured in accordance with subsection (1).

### **31. Power to disconnect supplies**

The Public Works Director may disconnect the supply of water to any person, public authority or Village Council where:

- (a) any deposit or advance payment required by the Public Works Director has not been paid;
- (b) the payment of any fee, charge or rate made or levied under this Act is in arrears;

(c) in the opinion of the Public Works Director, any person consuming water from that supply allows or has allowed any water from that supply to run to waste;

(d) any person, public authority or Village Council is in breach of the conditions of any agreement or extraction licence under which water is supplied, or has failed to comply with this Act or the Regulations;

(e) any person, public authority or Village Council is in breach of any order issued under Division 5 of this Part, or of the provisions of this Act or any regulations made under it.

### **32. Power to suspend supplies**

The Public Works Director may restrict, suspend or stop the supply of water under section 32 to any public or private water works:

(a) whenever, in the opinion of the Public Works Director, there is an actual or anticipated shortage of water;

(b) whenever it may be expedient or necessary for the purposes of extending, altering, testing, treating, maintaining or repairing the water works or for the purposes of the connection of services or for the fighting of fires;

(c) whenever any water works are damaged or there is any breakdown in the water works.

### **33. Powers of the Health Minister**

Where the Health Director is of the opinion that any water contained in any bore, private or public water supply is likely or may become polluted or there is likely to be, or may become, a threat to public health, the Health Director, after consultation with the Public Works Director and, where appropriate, with any person, public authority or Village Council may -

(a) require the Public Works Director to restrict, suspend or stop the supply of water to any person, public authority or Village Council;

(b) treat or require the Public Works Director to treat any water contained in any water works associated with such supply.

## **Division 5 - Water supply, extraction and use orders**

### **34. Temporary water restrictions**

(1) If satisfied that it is necessary or expedient to do so in the public interest (for example such as to cope in times of actual or anticipated shortage of water, or for

reasons of public health or emergencies) the Public Works Director may, by order in writing-

(a) restrict the amount of water which may be extracted or maximum rate at which water may be extracted from any bore, water reservoir, or public water supply; or

(b) prohibit the taking of such water.

(2) As soon as practicable after making such an order under subsection (1), the Public Works Director must cause notice of the order to be broadcast on television and or radio and or published in any newspaper.

(3) An order under this section:

(a) ceases to have effect if it is repealed, or

(b) where the order provides that it ceases to have effect on a specified day or on the expiry of a specified period, ceases to have effect on that day or on the expiry of that period, whichever first occurs.

(4) In making an order under subsection (1) to cope with actual or anticipated shortage of water, the Public Works Director shall give priority to providing water for efficient domestic household use and essential community services.

(5) In the case of a declared national disaster, the mandate of the National Disaster Council supersedes the mandate of the Public Works Director under this section.

### **35. Rainwater capture works**

The Minister responsible for water may act through the Public Works Director require any person, public authority or Village Council to install and maintain rainwater capture works.

### **36. Production of information**

The Public Works Director may, by order in writing served on any person, public authority or Village Council who is extracting water from any bore, water reservoir, public water supply, or rainwater capture works, direct the person, public authority or Village Council to furnish the Minister with specified information in relation to the condition of any bore or water works, or the extraction and use of water.

### **37. Water conservation orders**

(1) Despite the provision of this Act or any other written law, where the Minister is satisfied that any act or omission by any person or public authority or Village Council may result, directly or indirectly, in the inequitable distribution, loss,

wastage or undue depletion of any water, the Public Works Director may by order direct to do any one or more of the following:

(a) to close and shut off the supply of water from any bore, public water supply or private water works;

(b) to restrict or limit the amount of water taken from any bore, public water supply or private water works;

(c) to discontinue the use of any bore, public water supply or private water works;

(d) to use, or to cease using, the water extracted from any bore for such purposes as may be specified in the order;

(e) to deal with any water extracted from any bore or contained in any public water supply or private water supply in such manner as may be specified in the order;

(f) to cease or to refrain from doing any act or omission on any land which could or may be likely to harm Niue's water lens, storage or supply, as may be specified in the order;

(g) to erect such structures or to carry out such works, including water works, or to repair, maintain, alter or remove such structures or works as may be specified in the order.

(h) to take measures to repair any damage caused by the extraction or use, or misuse, or lack of maintenance of a bore or private water work,

(i) to take any other measures that Public Works Director considers to be necessary or expedient to promote the purpose and principles of this Act.

(2) An order made under subsection (1), and the terms of any such order, shall remain in force for the period specified in the order or until such order is revoked.

(3) If any person, public authority, Village Council or the occupier of any land to whom an order under this section is addressed shall fail to comply with any direction contained in such order within such time as is specified in the order, the Public Works Director may cause the provisions of the order to be carried out and may recover any expenses incurred from the person, public authority, Village Council or occupier of land to whom the order was addressed.

**PART 5- WATER QUALITY PROTECTION**  
**Division 1 - Water pollution control licence**

**38. Water pollution control licence**

(1) Subject to the provisions of this Part 5, no person or public authority shall cause or permit any matter to be disposed of underground by means of a water bore, or in such a way as may pollute any groundwater.

(2) Any person, Village Council or public authority wishing to undertake any activity listed in Schedule 2 to this Act shall apply to the Environment Director for a water pollution control licence in accordance with this Division.

(3) Subject to any conditions specified on the licence and the provisions of this Act, a water pollution control licence entitles its holder to carry out the scheduled activities at locations or premises specified in the licence.

**39. Application for granting of a water pollution control licence**

(1) An occupier of premises may make an application for a water pollution control licence.

(2) An application for a water pollution control licence shall be made to the Environment Director in the prescribed form, with the prescribed fee and, be accompanied by such information as is required by the Environment Director or prescribed by the regulation.

(3) The Environment Director may:

(a) require an applicant for an water pollution control licence to provide additional information within a specified time., and

(b) delay consideration of the application until the information is provided or, if the information is not provided within the time specified, may refuse to consider the application.

(4) The Environment Director may refuse to accept an application for a water pollution control licence if it appears to the Environment Director that the application is incomplete.

**40. Objections to granting of water pollution control licence**

(1) On receipt of an application, the Environment Director shall advertise for a two week period in the Gazette or media, a public notice:

(a) providing a brief description of the application, and



(b) requesting all interested persons to inform the Public Works Director whether they support the application or object to it, and if they do so object, the reasons for that objection; and

(c) stating the last day on which such information will be received and the name or official designation and address of the person to whom it should be sent.

(2) The Environment Director may:

(a) require an objector or applicant to provide additional information within a specified time.

(b) delay consideration of the objection or response until the information is provided or, if the information is not provided within the time specified, may refuse to consider the objection or response.

(3) Before making a determination on an application for a water pollution control licence in respect of which any objection has been made, the Environment Director must endeavour to resolve the issues raised by the objection by means of consultation with the applicant and the objector, with a view to reaching agreement on the matters raised by the objection.

#### **41. Determination of an application for a water pollution control licence**

(1) The Environment Director, after consultation with the Public Works Director and the Health Director may grant such an application subject to such conditions as the Directors shall see fit, or as are provided for in regulations, or may refuse to grant such an application.

(2) A water pollution control licence is not to be granted unless the Environment Director is satisfied that the applicant is a fit and proper person;

(3) The Environment Director shall not approve an application in respect of a water pollution control licence which in the opinion of the Environment Director, the Health Director, or the Public Works Director, would or may be, or is likely, to cause the pollution of any groundwater or be detrimental to any public water supply or to public health.

(4) A water pollution control licence is not to be granted unless the Environment Director is satisfied that adequate arrangements and conditions are in place to ensure the purpose and principles of this Act are upheld.

- (5) A water pollution control licence is not to be granted if the granting of the licence would be inconsistent with any provision of the Environment Act 2003.
- (6) After determining an application under this Division 1 of Part 5 of this Act, the Environment Director must cause notice of the determination to be given to the applicant and to each person who has made an objection in connection with the application.

#### **42. Conditions of a water pollution control licence**

- (1) A water pollution control licence is subject to such conditions as prescribed by Regulations under this Act and as the Environment Director may from time to time impose on the licence, including conditions:
  - (a) to give effect to any agreement between an applicant and objector;
  - (b) to give effect to the purpose and principles of this Act,
  - (c) relating to monitoring and reporting requirements of the licence holder.
- (2) Conditions may not be imposed on a water pollution control licence after it has been granted unless the Environment Director:
  - (a) has given written notice to the holder of the water pollution control licence that the Environment Director proposes to impose such conditions; and
  - (b) has given the holder of the water pollution control licence a reasonable opportunity to make submissions to the Environment Director with respect to the proposed conditions, and
  - (c) has taken any such submissions into consideration.

#### **43. Duration of a water pollution control licence**

A pollution control licence granted in accordance with this Division will remain in force for 3 years from the date it was granted.

#### **44. Renewal of a water pollution control licence**

A pollution control licence may be renewed from time to time by the Environment Director on the application of the licensee in the manner prescribed by the regulation to this Act.

#### **45. Amendment of a water pollution control licence**

(1) A water pollution control licence may be amended at any time during its currency on application by the holder of the licence or on the initiative of the Environment Director.

(2) The Public Works Director may amend a water pollution control licence, and may, without limitation, add to, vary or revoke:

(a) the activities authorised by the licence, or

(b) any conditions applying to that licence.

(3) Section 44 applies to an application for amendment made under this section, other than an application to amend the holder of the water pollution control licence.

(4) The Environment Director shall not amend any water pollution control licence under subsections (1) or (3) if such an amendment is inconsistent with the requirements of section 42.

#### **46. Suspension and cancellation of a water pollution control licence**

(1) The Environment Director may suspend or cancel a water pollution control licence on any one or more of the following grounds:

(a) that the holder of the pollution control licence has failed to comply with the conditions to which the licence is subject;

(b) that the holder of the pollution control licence has been convicted of an offence against this Act or the regulations; (c) if any fees, charges or civil penalties in respect of the pollution control licence have not been paid,

(2) During any period of suspension of a water pollution control licence:

(a) the holder of the pollution control licence is not authorised by such licence or otherwise to undertake any activity as authorised by such licence, and

(b) fees and charges payable under this Act in respect of the pollution control licence will continue to apply.

#### **47. Water pollution order**

(1) Despite this Act or any other written law, where the Environment Director is satisfied that any act or omission by any person or public authority or Village Council may result, directly or indirectly, in water pollution, the Environment Director may by order direct to do any one or more of the following:

(a) to cease or to refrain from doing any act or omission on any land which could or may be likely to harm Niue's water lens, storage or supply, as may be specified in the order;

(b) to discontinue the use of any sewerage works or any water works associated with it or connected to it;

(c) to erect such structures or to carry out such works, including private sewerage works, or to repair, maintain, alter or remove such structures or works as may be specified in the order;

(d) to treat any sewage or waste in a manner specified in the order;

(e) to prevent the amount of waste entering any groundwater, sea or cave in the manner specified in the order;

(f) to take action to remediate any land or water that has been contaminated in a manner specified in the order;

(g) to take any ancillary measures that the Water Supply Director considers to be necessary or expedient to promote the purpose and principles of this Act;

(2) An order made under subsection (1), and the terms of any such order, shall remain in force for the period specified in the order or until such time such order is revoked.

(3) If any person, public authority, Village Council or the occupier of any land to whom an order under this section is addressed shall fail to comply with any direction contained in such order within such time as is specified in the order, the Environment Director may cause the provisions of the order to be carried out and may recover any expenses incurred from the person, public authority, Village Council or occupier of land to whom the order was addressed.

## Division 2 - Sewerage and wastewater works

### 48. Sewerage works to be registered

The Public Works Director is to keep a register of all sewerage works, which, without limitation, shall include:

(a) The location of the work;

(b) The occupier of the land on which the work is situated;

(c) The type of work;

(d) The age of the work, and

(e) The maintenance history of the work.

#### **49. Application for an approval of private sewerage works**

(1) Before the fitting of any private sewerage works on any premises the occupier shall apply to the Public Works Director for approval..

(2) An application shall be in the prescribed form with the prescribed fee and contain a full description of the private sewerage works proposed and any other information or drawings as may be required of the Public Works Director.

(3) The Public Works Director may grant such an application subject to such conditions as the Public Works Director may see fit, or refuse such an application.

(4) No fitting of any private sewerage works on any premises shall commence or proceed except in accordance with a permit granted by the Public Works Director pursuant to this section, and all such private sewerage works shall be carried out in accordance with the provisions of the National Building Code for Niue.

#### **50. Disposal of wastewater**

The outlet from sinks, basins, washing machines or swimming pools or water catchment on any premises shall be fed into a soak hole constructed to the satisfaction of the Environment Director or shall be disposed of in such other manner as the Environment Director may require.

### **Division 3 - Wellhead protection**

#### **51. Wellhead protection plans**

(1) The Public Works Director, in consultation with the Environment and Health Directors, may prepare a wellhead protection plan for a public water supply bore.

(2) Without limitation, a wellhead protection plan may include:

(a) an assessment of potential sources of pollution, and of the susceptibility of the water supply to pollution.

(b) the establishment of wellhead protection zones within which:

(i). activities listed in Schedule 2 may be subject to specified conditions;

(ii). activities listed in Schedule 2 may be prohibited;

(iii). activities not listed in Schedule 2 may require a water pollution control permit, and be subject to specified conditions, or

(iv). activities not listed in Schedule 2 may be prohibited;

(c) contingency plans in case of emergencies affecting the quality of water from the public water supply bores to which the plan relates;

(d) such other measures determined by the Public Works Director as may be necessary or expedient to protect the public water supplies, and

(e) implementation actions and timeframes.

(3) Where a wellhead protection plan contains prohibitions or specified conditions of kinds specified in subsections (2)(b)(ii), (2)(b)(iii), or (2)(b)(iv), such activities and the prohibitions or conditions shall be made as a regulation to this Act.

## PART 6 - OFFENCES AND PENALTIES

### 52. Offences and Penalties

(1) Any person commits an offence who:

(a) constructs, alters, repairs or maintains a bore or public water supply works, or causes any such bore or public water supply works to be constructed, altered, repaired or maintained, unless authorised to do so by the Public Works Director.

**Penalty:**

In the case of an individual: an amount not exceeding 5 penalty units;

In the case of a body corporate: an amount not exceeding 5,000 penalty units and/or a term not exceeding 10 years imprisonment for a Director of the body corporate.

(b) extracts or uses water from any bore or other water works, other than public water supply water works or rainwater capture works, except as authorised by an extraction licence granted under Part 4 of this Act.

**Penalty:**

In the case of an individual: an amount not exceeding 5 penalty units;

In the case of a body corporate: an amount not exceeding 5,000 penalty units and/or a term not exceeding 10 years imprisonment for a Director of the body corporate.

(c) extracts or uses water from any public water supply works in excess of the volume or rates specified in Schedule 1 to this Act, or uses the water so extracted for purposes or for activities specified in Schedule 1 to this Act, except as authorised by an extraction licence granted under Part 4 of this Act.

**Penalty:**

In the case of an individual: an amount not exceeding 50 penalty units;

In the case of a body corporate: an amount not exceeding 10,000 penalty units and/or a term not exceeding 20 years imprisonment for a Director of the body corporate.

(d) makes a connection to, or disconnect from, any public water supply works.

**Penalty:**

In the case of an individual: an amount not exceeding 5 penalty units;

In the case of a body corporate: an amount not exceeding 5,000 penalty units and/or a term not exceeding 10 years imprisonment for a Director of the body corporate.

(e) causes or permits any matter to be disposed of underground by means of a water bore, or in such a way as may pollute any groundwater.

**Penalty:**

In the case of an individual: an amount not exceeding 5,000 penalty units;

In the case of a body corporate: an amount not exceeding 10,000 penalty units and/or a term not exceeding 20 years imprisonment for a Director of the body corporate.

(f) causes or permits either directly or indirectly any water to be polluted or causes or permits the doing of an act likely to lead to the pollution of any water, other than in accordance with a water pollution control licence issued under Part 5 of this Act.

**Penalty:**

In the case of an individual: an amount not exceeding 5,000 penalty units;

In the case of a body corporate: an amount not exceeding 10,000 penalty units and/or a term not exceeding 20 years imprisonment for a Director of the body corporate.

(g) carries out activities on premises other than in accordance with a wellhead protection plan.

**Penalty:**

In the case of an individual: an amount not exceeding 5,000 penalty units;

In the case of a body corporate: an amount not exceeding 10,000 penalty units and/or a term not exceeding 20 years imprisonment for a Director of the body corporate.

(h) contravenes an order made under Parts 4 or 5 of the Act.

**Penalty:**

In the case of an individual: an amount not exceeding 5,000 penalty units;

In the case of a body corporate: an amount not exceeding 10,000 penalty units and/or a term not exceeding 20 years imprisonment for a Director of the body corporate.

(i) Wilfully damages, destroys or interferes with, or attempts to damage, destroy or interfere with any bore, water storage tank, meter or public water supply works or water works.

**Penalty:**

In the case of an individual: an amount not exceeding 5,000 penalty units;

In the case of a body corporate: an amount not exceeding 10,000 penalty units and/or a term not exceeding 20 years imprisonment for a Director of the body corporate.

(j) fails to comply with the terms of any order of the court made under this Act and served on that person.

**Penalty:**

In the case of an individual: an amount not exceeding 5,000 penalty units;

In the case of a body corporate: an amount not exceeding 10,000 penalty units and/or a term not exceeding 20 years imprisonment for a Director of the body corporate.

(2) Subsections (1)(a) to (1)(d) do not apply to the Public Works Director or any person authorised by the Public Works Director.

(3) Any person who

(a) opens any ground, exposes any pipe or other work of a water supply authority:

i). without lawful excuse, or

ii). without having given the water supply authority at least 2 days' written notice of intention to open the ground.

**Penalty:**

In the case of an individual: an amount not exceeding 5 penalty units;



In the case of a body corporate: an amount not exceeding 100 penalty units and/or a term not exceeding 20 years imprisonment for a Director of the body corporate.

(b) Obstructs or hinders an authorised officer in the exercise of the authorised officer's functions under this Act,

**Penalty:**

In the case of an individual: an amount not exceeding 5 penalty units;

In the case of a body corporate: an amount not exceeding 100 penalty units.

(c) Provides false or misleading information under a requirement under this Act to provide information,

**Penalty:**

In the case of an individual: an amount not exceeding 5 penalty units;

In the case of a body corporate: an amount not exceeding 100 penalty units.

(d) fails to submit any report or provide information as required under this Act,

**Penalty:**

In the case of an individual: an amount not exceeding 5 penalty units;

In the case of a body corporate: an amount not exceeding 100 penalty units.

(e) fails to give all reasonable assistance to an authorised officer who is exercising powers or carrying out duties, or attempting to do so, under this Act;

**Penalty:**

In the case of an individual: an amount not exceeding 5 penalty units;

In the case of a body corporate: an amount not exceeding 100 penalty units.

(f) Offers or gives any inducement to any authorised officer exercising functions and powers under this Act which might reasonably be considered to have the purpose or effect of influencing a decision of that person under this Act.

**Penalty:**

In the case of an individual: an amount not exceeding 5 penalty units;

In the case of a body corporate: an amount not exceeding 100 penalty units.

**53. Limitation period for offences**

A prosecution for an offence under this Act may not be commenced more than 3 years after the alleged commission of the offence.

**54. Penalty notices**

(1) In this section:

"penalty notice" means a notice to the effect that, if the person served with the notice does not wish to have an alleged offence dealt with by a court, the person may pay, in accordance with the notice, the penalty specified in the notice.

"penalty notice offence" means an offence against section 52, or against this Act or any regulations that is declared by the regulations to be a penalty notice offence.

(2) The responsible Director may serve a penalty notice on a person who appears to the Director to have committed a penalty notice offence.

(3) The penalty to be specified in a penalty notice is:

(a) the amount prescribed by the regulations for the alleged offence, being an amount not exceeding the maximum penalty which could be imposed for the offence by a court, or

(b) community service work of a type and for a time specified in the regulation for the alleged offence.

(4) A penalty notice may be served personally or by post.

(5) If the penalty prescribed by the regulations for an alleged offence is paid or undertaken under this section, no person is liable to any further proceedings for the alleged offence.

(6) Payment or undertaking of a penalty under this section is not to be regarded as an admission of liability for the purposes of, nor is it in any way to affect or prejudice any civil claim, action or proceeding arising out of the same occurrence.

(7) The responsible Director may withdraw a penalty notice at any time within 28 days after the date on which it was served and, in that event:

(a) the amount payable, or community service work to be undertaken under the notice ceases to be payable or undertaken, and

(b) any amount that has been paid under the notice is repayable to the person by whom it was paid, and

(c) further proceedings for the offence in respect of which the notice was served may be taken against any person (including the person on whom the notice was served) as if the notice had never been served.

(8) This section does not limit the operation of any other provision of this or any other written law in relation to proceedings that may be taken in respect of offences.

## **55. Community service orders**

(1) Upon the conviction of any person for any offence committed against section 52 or of this Act or regulations, the prosecution may make submissions to the court on the appropriateness of a community service order and of the availability of any community service work.

(2) The court may sentence a person to a community service order instead of or in addition to a fine.

(3) The court may order a person sentenced to a community service order to work under appropriate supervision a specified number of hours for a charitable or community cause or organisation, and where possible, the work should relate water resource or environmental matters.

(4) The court may specify whether the responsible Director or a nominated person is to supervise the community service order work.

## **56. Civil claims for water pollution damage**

Despite the outcome of any criminal proceedings under this Act, a person who has suffered loss as a result of any water pollution incident may bring civil proceedings against the person or entity that caused the pollution which may include a claim for:

(a) economic loss resulting from a water pollution incident or from activities undertaken to prevent, mitigate, manage, clean up or remedy any pollution incident;

(b) loss of earnings arising from water pollution incident;

(c) loss of any water resource.

## **57. Common law causes of action**

Common law causes of action are preserved under this Act.

## **58. Proceedings for restraint of breaches of Act**

Without prejudice to the power of the Court to strike out vexatious proceedings, any person may bring proceedings in the Court for an order to prevent or remedy or cease a breach of this Act, whether or not any right has been, or may be, infringed as a result of that breach.

## 59. Orders of the Court

(1) Where the Court is satisfied that a breach of this Act has occurred, or that a breach is likely to occur unless prevented by an order of the Court, it may make any order it thinks fit to prevent, remedy or cease the breach including enforcement orders, declarations, and injunctions.

(2) Where an injunction or other remedy is sought concerning any activity governed by this Act, the Court must order that person who brings such proceedings to give an undertaking as to damages or to provide security for costs.

(3) The Court must not award costs against a person who brings proceedings to stop any activity or who asks for any order requiring compliance with this Act unless the Court is satisfied that the person has acted vexatiously or maliciously in bringing the proceedings and that the proceedings have no merit.

## 60. Appeal

(1) An appeal against any of the following decisions made by the Directors with functions under this Act shall lie with each responsible Minister and to Cabinet:

(a) a decision refusing to grant, or the imposition of conditions on, or renew a licence under Part 4 or 5 of this Act,

(b) a decision to grant a licence under Part 4 or 5 of this Act, if the appellant was an objector to the granting or amendment of the licence, or

(c) a decision suspending or cancelling a licence granted under Part 4 or 5 of this Act,

(d) a decision refusing to amend a licence granted under Part 4 or 5 of this Act in accordance with an application made by its holder.

(2) Any person who makes an appeal to the responsible Minister or Cabinet for a review of a decision made under this Act shall further appeal to the Court and any such appeal to Court is to be made in accordance with rules of court, but may not be made more than 28 days after the date on which the decision was made.

(3) The lodging of an appeal does not operate to stay action on the decision appealed against, except to the extent that the Court otherwise directs.

## PART 7 - INTEGRATED WATER RESOURCE MANAGEMENT PLAN

### 61. Integrated water resource management plan

(1) The Public Works Director may direct an authorised officer to prepare and implement an integrated water resource management plan for a designated area.

(2) The integrated water resource management plan shall-

(a) identify the area to which it relates;

(b) set out the objectives to be achieved by the plan; and

(c) specify the management measures to be adopted to achieve those objectives; and

(d) specify what protection is to be given to the designated area;

(e) specify the limits within which the water may be extracted; and

(f) specify what licensing requirements (if any) are to apply to anyone who wants to operate within such an area; and

(g) specify what protection is to be given to any other designated water area (whether by way of management measures, habitat protection, exploitation limits or licensing requirements) for the purpose of-

(i) ensuring the conservation and sustainability of the integrated water resource management plan of the water area in accordance with its integrated water resource management plan; or

(ii) ensuring the objectives set out in the plan can be achieved;

### 62. Variation of integrated water resource management plan

(1) If the Public Works Director thinks that a integrated water resource management plan should be varied in order to ensure the effective conservation or the efficient use of the water area to which it relates, the Director may, in writing, prepare a variation of the plan and submit it to Cabinet for approval.

(2) A variation takes effect when it is approved by Cabinet or at such other time as Cabinet determines.

### **63. Exemptions**

- (1) Cabinet may, on application made by or on behalf of a person or a group of persons, declare that an integrated water resource management plan, or a specified part of such plan, is not to apply to a person or group.
- (2) Cabinet may think a declaration subject to such conditions, if any, as Cabinet thinks necessary in order to ensure the effective conservation or efficient use of the water to which the integrated water resource management plan relates.

### **64. Revocation of integrated water resource management plan**

If Cabinet is satisfied that the objectives set out in an integrated water resource management plan have been achieved, the Cabinet may revoke the plan by notice in the *Gazette*.

### **65. Offences**

- (1) A person may not contravene or fail to comply with a provision of an integrated water resource management plan that applies to the person.
- (2) A person must not contravene or fail to comply with a direction given to the person by an authorized officer, being a direction that is consistent with an integrated water resource management plan, or part of such a plan, that applies to the person

**Penalty:**

In the case of an individual: 5 penalty units;

In the case of a body corporate: 5000 penalty units.

## **PART 8 - MISCELLANEOUS**

### **66. Regulations**

The Cabinet may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary, convenient or expedient to be prescribed for carrying out or giving effect to this Act and, without limitation, for or with respect to:

- (a) the forms to be used in connection with the administration of this Act,
- (b) the fees and charges to be imposed in connection with the administration of this Act, and the circumstances under which fees and charges may be waived, reduced or remitted,

(c) subject to section 54 specify penalty notice offences and fixing penalties in relation to them;

(d) provision for or with respect to the exemption of any person, matter or thing from the operation of this Act or any specified provision of this Act, either unconditionally or subject to conditions;

(e) amend or replace the Schedules to this Act; and

(f) establishing a Committee or Advisory Body for the purposes of administration of this Act.

#### **67. Schedules 1 and 2**

(1) The activities listed in Schedules 1 and 2 are “scheduled activities” for the purposes of this Act.

(2) A specified activity or premise is a scheduled activity for the purposes of this Act only in specified circumstances or only in specified areas or only under specified conditions.

#### **68. Personal liability of officers**

No person shall be personally liable for any act done by them in good faith in the exercise of any duties, powers, or authorities imposed or conferred on him by this Act unless the performance of any duties, powers or authority is exercised in a negligent manner.

#### **69. Exclusion of Crown liability**

(1) Neither the Crown nor any public authority is subject to any action, liability, claim or demand arising:

(a) from the unavailability of water, or

(b) from any failure in the quality or quantity of water, or

(c) as a consequence of anything done or omitted to be done in good faith by a Director with responsibilities under this Act, or by a person authorised by that Director, in the exercise any functions under this Act unless any such functions are exercised in negligent manner.

(2) Neither the Crown nor any public authority is subject to any action, liability, claim or demand arising as a consequence of:

(a) the use in good faith of any public water supply work, or

(b) the release of water from any public water supply work, by the Water Supply Director, or person authorised by the Public Works Director, in the exercise of any functions under this Act unless any such functions are exercised in negligent manner.

## **70. Compensation**

Whenever, for the purposes of Part 4, it becomes necessary to acquire or to resume any land or interest under sections 11 or 14 of the Niue Amendment Act (No 2) 1968, compensation under section 13 shall only be payable -

(a) in respect of land that any storage tank, bore or equipment is erected upon and the land surrounding such storage tank, bore and equipment as long as the bore, storage tank and equipment is in use or is likely to be used;

(b) in respect of any damage occasioned and not made good in the course of constructing, altering, repairing or maintaining any public water works; and not otherwise.

## **71. Effect of this Act on other Acts**

(1) The provisions of this Act apply even if they are inconsistent with any other law.

(2) Compliance with the requirements of this Act does not relieve a person from separate compliance with any other law of Niue.

(3) This Act overrides any approval given under any other law or public authority.

(4) Law, for the purposes of this section, does not include the Constitution.

## **72. Repeals and savings**

(1) The Water Resources Act 1996 is repealed.

(2) At the commencement of this Act:

(a) an application for a license or for an endorsement of a license made under the repealed Act, the processing of which had not been completed, is to be processed under this Act except as regards the fee payable;

(b) any plan made under the repealed Act continues as if it was made under this Act until expiry or it is cancelled.



## SCHEDULE 1

(Sections 9 and 22(3))

### 1. Activities requiring an extraction licence under Part 4

The following activities require an extraction licence in accordance with Part 4 of this Act:

- (1) All extraction of water for any purpose from bores or works other than public water supply works or rainwater capture works.
- (2) All extraction of water from public water supply works for commercial or experimental or research purposes of an amount that is determined from time to time by the Public Works Director.
- (3) All extraction and use of water for non-subsistence agricultural irrigation activities.
- (4) All extraction and use of water for mining operations, whether for use or dewatering.
- (5) All extraction and use of water for commercial manufacturing or processing operations.
- (6) All extraction and use of water for service provider accommodation of more than 10 beds including grounds maintenance and a swimming pool.
- (7) All extraction and use of water for marine purposes.
- (8) All extraction and use of water for horticultural purposes.
- (9) All extraction and use of water for commercial farming and animal husbandry.

## SCHEDULE 2

(Sections 9, 42(2) and 55(2))

The following activities require a water pollution control licence in accordance with Part 5 of this Act:

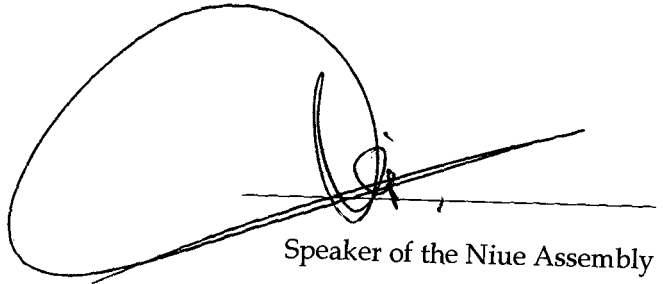
- (1) Food, livestock or agricultural processing, including fish processing.
- (2) Timber milling.
- (3) Power generating facilities.
- (4) Aircraft facilities.
- (5) Fuel storage facilities and retail outlets.
- (6) Service stations.
- (7) Mechanical repair depots.
- (8) Waste collection and disposal sites and facilities.
- (9) Hospitals.
- (10) Sewage treatment and conveyance or disposal operations.
- (11) Premises storing more than 1000 litres of oil.
- (12) Premises storing commercial quantities of agricultural chemicals or pesticides.
- (13) Chemical storage facilities.
- (14) Chemical industries or works for the commercial production of, or research into, chemical substances.
- (15) Extractive industries.
- (16) Commercial intensive livestock activities including piggeries.
- (17) Logging operations.
- (18) Mining exploration and operations.
- (19) Manufacturing and processing industries including desalination.
- (20) Tourism operations of more than 10 beds.

(21) Wash down pads and premises.

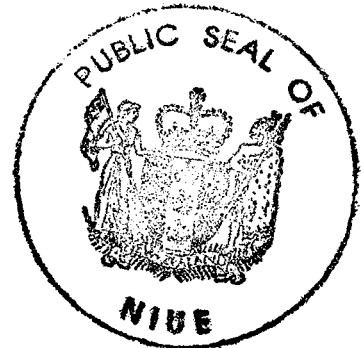
(22) Marine powered vessels.

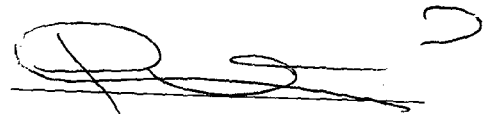
I, AHOHIVA LEVI, Speaker of the Niue Assembly, hereby certify that the requirements of Article 34 of the Niue Constitution have been duly complied with.

SIGNED AND SEALED at the Assembly Chambers this *2nd* day of *July* 2012.

  
Speaker of the Niue Assembly

COUNTERSIGNED in the presence of the Speaker



  
Clerk of the Niue Assembly

This Act was passed by the Niue Assembly on the 14<sup>th</sup> day of March 2012.  
This Act is administered by the Departments for Public Works, Environment and Health.