



Tonga

# **FOOD ACT 2014**

**Act 18 of 2014**





## FOOD ACT 2014

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# FOOD ACT 2014

Act 18 of 2014

**AN ACT TO REGULATE THE MANUFACTURE, SALE, IMPORT AND EXPORT OF FOOD FOR COMMERCIAL PURPOSES, TO GUARANTEE FOOD SAFETY AND FITNESS FOR HUMAN CONSUMPTION, TO PROMOTE FAIR TRADE PRACTICES IN FOOD AND TO PROVIDE FOR RELATED MATTERS**

I assent,  
TUPOU VI,  
16<sup>th</sup> October 2014.

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

## PART I - PRELIMINARY

### 1 Short Title

This Act may be cited as the Food Act 2014.

### 2 Interpretation

In this Act, unless the context otherwise requires:

“**adulterate**” means to make impure in order to give a false impression or value or to hide defects, by the addition of a foreign, inferior or inert substance to food, or by the exclusion or removal of a valuable or necessary ingredient of food;

“**advertisement**” includes any representation – written, pictorial, visual or otherwise – made for the purpose of promoting directly or indirectly the sale or disposal of any food or any substance represented as food;

“**appliance**” means the whole or any part of any implement, machine, instrument, apparatus or other object used or capable of being used in or in connection with the production, manufacture, treatment, packing, packaging, labelling, transport, handling, serving or storage of any food;

“**Authority**” means the National Food Authority established under section 3 of this Act;

“**authorized officer**” means a person authorized and qualified to act as such under section 10(1)(b) of this Act;

“**Codex**” means **Alimentarius Commission**, the World Organisation responsible for Food Safety Standards to protect human health in international trade in food and food products;

“**contaminant**” means any substance not intentionally added to food, which is present in such food as a result of the production (including operations carried out in crop husbandry, animal husbandry and veterinary medicine), manufacture, preparation, treatment, packing, packaging, transport or holding of such food or as a result of environmental contamination, but does not include insect fragments, rodent hairs or other extraneous matter;

“**contamination**” means the introduction or occurrence of a contaminant in food;

“**Council**” means the National Food Council of the Authority established under section 6 of this Act;

“**Court**” means a court with the competent legal authority;

“**Director**” means the Director of the Authority;

“**export**” means to take or cause to be taken out of the Kingdom for commercial purposes;

“**exporter**” includes any person who, whether as owner, consignor, consignee, agent or broker, is in possession of or in any way entitled to the custody or control of any food taken out of or intended to be taken out of the Kingdom;

“**food additive**” means any substance not normally consumed as food by itself and not normally used as a typical ingredient of food, whether or not it has a nutritive value, the intentional addition of which to food for a technological (including organoleptic) purpose in the production, manufacture, preparation, treatment, packing, packaging, transport or storage of such food results, or may be reasonably expected to result (directly or indirectly), in it or its by-products becoming a component of or otherwise affecting the characteristics of such food, but does not include contaminants

or substances added to food for the purpose of maintaining or improving nutritional qualities;

“**food business**” means any business, where production, manufacture, preparation, treatment, packing, packaging, transport, handling, labelling, grading, serving, storage or sale in relation to food is carried out for commercial purposes;

“**food production chain**” means all stages of production from primary production of food to food handling and food sale;

“**food safety**” means the assurance that food will not cause harm to the consumer when it is prepared or eaten according to its intended use;

“**food**” means any substance, whether processed, semi-processed or raw, which is intended for human consumption, and includes drink, chewing gum and any substance which has been used in the production, manufacture, preparation or treatment of food, but does not include cosmetics or tobacco or substances used only as drugs;

“**import**” means to bring or cause to be brought within the Kingdom for commercial purposes;

“**importer**” includes any person who, whether as owner, consignor, consignee, agent or broker, is in possession of or in any way entitled to the custody or control of any food brought in or intended to be brought within the Kingdom;

“**improvement notice**” means a notice served under section 21 of this Act;

“**ingredient**” means any substance, including a food additive, used in the manufacture or preparation of a food and present in the final product;

“**IPPC**” means International Plant Protection Convention, the World Organisation responsible for Plant Health Standards for international trades in plants and plant products;

“**label**” means any tag, brand, mark, pictorial or other descriptive matter written, printed, stencilled, marked, embossed or impressed on, or attached to, a container of food or its package;

“**manufacture**” includes processing and preservation and other related activities;

“**Minister**” means the Minister for Health or such other Minister to whom primary responsibility for food is assigned;

“**official analyst**” means a person authorized and qualified to act as such under section 10(1)(c) of this Act;

“**official laboratory**” means a laboratory designated or approved as such under section 10(2) of this Act;

“**OIE**” means International Office Epizootics, the World Organisation for Animal Health responsible for Animal Health Standards for international trade in animals and animal’s products;

“**package**” includes anything in which food is wholly or partially placed or wrapped;

“**premises**” includes any building, tent or other structure, permanent or otherwise, together with the land on which same is situated and any adjoining land employed in connection therewith, used for the production, manufacture, packing, packaging, transport, handling, serving, storage or sale of any food;

“**production**” means the cultivation, rearing or growing of food including harvesting, milking and farmed animal production prior to slaughter;

“**scientific sub-committee**” means the sub-committee established in section 8(5)(a) of this Act;

“**sell**” includes to offer, advertise, keep, store, display, transmit, consign, convey or deliver for sale, or to exchange or to dispose of to any person in any manner whether for a consideration or otherwise, and “**sold**”, “**selling**” and “**sale**” shall have corresponding meanings;

“**stages of production**” includes import, storage, transport and sale;

“**street food**” means ready-to-eat food prepared, sold or offered for consumption in streets and other public places;

“**substance**” includes any solid, liquid or gaseous materials;

“**traceability**” means the ability to follow the movement of a food through specified stages of production, processing and distribution;

“**treated**” means coloured, stained, powdered, polished, coated, mixed, preserved, flavoured, diluted or thickened with any substance, and “**treat**” and “**treatment**” shall have corresponding meanings;

“**unsanitary conditions**” means such conditions or circumstances as might cause contamination of food or render the same injurious or dangerous to health;

“**vehicle**” means any vessel, aircraft, conveyance, cart, container, animal or other thing that can transport food from one place to another; and

“**wholesome**”, in relation to food, means to be natural, clean, safe and not adulterated.

## PART II – ADMINISTRATION

### 3 Establishment of National Food Authority

- (1) There is hereby established the National Food Authority.



- (2) The Minister shall be the National Food Authority under this Act.

#### **4 Functions of the Authority**

The principal functions of the Authority shall be to:

- (a) employ risk management with the goal of ensuring that all:
  - (i) food produced in the Kingdom, whether for domestic consumption or export; and
  - (ii) food distributed or marketed in the Kingdom, whatever its origin; meets the prescribed standards of food safety and food quality;
- (b) coordinate and harmonize food control activities in the Kingdom at all stages of production, manufacture and distribution;
- (c) prevent and protect against fraud in connection with the sale of food;
- (d) formulate strategies and policies on food, nutrition and food security, including procedures for emergency response, and monitor their implementation;
- (e) encourage and promote research on food matters to facilitate the development of the food industry within the Kingdom;
- (f) provide food safety and food quality inspection and certification services as necessary;
- (g) consult widely with all sectors of the food chain in carrying out its activities under this section;
- (h) provide advice, information or assistance to any public authority in relation to food control, food safety, food quality assurance and food trade;
- (i) obtain, compile and keep under review information concerning food control, food safety, food quality assurance and food trade;
- (j) promote consumer education regarding food safety and nutrition; and
- (k) carry out any other matters in connection with or reasonably incidental to the foregoing.

#### **5 Budget and funds of the Authority**

In addition to an annual budgetary allocation from the Legislative Assembly, funds of the Authority shall include such moneys or other assets as may accrue to or vest in the Authority by way of grants, subsidies, donations or gifts.

#### **6 Establishment of National Food Council**

- (1) There is hereby established the National Food Council.

- (2) The Council shall consist of not less than three and not more than 7 members appointed by the Minister with the consent of Cabinet, and one of whom shall be appointed as chairman.
- (3) The members of the Council shall hold office for a term of two years, and may be reappointed.
- (4) The Council shall have the power to co-opt additional members.
- (5) Additional co-opted members shall -
  - (a) hold office for such periods of time and upon such terms and conditions as shall be determined by the Minister; and
  - (b) have the same rights, powers and duties as members of the Council.
- (6) Members of the Council shall be paid meeting fees according to government policy.
- (7) The Minister may remove a member for misconduct, for infirmity of body or mind, for conflict of interests or for having been convicted of a crime.
- (8) The quorum for the Council shall be at least one half of the Council members.
- (9) The Council may make provision for the conduct of its meetings and the procedures to be followed at such meetings but shall meet at least four times annually.

## **7 Secretariat**

- (1) There shall be a secretariat responsible for supporting and facilitating the activities of the Council, including meetings and correspondence.
- (2) The secretariat shall be appointed by the Authority.

## **8 Functions of the Council**

- (1) The functions of the Council shall be to:
  - (a) advise the Authority on food control, food safety and food quality assurance matters, including the production, manufacture, import, export, labelling and sale of food, on consumer protection and emerging food control issues including street food and foods for catering purposes;
  - (b) exercise oversight responsibility for the performance of the functions of the Authority;
  - (c) provide assistance and advice on the formulation, review and implementation of food policy, including procedures for emergency response;

- (d) propose and assist in the preparation and amendment of regulations, orders, standards, codes of practice, guidelines and notices under this Act;
  - (e) examine complaints and objections lodged in respect of decisions made or official actions taken under this Act;
  - (f) distribute information received from the Codex Alimentarius Commission, the IPPC, the OIE or other international or regional standard-setting bodies and coordinate the circulation of draft standards within the Kingdom and the collection of comments thereon from interested governmental and non-governmental actors;
  - (g) advise on the Kingdom's participation in the work of the Codex Alimentarius Commission, the IPPC and the OIE and their subsidiary bodies, including representation at meetings;
  - (h) promote consumer education regarding food safety and nutrition;
  - (i) on its own initiative, discuss any matter connected with food in the Kingdom, and report to the Authority on its discussions; and
  - (j) perform all other functions assigned to it by this Act or by the Authority.
- (2) The Council shall -
- (a) submit an annual report to the Authority; and
  - (b) provide a copy of such report upon request to any member of the public.
- (3) Members of the public may attend meetings of the Council if authorized by the Chairman of the Council.
- (4) The Council may appoint such sub-committees as it deems necessary, to assist it in the performance of its functions.
- (5) (a) Notwithstanding the provisions of sub-section 4, the Council shall appoint a scientific sub-committee to carry out food safety risk assessments and such other scientific tasks as may be assigned to it.
- (b) The scientific sub-committee shall be responsible for:
- (i) evaluating, in response to official requests or on its own initiative, physical, chemical or biological risks to human health arising throughout the food chain;
  - (ii) advising the Council and the Authority on the appropriate measures to be taken to protect consumer health; and
  - (iii) providing inputs into or developing proposed regulations or rules on subject matters within its mandate.
- (c) In carrying out its functions, the scientific sub-committee shall take into account:
- (i) the latest scientific research;

- (ii) information regarding procedures, methods and means of production;
- (iii) the results of sampling and analysis; and
- (iv) any other relevant data.

## **9 Minister's reserve powers**

- (1) If it appears to the Minister, upon proof, that there has been a serious failure by the Council to exercise its functions, he may give the Authority or the Council such directions as he considers appropriate.
- (2) If the Council fails to comply with such directions, the Minister may -
  - (a) give effect to them (and for that purpose may exercise any power of the Council); or
  - (b) notwithstanding section 6, remove all the members of the Council from Office and, until new appointments are made, carry out the Council's functions himself or appoint any other person or persons to do so.

## **10 Minister's powers of appointment and designation**

- (1) The Minister may appoint or designate any person with the appropriate qualifications as:
  - (a) an additional co-opted member of the Council;
  - (b) an authorized officer to carry out the functions assigned to such officers under this Act; or
  - (c) an official analyst for purposes of enforcement of this Act.
- (2) The Minister on the advice of the Council may designate any laboratory as an official laboratory for purposes of enforcement of this Act.

# **PART III – GENERAL PROVISIONS**

## **11 Authority's power to limit or ban substances in food**

The Authority may, on the basis of the results of scientific analysis or other credible scientific information and in accordance with applicable international standards, ban or set limits on the presence of additives, contaminants and residues in food or animal feed.

## **12 Authority's power to prohibit importation or cultivation**

Where the Authority determines that food of any specified class or description if imported or cultivated, taken or harvested from a specific area of the Kingdom may

be dangerous or injurious to persons consuming that food, it may by order prohibit the importation, cultivation, taking, harvesting or obtaining of that food.

### **13 Authority's emergency powers**

In the case of emergency or sudden necessity, in order to prevent or reduce the risk of a serious danger to public health or to mitigate the adverse consequences of a danger to public health, the Authority may by order:

- (a) totally prohibit the production, manufacture, preparation or sale of any food of the class specified by the Authority;
- (b) impose conditions on the production, manufacture, preparation or sale of any food of that class;
- (c) recall or otherwise cause to be removed from circulation any food of the class specified by the Authority in accordance with prescribed procedures;
- (d) cause any food to be tested or examined as prescribed;
- (e) cause any food to be held or isolated in any place and prohibit the removal of food from that place for such time as the Authority may prescribe; and
- (f) cause any food to be destroyed or otherwise disposed of as the Authority sees fit.

### **14 Food businesses**

- (1) All premises, including warehouses used for the preparation, sale, exposure or storage of food shall comply with the standards prescribed in regulations made under this Act.
- (2) All food businesses shall apply for a licence in accordance with the procedures to be prescribed in regulations under this Act.

### **15 Traceability**

- (1) Food businesses shall establish and implement a system enabling them to identify any person who was a:
  - (a) supplier; or
  - (b) receiver;of a food producing animal, food or substance intended to be or expected to be incorporated into a food.
- (2) Upon request of the Authority, food businesses shall make available all information collected under the system established under sub-section (1).

**16 Hygiene rules**

Food businesses and their employees shall comply with all applicable hygiene rules established under this Act.

**17 Labelling**

- (1) Every package of food intended for sale in the Kingdom shall contain a label which:
  - (a) permits its traceability;
  - (b) sets out such particulars as may be prescribed; and
  - (c) is in the English or Tongan language or a combination of both.
- (2) Where food other than packaged food is displayed for sale, it shall be labelled as prescribed in regulations made under this Act.

## **PART IV – INSPECTIONS**

**18 Objects of inspections**

Authorised officers appointed under this Act shall have powers to inspect -

- (a) food businesses and their surroundings and installations, as well as means of transportation, equipment and materials;
- (b) food ingredients, additives, disinfectants and any substance or processes used in the production, manufacturing or handling of food;
- (c) employees employed at the food business;
- (d) packaging material;
- (e) cleaning, disinfecting and maintenance at the food business; and
- (f) labelling.

**19 Powers of authorized officers**

- (1) Authorized officer shall have power to enter, at a reasonable hour without a warrant, any food business, premises, vehicle, ship, aircraft or other conveyance for the purpose of -
  - (a) inspecting, searching and examining ingredient, food or appliances;
  - (b) conducting such investigation and examination as are necessary to determine whether an offence has been committed or an obligation in relation to the standards and hygiene rules has been breached;

- (c) requiring the production of any document relevant to the activity, matter or thing under investigation including any licence or permit required by this Act;
  - (d) monitoring any work carried out in the premises;
  - (e) reading any values recorded by measuring instruments installed on the premises or by instruments in the possession of the authorized officer;
  - (f) taking photographs;
  - (g) seizing any ingredient, food, appliance or document reasonably suspected of being used contrary to the provisions of this Act; and
  - (h) requiring from any person any assistance that is relevant to the investigation or examination activity.
- (2) For the purpose of sub-section 1(g), the authorized officer shall provide the owner or occupier of the premises with a receipt signed by both the authorized officer and the owner or occupier of the premises.
- (3) An authorized officer exercising his authority under this section may request the presence and assistance of a police officer as he may consider necessary.
- (4) An authorized officer shall, for the purposes of searching such persons, have the power to stop, search and detain any person whom he has reasonable grounds to believe has committed an offence under this Act.
- (5) An authorized officer shall have power to arrest any person whom he has reasonable grounds to believe has committed an offence under this Act.
- (6) An authorized officer shall produce his official identification card upon request by any person affected by the exercise or performance of the authorized officer's power, duty or function under this Act.

## **20 Rights and duties of owners and persons in charge of food businesses**

During an inspection carried out under section 19, the owner or other person in charge of the food business or any employee present at the food business -

- (a) may accompany the authorized officer;
- (b) shall supply any information or documents requested by the authorized officer relating to installations, appliances, materials, procedures, processes or other matters relevant to any inspection; and
- (c) shall permit the taking of samples and the gathering of evidence including photographs.

## **21 Improvement notice**

If an authorized officer has reasonable grounds for believing that an owner or person in charge of a food business is failing to comply with this Act, he may serve an improvement notice on that owner or person in charge:

- (a) stating the authorized officer's grounds for believing that this Act is not being complied with;
- (b) specifying the measures which the authorized officer deems that the owner or person in charge shall take in order to remedy the failures referred to in paragraph (a); and
- (c) requiring the owner or person in charge to implement those measures, or measures which are at least equivalent to them, within the time period specified in the notice.

## 22 Food unfit for consumption

- (1) Where it appears that any food at a food business is unfit for human consumption or is likely to cause harm or danger to human health, an authorized officer shall -
  - (a) seize and seal such food, and issue a written notice to the owner or person in charge of the food business that the food or any specified portion of it is temporarily not to be sold, removed, manipulated, tampered with or otherwise altered without the authorization of the authorized officer;
  - (b) issue a written notice temporarily ordering the food removed to a specified place; or
  - (c) issue a written notice ordering the immediate destruction of the food.
- (2) Where any action is taken under sub-section (1) because of a threat to human health, the authorized officer shall immediately notify the Authority which shall take action to notify other relevant governmental and non-governmental parties so that all measures necessary to ensure public safety and the protection of consumers, including public warnings, recall orders, marketing restrictions, marketing bans or other appropriate measures may be adopted.
- (3) As soon as practicable, and in any event within 14 days, an authorized officer acting under sub-section (1)(a) or (b) shall review the situation at the affected food business to determine whether the circumstances that caused the notice no longer exist, and if the authorized officer:
  - (a) is so satisfied, he shall withdraw the notice and where appropriate, allow the release of any food from the place where it is stored; or
  - (b) is not so satisfied, he may order that any such food be destroyed or disposed of so as to prevent its being used for human consumption, and shall supervise the destruction of such food.



## PART V – IMPORT AND EXPORT

### 23 Requirements for imported food

- (1) No article of food shall be imported into the Kingdom unless it is accompanied by the prescribed documents and unless it is offered up for inspection by the Authority at the port of entry.
- (2) The Minister on the advice of the Council may by regulation provide that certain articles of food shall not be imported into the Kingdom unless they have been produced or manufactured in accordance with the prescribed standards.

### 24 Inspection and sampling

- (1) An authorized officer may inspect any food imported into the Kingdom and, for the purpose of analysis or inspection thereof, take samples of any such food.
- (2) Without prejudice to the provisions of sub-section (1), the Minister may, on the basis of risk assessments, by order declare any foods to be high risk foods and any such food when imported into the Kingdom shall be subject to mandatory inspection, sampling and analysis and may only be released for distribution and sale if the results of the inspection, sampling and analysis confirm their fitness for human consumption.
- (3) Where samples are taken under sub-section (1), the authorized officer shall, in the presence of the owner or importer or any person in control of the food, seal and mark them as prescribed.
- (4) Where a sample is taken pursuant to sub-section (1), the consignment from which it was taken shall not be released by an authorized officer except upon production of an official analyst's certificate to the effect that the food complies with the requirements of this Act.
- (5) The costs of any inspection, analysis and storage while analysis is being performed shall be borne by the importer.

### 25 Re-labelling and re-conditioning

- (1) Subject to the provisions of sub-section (2), the importation of any food which does not comply with the provisions of this Act is prohibited.
- (2) Where any article of food sought to be imported into the Kingdom would, if sold in the Kingdom constitute a contravention of this Act, the Authority may nonetheless permit its importation solely for the purpose of re-labelling or re-conditioning as prescribed.

- (3) In the event that any re-labelling or re-conditioning authorized under sub-section (2) is not carried out within the prescribed time period, the importer shall export or destroy such food at his expense.
- (4) Where an importer fails to export or to destroy imported food as required under sub-section (3), the Authority may order the destruction of or may destroy the imported food.
- (5) The Authority's decision to order the destruction of or to destroy the food under sub-section (4) shall not prevent the Government from later recovering the costs of such destruction from the importer as a debt.

## **26 Requirements for the export of food**

- (1) No item of food shall be exported from the Kingdom unless it has been certified by the Authority in accordance with prescribed procedures as:
  - (a) being fit for human consumption;
  - (b) having been produced, manufactured or processed in accordance with prescribed standards; and
  - (c) meeting the requirements of the importing country.
- (2) The Authority shall be the competent authority for purposes of certification of food items for export.

## **PART VI – OFFENCES AND PENALTIES**

### **27 Sale of unwholesome food**

- (1) Any person who sells any food that-
  - (a) has in or upon it any poisonous or harmful substance;
  - (b) is not wholesome or is otherwise unfit for human consumption;
  - (c) is adulterated; or
  - (d) is injurious to human health;commits an offence.
- (2) In determining whether an article of food is injurious to human health, due regard shall be given not only to the probable effect of such food on the health of a person consuming it, but also to the probable cumulative effect of articles of substantially similar composition on the health of a person consuming such articles in ordinary quantities.

**28 Sale of food not meeting standards**

- (1) Any person who prepares or sells any food for which there is a prescribed standard commits an offence unless the food complies with that standard.
- (2) Any person who sells any food which bears or has attached to it, or is contained in a package which bears or has attached to it, a name for a food for which there is a prescribed standard commits an offence unless the food complies with the prescribed standard for that food.

**29 False or misleading labelling**

- (1) Any person who packs or labels any food in a manner which is false or misleading or which does not comply with the labelling standards prescribed under this Act commits an offence.
- (2) Any person who sells any food with a false or misleading label or a label that does not comply with the labelling standards prescribed under this Act commits an offence.

**30 General offences**

Any person who-

- (a) prepares, stores, handles or sells food under unsanitary conditions;
- (b) imports, exports, produces, manufactures, prepares, stores or sells food which otherwise violates any provision of this Act;
- (c) operates a food business without any licence required by this Act;
- (d) fails to comply with an order issued under section 12 or 13;
- (e) fails to establish and implement a traceability system in accordance with section 15(1);
- (f) fails to follow the applicable hygiene rules established under this Act;
- (g) fails to ensure that all employees of a food business follow prescribed procedures;
- (h) fails to label food as prescribed under section 17;
- (i) fails to comply with an improvement notice issued under section 21;
- (j) tampers with any food samples taken under this Act;
- (k) breaks any seal or alters any markings made by an authorized officer without permission;
- (l) gives false information to an authorized officer;
- (m) attempts to improperly influence an authorized officer in the exercise of his official functions under this Act; or

- (n) poses as an authorized officer;  
commits an offence.

### **31 Offences by authorized officers**

An authorized officer who -

- (a) seizes food for any reason other than those prescribed in this Act;
- (b) discloses any information acquired in the course of exercising his official functions under this Act except where required to do so by his supervisor or by any Court; or
- (c) accepts any monetary or other benefit from a person affected by the exercise of official powers under this Act;

commits an offence

### **32 Publishing false or misleading advertisements**

Any person who, for the purpose of effecting or promoting the sale of any food, publishes or causes to be published an advertisement which is false or misleading commits an offence.

### **33 Offences by bodies corporate**

Where an offence under this Act which has been committed by a body corporate is proven to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of:

- (a) any director, chief executive officer, manager or other similar officer of the body corporate; or
- (b) any person who was purporting to act in the capacity of a director, chief executive officer, manager or similar officer;

that person as well as the body corporate shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

### **34 Penalties**

- (1) Any person who commits an offence under this Act shall be liable upon conviction –
  - (a) if it is an individual:
    - (i) in the case of a first time offence to a fine not exceeding \$10,000 or to imprisonment for a period not exceeding 3 years or both;

- (ii) in the case of a subsequent offence to a fine not exceeding \$20,000 or to imprisonment for a period not exceeding 5 years or both; and
    - (iii) where the offence is a continuing offence, to an additional fine not exceeding \$300 or imprisonment for 30 days for each day on which the offence continues; and
  - (b) if it is a body corporate:
    - (i) in the case of a first time offence to a fine not exceeding \$50,000;
    - (ii) in the case of a subsequent offence to a fine not exceeding \$100,000; and
    - (iii) where the offence is a continuing offence, to an additional fine not exceeding \$5,000 for each day on which the offence continues.
- (2) Upon conviction of any person for any offence under this Act, the Court may, in addition to any other sentence imposed -
  - (a) suspend or cancel any licence to operate a food business issued to the convicted person; and
  - (b) declare any food, appliance, product, material, substance or other object in respect of which the offence has been committed or which was used in connection with the commission of the offence forfeited to the state and disposed of as the Court may direct.

### **35 Additional penalties**

- (1) If the owner of a food business is convicted of an offence under this Act, the Court before which he is convicted may by order impose a temporary or permanent prohibition:
  - (a) on the use of a particular process or particular equipment at the food business;
  - (b) on the use of the premises for the purposes of running a food business; or
  - (c) on the participation by the owner in the management of the food business with respect to which the offence was committed or with respect to any food business in the Kingdom.
- (2) A Court shall cancel a temporary order issued under sub-section (1) where an authorized officer certifies that the conditions which led to the issuance of the order are no longer in effect.

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## PART VI – MISCELLANEOUS

### 36 Right of appeal

Any person aggrieved by an action or decision of an authorized officer or an official analyst under this Act may appeal to the Council within the prescribed time period and the decision of the Council shall be final.

### 37 Good faith defence

An authorized officer, official analyst or other representative of the Authority shall not be liable to suit or to prosecution in respect of anything done in good faith in the performance of his functions under this Act.

### 38 Presumptions

- (1) In any proceedings under this Act, a certificate of analysis purporting to be signed by the director or head of an official laboratory or by an official analyst shall be accepted as prima facie evidence of the facts.
- (2) Evidence that a package containing any food to which this Act applies bore a name, address or registered trademark of the food business or person by whom it was produced, manufactured or packed, shall be prima facie evidence that such food was produced, manufactured or packed, as the case may be by that food business or person.
- (3) Any substance commonly used for human consumption, if sold or offered, or exposed or kept for sale, shall be presumed, until the contrary is proved, to have been sold or, as the case may be, to have been or to be intended for sale for human consumption
- (4) Any substance commonly used for human consumption shall be presumed, until the contrary is proved, to be intended for human consumption -
  - (a) when found on premises used for the preparation, storage or sale of that substance; and
  - (b) any substance commonly used in the production or manufacture of articles for human consumption which is found on premises used for the preparation, storage or sale of those articles.
- (5) Any substance capable of being used in the composition or preparation of any article commonly used for human consumption which is found on premises in which that article is prepared shall, until the contrary is proved, be presumed to be intended for such use.
- (6) Where any person demands any food by a name prescribed for a food for which there is a standard prescribed, he shall be deemed to have demanded food which complies with that standard.

### 39 General defences

- (1) In any proceedings for an offence under this Act it shall be a defence for the accused to establish that he could not with reasonable diligence have ascertained that the sale of the food would contravene this Act.
- (2) It shall be a defence under section 29 to prove that someone could not reasonably have ascertained that the packaging or labelling was false or misleading.

### 40 Defences with regard to advertisements

In any proceedings under section 32 -

- (a) it shall be up to the defendant to prove that he did not publish the advertisement or did not cause it to be published; and
- (b) it shall be a defence for the defendant to prove either:
  - (i) that he did not know or could not with reasonable diligence have ascertained that the advertisement was false or misleading; or
  - (ii) that, being a person whose business it is to publish or arrange for the publication of advertisements, he received it in the ordinary course of business and did not make any material alterations to it.

### 41 Regulations

- (1) The Minister may, with the consent of Cabinet, make regulations for the purpose of carrying out the provisions of this Act, and shall include but not limited to the following -
  - (a) the control of the cultivation, production, manufacture, storage, transport, packing, packaging, labelling and sale of all types of food, including food that is organically produced, genetically modified, dietetic or intended for infants or other population groups;
  - (b) the preparation, handling and serving of food;
  - (c) the construction, inspection and maintenance of food businesses, including hotels, boarding houses, guest houses, markets, grocery stores and businesses selling street food;
  - (d) the places at which, and the conditions under which, animals are slaughtered for human consumption;
  - (e) the places at which, and the conditions under which, poultry, fish products, dairy products and other foods of animal origin are produced, processed or packaged for sale;
  - (f) the places at which, and the conditions under which, crops are produced for food;

- (g) the importation and exportation of foods, including any required documentation, inspection and certification procedures;
  - (h) the procedures applicable for the issuance, suspension and cancellation of licences to operate a food business;
  - (i) the acceptable levels of food additives, environmental contaminants, veterinary drugs, pesticides and other residues or other chemical and microbiological contaminants in foods;
  - (j) the procedures to be followed by authorized officers, official analysts and official laboratories in the exercise of their functions under this Act;
  - (k) food standards generally;
  - (l) the disposal or destruction of unsafe food;
  - (m) the fees payable in respect of the inspection and analysis of food;
  - (n) the forms to be used for the purposes of this Act, including applications, licences, permits, improvement notices and receipts for articles seized;
  - (o) offences and penalties; or
  - (p) any other matters deemed necessary to achieve the purposes of this Act.
- (2) Notwithstanding the provisions of sub-section (1)(k), the standards, rules and recommended practices contained in the Codex Alimentarius adopted by the Codex Alimentarius Commission shall be deemed to apply as regulations under this Act until such time that regulations on food standards are made by the Minister.

## **42 Act shall prevail**

In the event of any conflict or inconsistency between the provisions of this Act and any other enactment, apart from the Act of the Constitution of Tonga, in force in the Kingdom, the provisions of this Act shall prevail.

## **43 Act binds the Crown**

This Act binds the Crown.

Passed by the Legislative Assembly this 30<sup>th</sup> day of July 2014.