



Tonga

# PLANT QUARANTINE ACT

**Chapter 44.10**

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# PLANT QUARANTINE ACT

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# PLANT QUARANTINE ACT

## AN ACT TO REVISE THE LAW RELATING TO THE QUARANTINE OF PLANTS<sup>1</sup>

Commencement [31st August, 1982]

### PART I — PRELIMINARY

#### 1 Short title

This Act may be cited as the Plant Quarantine Act.

#### 2 Definition

In this Act, unless the context otherwise requires —

“**Chief Executive Officer**” means the Government chief executive officer responsible for agriculture;<sup>2</sup>

“**Contaminate**” means infestation or infection by plant pests or having in association with it unauthorized plant materials or soil adhering to or with the articles;

“**Conveyance**” means any carrier such as a vessel, aircraft, lighter, truck, van, transport or shipping container;

“**Declaration**” refers to an oral or written statement certifying as to plants, plant materials or other prohibited or restricted articles under the Act which accompanied a person on their arrival from abroad;

“**Export**” means to take a thing or cause it to be sent out of the country by any means of conveyance;

“**Garbage**” means mixed refuse waste material derived in whole or in part from plants, fruits, vegetables, meats or other plant or animal material or other refuse of any character whatsoever that has been associated with any fruits, vegetables, meats or other plant or animal material;

“**Import**” means to bring a thing or cause it be brought into the country from any place outside of the country by any conveyance;

“**Infected**” means a condition caused by a plant pest;

“**Infested**” means the presence of plant pest other than plant disease pathogen;

“**Inspector**” means an employee of the Government appointed by the Minister to carry out functions under this Act;

“**Land**” includes any surface area, building, wharf, or port facility;

“**living modified organism**” has the same meaning as under the Biosafety Act;<sup>3</sup>

“**Minister**” means the Minister responsible for agriculture;<sup>4</sup>

“**National Biosafety Advisory Committee**” means the National Biosafety Advisory Committee established under section 5 of the Biosafety Act;<sup>5</sup>

“**Noxious Weed**” means a plant declared by notice of the Minister to be harmful and subject to quarantine control;

“**Permit**” means a written authorization issued by the Minister or the Chief Executive Officer for the movement into or through the country of any plant, plant pest, soil, or other regulated article;

“**Person**” shall be construed to mean both the singular and plural and shall include individuals, corporations, companies, associations and societies;

“**Phytosanitary Certificate**” means a form substantially in the format of the Model Certificate of the International Plant Protection Convention (held in Rome on 6th December 1951) for signature of an appropriate Officer of the Plant Quarantine Service of the country of origin where the plants were grown, attesting the plant or plants to which it refers is free of agricultural pests and substantially free from other injurious plant pests;

“**Plant**” means all species, varieties and types of plants or parts thereof whether living or dead including stems, branches, tubers, bulbs, corms, stocks, budwood, cuttings, layers, slips, suckers, roots, leaves, flowers, fruits, sap, seed and any other plant growth other than items manufactured wholly or in part from plants or its part;

“**Plant Material**” means all materials of plant origin;

“**Plant Pest**” means an organism of animal or plant origin, such as insect, nematode, snail, fungus, bacterium, virus; including noxious weed known, suspected or liable to be harmful to plants;

“**Quarantine**” means a restriction, imposed by duly constituted authorities, whereby the production, movement or existence of plants, plant materials, animals, animal products or any other article or material or the normal activity of persons is brought under regulation, or in order that the introduction or spread of a pest may be prevented or limited or in order that a pest already introduced may be controlled or eradicated, thereby reducing or avoiding losses that would otherwise occur through damage done by the pest or through a continuing of control measures;

“**Soil**” means the loose surface material of the earth in which plants grow and which may serve to harbour plant pests, in most cases consisting of disintegrated rock with an admixture of organic material and soluble salts; including among other things, gravel, rock, compost, clay, sand, silt, vermiculite;

“**Treatment**” means the employment of remedial measures to ensure removal of objectionable materials, or the elimination, sterilization or killing of any plant pest, to destroy or eliminate contamination including among other measures the cleaning, incineration, disinfection, disinfestation and re-exportation.

### **3 Minister is authorized to administer the Act**

The authority for administering this Act is conferred on the Minister who may with the consent of the Cabinet make regulations to carry out the provisions of this Act.<sup>6</sup>

### **4 *Repealed by Act 10 of 1995***

### **5 Establishing necessary facilities and services**

The Minister may establish under regulations temporary quarantine stations and checkpoints, quarantine stations, required equipment to operate such stations, post-entry stations and services related thereto to carry out the purpose of this Act.

### **6 Protection against claims**

The Government, and the authorized officers and Inspectors, shall not be liable for any loss or damage resulting from the exercise of a power conferred by this Act unless the loss or damage is caused otherwise than in reasonable exercise of those powers.

**7 Fees may be prescribed**

The Minister may with the consent of Cabinet prescribe by regulations any fees to be charged under this Act.<sup>7</sup>

**PART II — INSPECTORS****8 Appointment of Inspectors**

- (1) The Minister shall appoint from time to time such Inspectors as may be necessary to carry out the purposes of this Act.
- (2) Inspectors shall be provided with suitable identification.

**9 Inspector authorized access**

In the exercise of his powers the Inspector may, for sufficient reasons of which he shall inform the occupier at the time of entry and at a reasonable hour during daylight hours, enter any conveyance, land or building other than a dwelling-house, for the purposes of searching for plants, plant materials, plant pest, soil, garbage or any other regulated article or material under this Act, for the purpose of pest control or elimination of pests and to otherwise carry out his functions under the provisions of this Act.

**10 Inspectors may examine documents**

An Inspector may enter any conveyance and examine any log, manifest, cargo stowage plan, passenger list, crew list or other necessary document in carrying out his functions under this Act.

**11 Inspectors may search, retain and apply treatments**

An Inspector may examine cargo, mail, baggage, conveyances, containers, or any place where they have been stored, to search for plants, plant materials, plant pests, soil, or any other regulated article or material under this Act; and carry out such treatment necessary for plant pest control.<sup>8</sup>

**12 Importers required to open shipment**

An Inspector may cause the importer to open any mail, box, case, receptacle, space or container and to require its opening at the importer's expense when he fails to do so.



**13 Inspectors may certify**

An Inspector may sample, inspect, and certify any shipment of plants or plant materials, which he believes meets the import regulations of the importing country.

**14 Interfering with an Inspector is an offence**

Any person who directly or indirectly obstructs, hinders, interrupts, threatens, or assaults an Inspector in the performance of his duty under this Act is guilty of an offence against this Act.

## PART III — IMPORTATION

**15 Minister may prohibit entry**

It shall be lawful for the Minister at any time to prohibit by regulation the importation of any plant, plant material, plant pest, soil, insects or garbage and the power so conferred upon the Minister shall extend to authorize the prohibition of these things generally or specifically from any specified place.

**16 Minister may limit entry of plants**

The Minister may by regulations limit entry of plants into Tonga and may order that such plants be grown under the supervision of the Ministry of Agriculture in order to determine whether such imported plants may be infested or infected with plant pests not discernible by port of entry inspection and may order such treatment as he shall consider expedient.<sup>2</sup>

**17 *Repealed by Act 10 of 1995*****18 Inspection authorized for plant importations**

On the arrival from any places outside Tonga of any conveyance at any port of entry, an Inspector may inspect any plants and plant material therein intended for importation or any such material which has been landed from the conveyance, and if found contaminated with plant pests or unauthorized material the Inspector may require re-exportation under conditions which he may specify, or that it be treated in such manner to eliminate the contamination prior to release from plant quarantine jurisdiction, or that it be disposed of in a manner prescribed by the Inspector.

**19 Inspection authorized for in-transit or trans-shipments**

When a conveyance carrying plants and or plant material from a place outside of the Kingdom of Tonga arrives at a first port of entry, the importer of such plants shall land all or any such plants as the Inspector may direct for examination, and treatment if required, and such imported plants shall not be moved, trans-shipped or diverted for examination or treatment or discharge at a second destination or port of entry except as authorised by an Inspector.<sup>10</sup>

**20 Smuggling or unauthorized possession is an offence**

Any person who imports plants and/or plant material or other regulated articles in contravention of this Act or takes from the control of plant quarantine any plant and/or plant regulated article under this Act shall be guilty of an offence under this Act.<sup>11</sup>

**21 Prohibited materials authorized importation by Government**

Any prohibited materials under the provisions of the Act or regulations, may be introduced for scientific research purposes by the Ministry upon such conditions and under such regulations as the Minister may prescribe.

**22 Conveyances may be inspected and treated**

On the arrival of any conveyance, an Inspector may enter and inspect the conveyance and apply seals, treatment, or other measures commensurate with any pest risk that could result in the spread of plant pests.

**23 Port authorized for entry of restricted materials**

No plant, plant material or other regulated article under this Act may be imported into Tonga except at ports of entry so named by notice of the Minister published in the Gazette.<sup>12</sup>

**24 Passengers required to declare plant material, etc.**

All persons arriving in Tonga shall make a declaration in writing in such form as the Minister may prescribe by Notice in the Gazette.<sup>13</sup>

**25 Permission must be obtained to import regulated items**

(1) It shall be unlawful for any person to import into Tonga any plant, plant material or other regulated articles until a written permit has been issued under such regulations as the Minister may prescribe.

- (2) All importations of living plants and plant material shall be accompanied by a phytosanitary certificate.<sup>14</sup>

**27 Importers must furnish notice on imports of Plant Quarantine concern**

It shall be the duty of the importers, customs, agent of conveyance and the to notify the Chief Executive Officer of the intended arrival of regulated articles under this Act and to provide such information as the Chief Executive Officer may require.<sup>15</sup>

**28 Customs and Chief Executive Officer must retain restricted materials under control**

Except by notification by an Inspector, no regulated article under this Act shall be taken from control of the Customs and Chief Executive Officer, and they shall retain under their control when so ordered by an Inspector any such regulated article, until such time as the Inspector notifies the Customs and Secretary of Marine and Ports of compliance of the importation with the regulations under this Act.<sup>16</sup>

**29 Customs and Post Office services must assist in carrying out Act**

It shall be the duty of the Customs and Postal Services to notify the Chief Executive Officer whenever foreign mail arrives in the Kingdom of Tonga containing any regulated article under this Act, and to retain such material until notification of compliance with this Act by an Inspector.

**30 Importers required to comply with orders within time limits**

The Inspector may set a time limit by which the importer must carry out treatments for regulated articles. When such time limit expires, the Inspector may destroy or cause to be destroyed the regulated article at the importer's expense.<sup>17</sup>

**31 Inspectors may take quarantine actions**

Plant, plant material, plant pests, soil and other items imported together with anything else which may be contaminated contrary to the provisions of this Act or regulations thereunder, may be seized by an Inspector and be inspected, treated or disposed of as deemed necessary by the Inspector.

**32 Inspectors may destroy regulated material**

An Inspector shall destroy or cause to be destroyed when there is no less drastic measure available, any imported plant or plant material, soil, garbage or anything else which may be contaminated or in contravention of this Act or regulations

thereunder and no legal proceedings of any nature shall lie in respect of such destruction.

### **33 Living cultures and other organisms require permits**

No person shall import into Tonga any living culture or organism including parasites, predators, arachnids, molluscs, insects, nematodes, fungus, bacterium, virus or plant parasitic organism, mycoplasma, honeybee or plant pest unless a written permit has been issued as prescribed by the Minister in regulations and the importation is in compliance with the permit.<sup>18</sup>

### **34 Noxious weeds**

No person shall import or move within Tonga any noxious weed identified in a regulation promulgated by the Chief Executive Officer unless the importation or movement is authorized by permit and under conditions which the Chief Executive Officer may prescribe.<sup>19</sup>

### **35 Garbage regulated**

No garbage shall be discharged from any vessel or aircraft within the Kingdom except in accordance with conditions prescribed by the Chief Executive Officer. The master or captain of any vessel or aircraft from which any garbage is discharged in contravention of this section or conditions prescribed shall be guilty of an offence under this Act.<sup>20</sup>

## **PART IV — DOMESTIC QUARANTINE CONTROL**

### **36 Domestic regulations authorized**

No person shall import or move from one part of Tonga into another part of the Kingdom any plant material, plant pest, soil, conveyance or contaminated article declared by the Minister to be quarantined, or from an infected area to a non-infected area without first obtaining authorization for its movement under conditions which the Minister may require by Notice in the Gazette.<sup>21</sup>

### **37 Minister may establish quarantines for control**

- (1) When it shall be determined by the Minister that any land, place, conveyance, article or substance is infected or infested, written notice thereof shall be given to the owner who shall forthwith control or eradicate and prevent dissemination of such plant pests and shall comply with such notice within the time and manner required by such notice or by the regulations under this Act.

- (2) Whenever the owner cannot be found or shall fail, neglect, or refuse to comply with the requirements so ordered by the Minister within the time period prescribed, it shall be lawful and required for the Inspector to carry out the work or cause the work specified in the notice to be done at the expense of the owner.

### **38 Minister may declare pest emergency**

- (1) The Minister may during a state of plant pest emergency declare any area within Tonga to be infected or infested and shall thereafter have the authority to issue emergency regulations by notice in the Gazette to become effective for not more than 6 months, and such regulations may be revoked or extended before or after 6 months by notice in the Gazette.<sup>22</sup>
- (2) In addition to any other power conferred upon him, the Minister may at any time take such action as he considers necessary to prevent the establishment or spread of specific plant pests or the eradication of specific plant pests in Tonga.<sup>23</sup>

### **39 Persons may be reimbursed for losses**

The Minister may pay out from Government Revenue to the owner, or any other person sustaining loss as a result of any measure under section 38 an amount by way of compensation for loss incurred as determined by the Minister.

### **40 Export certificates**

- (1) Persons on application to the Minister and payment of the fee shall have domestic plants or plant materials inspected and shall receive a certificate covering such plants or plant materials if the shipment conforms to the current phytosanitary regulations of the importing country and all other requirements of the Government.
- (2) Any person who exports any plant or plant material without a certificate issued under subsection (1) of this section commits an offence under this Act.<sup>24</sup>

### **40A Decisions relating to living modified organisms<sup>25</sup>**

All permits, certificates, authorisations, controls, requirements and prohibitions applied or imposed under this Act and relating to living modified organisms, shall be issued or imposed in accordance with the Biosafety Act and any applicable decision of the National Biosafety Advisory Committee.

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## PART V — OFFENCES AND PUNISHMENT

### 41 Persons must comply with orders

Any duty, obligation or requirement imposed on any person by any instrument under this Act may be enforced against the said person and any person who fails, neglects, or refuses to comply with or observe such duty, obligation or requirement commits an offence against this Act.

### 42 Misuse of document is an offence

Anyone who forges, counterfeits, alters, defaces, or destroys a document or order or other instrument in contravention of this Act is guilty of an offence against this Act.

### 43 Falsifying is an offence

Every person who makes any false declaration or gives false certification under this Act commits an offence against this Act.

### 44 Police and Chief Executive Officer required to prosecute violations

- (1) It shall be the duty of the Chief Executive Officer to prosecute violations against any provision of this Act or any regulation made thereunder.<sup>26</sup>
- (2) Any person who is guilty of an offence against this Act or any regulation made thereunder shall be liable to a fine of \$5,000 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.<sup>27</sup>

### 45 Repeal and savings

The Diseases of Plants Act is hereby repealed. Subsidiary legislation made by virtue of that Act shall remain in force if it is not inconsistent with the provisions of this Act and shall be deemed for all purposes to have been made under the provisions of this Act until the subsidiary legislation is revoked or repealed.

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**ENDNOTES**

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<sup>1</sup> Acts 24 of 1981, 22 of 1986 and 46 of 1988

Amended by Act 10 of 1995

Amended by Act 8 of 2005

Amended by Act 5 of 2012, commencement 30 July 2012

<sup>2</sup> Inserted by Act 5 of 2012

<sup>3</sup> Inserted by Act 21 of 2009

<sup>4</sup> Amended by Acts 10 of 1995, 8 of 2005 and 5 of 2012

<sup>5</sup> Inserted by Act 21 of 2009

<sup>6</sup> Substituted by Act 10 of 1995; Amended by Act 42 of 2010

<sup>7</sup> Amended by Acts 10 of 1995 and 42 of 2010

By GS 12/1992 the Minister made the Plant Quarantine (Squash and Vanilla) (Fees) Regulations

—  
“The fees payable in respect of plant quarantine are set out below:

**INSPECTION FOR EXPORT**

(a) Squash inspection fee

For squash inspection the fee will be T\$2.50 per metric ton.

b) Vanilla inspection fee

For consignments:

Up to 10kg T\$3.00 minimum charge

In excess of 10kg but not more than 100kg T\$0.30 per kg

In excess of 100kg but not more than 1000kg T\$0.20 per kg

In excess of 1000kg T\$0.15 per kg.”

<sup>8</sup> Amended by Act 10 of 1995

<sup>9</sup> Amended by Act 10 of 1995

Amended by Act 8 of 2005

<sup>10</sup> Amended by Act 10 of 1995

<sup>11</sup> Amended by Act 10 of 1995

<sup>12</sup> Amended by Act 10 of 1995

<sup>13</sup> Substituted by Act 10 of 1995

<sup>14</sup> Substituted by Act 10 of 1995

<sup>15</sup> Substituted by Act 10 of 1995

<sup>16</sup> Amended by Act 10 of 1995

<sup>17</sup> Amended by Act 10 of 1995

<sup>18</sup> Amended by Act 10 of 1995

<sup>19</sup> Amended by Act 10 of 1995

<sup>20</sup> Amended by Act 10 of 1995

<sup>21</sup> Amended by Act 10 of 1995

<sup>22</sup> Amended by Act 46 of 1988

<sup>23</sup> Inserted by Act 46 of 1988

<sup>24</sup> Substituted by Act 22 of 1986

<sup>25</sup> Inserted by Act 21 of 2009

<sup>26</sup> Amended by Act 10 of 1995

<sup>27</sup> Amended by Act 10 of 1995