Tonga

FOOD ACT

Chapter 19.03

2020 Revised Edition

FOOD ACT

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Tonga

FOOD ACT

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[1]

Commencement [16 November 2020][2]

PART I - PRELIMINARY

1 Short title

This Act may be cited as the Food Act.

2 Interpretation

In this Act, unless the context otherwise requires –

"accredited laboratory" means a laboratory designated or approved as such under section 50 of this Act;

"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 14 of this Act;

"Chief Executive Officer" means the Chief Executive Officer of the Ministry;

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

"Committee" means the National Food Scientific Committee established under section 48 of this Act;

"Compliance Notice" means a notice served under section 68 of this Act;

"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 established under section 38 of this Act;

"Court" means a court with the competent legal authority;

"enforcement officer" means a person designated as an enforcement officer under section 63 of this Act;

"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" 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 –

(a) cosmetics;

(b) alcohol;

(c) tobacco;

(d) substances used only as drugs; or

(e) traditional Tongan medicine ;

"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 Division" means the Division established under section 11 of this Act;

"food license" means a food license issued in accordance with this Act ;

"food permit" means a food permit issued in accordance with this Act;

"food premises" for the purposes of this Act means a place, either permanent or temporary, used for the preparation, manufacture, processing, packaging, sale, exposure or storage of food and includes a warehouse;

"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;

"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 for commercial purposes;

"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;

"marine products for human consumption" means marine products that are cultivated, imported, processed and sold for human consumption;

"manufacture" includes processing and preservation and other related activities;

"Minister" means the Minister responsible for food;

"Ministry" means the Ministry responsible for food;

"National Policy" means the national food policy developed by the Ministry and approved by the Cabinet under section 10 of this Act;

"official analyst" means a person authorized and qualified to act as such under section 49 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;

"order" means an order issued by the Authority under this Act;

"outer islands" for the purposes of this Act means Vava'u, Ha'apai, 'Eua, Niuatoputapu and Niuafo'ou;

"owner" for the purposes of this Act includes a manager, operator or person in charge of a food business or food premise;

"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;

"Registrar" means the Registrar of business licenses under the Business Licenses Act;

"research unit" means the research unit established under section 13 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.

3 Application

This Act shall bind the Crown.

PART II – ADMINISTRATION

4 Administration

The Minister shall be responsible for the administration of this Act.

5 Functions of the Minister

Functions of the Minister are to –

(a) manage and co-ordinate the food sector in the Kingdom in order to ensure that food that is imported, manufactured, exported or sold commercially is fit for human consumption and to promote fair trade practices in relation to food;

(b) administer this Act and all other applicable laws relating to the food sector for which the Ministry is given statutory responsibility; and

(c) carry out any other function consistent with the objects of this Act, which may be prescribed by the Cabinet from time to time.

6 Powers of the Minister

The Minister shall hold any and all such powers as are necessary to administer the functions of the Minister under this Act.

7 Delegation of powers of Minister

(1) The Minister may delegate one or more of his powers or functions under this Act to the Chief Executive Officer or an employee of the Ministry, except this power to delegate.

(2) For the efficient use of Government resources, the Authority may, with the written agreement of the Minister responsible, delegate one or more functions of the Division under this Act to another Government line Ministry in relation to the implementation or enforcement of this Act.

(3) A delegation made under subsection (1) shall be –

(a) made in writing;

(b) communicated to the person to whom the power is delegated;

(c) state clearly the functions and powers that are being delegated; and

(d) state clearly the effective date and end date for the delegation of powers.

(4) A delegation made by the Minister in subsection (1) shall continue in effect, even if the person who made the delegation is no longer in office and shall end when it is revoked in writing by a Minister in office.

(5) A delegation shall be recorded in the register of the Ministry under Part XVI.

8 Minister's reserve powers

(1) If it appears to the Minister, upon proof, that there has been a serious failure by an entity established under this Act to exercise its functions, the Minister shall issue such directions to the entity as the Minister considers appropriate in the circumstances.

(2) If the entity fails to comply with such directions, the Minister may remove all the members of the entity from office and, until new appointments are made, carry out the entity's functions or appoint any other person or persons to do so.

9 Functions of the Ministry

The Ministry, under the direction of the Authority, shall have the following functions –

(a) exercise general supervision and control over all matters relating to the food sector in the Kingdom;

(b) liaise as appropriate with governing bodies under this Act to ensure efficient and effective implementation and administration of this Act;

(c) oversee the work of the Food Division;

(d) propose, prepare and amendment of regulations, orders, standards, codes of practice, guidelines and notices under this Act;

(e) 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;

(f) 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; and

(g) perform all other functions assigned to the Ministry by this Act or by the Authority.

10 Development of a National Food Policy

(1) The Ministry shall develop and oversee the adoption of a National Food Policy within 18 months of the commencement of this Act.

(2) The National Food Policy, including subsequent revisions, must be approved by Cabinet.

(3) The Chief Executive Officer shall be responsible for ensuring the review of the National Food Policy every 3 years after it is first adopted by Cabinet.

(4) In developing the National Food Policy and for each subsequent review, the Food Division will, as appropriate, consult with key Government and non-Government stakeholders in Tongatapu and the outer islands.

11 Establishment of the Food Division

(1) The Food Division is hereby established.

(2) The Division shall be attached to the Ministry which is assigned the primary responsibility for food.

(3) The Division shall be headed by a senior officer of the Ministry and shall be comprised of staff of the Ministry who are appointed in accordance with the Public Service Act.

12 Functions of the Food Division

Functions of the Food Division shall include, but not be limited to –

(a) implementing, monitoring and enforcing this Act;

(b) reporting to the Authority on progress toward meeting the Government's objectives as contained in the National Food Policy;

(c) liaising with the National Food Council and other key stakeholders as required for the proper discharge of the Division's responsibilities under this Act;

(d) developing reports and or official statements on behalf of the Ministry on food related matters;

(e) as required, co-ordinating donor activity in the food industry in consultation with key stakeholders;

(f) facilitating training and capacity building for key stakeholders;

(g) promote consumer education regarding food safety and nutrition;

(h) requesting and obtaining data from individuals, companies, key Government line Ministries and food providers for the establishment and maintenance of an overarching food sector database;

(i) verifying high risk goods to ensure compliance with national or Codex food standards;

(j) developing, implementing, monitoring or reviewing regulations in accordance with this Act; and

(k) performing any other function assigned to the Division by any other enactment or regulations made under this Act.

13 Establishment of research unit

(1) The Minister shall establish a research unit within the Ministry to be responsible for the functions in subsection (2).

(2) The research unit shall be responsible for –

(a) conducting appropriate research on issues referred to it by the Authority under section 22(2);

(b) consulting with and obtaining information from relevant stakeholders to inform their recommendations to the Authority.

(3) The unit shall be headed by a senior officer of the Ministry and officers of the unit shall be appointed in accordance with the Public Service Act.

(4) Each member of the research unit shall be subject to the requirement for confidentiality under section 25.

PART III – NATIONAL FOOD AUTHORITY

14 Establishment of National Food Authority

(1) The National Food Authority is hereby established.

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

15 Functions of the Authority

Principal functions of the Authority shall be to-

(a) assess whether an applicant meets the relevant criteria to obtain approval to operate a food business in the Kingdom;

(b) assess whether an applicant meets the relevant criteria to continue to operate a food business in the Kingdom, and where relevant criteria are not met, assess whether to revoke a food license, food permit or other such approval to operate a food business in the Kingdom, either temporarily or permanently;

(c) 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;

(d) coordinate and harmonize food control activities in the Kingdom at all stages of production, manufacture and distribution;

(e) prevent and protect against fraud in connection with the sale of food;

(f) formulate strategies and policies on food, nutrition and food security, including procedures for emergency response, and monitor their implementation;

(g) encourage and promote research on food matters to facilitate the development of the food industry within the Kingdom;

(h) provide food safety and food quality inspection and certification services as necessary;

(i) consult widely with all sectors of the food chain in carrying out its activities under this section;

(j) provide advice, information or assistance to any public authority in relation to food control, food safety, food quality assurance and food trade;

(k) obtain, compile and keep under review information concerning food control, food safety, food quality assurance and food trade;

(l) promote consumer education regarding food safety and nutrition; and

(m) carry out any other matters in connection with or reasonably incidental to the foregoing.

16 Regional and international cooperation

Subject to the consent of Cabinet, the Authority may from time to time enter into Agreements of regional and international co-operation for the strengthening of legal frameworks for food, and for aligning with regional and international standards in relation to the sale of food.

PART IV - POWERS OF THE AUTHORITY

17 General powers

(1) In addition to the specific powers of the Authority under this Part, the Authority shall have the power to –

(a) issue, suspend or revoke a food license, food permit or other such approval to operate a food business in the Kingdom;

(b) recommend to the Registrar of business licenses the closure of a food business in respect of which a food license or food permit has been revoked permanently or never issued;

(c) designate an enforcement officer under Part XII of this Act;

(d) delegate one or more responsibilities of the Authority under this Act to any other Government Ministry or agency, provided that shared processes and responsibilities are outlined in regulations made under this Act;

(e) appoint food officers under the Food Division, including the head of division, in accordance with general processes of the Government;

(f) issue a written directive to the owner of a food business in accordance with this Act or regulations made under the Act; or

(g) require the owner of a food business to comply with a request for information which is in accordance with this Act or regulations made under the Act.

(2) 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.

(3) 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.

18 Power of the Authority to obtain information

(1) Where the Authority considers it necessary or desirable to fulfil the Authority's functions under this Act, the Authority may, in writing, require a person or business to provide information or documentation relating to the manufacture, import, supply, distribution or sale of any food or food products in Kingdom, whether or not that business has obtained a permit or license under this Act, provided that the request for information is to in relation to the discharge of the Authority's functions under this Act.

(2) Notwithstanding subsection (1), the Authority or an employee of the Authority who receives or deals with information obtained under this section shall be bound by the requirement of confidentiality in section 25.

19 Power to obtain information from Ministry responsible for Customs

(1) Pursuant to section 125(3)(b) of the Customs and Excise Management Act, the Authority shall request and receive the following information from the Ministry responsible for Customs in relation to food products in consignments –

(a) certificate of origin;

(b) sanitary and phytosanitary certificate; and

(c) health certificate.

(2) Information requested under subsection (1) shall be specifically used by the Authority for the purposes of discharging its functions under this Act.

(3) The Authority may, in writing, request and receive from the Ministry responsible for Customs any other relevant information or documentation required by the Authority relating to imported food or food products.

(4) All information received by the Authority under this section shall be kept by the Authority in strict confidence, in accordance with section 25 of this Act and section 125 of the Customs and Excise Management Act.

(5) For the purposes of carrying out joint activities and mutual cooperation under this Act, the Ministry and the Ministry responsible for Customs may enter into a Memorandum of Agreement to determine the appropriate process and the nature of co-operation between officers of each Ministry.

(6) A person who is required to furnish information to the Authority under this section must provide accurate, correct and up to date information to the Authority. A failure to comply with this requirement constitutes an offence under this Act.

20 Powers during a national food emergency

Powers of the Authority and procedures to be followed during a time of a national food emergency are set out in Part VII of this Act.

21 Delegation of powers of Authority

(1) The Authority may delegate one or more of the powers or functions of the Authority under this Act to the Chief Executive Officer or an employee of the Ministry or Authority, except this power to delegate.

(2) A delegation made under subsection (1) shall be –

(a) made in writing;

(b) communicated to the person to whom the power is delegated;

(c) state clearly the functions and powers that are being delegated; and

(d) state clearly the effective date and end date for the delegation of powers.

(3) A delegation made by the Authority in subsection (1) shall continue in effect and shall end when it is revoked in writing by the Authority or at the expiry of the delegation period as stated on the person's instrument of delegation.

(4) A delegation shall be recorded in the register of the Ministry under Part XVI.

PART V - GENERAL PROCEDURES OF THE AUTHORITY

DIVISION 1 – CRITERIA FOR AUTHORITY

22 General considerations

(1) In carrying out its functions under this Act, the Authority shall take into account the following –

(a) the need to be fair to and balance the interests of:

(i) food businesses within the formal and informal sectors; and

(ii) food businesses located in the outer islands and outlying islands;

(b) the need to maintain continuity and facilitate the manufacture, sale, import and export of food for commercial purposes in and from Tonga;

(c) the need to guarantee food safety and ensure that food that is sold to consumers is fit for human consumption; and

(d) the need to promote fair trade practices in food.

(2) In addition to the general considerations in subsection (1), the Authority shall request a relevant report from the research unit of the Authority on any issue for which the Authority requires further information or evidence upon which to base its decision.

23 Submissions from stakeholders

(1) In exercising its functions under this Act, the Authority shall endeavour to consult with relevant stakeholders in the Kingdom, whether in person or in writing, or through other means as the Authority deems appropriate.

(2) Submissions to the Authority shall be in the prescribed form.

(3) The process for the lodging of submissions shall be set out in regulations made under this Act.

(4) Where the Authority has consulted with a stakeholder association, the Authority is deemed to have conducted the consultation with each member of the stakeholder association.

(5) It is the responsibility of the stakeholder association to inform its members of the content, issues raised, submissions made at or to be made in relation to a consultation of the Authority under subsection (2).

24 Classification of information provided to the Authority

(1) The Authority shall determine the classification of information and materials provided by businesses, individuals and Ministries to the Authority under this Act.

(2) Information provided to the Authority which is of a commercially sensitive nature must be kept strictly confidential, except –

(a) where the Authority is given the express authority to release such information by the owner of the information; or

(b) where the Authority is required or permitted to release the information under section 25(3) of this Act.

(3) The Authority is responsible for ensuring that information or materials provided to the Authority is kept in a secure place and released only when authorised by the Authority.

(4) Where the Authority has issued approval for the release of information under section 24(2)(a) and 25(3), the Secretary shall follow processes outlined in regulations made under this Act.

25 Confidentiality

(1) A pricing officer shall not communicate or allow to be communicated, any information obtained under this Act, to any person not legally entitled to such information.

(2) Any person who contravenes this section commits an offence and shall be liable upon conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 10 years, or both.

(3) Nothing in this section shall prevent the disclosure of any document or information to –

(a) the Supreme Court or Court of Appeal in relation to proceedings under this Act;

(b) any person in the service of Government where such disclosure is necessary for the performance of the person's official duties;

(c) the Auditor General or any person authorised by the Auditor General where such disclosure is necessary for the performance of official duties;

(d) the Governor of the National Reserve Bank of Tonga or any person authorised by the Governor where such disclosure is necessary for the performance of official duties;

(e) international food agencies with which the Government of Tonga has an agreement to the extent permitted under that agreement.

DIVISION 2 – APPLICATION FOR A FOOD LICENSE OR PERMIT

26 Application for a food license or food permit

(1) The Authority shall issue a food license or food permit in accordance with criteria and processes established in regulations made under this Act.

(2) An application under subsection (1) must be made on the prescribed form and shall be accompanied by –

(a) the current medical certificate of every employee of the business; and

(b) the prescribed fee.

27 Form of license or permit

Where an application made under subsection (1) is approved by the Authority, the Authority shall issue a food license or food permit, which shall include on the face of the license or permit the following information –

(a) name of business and location;

(b) name of owner and or manager of business;

(c) type of food business;

(d) date of issuance of license or permit and date of expiry;

(e) food business registration number and TIN;

(f) any special conditions of the license or permit.

28 Authority may suspend or revoke a food license or food permit

(1) The Authority may suspend or revoke a food license of food permit in accordance with criteria and processes made in regulations under this Act.

(2) A notice of suspension or revocation shall be in the prescribed form and shall be conveyed to the owner or manager of a food business in accordance with prescribed procedures.

29 Authority to publish list of businesses

(1) Following a determination by the Authority under section 27 or 28, the Authority shall, as soon as is reasonably practical, publish the following –

(a) name of the business; and

(b) nature of the license or permit which has been issued, suspended or revoked,

through at least one of the following methods –

(i) on the Ministry's website;

(ii) in a newspaper of general circulation inthe Kingdom; or

(iii) announced on public radio.

(2) To the extent possible, the Ministry shall convey the information in subsection (1), to District and Town Officers on Tongatapu and in the outer islands and the outlying islands of Tonga..

DIVISION 3 – REQUIREMENTS FOR BUSINESSES

30 Approval to operate as a food business

(1) A person who operates or intends to operate a food business in the Kingdom must apply for a food licence or food permit in accordance with regulations made under this Act.

(2) The requirement in subsection (1) shall apply in addition to the requirement for a business license under the Business Licenses Act.

(3) An application under subsection (1) shall be on the prescribed form and must be accompanied by the prescribed fee.

(4) The holder of a food license, food permit or other approval type issued under this Act must display a copy of such license, permit or approval at a prominent position of the business for the information and assurance of customers.

(5) The Authority may establish different classes, categories or classifications of food businesses for the issuance of a food license, food permit or any other approval type under this Act.

31 Medical requirements

The Authority, in consultation with the Ministry of Health, shall prescribe the regularity and nature of medical clearances required for the employees of food businesses in the Kingdom.

32 Standards for food premises

(1) The owner of a food business shall comply with prescribed standards for food premises.

(2) In establishing standards for food premises in the Kingdom, the Authority shall have due regard for –

(a) incorporating Codex standards at a pace which is affordable, practical and appropriate in the Kingdom; and

(b) giving priority to registering food premises that are high risk and present a greater risk to consumers due to the nature of food being prepared, manufactured or sold there.

33 Traceability

(1) The owner of a food business must establish and implement a trading system which will enable the Authority to trace or identify any person who was a –

(a) supplier;

(b) buyer; or

(c) receiver,

of a food producing animal, food or substance intended to be or expected to be incorporated into a food.

(2) Upon written request of the Authority, a food business shall make available all or any information collected under the traceability system under sub-section (1).

(3) A request for information under subsection (1) shall be in the prescribed form.

34 Hygiene rules

(1) The owner of a food business shall ensure that all of his employees, agents or suppliers comply with applicable hygiene rules established in regulations made under this Act.

(2) The Authority shall from time to time, monitor the implementation or enforcement of hygiene rules within a food business.

35 Labelling

(1) Any food intended for commercial 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.

36 Food standards

(1) The Authority, with the consent of Cabinet, may establish food standards in regulations made under this Act, or in a stand-alone code.

(2) To the extent possible food standards shall be consistent with Codex and with provisions of this Act.

37 Food waste

The Authority, through regulations made under this Act, shall establish requirements for the disposal of food waste by food businesses in the Kingdom.

PART VI - NATIONAL FOOD COUNCIL

38 Establishment of National Food Council

The National Food Council is hereby established .

39 Members of the Council

(1) The Council shall be comprised of the following members –

(a) Chief Executive Officer of the Ministry ;

(b) Chief Executive Officer of the Ministry of Health or nominee;

(c) Chief Executive Officer of the Ministry responsible for Customs or nominee;

(d) Chief Executive Officer of the Ministry responsible for Trade and Economic Development or nominee;

(e) the Attorney General or nominee;

(f) two representatives of the food industry, nominated by the Authority and approved by the Cabinet;

(g) one food expert, nominated by the Authority and approved by the Cabinet;

(h) one representative of civil society or non-government organisations, nominated by the Authority and approved by the Cabinet; and

(i) Chief Executive Officer of the Ministry responsible for Fisheries or nominee.

(2) Members of the Council in subsections 1(f), 1(g) and 1(h) shall hold office for a term of two years, and may be reappointed by the Authority, with the consent of Cabinet.

(3) The Council may, from time to time, co-opt one or more additional members with technical knowledge and expertise or applicable local knowledge to attend a meeting of the Authority as a co-opted member,

Provided that a co-opted member –

(a) shall not constitute the quorum of the Council; and

(b) shall not be entitled to vote on any matter or issue considered by the Council.

(4) A co-opted member of the Council shall hold office for such periods of time and upon such terms and conditions as shall be determined by the Minister.

(5) Member of the Council shall be paid meeting fees according to applicable Government policy.

(6) (a) A representative under sub section (1)(f), (g) or (h) of this section shall be nominated by the Authority with the approval of Cabinet to be Chairperson of the Council; and

(b) The Deputy Chairperson of the Council shall be the Chief Executive Officer of the Ministry of Health or nominee.

40 Functions of the Council

(1) Functions of the Council are to advise the Authority on –

(a) 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) food policy, legislation, regulations and standards;

(c) ensure that processes of key Government line Ministries and agencies are aligned with processes established under this Act; and

(d) determination of appeals subject to section 58 of this Act.

(2) Members of the Council shall also form part of the National Emergency Food Committee and carry out functions under Part VII of this Act. (3) The Council may appoint such sub-committees as it deems necessary to assist it in the performance of its functions.

(4) The Council shall exercise oversight responsibility over the performance of the functions of the Authority.

41 Meetings and quorum

(1) The Council shall meet at least four times annually.

(2) The quorum for a meeting of the Council shall be at least one half of the Council members.

(3) The head of the Food Division shall be the Secretary of the Council.

(4) The Food Division shall provide secretariat services to the Council, unless the Council determines otherwise.

(5) Members of the public may attend meetings of the Council if authorised by the Chair of the Council.

(6) The Council shall submit an annual report of its activities to the Authority and upon request, provide a copy to any member of the public.

(7) Rules of procedure of the Council are in Schedule I and may be amended from time to time by the Council, with the consent of Cabinet.

PART VII – POWERS OF AUTHORITY IN A FOOD EMERGENCY

42 Notice of imminent risk

(1) A person who has reasonable cause to believe that food or food items that are subject to the Act will present or are an imminent health risk to the public shall immediately notify the Chief Executive Officer of the Ministry.

(2) The notice in subsection (1) shall be as prescribed in Form A of Schedule II, the original which shall be provided to the Chief Executive Officer of the Ministry.

(3) Upon receiving a notice under subsection (2), the Chief Executive Officer, in consultation with the Head of the Food Division and the Chair of the National Food Council will meet within 24 hours to consider the following –

(a) determine likely magnitude of the event being reported and if there is a need to inform higher officials;

(b) consider the source of information and credibility of the report;

(c) verify the initial report to ensure credible;

(d) initiate investigation of the reported event by an authorised officer.

(4) Based on the initial report of the authorised officer in subsection 42(3)(d), the Chief Executive Officer shall call a joint meeting of the Food Emergency Committee as soon as is practicable.

43 Establishment of National Food Emergency Committee

(1) The National Food Emergency Committee is hereby established.

(2) The Committee shall have the following members –

(a) Minister responsible for Food or in his absence the Minister responsible for Health (Chair);

(b) Chair and available members of the National Food Council;

(c) Commissioner of Police or nominee;

(d) Head of the Food Division and available official analysts;

(e) Chair of the Tonga Chamber of Commerce or nominee; and

(f) two technical experts nominated by the Authority with expertise specifically relevant to the nature of the emergency.

(3) A quorum for an emergency meeting shall be 4 members and must include the Attorney General (or his nominee) and at least one official analyst or technical expert.

(4) The purpose for the emergency meeting shall include, but not be limited to the following –

(a) initiate a risk assessment of the reported event, to be immediately carried out by a person qualified to conduct this;

(b) based on the risk assessment, consider whether or not the continued import, distribution or sale of the identified food or food item in section 42(1) presents an imminent risk to the public health;

(c) determine the likely magnitude of the event and whether there is a need to initiate an emergency response;

(d) consider whether there is a need to inform higher officials;

(e) consider whether there is a need to issue an Emergency Order, and the nature of such Order; and

(f) consider whether there is a need to make a public announcement, and if so, the mode, frequency and content of the announcement.

(5) If the Committee determines that there is a serious and imminent risk to the public, it shall recommend to the Authority to issue one or more of the following orders –

(a) emergency order, as prescribed in Form B of Schedule II;

(b) recall order; as prescribed in Form C of Schedule II;

(c) order to destroy, as prescribed in Form D of Schedule II;

(d) order to seal (to prevent sales pending further investigation or analysis), as prescribed in Form E of Schedule II;

(e) order to re-export, as prescribed in Form F of Schedule II.

(6) A public announcement made under subsection 4(e) of this section must be issued in both the Tongan and English languages.

44 Power of Authority to issue orders

(1) Upon the recommendation of the National Food Emergency Committee, the Authority shall issue an Order under this Part to prevent or reduce the risk of serious danger to public health or to mitigate the adverse consequences of a danger to public health.

(2) An order issued by the Authority may direct or require one or more of the following-

(a) require the publication of warnings in the form approved by the Authority that a particular food or class of food is unsafe for human consumption;

(b) absolutely prohibit or impose conditions on the cultivation, harvesting, taking, obtaining or production in a specified area of any particular food or class of food intended for human consumption;

(c) absolutely prohibit or impose conditions on the manufacture, preparation, import, export, transportation or sale of any food or any class of food specified in the order;

(d) prohibit a particular food or class of food from being advertised or sold;

(e) recall or otherwise cause to be removed from circulation any food or class of food specified in the order;

(f) direct that a particular food or class of food intended to be used for human consumption be impounded, isolated, destroyed or otherwise disposed of at any place and specify the manner in which the impounding, isolation, destruction or disposal is to be carried out;

(g) direct that a particular food or class of food that is intended to be imported be re-exported at the importer's expense; or

(h) cause any food to be tested, analysed or examined in such manner as may be prescribed in the order.

(3) An order made under this Part of the regulations may be varied or revoked by the Authority in the same manner as the order was made.

45 Special Provisions Relating to Recall Orders

(1) A recall order made by the Authority may require the owner, operator or person in charge of a food business or an importer to disclose to the public or to a class of consumers specified in the order the following information in the manner specified in the order-

(a) the particular food or type of food to be recalled or disposed of;

(b) the reasons why the food is considered unsafe;

(c) if applicable, the circumstances under which the consumption of the food is unsafe; and

(d) procedures for disposing of the food.

(2) A person who is required by a recall order to conduct a recall of any food –

(a) must immediately comply with the recall order; and

(b) shall give written notice to the Authority of the completion of the recall within 2 days of the completion of the recall.

(3) Where a person who is required by a recall order to carry out a recall fails to do so satisfactorily within the time prescribed in the order, the Authority may take steps to implement the recall order and the person responsible shall be

surcharged with the costs incurred by the Authority in implementing the recall order.

46 Manner of Making Emergency Orders

(1) An order under this Part of the regulations-

(a) shall be made in writing addressed to the owner, operator or person in charge of a food business or an importer, and shall be served personally on that person or each of those persons as the case may be;

(b) may be addressed to several persons, to a class of persons or to all persons; and

(c) if there is a right of appeal, advise the owner, operator or person in the charge of the business of this right.

(2) Notice of an order addressed in the manner specified in subsection (1)(b) setting out the terms of the order and the persons to be bound by the order shall, within 2 days of the making of the order, be published in a daily newspaper circulating in the Kingdom for such period of time as in the opinion of the Authority will be most likely to bring the order to the attention of the persons bound by it.

(3) An order that is personally served on a person takes effect from the date of service thereof. Where personal service cannot be effected within 2 days of the making of an order, it may be published in a daily newspaper in accordance with subsection (2) in lieu of personal service.

(4) An order, notice of which is published under subsection (2), takes effect at the beginning of the first day on which the notice was published.

(5) An order ceases to have effect at the expiration of 90 days after the date on which it takes effect unless it is sooner revoked by the Authority. An order may however be renewed if circumstances so demand.

47 Compensation

(1) A person bound by an order under this Part of the regulations who suffers loss as a result of the making of the order may apply to the Authority for compensation if the person considers that there were insufficient grounds for the making of the order.

(2) If the Authority finds that there were insufficient grounds for the making of the order, it shall direct the payment of such compensation to the applicant which is just and reasonable.

(3) The Authority shall send written notification of its determination as to the payment of compensation under this regulation to each applicant for the payment of such compensation.

PART VIII – SCIENTIFIC ANALYSIS

48 National Food Scientific Sub-Committee

(1) The Council, with the approval of the Minister, shall appoint a National Food Scientific Sub-committee to carry out food safety risk assessments and such other scientific tasks as may be assigned to it.

(2) The Sub-Committee shall report directly to the Council and is responsible for –

(a) evaluating, in response to official requests or on its own initiative, physical, chemical or biological risks to human health arising throughout the food chain;

(b) advising the Council and the Authority on the appropriate measures to be taken to protect consumer health; and

(c) providing inputs into or developing proposed regulations or rules on subject matters within its mandate.

(3) In carrying out its functions, the Committee shall take into account –

(a) the latest scientific research;

(b) information regarding procedures, methods and means of production;

(c) the results of sampling and analysis; and

(d) any other relevant data.

49 Official analyst

(1) The Minister may, from time to time, designate one or more qualified people from within the Ministry as official analysts under this Act.

(2) In addition to other general functions determined by the Minister, an official analyst shall be responsible for –

(a) analysing food ingredients or food sources;

(b) assessing whether a particular food is unsafe or unfit for human consumption;

(c) providing its recommendations or findings in written form to the Authority or any other body as is requested from time to time;

(d) carrying out any other function as approved by the Authority and consistent with the purposes of this Act.

(2) An official analyst who is designated under subsection (1) shall be a public service officer within the Ministry who has been recruited according to usual processes of Government.

(3) An official analyst, once designated, shall become a member of the Food Division and will report to the Head of the Food Division.

50 Accredited laboratory

(1) The Minister, on the advice of the Council, may recognise a laboratory as an accredited laboratory for the purposes of this Act.

(2) An accredited laboratory may be located in the Kingdom or abroad, provided that it has met criteria prescribed in regulations made under this Act.

(3) The process for lodging an application for accreditation shall be prescribed by regulations made under this Act.

(4) If approved as an accredited laboratory, the Minister shall issue the laboratory a certificate of accreditation, which shall be in a form prescribed by regulations.

(5) Each accreditation shall be valid for a period of not more than 5 years and may be renewed.

(6) An application for renewal of accreditation shall be set out in regulations made under this Act.

(7) The Minister shall have the power to issue, renew or revoke an accreditation issued under this Part.

PART IX – IMPORTS AND EXPORTS

51 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.

52 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.

53 Requirements for marine products

(1) Sanitary standards for marine food products shall be established in regulations made under this Act.

(2) Rules governing the import, processing, aqua farming, export, and sale of marine food products shall be outlined in the regulations.

54 Inspection and sampling

(1) An enforcement 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 enforcement 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 enforcement 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.

55 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.

PART X - FINANCIAL MATTERS

56 Budget and funds of the Authority

(1) The Minister shall propose and allocate sufficient resources and budget on an annual basis to the Authority for the discharge its functions under this Act.

(2) In addition to its 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.

57 General revenue

(1) All monies paid or received under this Act, including for the payment of fines, must be deposited into the General Revenue account of the Kingdom.

(2) With the consent of Cabinet, the Minister may request and allocate a set portion of the funds received in subsection (1) into the annual budget of the Authority, for the administration of this Act and regulations made under the Act.

PART XI - APPEALS

58 Right of appeal

A person aggrieved by an action or decision of an enforcement 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.

59 Good faith defence

An enforcement 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.

60 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.

61 General defences

(1) In any proceedings for an offence under this Act it shall be a defence for the defendant 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 83 to prove that someone could not reasonably have ascertained that the packaging or labelling was false or misleading.

62 Defences with regard to advertisements

In any proceedings under section 85 -

(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.

PART XII - ENFORCEMENT

63 Designation of enforcement officers

(1) The Authority may designate a person as an enforcement officer for the purposes of this Act.

(2) A designation under subsection (1) must be made in writing, with the instrument of designation clearly stating the duration and the powers provided.

(3) An enforcement officer shall, in addition to the instrument of designation, be provided with a certificate of identity as a duly authorised enforcement officer under this Act.

(4) Before a person is designated as an enforcement officer under subsection (1), the Authority shall ensure that the person is –

(a) by their level of skill, training, qualifications or experience; or

(b) by their record in the public service, displaying such qualities as leadership, honesty and integrity,

suitable to undertake duties under this Act.

(5) The Authority may revoke the designation of an enforcement officer in accordance with subsection (6).

(6) A revocation must be made in writing and must clearly state the following –

(a) effective date for the revocation of powers;

(b) reason for the revocation; and

(c) powers that have been revoked.

(7) An enforcement officer whose designation has been revoked under subsection (6) shall return the certificate of identity which was issued to the officer to the Head of the Food Division and must not use the identity card after the revocation date.

(8) Notwithstanding the revocation of a person's designation as an enforcement officer, a public service officer shall continue to be employed by the Ministry, until the Public Service Commission otherwise directs the Authority in writing.

64 Powers of enforcement officers

(1) An enforcement 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 enforcement 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 enforcement officer shall provide the owner or occupier of the premises with a receipt signed by both the enforcement officer and the owner or occupier of the premises.

(3) An enforcement officer exercising his authority under this section may request the presence and assistance of a police officer as he may consider necessary.

(4) An enforcement 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 enforcement officer shall have power to arrest any person whom he has reasonable grounds to believe has committed an offence under this Act.

(6) An enforcement officer shall produce his official identification card upon request by any person affected by the exercise or performance of the enforcement officer's power, duty or function under this Act.

65 Power to seize 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 enforcement 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 enforcement 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 enforcement 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 enforcement 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 enforcement 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.

66 Objects of inspections

An enforcement officer 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.

67 Responsibilities of owner or person in charge of business

During an inspection or investigation carried out under this Part, the owner, service provider or person in charge of the business or premise –

(a) may accompany the pricing officer or enforcement officer;

(b) shall answer any questions or supply any information or document requested by the enforcement officer in relation to the objective of the inspection or investigation; and

(c) shall permit the taking of samples and the gathering of evidence, including the taking of photographs.

68 Compliance Notice

If an enforcement 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 a Compliance Notice on that owner or person in charge-

(a) stating the enforcement officer's grounds for believing that this Act is not being complied with;

(b) specifying the measures which the enforcement 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.

69 Form of notice

A compliance notice issued under section 68 shall -

(a) state the provision or requirement under the Act that is or has not been complied with;

(b) specify the measures which are necessary to ensure compliance; and

(c) state the date on which the owner must comply, following which there will be a re-inspection by a designated officer.

70 Non-compliance on first inspection

If an enforcement officer has reasonable grounds to believe that the owner, service provider or person in charge of a business or premise is or has failed to comply with the Act, he may carry out one, or a combination of the following –

(a) issue a verbal direction to the owner or person in charge;

(b) serve a Compliance Notice on the owner or person in charge in accordance with section 68 of this Act; or

(c) where there is a blatant disregard for the provisions of this Act, issue a spot fine in accordance with Part XIV of this Act

71 Non-compliance on re-inspection

If a designated officer finds, upon re-inspection of the business or business premise, that the owner, service provider or person in charge has failed to comply with a Compliance Notice, the Authority may in writing order one or more of the following –

(a) prohibit the person from selling the regulated good for a period of time with specified conditions;

(b) prohibit the service provider from providing the regulated service for a period of time with specified conditions;

(c) if a spot fine was not already issued under section 70(c), issue a spot fine in accordance with Part XIV of this Act;

(d) suspend a person's food license or food permit;

(e) initiate a prosecution under this Act.

72 Closure of businesses

Where a person has been repeatedly issued with a compliance notice, spot fine or convicted of one or more offence under this Act, the Authority may recommend the closure of the business to the Registrar of business licenses under the Business Licenses Act.

PART XIII – JOINT ENFORCEMENT

73 Joint enforcement

(1) For the effective enforcement of this Act, the Minister in agreement with Ministers of relevant line Ministries, may authorise officers from the Ministry to work jointly with officers from other line Ministries under terms to be formalised by the Ministers through a Memorandum of Agreement.

(2) Subject to the Minister's approval, the head of the Food Division may make arrangements for the division to work jointly with other line Ministries for the discharge of its statutory functions.

74 Enforcement protocols with Ministry responsible for Fisheries

(1) The Ministry and the Ministry responsible for Fisheries shall, through written enforcement protocols, specify the manner in which the Food Division will interact with the Ministry responsible for Fisheries to jointly enforce this Act.

(2) Linkages between the two Ministries may include agreed protocols during –

(a) inspections or investigations under this Act;

(b) collection, collation and recording of evidence and exhibits;

(c) inspection, sampling, or clearance of imported or exported marine food products;

(d) closing a business;

(e) removal of drugs or illicit goods;

(f) prosecution of offenders;

(g) enforcement of spot fines;

(h) obstruction of officers; and

(i) non-compliance with orders of the Court.

75 Enforcement protocols with Government line Ministries

(1) The Authority may, through written enforcement protocols with other Government line Ministries, including but limited to the –

(a) Ministry responsible for Trade and Economic Development;

(b) Ministry responsible for Health;

(c) Ministry responsible for Customs; and

(d) Tonga Police;

specify the manner in which the designated division will interact with Tonga Police to jointly enforce this Act.

(2) Linkages between the Authority and key Government line Ministries may include agreed protocols during –

(a) inspections or investigations under this Act;

(b) collection, collation and recording of evidence and exhibits;

(c) inspection, sampling, or clearance of imported or exported food;

(d) closing a business;

(e) removal of drugs or illicit goods;

(f) prosecution of offenders;

(g) enforcement of spot fines;

(h) obstruction of officers; and

(i) non-compliance with orders of the Court.

PART XIV – SPOT FINES

76 Power to issue

(1) An enforcement officer shall have the power to issue a spot fine under this Act.

(2) In addition to provisions under this Part, the Ministry may develop enforcement protocols to be approved by the Minister, for the purposes of issuing and enforcing spot fines.

77 Election of process

(1) In the event that a person is issued with a spot fine, that person may elect to do one of the following –

(a) accept the alleged infringement and pay the prescribed fine; or

(b) contest the allegation by submitting a letter in writing to the Division outlining the reason or reasons for contesting the allegation.

(2) Where a person contests in the allegation under subsection (1)(b), the Division shall take into account all relevant information from the complainant and the enforcement officer, and within 21 days of the letter being received in subsection (1)(b), make a final and binding decision which shall be communicated in writing to the complainant.

(3) If a person who is issued with a spot fine does not respond within a period of 21 days, the matter will be automatically referred by the Division to the court for determination.

78 Form of notice

In the Notice of a spot fine, the Notice shall clearly state the following –

(a) the alleged offence;

(b) date on which the offence was allegedly committed;

(c) provision or provisions which have been violated and prescribed sanction; and

(d) right of the alleged offender to elect the process in accordance with subsection (1) and the prescribed period within which this must be done.

79 Types and level

(1) The Minister, with the consent of Cabinet, will determine the types and level of spot fines to be issued under this Part.

(2) The maximum amount for a spot fine shall be –

(a) in the case of a business, a fine of up to $3,000 per offence; and

(b) in the case of an individual, a fine of up to $1,500 per offence.

PART XV – OFFENCES AND PENALTIES

80 General offences

A person who-

(a) operates a food business without a licence, permit or approval required by this Act;

(b) imports, exports, produces, manufactures, prepares, stores or sells food which otherwise violates any provision of this Act;

(c) gives false information to the Authority or an enforcement officer under this Act;

(d) fails to comply with an order issued by the Authority under this Act;

(e) fails to comply with a Compliance Notice issued under this;

(f) tampers with any food samples taken under this Act;

(g) fails to label food as prescribed under this Act;

(h) fails to establish and implement a traceability system in accordance with this Act;

(i) prepares, stores, handles or sells food under unsanitary conditions;

(j) fails to follow the applicable hygiene rules established under this Act;

(k) fails to ensure that all employees of a food business follow prescribed procedures;

(l) breaks any seal or alters any markings made by an enforcement officer without permission;

(m) attempts to improperly influence an enforcement officer in the exercise of his official functions under this Act; or

(n) poses as an enforcement officer;

commits an offence.

81 Sale of unwholesome food

(1) A 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.

82 Sale of food not meeting standards

(1) A person who prepares or sells any food for which there is a prescribed standard made under or pursuant to this Act commits an offence, unless the food complies with that standard.

(2) A 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.

83 False or misleading labelling

(1) A 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) A 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.

84 Offences by enforcement officers

An enforcement 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

85 Publishing false or misleading advertisements

A 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.

86 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.

87 Penalties

(1) A 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, permit or approval 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.

88 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 enforcement officer certifies that the conditions which led to the issuance of the order are no longer in effect.

PART XVI – REGISTERS

89 Registers to be established

(1) The Chief Executive Officer shall establish and maintain a register which contains the following information –

(a) names and contact details of all food businesses including importers, distributors, manufacturers, traders and exporters;

(b) list of all persons who are delegated with responsibilities under this Act and the effective date and duration;

(c) names of all designated officers, including their date of appointment, powers and duration of appointment;

(d) complaints lodged under this Act and outcomes;

(e) prosecutions initiated under this Act and outcomes;

(f) level and nature of spot fines issued under this Act and outcomes;

(g) any other register that the Chief Executive Officer deems necessary for the efficient and effective discharge of the Authority's functions.

(2) To the extent possible, the registers of the Ministry shall be established and maintained electronically.

PART XVII - MISCELLANEOUS

90 Annual report

(1) The Ministry shall, no later than 6 months after the end of each financial year, furnish to the Cabinet a copy of its Annual Report which outlines its operations for the preceding financial year.

(2) As soon as is reasonably practical, the Minister shall present a copy of the Authority's Annual Report to the Legislative Assembly.

91 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 enforcement officers, official analysts and official laboratories in the exercise of their functions under this Act;

(k) food standards generally;

(l) regulation of all aspects related to marine food products;

(m) the disposal or destruction of unsafe food;

(n) the fees payable in respect of the inspection and analysis of food;

(o) the forms to be used for the purposes of this Act, including applications, licences, permits, Compliance Notices and receipts for articles seized;

(p) prescribing regulatory offences and penalties; or

(q) any other matter deemed necessary to achieve the purposes of this Act.

(2) Notwithstanding the provisions of sub-section (1)(k), the standards, guidelines 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 and approved by Cabinet.

92 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.

PART XVIII – SAVINGS AND REPEAL

93 Savings and repeal

This Act shall repeal and replace the Food Act 2014.

Passed in the Legislative Assembly this **7th** day of **September** 2020.

SCHEDULE I

(Section 41 (7))

RULES OF PROCEDURE OF THE NATIONAL FOOD COUNCIL

The National Food Council shall have the following rules of procedure –

1 Meetings of the Council

(1) Meetings of the Council shall take place at such time and at such place at the Chair directs from time to time.

(2) The Secretary shall provide at least 48 hours written notice of each meeting and distribute the agenda and materials for the meeting together with such notice.

2 Quorum for meetings

(1) The quorum for a meeting of the Council shall be at least half of its full members, provided that –

(a) at least 2 of the members in attendance are Chief Executive Officers; and

(b) either the Chair or Vice-chair is attending the meeting.

(2) For ensuring that meetings are not constituted without a quorum –

(a) each member must advise the Secretary at least a day in advance of the meeting whether or not he is able to attend a planned meeting of the Council; and

(b) the Secretary must ensure that either the Chair or the Deputy Chair is available to attend the meeting.

3 Responsibilities of Chair and Deputy Chair

(1) Responsibilities of the Chair are as follows –

(a) call for, and preside over meetings of the Council;

(b) serve as the head of the Council, responsible for the proper execution and discharge of the Council's responsibilities under this Act;

(c) oversee the work of the Secretary and Secretariat to ensure that proper meeting papers and records are kept;

(d) ensure the confidentiality of Council records as appropriate; and

(e) deal with the media and act as the official spokesperson for the Council.

(2) Except as may be otherwise provided in this Act and regulations made under this Act, the Chair shall have the power to act, contract or sign instruments and documents on behalf of the Council and, pursuant to the resolutions of the

Council, delegate any of these powers to the Deputy Chair or to other officers of the Council.

(3) In the absence of the Chair from any meeting, the Deputy Chair shall preside at that meeting and he shall have the same powers of the Chair while he presides.

(4) A decision of or proceeding before the Council shall not be held bad or void by reason of error of form or informality.

4 Term of office

(1) Except for ex-officio members, a member of the Council shall be appointed for a term of 2 years and may be re-appointed in accordance with section 39.

(2) Unless he vacates his office sooner under article 5, a member of the Council shall continue to hold office until his successor comes into office, notwithstanding that the term for which he was appointed may have expired.

5 Extraordinary vacancies

(1) A member of the Council may at any time be removed from office by the Authority for inability to perform the functions of the office, bankruptcy, neglect of duty, misconduct, or where a member is convicted of a criminal offence.

(2) Except for ex-officio members, a member of the Council may at any time resign his office by giving written notice to that effect to the Chair.

(3) If a member of the Council dies, resigns, or is removed from office by the Authority, the vacancy shall be deemed to be an extraordinary vacancy.

(4) An extraordinary vacancy shall be filled temporarily by the appointment of a member by Cabinet on the recommendation of the Minister.

(5) Every person appointed to fill an extraordinary vacancy shall be appointed for the residue of the term for which the vacating member was appointed and may be reappointed by the Cabinet as a full member.

6 Delegation of powers

(1) Except for his power to Chair or call meetings of the Council, from time to time the Chair may delegate one or more of his functions to the Deputy Chair or a full member of the Council.

(2) Where a function is delegated under this article, the alternate member shall not automatically be deemed to have been given the delegation which was given to the full member, unless this is expressly provided in writing by the Chair in the instrument of delegation.

(3) The Secretary shall keep a register of the names of each person to whom a power or function is delegated under this article.

7 Members and officers to maintain confidentiality

(1) A member of the Council and a person engaged or employed in connection with the work of the Council shall maintain and ensure the confidentiality of all documents and reports in relation to the work of the Council, as well as information or matters which come to his knowledge when carrying out his functions or duties under this Act.

(2) A person in sub-article (1) shall not communicate or convey any information to any person except as approved by the Council in accordance with this Act.

8 Voting

A decision of a majority of the members present at any meeting shall be the decision of the Council, and, in the event of an equality of votes, the member presiding shall have only a deliberative vote and not a casting vote.

9 Functions of the Secretary and Secretariat

(1) Functions of the Secretary shall include:

(a) keeping proper minutes of a meeting of the Council;

(b) notifying members as to future meetings of the Council, as well as preparing and ensuring the timely distribution of all meeting materials;

(c) liaising between the Ministry and the Council as necessary to ensure timely and effective communication between the Ministry and Council;

(d) liaising between the Council and relevant stakeholders, the media and the public as is required from time to time to ensure timely and effective communication between these groups and the Council;

(e) ensuring that confidential information of the Council are kept in secure storage and released only in accordance with the instructions of the Chair; and

(f) complying with any other lawful direction of the Chair or Deputy Chair from time to time.

(2) Functions of the Secretariat shall include:

(a) distributing meeting materials of the Council under the supervision of the Secretary;

(b) keeping proper filing systems for the secure storage of reports, documents, accounts and any other record of the Council;

(c) carrying out administrative or financial functions of the Council as required from time to time; and

(d) following the lawful directions of the Chair or Secretary pursuant to this Act.

10 Members not personally liable

No member of the Council shall be personally liable for any act done or default made by the Council in good faith in pursuance or intended pursuance of the powers, duties and functions of the Council under this Act.

11 Meeting fees

(1) A non-government member of the Council shall be entitled to receive a meeting fee for each meeting of the Council. The meeting fee and process for payment shall be set out in regulations made under this Act.

(2) A government employee who is a member of the Council shall not be entitled to receive a meeting fee under this Act.

12 Responsibilities of co-opted members

(1) Co-opted members appointed by the Council shall hold office for such periods of time and upon such terms and conditions as shall be determined by the Council.

(2) The Council may remove a co-opted member for misconduct, for infirmity of body or mind, for conflict of interests or for having been convicted of a crime.

SCHEDULE II

FORM A - NOTICE OF FOOD SAFETY EVENT OR ISSUE

(Section 42(2))

To: National Food Authority
Address: Ministry responsible for Food
Ma'ufanga
Nuku'alofa

NOTICE OF FOOD SAFETY EVENT OR ISSUE

I, …….. (name) being a …….. (occupation) of ……..… (name of firm or company) / or of ..... (name of village), hereby wish to advise the Authority of the following food safety event or issue, which I strongly believe may pose a serious imminent risk to public health:

Food safety issue or event:

……
……
……
…….

Incident was also reported to:

……
……
……
…….

Details of contaminated food (if any):

……
……
……
…….

In support of the above, I also enclose the following documents / statements / or information from the following witnesses:

1. Name: ……..
   Contact details: …….
2. Name: …….
   Contact details: …….
3. Name: …….
   Contact details: …….

The location and details of the food business/food vendor which I believe is responsible for the food safety event or issue being reported:

……
……
……
……..

My contact details are:

……
……
……
……..

Declaration:

I understand that the Food Act 2020 provides penalties for persons who provide false information.

I declare that the information supplied in this Notice is a true, correct and complete statement. I understand that I am required to report immediately to the Authority any changes to the information given on this form and further understand that failure to do so may render me liable to prosecution.

……
Name and signature of informant

FOR OFFICE USE ONLY:

Received by: ……..

Date: ……..……..

Date submitted: ……

FORM B - EMERGENCY ORDER

(Section 43(5)(a))

Ministry responsible for Food

To: ……
Address: ……
……
……

EMERGENCY ORDER

In exercise of the powers conferred by section 44 of the Food Act 2020, I hereby issue the following Order:

that the above-named shall immediately publish warnings that the particular food or class of foods listed below is unsafe for human consumption;

☐ that the cultivation, harvesting, taking, obtaining or production of:
……..… (specific food / or particular class of food*) in
…….. (specific area) is prohibited until further notice from the Authority;

☐ that the above-named manufacturer is absolutely prohibited from the preparation, manufacture or sale of the following food:
……. (specific food/ or particular class of food*);
that the above-named is prohibited from advertising or selling the following food:
……..… (specific food / or particular class of food*);

☐ that the following food: ……. (specific food / or particular class of food*) shall be immediately recalled from public sale or shall be immediately removed from circulation in Tonga;

☐ that the following food: …….. (specific food / or particular class of food*) which is intended for human consumption shall immediately be impounded, isolated, destroyed or otherwise disposed of at …… (specify place / manner) in which the impounding, isolation, destruction or disposal is to be carried out;

☐ that the following food: ……. must immediately be tested, analysed or examined to identify the following:

……..…..
(specify purpose for analysis or testing).

You are hereby notified that this Order will take effect –

(a) if served on you personally, within 2 days of the making of this Order; or

(b) if published by notice in the newspaper, at the beginning of the first day on which the notice was published.

This Notice will cease on ……. (insert date) which is 90 days after the date on which the Notice takes effect, unless it is revoked sooner by the Authority or extended for a further specified period.

Dated this ……. day of ……..……., 20…….

……
National Food Authority

FORM C - ORDER TO RECALL

(Section 43(5)(b))

Ministry responsible for Food

To: ……
Address: ……
……
……

ORDER TO RECALL

In exercise of the powers conferred by section 44 of the Food Act 2020, I hereby issue the following Order:

1. Recall all of the goods identified below, within 7 working days from the date of this order;

List of Goods	Brand Specification
…….	……
…….	……
…….	……
…….	……

2. Notify the public of the following matters:

   (i) the particular food or type of food to be recalled;
   (ii) the reasons why the food is considered unsafe;
   (iii) the circumstances under which the consumption of the food is unsafe;
   (iv) procedures for disposing of the food,

   By way of –

   (a) publishing a notice in a newspaper of general circulation in Tonga on a weekly basis for a period of at least four consecutive weeks (1 month); and

   (b) making an announcement on the Radio Tonga News Bulletin within 24 hours of the date of this order, and to be announced at least 3 times in the 24 hour period.

You are hereby advised that you must give written notice to the Authority by ……. (date stated here must be within 2 days of the

date of Recall Order) that you have completed the recall according to the above instructions.

You are further advised that should you fail to comply with this Recall Order, the Authority may carry out the product recall on your behalf, and the total costs of which you will be responsible.

Dated this ……. day of ……..……., 20……

……
National Food Authority

FORM D - ORDER TO DESTROY

(Section 43(5)(c))

Ministry responsible for Food

To: ……
Address: ……
……
……

ORDER TO DESTROY

In exercise of the powers conferred by section 44 of the Food Act 2020, I hereby issue the following Order:

☐ that the following food: ……. (specific food / or particular class of food*) which is intended for human consumption shall immediately be impounded, isolated and destroyed at ……. (specify place / manner) on the following date: ……

You will be entitled to be present when this Order is being carried out.
If you are not present on the abovenamed date, we request that you send a representative to be present at the abovenamed site.

Dated this ……. day of ……..……., 20……

……..
National Food Authority

FORM E - ORDER TO SEAL

(Section 43(5)(d))

Ministry responsible for Food

To: ……
Address: ……
……
……

ORDER TO SEAL

In exercise of the powers conferred by section 44 of the Food Act 2020, I hereby issue the following Order:

☐ that the following food: ……. (specific food / or particular class of food*) which is intended for human consumption shall immediately be isolated at:
……..…….
(specify place / manner) for the following period……
(state duration of seal) for the following reasons:
……...…….
(state reason why the food is being sealed).

You shall not, under any circumstance, be permitted to remove this seal or to offer the above-named product for public sale or consumption.

By ……. (specify date) this Order will either be removed, or you will be issued with a further Order in respect of the above-named product(s).

Dated this ……. day of ……..……., 20……

……
National Food Authority

FORM F - ORDER TO RE-EXPORT

(Section 43(5)(e))

Ministry responsible for Food

To: ……
Address: ……
……
……

ORDER TO RE-EXPORT

In exercise of the powers conferred by section 44 of the Food Act 2020, I hereby issue the following Order:

☐ that the following imported food:
……..…….
(specific food / or particular class of food*) which is intended for human consumption does not meet the requirements of the Food Act 2020 or regulations and shall immediately be re-exported to the point of origin at the expense of the importer.

You shall not, under any circumstance, be permitted to offer the above-named product for public sale or consumption.

The above-named consignment must be re-exported to:
……
……by
…… (specify date).

If you do not comply with this Order, the Authority will re-export the above-named goods on your behalf, and you will be liable for the total costs related to the re-export.

Dated this ……. day of ……..……., 20……

……..
National Food Authority

[1] Act 3 of 2020

[2] GE.156/2020 dated 16 November 2020