



**Tuvalu**

# **FOOD SAFETY ACT**

**2008 Revised Edition**

**CAP. 28.08**





Tuvalu

## FOOD SAFETY ACT

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Tuvalu

## FOOD SAFETY ACT

**AN ACT TO PROMOTE PUBLIC HEALTH AND SAFETY WITH REGARD TO FOOD, TO REGULATE THE PREPARATION, SALE AND USE OF FOOD, TO ASSIST CONSUMERS MAKE INFORMED CHOICES ON FOOD, TO PROMOTE FAIR TRADING PRACTICES IN RELATION TO FOOD AND FOR RELATED MATTERS<sup>1</sup>**

Commencement [10 October 2007]<sup>2</sup>

### PART I – PRELIMINARY

#### 1 Short title

This Act is cited as the Food Safety Act.

#### 2 Interpretation

In this Act, unless the context otherwise requires —

“**adulterated**”, in relation to a food, means —

- (a) it contains, or is mixed with, any substance which reduces its properties as compared with such food in a normal or non-deteriorated state;
- (b) a substance has been removed from it so that its properties are reduced as compared with such food in a normal or non-deteriorated state;
- (c) it contains a substance which is not permitted for use in food;
- (d) it contains more of a substance than is permitted;
- (e) it is prepared so that the damage, deterioration, or inferiority is or may be concealed;

- (f) it is the product of an animal that died naturally of disease; or in the case of a warm-blooded animal, in any way other than by legal slaughter;
- (g) it consists wholly or in part of any diseased or putrid or rotten animal or vegetable substance whether manufactured or not;
- (h) it contains a hazard or any physical, chemical or biological agent that is or is likely to be injurious to the health of the person consuming the food, whether added with intent or otherwise;
- (i) the food comes into contact with a material that contains a substance which may render the food unfit for human consumption
- (j) it contains a foreign substance;
- (k) it is in a sealed package which is damaged and can no longer protect the contents from contamination or deterioration; or
- (l) it is in a package and any contents of the package are different from what the label states the package contains;

“**advertise**” means use of words, whether written or spoken, symbolic or pictorial representation or design, or any other representation that has the effect of promoting a product for sale;

“**article**” means (i) any food or (ii) anything used to label or advertise food or (iii) any thing or machine used for the preparation, preservation, packing, storing or displaying of any food;

“**best before date**” means the date after which a food may not be of the quality expected by a consumer;

“**expiration date**” means the date after which a food may be unsafe to eat. For the purposes of this Act the phrases “**use by**”, “**expiry date**” and “**expiration date**” shall have the same meaning;

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

“**food business**” means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of production, processing and distribution of food for sale. While not limited to the following, food businesses include restaurants, bakeries, caterers, food wholesalers and retailers, fish vendors, food hawkers, meat butcheries, food processors, food importers and food exporters;

“**food handler**” means any person who directly handles packaged or unpackaged food, food equipment and utensils, or food contact surfaces and is therefore expected to comply with food hygiene requirements;

“**good hygienic practices**” means practices as prescribed by the Recommended International Code of Practice–General Principles of Food Hygiene of the Codex Alimentarius Commission;

“**hazard**” means a biological, chemical or physical agent in, or condition of, food with the potential to cause an adverse health effect;

“**insanitary conditions**” means such conditions as could cause contamination of a food with dirt or filth, or could render the food injurious or dangerous to health, whether such contamination or injury or danger actually occurs or not;

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

“**Minister**” means the Minister responsible for health;

“**premises**” means:

- (a) any building or tent or other structure, permanent or temporary, the land on which it is situated, and any adjoining land used in connection with it;
- (b) any vehicle or vessel; and
- (c) any place, including a street, open space, or place of public resort, used in the preparation, preservation, packaging or storage of any article;

“**operator**” means any person who is in charge of, responsible for the operations of, directs or controls the production, processing, handling or sale of food for a food business premises;

“**sell**” means to offer, advertise, keep, deliver, or prepare for sale or exchange, to dispose of for consideration, or to deliver in pursuance of a sale or exchange.

## PART II – GENERAL PROVISIONS

### 3 Labelling requirements

- (1) Packaged food, other than food that may be exempted from this section by regulation, shall bear a label that states —
  - (a) The name under which the product is to be sold;
  - (b) The nature of the food;
  - (c) The list of ingredients;
  - (d) The net weight, true measure or volume of contents;
  - (e) The name, address and other contact information of the manufacturer or importer; and

- (f) Any other particulars prescribed by regulations and standards under this Act.
- (2) Any information required under subsection (1) must be provided in the English language or Tuvalu language in a manner that is easily visible and likely to be read and understood by an ordinary consumer under customary conditions of purchase and use.

#### **4 Registration of food businesses' premises**

- (1) All food businesses' premises shall be registered with the Ministry of Health before initiating operations.
- (2) In obtaining a license from the appropriate licensing authority, a food business' premises shall be inspected by a food inspector prior to the business initiating operations.
- (3) Notwithstanding a business being in possession of a license provided by the appropriate licensing authority, no food business shall initiate operations until it meets the requirements of this Act and its regulations and standards.
- (4) A license, or a true copy of it, relevant for the particular food business and current for the period of operation, shall be displayed in all premises covered under this Act.

#### **5 Training of food handlers**

All food handlers shall, prior to starting work in a food business, be required to have undergone training offered by the health authorities or by a training organization accredited by the health authorities for such training.

#### **6 Health of food handlers**

- (1) All food handlers shall, prior to starting work in a food business, be required to have undergone medical screening tests prescribed by the Director of Health.
- (2) All food handlers shall be required to have annual medical screening tests prescribed by the Director of Health.
- (3) No person shall be employed as a food handler if they have not been cleared by the medical examinations under sub-sections (1) and (2).

#### **7 Expiration and "best before" dates**

- (1) Food that carries an expiration date or is required by regulations under this Act to carry such a date shall bear the expiration date in a manner that is



easily visible and likely to be read and understood by an ordinary consumer under customary conditions of purchase and use.

- (2) Food that carries a “best before” date or is required by regulations under this Act to carry such a date shall bear the date in a manner that is easily visible and likely to be read and understood by an ordinary consumer under customary conditions of purchase and use.

## **8 Obtaining food from closed areas**

- (1) If the Director of Health is of the opinion that any food or any specified class of food if cultivated, taken, harvested or obtained in or from a specific area may be dangerous or injurious to persons consuming the food, the Director of Health may by order prohibit the cultivation, taking, harvesting or obtaining of the food in or from that area.
- (2) If a prohibition order made under subsection (1) is within the jurisdiction of any other department, the Director of Health must consult the department before making an order under subsection (1).

## **9 Power to prescribe a food as a prohibited product where a public health concern exists**

- (1) If in the opinion of the Director of Health there is a public health concern, the Director of Health may, by order, declare any food a prohibited product.
- (2) A food declared as a prohibited product under subsection (1) shall be prohibited from being imported, produced, prepared, stored, displayed or sold.
- (3) The Minister, if it is necessary in the public interest, may exercise the power conferred on the Director of Health by subsection (1).

# **PART III - PROHIBITIONS**

## **10 Food that is not suitable for human consumption**

A person who imports, exports, produces, processes, handles, stores, displays or sells food that is unfit for human consumption, adulterated, damaged, deteriorated, or perished commits an offence and is liable upon conviction to a fine not exceeding \$500.

## **11 Misleading or deceptive food**

A person who labels, packages, processes, handles, stores, displays, sells or advertises any food in a manner that is false, misleading or deceptive about its

character, nature, value substance, quality, composition, merit or safety commits an offence and is liable upon conviction to a fine not exceeding \$500.

## **12 Labelling not complying with requirements**

A person who labels, packages, processes, handles, stores, displays, sells or advertises any food that is not labelled in accordance with section 3 of the Act or its regulations commits an offence and is liable upon conviction to a fine not exceeding \$500.

## **13 Food not complying with a prescribed standard**

A person who imports, exports, processes, handles, stores, displays, sells or advertises food that does not comply with a prescribed standard for that food commits an offence and is liable upon conviction to a fine not exceeding \$500.

## **14 Food not complying with regulations**

A person who labels, imports, exports, packages, processes, handles, stores, displays, sells or advertises any food in a manner that is in contravention of any regulations promulgated under this Act commits an offence and is liable upon conviction to a fine not exceeding \$500.

## **15 Insanitary conditions**

A person who produces, processes, handles, stores, displays or sells food under insanitary conditions commits an offence and is liable upon conviction to a fine not exceeding \$500.

## **16 Selling a food after its expiration date**

A person who imports, exports, stores, displays, sells or advertises any food after its expiration date commits an offence and is liable upon conviction to a fine not exceeding \$500.

## **17 Selling a food after its “best before” date**

A person who imports, exports, stores, displays, sells or advertises any food more than one week after its “best before” date, unless otherwise permitted by regulations under this Act, commits an offence and is liable upon conviction to a fine not exceeding \$500.

**18 Obliterating an expiration date or “best before” date**

A person who marks any article or takes any other action so as to make an expiration date or a ‘best before’ date not easily visible commits an offence and is liable upon conviction to a fine not exceeding \$500.

**19 Failure to provide reasonable assistance**

A person who refuses or fails to give to a food inspector all reasonable assistance or any information which such person may reasonably be expected to possess commits an offence and is liable upon conviction to a fine not exceeding \$500.

**20 Interfering with the duties of inspectors**

A person who —

- (a) uses force or violence against, intimidates, obstructs, impedes or attempts to obstruct or to impede a food inspector in the performance of his or her functions under this Act, its regulations or standards; or
- (b) gives, procures, offers or promises any bribe, recompense or reward to influence any food inspector in the performance of his or her functions under this Act, its regulations or standards,

commits an offence and is liable upon conviction to a fine not exceeding \$500.

**21 Providing inspectors false or misleading information**

A person who knowingly makes a false or misleading statement, either verbally or in writing, to any food inspector in the performance of his or her functions under this Act, its regulations or standards commits an offence and is liable upon conviction to a fine not exceeding \$500.

**22 Offences against an order by the Director of Health**

A person who —

- (a) cultivates, takes, harvests or otherwise obtains food from an area declared closed for such by the Director of Health under section 8 of this Act; or
- (b) imports, produces, prepares, stores, displays or sells a food prohibited under section 9 of this Act,

commits an offence and is liable upon conviction to a fine not exceeding \$500.

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## PART IV - FOOD INSPECTION AND ANALYSIS

### 23 Appointment of food inspectors

- (1) Any person or persons of a specified class or description may, by regulation, be appointed as food inspectors for the purposes of this Act.
- (2) All health inspectors, assistant health inspectors and senior or staff nurses of the Ministry of Health on outer islands shall be food inspectors for the purposes of this Act.
- (3) With respect to food being imported to Tuvalu, at the point of entry of the food into the country, agricultural quarantine officers shall be food inspectors for the purposes of this Act.

### 24 Powers of entry and search

- (1) For the purposes of this Act, a food inspector may at all reasonable times —
  - (a) stop and detain any vehicle or vessel the inspector knows or reasonably suspects —
    - (i) is being used for the production, processing, handling, storage, display or sale of any food or article under this Act; and
    - (ii) has been or is being or is likely to be used by any person in connection with a contravention of any provision of this Act or its regulations and standards.
  - (b) enter any premises the inspector knows or reasonably suspects are being used for the production, processing, handling, storage, display or sale of any food or article under this Act.
- (2) In any premises entered under subsection (1), a food inspector may —
  - (a) search for, examine and take samples of any article subject to this Act;
  - (b) open and inspect any room, place, container or package that the food inspector knows or reasonably suspects contains any article subject to this Act;
  - (c) examine any documents (electronic or hardcopy) that could contain any relevant information about articles subject to this Act and make copies of them;
  - (d) obtain photographic evidence of any article or condition subject to this Act;
  - (e) question with respect to matters under this Act any person the food inspector finds thereon;
  - (f) make such inquiry and examination as the food inspector believes to be necessary or desirable to assist the discharge or exercise of any function

or power under this Act to ascertain whether any contravention of any provision of this Act has been, is being or is likely to be committed.

- (3) Subsection (1) does not authorize forcible entry by a food inspector to any premises except under the authority of a warrant obtained pursuant to subsection (4).
- (4) A magistrate may, if satisfied upon the information of a food inspector that there is reasonable cause to suspect that any place has been or is being or is likely to be used in connection with a contravention of any provision of this Act, issue a search warrant directing the food inspector to enter the place specified in the search warrant for the purpose of exercising the powers conferred on a food inspector under this Act.
- (5) For the purpose of gaining entry to any premises or place, a food inspector may call in aid such persons as he considers necessary.
- (6) A search warrant issued under subsection (4) is, for a period of one month from its issue, sufficient authority —
  - (a) to the food inspector to whom it is directed, and to all persons acting in aid of the food inspector, to enter the place specified in the search warrant; and
  - (b) to the food inspector to whom it is directed to exercise in respect of the place specified in the search warrant all the powers conferred on a food inspector by this Act.
- (7) Before exercising any power under subsection (1), the food inspector shall upon request produce identification.

## **25 Inspection report**

After any inspection, the food inspector shall give to the owner or person in charge of the premises at the time of inspection a written report noting any violation of this Act or the regulations. A copy of this report shall be given to the Health Inspector and Chief of Public Health.

## **26 Inspection frequency**

- (1) High risk food business premises, including but not limited to restaurants, bakeries, caterers, and fast food operations shall be inspected at least once every 3 months. Medium and low risk food business premises shall be inspected at least once every 6 months.
- (2) Upon inspection, any premises where corrective action is prescribed on the inspection report shall be re-inspected as frequently as identified appropriate and necessary for public health purposes by the food inspector until the corrective action is taken.

## **27 Sampling**

- (1) Where a food inspector reasonably believes there may be a contravention of this Act, its regulations and standards, the food inspector may demand and obtain samples of any articles as required for the purposes of this Act.
- (2) The food inspector taking a sample of food for the purposes of this Act, its regulations and standards shall divide any such food into 3 parts to be then and there separated, and each part shall be labelled or marked and sealed or fastened up, in such manner as the nature will permit, and one of the said parts shall be delivered to the owner, agent, servant or person in charge aforesaid, one shall be retained by the purchaser or inspector, and the third shall be submitted to an analyst.
- (3) Samples taken under sections 24 and 27 may be forwarded under seal in any convenient way to an analyst appointed under section 28.
- (4) Where an analyst certifies that the seal of any sample, taken under sections 24 and 27, was unbroken, the certification shall be sufficient evidence of identity of the sample.

## **28 Appointment of analysts**

The Minister may, by notice in the Gazette, accredit suitably qualified persons or laboratories, located either within or outside Tuvalu, to be analysts for performing laboratory and field tests for the purpose of this Act.

## **29 Certificate of analyst to be evidence**

- (1) Any analyst analyzing any food submitted for the purposes of this Act may give a certificate of the result of the analysis.
- (2) In any legal proceeding under this Act, the production of a certificate purporting to be signed by an analyst shall be prima facie evidence of the identity of the food analysed and of the result of the analysis.

## **30 Copy of result of analysis**

A copy of the result of any analysis shall, on demand, be supplied to the person from whom the sample was procured.

## **31 Cost of analysis**

The court may, in case of a conviction, award the cost of analysis against the defendant as part of the costs of the prosecution.

**32 Seizing articles**

- (1) A food inspector may seize any article which contravenes the Act or its regulations or standards.
- (2) Any food inspector seizing an article under subsection (1) shall include a statement of such seizure in the written inspection report and make such written notice available to the owner or operator of the premises in as short a time as practically possible.
- (3) If a food inspector has seized articles or records or other property for the purposes of this Act he or she may —
  - (a) retain them for as long as necessary for those purposes; and
  - (b) in the case of records, the person otherwise entitled to possession of the records, if he or she so requests, is entitled to be furnished as soon as practicable with a copy certified by the food inspector to be a true copy and such a certified copy must be received in all courts and elsewhere as evidence of the matters contained in it as if it were the original; and
  - (c) in the case of articles or other property, thereafter dispose of it as the court directs.
- (4) An owner or operator from whom an article has been seized may apply to the court within 7 days from the date of seizure for an order to revoke the seizure and release the seized article.

**33 Destruction and disposal of seized articles**

- (1) Any article seized by an authorized food inspector under section 32 shall be destroyed and disposed of by the food inspector where:
  - (a) the food inspector has reasonable evidence that public health is at immediate risk unless the article is destroyed and disposed; or
  - (b) the article is in contravention of this Act, its regulations or standards and the owner consents in writing to its destruction and disposal; or
  - (c) the court has so ordered under section 40.
- (2) Where an article is destroyed and disposed of by the food inspector under subsection (1) all reasonable costs for destruction and disposal shall be borne by the owner of the article or, where a person is convicted under section 40, the person so convicted.

**34 Temporary closure**

- (1) The Chief of Public Health may order the temporary closure of any premises where either:

- (a) a food inspector has reasonable evidence that public health is at immediate risk until corrective action identified as necessary in an inspection is taken; or
  - (b) the premises fails, after 3 re-inspections undertaken within a reasonable period under section 26 subsection (2), to implement a corrective action, identified as necessary by a food inspector.
- (2) Temporary closure shall be for a minimum period of three days.
- (3) After three days temporary closure as prescribed under subsection (2), an owner or operator may request a food inspector to re-inspect the premises to determine the compliance of the premises with this Act, its regulations and standards and the food inspector shall carry out that re-inspection within 72 hours of receiving the request for re-inspection.
- (4) Where premises are found, upon re-inspection under subsection (3) to be in compliance with this Act, its regulations and standards, the Chief of Public Health shall immediately lift the order for temporary closure of the premises.
- (5) Where a food business:
- (a) fails to stop its operations and close its premises within one day of the Chief of Public Health ordering the temporary closure of its premises under subsection (1); or
  - (b) fails to comply with the requirements of this Act, its regulations and standards within 14 days of the Chief of Public Health ordering the temporary closure of its premises under subsection (1); or
  - (c) is found on more than three occasions in a twelve month period to be subject to a temporary closure order,
- the Chief of Public Health shall request the responsible authority for issuing of trading licences to immediately withdraw the licence of the food business.
- (6) The authority issuing trading licences shall be required to take action as requested by the Chief of Public Health under subsection (5) as soon as it is practically possible to do so.
- (7) Where a food business has had its licence revoked under subsection (6), the owner or operator shall not be permitted to apply for a new food business licence within 3 months of having the license revoked.

### 35 Liability

No food inspector or analyst shall be liable for any actions taken while executing his or her duties under this act, unless he or she has acted in bad faith or without reasonable care.



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## PART V – LEGAL PROCEEDINGS

### 36 Bringing of prosecutions

- (1) Prosecutions for an offence under this Act may be brought—
  - (a) by or on behalf of the Attorney-General; or
  - (b) by any police officer.
- (2) A person referred to in subsection (1)(a) or (b), whether or not a lawyer, may lay, institute or conduct any charge, information, complaint or other proceeding arising under this Act, subject to any directions issued by the Attorney-General.

### 37 Magistrates' Courts to have jurisdiction

Any Magistrates' Court shall have jurisdiction to hear, try and determine any criminal proceeding arising in or from a charge made before such court that any person has committed, or is suspected of committing, within the jurisdiction of such court any offence under this Act.

### 38 Penalties

A person who contravenes or fails to comply with any provision of this Act creating an offence is liable upon conviction, where there is no penalty provided, to a fine not exceeding —

- (a) in the case of an individual, \$200 for a first offence and \$500 for a second or subsequent offence; and
- (b) in the case of a body corporate, \$500 for a first offence and \$1000 for a second or subsequent offence.

### 39 Offences by bodies corporate

If a body corporate commits an offence against this Act, each director or other person concerned in the management of the body corporate is also guilty of, and liable to the penalty provided for, that offence unless the director or other person proves that he exercised reasonable diligence to prevent the commission of the offence.

### 40 Additional powers of the court

- (1) If a person is convicted of an offence against this Act, its regulations or standards, the court, in addition to any other penalty, may order —

- (a) that any article be seized, destroyed and disposed of by a food inspector; and
  - (b) that the person convicted shall pay the reasonable costs incurred in the destruction and disposal of any such article.
- (2) Costs payable under subsection (1) may be recovered in the same way as a fine.

## PART VI – MISCELLANEOUS

### 41 Regulations

- (1) The Minister, acting in accordance with the advice of the Cabinet, may make any regulations necessary to give effect to this Act, including, but not limited to —
- (a) prescribing standards;
  - (b) regulating specified modes of preparation of food or of specified classes of food such as organic food;
  - (c) prescribing labelling requirements;
  - (d) regulating the importation and exportation of food;
  - (e) regulating fish and fisheries products;
  - (f) regulations that give effect to obligations resulting from Tuvalu being a signatory to an international agreement;
  - (g) regulating genetically modified food;
  - (h) exempting any article from any provision of the Act;
  - (i) regulating production, processing, preparation, packaging, storage, transportation, display and selling practices;
  - (j) providing for fees for inspection and analysis;
  - (k) regulations on licensing and conditions for licences to be awarded;
  - (l) providing for the tracing and recall of food where necessary;
  - (m) regulating breast milk substitutes;
  - (n) regulating advertising in relation to food;
  - (o) regulating the inspection, sampling and analysis of food;
  - (p) regulating the sale of food after its “best before” date;
  - (q) providing for the establishment of a food safety committee to address food from production to consumption;
  - (r) regulating plant and animal feed and chemicals as they relate to food safety; and

- (s) any other matter necessary or convenient for carrying out or giving effect to this Act.
- (2) In making regulations the Minister shall, so far as practicable, consider the desirability of —
  - (a) restricting the use of substances having no or very little nutritional value as food or ingredients of food; and
  - (b) providing necessary dietary supplements for better nutrition.

#### **42 Repeal and Savings**

- (1) The Pure Food Ordinance (Cap. 36, 1990 Edition) is repealed.
- (2) Nothing contained in this Act shall repeal or modify the provisions of the Public Health Act.

## ENDNOTES

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<sup>1</sup> Act 8 of 2006

<sup>2</sup> LN 7/2007