

FIJI ISLANDS

FOOD SAFETY ACT 2003

ARRANGEMENT OF SECTIONS

PART 1- PRELIMINARY

1. Short title and commencement
2. Interpretation

PART 2 - GENERAL PROVISIONS

3. Food, which is unsafe, unhygienic, adulterated or unfit for consumption
4. Adulterated food
5. Sale of mixture
6. Food enrichment
7. Protection for food purchasers
8. False, misleading or deceptive representation
9. Non-standard food that may be mistaken for standard food
10. Insanitary conditions
11. When keeping or conveying of food not an offence
12. Dealing with prohibited food
13. Labelling requirements
14. Advertisement and promotions
15. Promotion of breast-milk substitutes and baby accessories

PART 3 - LICENSING OF FOOD ESTABLISHMENTS

16. Licences for food establishments
17. Power to grant licences
18. Application for licences
19. Suspension of licence on order of closure
20. Factors Board must consider before issuing licences
21. Inspection of food establishments
22. Appeal to Minister
23. Keeping of records

PART 4 - IMPORTATION

24. Conditional importation for non-complying food
25. Failure to make required changes
26. Selling non-complying foods
27. Power to exempt food

PART 5 - ADMINISTRATION AND ENFORCEMENT

28. Central Board of Health to administer Act
29. Food Safety Advisory Committee
30. Special or standing committees
31. Local authorities
32. Analysts and approved laboratories
33. Authorised officers
34. Powers of inspection
35. Power to search, etc.
36. Offences against authorised officers
37. Safekeeping of seized articles
38. Articles of similar nature not seized
39. Remedy against seizure
40. Articles remain under seizure until court decision, etc.
41. Release by authorised officers
42. Disposal of food
43. Power to take samples
44. Procedure for taking samples
45. Forwarding of samples by post
46. Copy of results of analysis
47. Certificate of analysis
48. Power to obtain information
49. Prohibition of cultivation, etc. of food in certain circumstances
50. Power to prohibit, etc. in an emergency situation
51. Power to close insanitary premises, etc.
52. Conflict of interest
53. Immunity of authorised officers
54. Services by the Board

PART 6 - LEGAL PROCEEDINGS

55. Offenders separately liable
56. Valuation of goods
57. Liabilities of employers, agents, employees, etc.
58. Defences
59. Presumptions as to consumption
60. Presumptions as to liability
61. Limitation of time
62. Certificate of analyst to be evidence
63. Court may order independent analysis
64. Court may order additional penalty
65. Officers of body corporate
66. Penalties
67. Proceedings on behalf of the Board

PART 7 - MISCELLANEOUS

- 68. Annual Report
- 69. Rules of Codex Alimentarius Commission incorporated
- 70. Regulations
- 71. This Act is in addition to any other law
- 72. Repeals and savings

Schedule 1 Panel of other members of Food Advisory Committee
Schedule 2 Penalties

ACT NO. 10 OF 2003

I assent

[L.S.]

J.I. ULUIVUDA
President

[26 August 2003]

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**

ENACTED by the Parliament of the Fiji Islands

PART 1 - PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Food Safety Act 2003.
- (2) This Act commences on a date appointed by the Minister by notice in the *Gazette*.

Interpretation

2. (1) In this Act, unless the context otherwise requires-

"adulterant" means any material or substance which is or could be used for the purpose of adulterating food;

"advertisement" means-

- (a) any written or spoken word;
- (b) any symbolic, pictorial representation or design;
- (c) any other form of representation or expression published,

used or apparently used to directly or indirectly promote the sale or disposal of any food;

"analyst" means a person authorised under section 32(1)(a);

"animal" includes any quadruped or bird whether domesticated or wild, fish crustaceans, molluscs, shellfish, octopus, jelly-fish, turtles, reptiles, insects or worms and their products such as eggs, caviar or milk, the whole or part of which are consumed or presented for consumption;

"appliance" means the whole or any part of any utensil, machinery, instrument, apparatus or any other thing used for handling, conveying, serving, selling or supplying any food, and includes any utensil, machinery, instrument, apparatus, or any other thing used or that could be used in leaning any appliance or food vending machine;

"approved laboratory" means a laboratory approved under section 32(1)(b);

"article" includes

- (a) any food or adulterant;
- (b) any appliance;
- (c) any package, or any material used or that could be used in packing food;
- (d) any labelling or advertising material connected with food;
- (e) any other thing found in any food premises or on a person handling food;

"aspect", when used in connection with food, includes the character, nature, value, price, substance, quality, strength, purity, composition, merit, safety, amount, origin, age and effect of the food or of any ingredient, constituent of the food which induces a consumer to buy the food or any information in that regard which is needed for making an informed decision;

"authorised officer" means a person appointed under section 33;

"batch number" means any combination of letters or figures or both, used for marking, identifying or tracing a batch or lot of pre-packaged food or articles when manufactured,

distributed or sold, and includes a date mark; and "lot number" has a corresponding meaning;

"Board" means the Central Board of Health constituted under section 3 of the Public Health Act (Cap. 111);

"Codex Alimentarius", means the internationally adopted food standards published by the Codex Alimentarius Commission and Codex, has a corresponding meaning.

"Codex Alimentarius Commission" means the international body established by the World Health Organisation and Food and Agriculture Organisation to carry out Food Standards Programmes for the purpose of protecting the health of consumers and facilitating international trade.

"Committee" means the Food Safety Advisory Committee established by section 29;

"consumption" means human consumption; and "consumed" has a corresponding meaning;

"examine" includes test, measure, count, weigh or compare with another standard;

"food" means any substance or matter used or represented for consumption as food or drink, whether alcoholic or otherwise, and includes-

- (a) any ingredient, food additive or other substance that enters into or is used in the composition or preparation of food or drink;
- (b) any confectionery or chewing substance, including ice and ice cream;
- (c) salt and spices, whether used as ingredients or otherwise;
- (d) any other substance declared to be food under subsection (2), but does not include a substance or matter used as a drug or medicine unless it is sold as food;
- (e) for the purposes of this Act, water which is meant for consumption is classified as a food, including bottled water and water that is used in food or beverages or in conjunction with the processing of food;

"food authority" means a local authority or any other body empowered by the Board to function as a food authority under this Act, and appropriate authority or "the authority" has a corresponding meaning;

"food establishment" means any operation or any business entity that stores, prepares, packages, serves, vends or provides food for consumption and includes food processing establishments and delivery services, and establishment has a corresponding meaning;

"food processing" means the mixing, heating, separating, cooling, freezing, fermenting, preserving, or reducing in size of one or more edible components to produce products fit for human consumption;

"food processing establishment" means a commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer;

"food vending machine" means any machine or mechanical device used or capable of being used for selling or supplying food without any intervention or addition by or on behalf of the seller at the time of sale or supply;

"import" means bring or cause to be brought into the Fiji Islands for the purpose of consumption;

"importer" includes a person who as owner, consignor, agent or broker is entitled to the possession, custody or control of imported food, whether or not it has been purchased by them;

"ingredient" includes any element of an ingredient;

"insanitary condition" means any condition or circumstance that might cause adulteration or contamination of food with dirt, filth or harmful substances or which might render food injurious or dangerous to health or offensive as food, or any other condition or circumstance that clearly violates hygiene requirements;

"label" means any tag, brand or mark, and any statement or pictorial or other descriptive matter written, printed, stencilled, marked, embossed or impressed on, or attached to or included in, or belonging to, used with, or displayed in connection with or accompanying any food or any package of food;

"licence" means a licence issued under Part 3;

"local authority" has the meaning in section 10 of the Public Health Act;

"mixture" means any food made by mixing together other food ingredients;

"owner" includes the owners agent or an importer, an exporter, a distributor, a seller or a person in possession or control of any food;

"package" means anything in or by which food to be sold is wholly or partly packed, cased, covered, enclosed or contained and includes a basket, barrel, bag, bottle, casket, pail, receptacle, sack or wrapper of any kind whether open or closed;

"premises" means any place or establishment, where food is sold or prepared, packed or kept for sale, and includes a building, tent, stall or other temporary structure, together

with the land on which the same is situated and any adjoining land or structure used in connection therewith; and food premises has a corresponding meaning;

"pre-packaged", in relation to an item, means the pre-packaged item, which consists of food and the packaging into which the food was packed before being offered for sale, whether or not the packaging encloses the food completely or partially, but in any case, in such a way that the contents of the package cannot be altered without opening or changing the packaging;

"prohibited food" means any food which is declared to be prohibited under or contravenes this Act or the regulations;

"proprietor", in relation to food premises, means a person who owns, possesses, operates or is apparently in charge of such premises;

"publish" means-

- (a) to insert in a newspaper or any other publication;
- (b) to send to a person by post;
- (c) to deliver by hand;
- (d) to distribute in a public place;
- (e) to leave on premises, a dwelling or any other place in the occupation of a person,
- (f) temporarily or otherwise;
- (g) to disseminate by broadcast, telecast or projected image whether moving or still; or
- (h) to bring to the notice of the public in any manner whatsoever;

"sample" includes a part of a sample;

"sell", in connection with a food article, means to sell for consumption or use by a person, and includes-

- (a) to barter, to offer or attempt to sell, to receive for sale, to have in possession for sale, to expose for sale, to send, forward or deliver for sale or to cause or allow to be sold, offered or exposed for sale;
- (b) to re-sell for consumption or use;

(c) in consideration of an inclusive charge for the article supplied, to supply for consumption or use by a person pursuant to a contract, together with accommodation, service or entertainment including supply of a meal at a hotel, boarding house, restaurant or function room;

(d) to offer as a prize or reward;

(e) to give away for the purpose of advertisement or promotion of a food or of any other trade or business;

"vehicle" means a device, whether mobile or not, that is usually a means of conveyance on land and includes a cart, caravan, bicycle or railway carriage or other similar contrivance;

"vessel" means a ship, boat, or any other form of similar transportation used in navigation either on the sea, in inland waters, and includes, a barge, hulk or air-cushion vehicle whether or not operational.

(2) The Board may, by order in the *Gazette*, declare to be food any substance-

(a) intended for consumption; or

(b) represented for consumption that does not come within the definition of food.

PART 2 - GENERAL PROVISIONS

Food which is unsafe, unhygienic, adulterated or unfit for consumption

3. (1) A person who prepares, packs, keeps, conveys, sells or gives free of charge any food which is unsafe, unhygienic or unfit for consumption commits an offence.

Provided that this section shall be subject to any exemptions provided under section 70(1)(m) and (n), and in the case of exemption affecting Fijians, such exemption shall be made subject to written certification of the Fijian Affairs Board under section 11 of the Fijian Affairs Act (Cap. 120).

(2) Without limiting subsection (1), a food is deemed to be unfit for consumption if the food-

(a) might cause death if it is consumed;

(b) contains material that might endanger human life or cause death if consumed;

(c) might directly or indirectly result in injury, illness or any other adverse health effect;

(d) might constitute a cumulative health hazard, in that the health of a person consuming it in ordinary quantities may be severely impaired in the long run;

(e) bears or contains any toxin, or any poisonous, deleterious substance, or any agent of infection which might render the food injurious or dangerous to health;

(f) has been prepared, packed, kept or conveyed under insanitary conditions which might render the food injurious or dangerous to health;

(g) is wholly or partly damaged, infested, putrid, rotten, decomposed or decayed;

(h) is wholly or partly the product of a diseased animal, or one which has died naturally and has not been slaughtered when slaughtering is the practice;

(i) contains any matter foreign to the nature of food such as filth, dirt, insect, vermin, excreta or similar matter, which makes it unsafe or unfit for consumption.

(3) The Board may, by order in the *Gazette*, declare any food to be unfit for consumption if the food does not comply with internationally adopted food standards as contained in the Codex Alimentarius, or if the food has been proven to be unfit for consumption based on scientific evidence.

Adulterated food

4. (1) A person who sells, or prepares, packs, keeps or conveys for the purpose of sale, any food that is adulterated commits an offence.

(2) For the purpose of this Act, a food is deemed to be adulterated if-

(a) by its labelling or otherwise the food is represented as being a particular type of food but-

(i) the food contains or is mixed or diluted with any inferior or cheaper substance; or

(ii) any constituent of the food has been wholly or partly extracted or removed so that its properties as compared with the food in a whole and pure state are diminished;

(b) the food is in a package but the contents of the package as originally packed have been wholly or partly removed or replaced by any other component;

(c) the food bears or contains any substance which-

(i) is prohibited or not permitted in general or by Codex in relation to that food;

(ii) is more than the maximum amount permitted in relation to that food; or

(iii) is known to be harmful, or the amount of which is known to be excessive in relation to that food;

(d) the food does not comply with the prescribed standards or prescribed specifications in relation to such food; or

(e) the food is made to appear better or to have greater value than it really has, unless such processing is specifically permitted in regard to that food.

(3) A food is deemed not be adulterated under subsection (2)(a) if-

(a) the food is sold as a mixture in accordance with this Act;

(b) the food contains no more than the prescribed quantity or proportion of any substance required or permitted to be added; or

(c) the extraction or removal of any constituent is required or permitted by and complies with the regulations.

Sale of mixture

5. (1) If a person sells a food, the ingredients must be pure, undeteriorated, and comply with the standards set out in Codex and the person must represent it as mixture to the purchaser and provide all and accurate information about the name and the proportions of elements of the mixture.

(2) The Board may, by order in the *Gazette*, prohibit the sale of any mixture and prescribe standards for any mixture.

(3) A person who prepares or sells a mixture in contravention of this section commits an offence.

Food enrichment

6. The Board may prescribe standards with respect to the fortification of any food if such fortification is based on scientific evidence showing its benefit to health.

Protection for food purchasers

7. (1) If a standard is prescribed for a food, the purchaser is deemed to have demanded food that complies with the standard.

(2) If no standard is prescribed, a purchaser who demands food in its common name in the food industry is entitled to have food of such nature, substance and quality that is reasonably expected of such food under the fair trading practices.

False, misleading or deceptive representation

8. (1) A person who sells, prepares, packs, keeps, conveys, labels or advertises any food for sale in a manner that is false, misleading or deceptive in relation to any particular aspect of the food, which induces a consumer to buy the food, commits an offence.

(2) For the purposes of subsection (1), the following are deemed to be false, misleading or deceptive-

- (a) the food is sold under the name of another food;
- (b) the food is an imitation, but information stating the fact is not conspicuously displayed on its label, package or advertisement;
- (c) the food does not comply with this Act or the regulations regarding presentation of food;
- (d) a particular fact about any aspect of the food, which is known or could have been ascertained with due diligence, and which is an important fact for consumers, is omitted;
- (e) the trademark, brand name or any other special name under which the food is sold is misleading, false or deceptive.

Non-standard food that may be mistaken for standard food

9. A person who sells, prepares, packs, keeps, conveys, labels or advertises for sale any food that does not comply with the standard prescribed for such food in such a manner that it is likely to be mistaken for food of the prescribed standard commits an offence.

Insanitary conditions

10. A person who sells, prepares, packs, keeps or conveys for sale any food under insanitary conditions that renders or may render the food injurious or dangerous to health commits an offence.

When keeping or conveying of food not an offence

11. A person may keep, convey or handle any food prohibited under this Act if the person has, in writing, informed the Board or a food authority (as a delegate of the Board) about it and the person has obtained permission for the Board or the food authority, or the person was acting under the directives of the Board or of the food authority, for the proper disposal of the prohibited food.

Dealing with prohibited food

12. (1) The Board may by regulation prescribe procedures for dealing with and disposing of

prohibited food either in general or in particular cases.

(2) Without limiting subsection (1) the Board may by regulations-

- (a) direct that any prohibited food must be reported to the food authorities;
- (b) direct that the production, importation or packaging of that food ceases immediately;
- (c) require that prohibited food must be detained in a specified place until the appropriate authority can take the necessary action;
- (d) recall or cause to be recalled any prohibited food by product recall procedures;
- (e) direct that a prohibited food be delivered to the authorities for disposal.

(3) Without limiting subsection (2), the following methods may be used for disposal of food-

- (a) burial or burning or for animal consumption or any other appropriate method approved by the Board;
- (b) purifying, sterilizing or reconditioning to the extent which is safe, practicable and desirable for saving food resources or any other means of corrective processing;
- (c) reprocessing, repacking, re-labelling or any other suitable operation or changes to comply with this Act and the regulations.

(4) Any disposal of food carried out under this section must-

- (a) be carried out with the directives of the Board;
- (b) be effective and practicable; and
- (c) be environmentally safe and pose no direct or indirect health hazard as a result of the disposal process.

(5) A person who is in possession, control or custody of any food that does not comply with this Act and the regulations, may apply to the Board for approval to make necessary changes in accordance with subsection (3)(c).

(6) Upon an application under subsection (5), the Board may make the changes itself or allow the applicant to carry out the changes.

(7) This section applies, with necessary modifications, to other similar articles to which this Act applies.

Labelling requirements

13. (1) Subject to subsection (4) or (5), the label of every package of food intended to be sold must contain the following-

- (a) the name under which the product is to be sold and stating the nature of the food;
- (b) the name, address and other contact information of the manufacturer, importer, packer and distributor and
- (c) any other particulars prescribed by the regulations.

(2) The label of every pre-packaged food must, in addition to the requirements under subsection (1), contain the following-

- (a) the batch number or lot number identifying the food processed in the same batch;
- (b) the net quantity, by weight or volume;
 - (i) the list of ingredients in descending order in which they have been included in the formulation;
 - (ii) prescribed nutritional information;
- (c) the expiry date or other similar reference indicating its shelf-life expiry;
- (d) any special conditions for its storage or use;
- (e) any other mandatory labelling standards required under the Codex.

(3) Any information required under this section must be provided in the English 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) The Board may make regulations-

- (a) to prescribe rules for labelling;
- (b) to exempt any food or class of food from the requirements of subsections (1) and (2); and
- (c) to prescribe circumstances in which any of the provisions regarding labelling does not apply;
- (d) to prescribe labelling that alerts the consumer about risks to health (established by scientific evidence) associated with the consumption of certain foods or food components.

(5) If any food-

(a) is offered for sale to the ultimate consumer without pre-packaging; or

(b) is packed on the sale premises at the consumers request,

the requirements of this section are deemed to have been satisfied.

(6) A person who contravenes subsection (1), (2) or (3) commits an offence.

Advertisement and promotions

14. (1) Subject to subsection (4), a person who, for the purpose of effecting or promoting the sale of any food, advertises, promotes or causes the advertisement or promotion of any food-

(a) which is prohibited or the sale of which is not permitted under this Act or regulations;
or

(b) in any particular aspect that is false, misleading or deceptive,

commits an offence.

(2) Without limiting subsection (1), an advertisement or promotion is deemed to be false, misleading or deceptive, if the advertisement or promotion-

(a) incites the public to excessive or irresponsible consumption of a particular food;

(b) contains exaggerated or unsubstantiated claims;

(c) expresses partial truths or ambiguous claims which may lead to misinterpretation or confusion;

(d) refers to investigations or reports by false or non-existent authorities or research centres;

(e) suggests that the consumption or use of the product improves social prestige or personal status;

(f) claims that the food complies with the specific conditions desired by consumers when it does not;

(g) uses, in whole or in part, a copy of or the result of any analysis made for the purposes of this Act without the written approval of the Board.

(3) The Board may, by regulations, impose controls on the advertising and promotion of food so

as to maintain and improve conditions for informed consumer decisions concerning food.

(4) In proceedings under subsection (1), it is a defence to prove that-

(a) the defendant could not with due diligence have ascertained that the advertisement or promotion contravened subsection (1); or

(b) in the case of a defendant whose business is to publish or to arrange for the publication of advertisement - the defendant received the advertisement or the promotion material for publication in the ordinary course of the defendant's business and the defendant did not make or cause any material alteration to the substance of the advertisement.

Promotion of breast-milk substitutes and baby feeding accessories

15. A person who promotes any breast-milk substitute by advertisement, by offering or giving any gift, prize, discount coupon or any other free item or by any other similar means, commits an offence.

PART 3 - LICENSING OF FOOD ESTABLISHMENTS

Licences for food establishments

16. (1) No person must operate a food establishment unless the establishment is licensed under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to the prescribed penalty.

Power to grant licences

17. (1) The Board may issue different types of licences as prescribed by regulation in respect of the different types of food establishments.

(2) The Board may issue a licence with or without conditions.

(3) The power to issue a licence under this Act includes the power to refuse to issue a licence, or to vary, suspend, or cancel a licence.

(4) A person may apply for one or more licences in respect of a food establishment.

(5) The owner of a licensed food establishment must comply with such conditions imposed by the Board and any other conditions specified in the licence.

(6) A person who fails to comply with any of the conditions of a licence imposed by the Board or prescribed by regulations commits an offence.

Application for licences

18. (1) A person who intends to operate a food establishment under this Act may, in the prescribed form and accompanied by the prescribed fee, apply to the Board for a licence to operate a food establishment.

(2) If the Board refuses an application, the Board must, in writing, notify the applicant of its refusal of the application and the reasons for refusal within 14 days from the date of refusing the application.

Suspension of licence on order of closure

19. (1) If a food establishment has been ordered by the Board to close its operation, the licence issued to operate that establishment is automatically suspended from the date the order is served on the licensee until such time the reasons for closure is rectified to the satisfaction of the Board.

(2) If-

(a) the breach that caused closure of a food establishment is a second or subsequent breach; or

(b) the compliance with the Act requires renovations to the premises,

(including a fire, flood or similar incident), the Board may revoke the licence issued in respect of the premise.

(3) The owner of a licence that is revoked under subsection (2) may apply to the Board for a new licence.

Factors Board must consider before issuing licences

20. The Board must not approve an application for a licence in respect of a proposed food establishment unless it is satisfied that-

(a) the proposed plan for the food establishment has been approved by the relevant local authority;

(b) the proposed plan for a new, expanded or altered food establishment has been approved by the relevant local authority;

(c) the new, expanded or altered food establishment has been constructed according to the proposed plan earlier approved by the relevant local authority;

(d) the proposed food establishment complies with health and safety standards under the Health and Safety At Work Act 1996 and any relevant regulations made under that Act;

and

(e) any other prescribed requirements or conditions are complied with.

Inspection of food establishments

21. (1) An authorised inspector must inspect and examine every food establishment at least once every year.

(2) After completing an inspection of a food establishment, the authorised officer must submit a report of the inspection to the Board and the food authorities within 10 working days of completing the inspection unless otherwise specified under subsection (4).

(3) The report must, in respect of the food establishment, specify

(a) if food that is prepared, packed, stored, sold or given free of charge is safe, hygienic, unadulterated and fit for consumption;

(b) if a mixture, whether or not the ingredients of a food are pure, undeteriorated and comply with the standards set out in the Codex;

(c) if food is sold, prepared, packed, kept, conveyed, labelled or advertised for sale in a manner that is false, misleading, deceptive in relation to any particular aspect of food, which induces a consumer to buy the food;

(d) if food is sold, prepared, packed, kept, conveyed, labelled or advertised for sale complies with the prescribed standard of such food;

(e) if food is sold, prepared, packed, kept or conveyed for sale under insanitary conditions that render or may render the food injurious or dangerous to health;

(g) if the label of every package of food complies with section 13;

(h) if breast-milk substitute is promoted by advertisement, by offering or giving any gift, prize, discount coupon or any other free item, or by other similar means;

(i) if the establishment is licensed under section 16(1);

(j) if the establishment complies with the conditions of the licence;

(k) if imported food complies with Part 4;

(l) if the food establishment has been expanded or altered without the approval of the Board;

(m) if the food establishment has been expanded or altered not according to the plan approved by the Board;

(n) if the food establishment complies with the Health and Safety at Work Act 1996 and the regulations made under that Act;

(o) any recommended action to be taken by a licensee for compliance with this Act or the regulations made under this Act and a date by which the recommended action must be completed;

(p) any other recommendation.

(4) If there is a non compliance with this Act or the regulations, the authorised officer must, verbally at the time of the inspection, notify the licensee or the person responsible for the action required.

(5) The authorised officer must submit a written report of the inspection within 5 working days of the inspection-

(a) a copy of which is supplied to the Board;

(b) a copy retained for public record.

(6) Upon request, the food authorities must grant a licensee of a food establishment that has been inspected under this section access to the report in respect of the establishment.

Appeal to Minister

22. (1) Subject to section 31 of the Interpretation Act, any person aggrieved by the refusal of the Board to issue a licence or by the cancellation of a licence may, within 14 days from the date of such refusal or cancellation, appeal in writing to the Minister.

(2) The Minister may confirm or reverse the decision of the Board.

(3) The decision of the Minister is final.

Keeping of records

23. The Board must record the details of any licence issued, varied, suspended, cancelled or refused by it in a register.

PART 4 - IMPORTATION

Conditional importation of non-complying food

24. (1) Subject to subsections (2) and (4), an importer who imports any food or food ingredient which does not comply with this Act or the regulations commits an offence and is liable, on conviction, to the penalty set out in the Schedule 2 and in addition to such penalty the court may

order that the consignment of food be forfeited to the State.

(2) If any food to be imported-

(a) is a processed food in the finished form which is to be sold in the Fiji Islands; and

(b) does not comply with this Act or the regulations regarding labelling,

the Board may, in writing, approve that the food to be imported and relabelled in the Fiji Islands to comply with labelling requirements under this Act and regulations and such the labelling must state that the origin of the product and the name, address and other contact details of the importer or agent.

(3) The importer of any food must give the Board 14 days notice prior to the importation of any food under subsection (2).

(4) Subject to subsection (5), if any food to be imported-

(a) is raw or semi-processed food that requires further processing; and

(b) the original packaging is required to be removed for processing before being sold in the Fiji Islands,

the food may be repacked, reprocessed or reconditioned after importation to ensure compliance with this Act and the regulations.

(5) A person who intends to import food under subsection (4) must, first obtain a permit from the Board and other import control agencies, specifying the conditions of importation and reprocessing of the food.

(6) Without limiting the power of the Board to impose any condition, the Board may direct an importer-

(a) to perform re-labelling or reprocessing operations in a designated area or under the supervision of an authorised officer or in a manner prescribed approved by the Board;

(b) to deposit security or any other guarantee approved by the Board;

(c) to include any other information on the label that the Board thinks fit to protect the health and safety of the public.

Failure to make required changes

25. (1) If any imported food does not comply with this Act or the regulations, the Board may direct that the imported food-

(a) if it requires re-labelling, be relabelled within 30 days by the importer;

(b) if it requires reprocessing, be reprocessed within 3 months or any shorter period specified in the permit issued under section 24(5) by the importer;

(2) An importer who contravenes paragraph (a) or (b) of subsection (1) commits an offence.

(3) It is not an offence under subsection (2) if the food is to be re-exported, provided that the importer gives notice in writing to the Board of the intention to re-export the food before a specified date.

(4) If the food is not exported within 30 days of the specified date, such food is to be forfeited to the State in addition to the penalty for the offence under subsection (2) and must be disposed of by written direction of the Board.

Selling non-complying food

26. (1) A person who sells any food imported under section 25 before making necessary changes to comply with this Act or the regulations commits an offence and is liable on conviction to a fine of not less than the value of the consignment involved in the offence, and the consignment is to be forfeited.

(2) The value of the consignment is the value indicated in the notice given to the Board regarding the consignment, unless the Board directs otherwise.

Power to exempt food

27. The Board may, by order in the *Gazette*, exempt any food or any class of food from any or all of the provisions of this Part, except in relation to the importers identification required under section 24(2).

PART 5 - ADMINISTRATION AND ENFORCEMENT

Central Board of Health to administer Act

28. The Board is responsible for the administration and enforcement of this Act and for that purpose has the powers conferred on it by this Act, Public Health Act or any other written law.

Food Safety Advisory Committee

29. (1) This section establishes the Food Safety Advisory Committee consisting of-

(a) the Director of Primary and Preventive Health Care Services as Chairperson;

(b) the Chief Health Inspector;

- (c) a Senior Health Inspector;
- (d) 3 other members appointed by the Minister to represent the food industry; and
- (e) at least 6 members appointed by the Board from the panel listed in Schedule 1.

(2) The function of the Committee is to advise the Board on any matter in connection with the administration and enforcement of this Act.

(3) The Chief Health Inspector or his or her nominee is the Secretary of the Committee and, under the direction of the Committee, has the power and duties conferred on him or her by the Committee.

(4) The Committee must meet as often as is necessary.

(5) Nine members of the Committee constitute a quorum but the quorum must include members specified in paragraphs (a), (b) and (c) of subsection (1).

Special or standing committees

30. The Committee may appoint special or standing committees consisting of its members or specialist non-members to advise the Committee on particular matters or with aspects of food standards and food safety.

Local authorities

31. (1) A local authority is deemed to be a food authority for the purposes of this Act.

(2) The functions of a local authority and its relationship with the Board for purposes of this Act are as provided in the Public Health Act or in any other written laws.

Analysts and approved laboratories

32. (1) The Board may-

- (a) appoint any person who is a qualified food analyst as an authorised food analyst for the purposes of this Act;

- (b) approve any laboratory in the Fiji Islands or in any other country for the purposes of this Act.

(2) An authorised analyst may be authorised to carry out a specified type or a general type of food analysis.

(3) The Board must, by notice in the *Gazette*, publish a list of appointed authorised analysts and approved laboratories (including the nature of their authorisation, names, addresses and other

relevant details).

Authorised officers

33. (1) The Board or a local authority with the approval of the Board may, appoint any person with prescribed qualifications as authorised officers to administer and enforce the provisions of this Act.

(2) Every authorised officer must be issued with a certificate of authority and the certificate must be produced by the officer when on duty if demanded by any person.

(3) The Board or a local authority with the approval of the Board may appoint prosecutors to appear on behalf of the Board in the magistrate's court.

Powers of inspection

34. (1) If an authorised officer has reasonable grounds to believe that-

(a) any article to which this Act applies is sold, prepared, packed or kept in any premises, vehicle, vessel or aircraft; or

(b) any article, which contravenes this Act, is kept in any premises, vehicle, vessel or aircraft,

the officer may, enter and inspect such premises, vehicle, vessel or aircraft.

(2) For the purposes of subsection (1), the officer may remain in the premises, vehicle, vessel or aircraft for as long as it is necessary to perform his or her duty, and may inspect any part of the premises, vehicle, vessel or aircraft.

(3) An authorised officer may, during an inspection conducted under subsection (1)-

(a) examine-

(i) any article which is used or may be used to contravene this Act or the regulations;

(ii) any article that the officer believes has been or is being or could be used in any way in connection with a contravention of this Act or the regulations;

(iii) any equipment used in the processing, storage or packing of food or food products used in connection with food processing;

(iv) any aspect of the operation in respect of food in a premises, vehicle, vessel or aircraft including but not limited to, waste disposal facilities, water supply, sanitation equipment, plumbing and other facilities and equipment

related to the premises, vehicle, vessel or aircraft and operation of the premise, vehicle, vessel or aircraft as a food establishment; and

- (v) any practice which may contravene the codes of practice, guidelines or other recommended measures set out in the Codex Alimentarius.

(b) require to open any receptacle in which the officer has reasonable cause to believe any such article is kept;

(c) take or remove any article or a sample of such article;

(d) ascertain if this Act is being complied with or obtain information which might be relevant to the enforcement of this Act by-

- (i) questioning any person and require the person to answer any question or to show any book, document or record which might contain relevant information;
- (ii) examining and removing for copying any book, document or record shown or found and copy the whole of it or any extract from it as evidence.

Power to Search, etc.

35. (1) If, upon an inspection under section 34, an authorised officer has reasonable grounds to believe that-

- (a) an offence may have or has been committed under this Act or the regulations; and
- (b) it is necessary to obtain evidence for such offence,

the officer may-

- (aa) search any premises, animal or person by whom any article to which this Act applies is being conveyed; or
- (bb) stop, detain and search any vehicle, vessel or aircraft in or on which any article is sold, prepared, packed or kept for sale, handled or served.

(2) In exercising the powers under subsection (1), the authorised officer may-

- (a) upon reasonable suspicion, seize and detain for as long as is necessary any article by means of which or in relation to which any provision of this Act or the regulations has been contravened;
- (b) mark, fasten, seal or secure any article;

(c) mark, fasten, seal or secure any door, gate or opening affording access to any article;

(d) take and remove any thing or matter or a sample from it if the officer has reason to believe that-

(i) the thing, matter or sample may be used as evidence in any proceedings under this Act; or

(ii) it is necessary to do so to prevent a health hazard;

(e) photograph any article, the officer considers is used to contravene or contributing to the contravention of this Act.

(3) Before exercising the power of search under subsection (1), the authorised officer must give prior written notice to the person who is the subject of the search or who is the owner or keeper of any premises, animal, vehicle, vessel or aircraft.

(4) In exercising the power under this section or section 34, an authorised officer may be accompanied by any person who the officer believes has special knowledge of any matter related to the inspection or search.

(5) In exercising the power under this section or section 34, the authorised officer must produce his or her authority.

(6) An authorised officer may request the assistance of a police officer in carrying out any function under this Act.

Offences against authorised officers

36. (1) The owner, the person in possession of any premises, vehicle, vessel or aircraft and any person found in the premises, vehicle, vessel or aircraft inspected or searched by an authorised officer pursuant to sections 34, and 35 who refuses or fails to give to the authorised officer all reasonable assistance or any information which such person may reasonably be expected to possess or control, commits of an offence.

(2) A person who-

(a) uses force or violence against, intimidates, obstructs, impedes or attempts to obstruct or to impede any authorised officer in the performance of his or her functions under this Act or the regulations;

(b) knowingly makes a false or misleading statement, either verbally or in writing, to any authorised officer engaged in the performance of functions under this Act or the regulations;

(c) upon lawful demand by an authorised officer to state his or her name and address, refuses to do so or gives a false name or address;

(d) retakes, or attempts to retake any article seized under this Act, or resists or attempts to prevent the seizure;

(e) removes, alters or interferes in any way with any article seized or sealed under this Act, without the authority of an authorised officer;

(f) gives, procures, offers or promises any bribe, recompenses or rewards to influence any authorised officer engaged in the performance of his or her functions under this Act or the regulations;

commits an offence.

Safekeeping of seized articles

37. An authorised officer who seizes any article under this Act must take all necessary measures to ensure its proper protection and to prevent its unauthorised use or replacement including-

(a) marking, sealing or securing its identification;

(b) weighing, counting, measuring, making, listing or determining its number or amount;

(c) recording, by reference to existing records, information regarding characteristics, properties, condition, value or any other aspect of the article which might be useful;

(d) separating, isolating, locking and sealing under special confinement the article to prevent any unauthorised contact with the article or any possibility of use or replacement of such article;

(e) removing the article to any other proper place, in the premise, vehicle, vessel or aircraft or any other place as necessary;

(f) placing the article under the custody and responsibility of the owner or proprietor of the premise, vehicle, vessel or aircraft or any other person,

at the expense of the owner or the person in possession or control of the article at the time it was seized.

Articles of similar nature not seized

38. (1) An authorised officer must make every effort to determine the existence, amount, value, whereabouts of any article and any other information of any article which might be useful for identification and seizure of such article of a nature similar to that of the seized article, and must seize the article, if the officer thinks fit to do so.

(2) Every such similar article, whether or not seized, must-

(a) be surrendered to the Board or vested in the Board by a forfeiture order of the court;
and

(b) be disposed of by the direction of the Board.

Remedy against seizure

39. (1) If an authorised officer seized and detained an article under this Act, the officer must, give a written notification of the seizure and detention to the owner or person apparently in charge of the article as soon as practicable.

(2) If the person fails or refuses to accept the notice or no one is apparently in charge, the officer must affix the notice on a conspicuous part of the premise, vehicle, vessel or aircraft from which the article was seized.

(3) An owner or any other person claiming an interest in a seized article may apply to the court for an order-

(a) to release of the seized article; or

(b) to revoke the seizure.

(4) After hearing an application under subsection (3), the court may-

(a) order the release of any seized article, if sufficient security is given pending final determination of the matter;

(b) revoke the seizure, if the court is satisfied that this Act has not been contravened; or

(c) refuse the application or make such other order as it thinks fit to make.

Articles remain under seizure until court decision, etc.

40. (1) An article seized under this Act must be kept by the Board and disposed of within 60 days unless before the end of that period the court orders-

(a) the release of the article;

(b) the revocation of the seizure; or

(c) the restitution of the article.

(2) The Board may apply to the court within 60 days from the date of seizure for an order for

continuation of the seizure if a longer period is required to dispose of an article or to prepare for legal proceedings.

Release by authorised officers

41. (1) If an authorised officer is satisfied that the provisions of this Act (with respect to the seized article) have been complied with, the officer must release the article and report the release to the Board.

(2) If the court orders the release of a seized article, an authorised officer must release any article specified in the order.

Disposal of food

42. An authorised officer may destroy or dispose of in a proper manner-

(a) any food unfit for consumption or offensive as food, in order to prevent a health hazard; or

(b) any food surrendered by the owner or person in possession of the food for destruction and disposal, on payment by the owner or person in possession of the food of prescribed charges.

Power to take samples

43. (1) An authorised officer may select and take or obtain samples of any food as required by the officer for the purposes of this Act.

(2) An authorised officer may require the seller of any food, or an agent or employee of the seller or any other person in charge of the food, to show and allow the inspection of any package in which a food is kept at the time and may take or obtain samples as required.

(3) An authorised officer may select and take or obtain samples for the purpose of this Act, without payment, from any manufacturer or importer of food or from an agent or employee of the manufacturer or importer and the officer must provide a receipt stating the details of the sample taken.

(4) A person who refuses or fails to comply with any requisition made by an authorised officer under this section commits an offence.

Procedure for taking samples

44. (1) In respect of every sample taken under this Part, an authorised officer must-

(a) notify the owner, the person in possession of the premises, vehicle, vessel or aircraft the person's agent or employee or any other person apparently in charge of the food to be

sampled, before or as soon as practicable after obtaining the sample;

(b) take adequate sample and divide it as follows

- (i) one part for analysis;
- (ii) one part to be kept by the sampling officer for future comparison;
- (iii) one part for the person providing the sample to use, if he or she wishes, for his or her own analysis; and
- (iv) if the person providing the sample so requests, an additional part for the person to keep for future comparison;

(c) label or mark and seal or fasten the parts in whatever way the nature of the sample will permit;

(d) permit the person from whom the sample was obtained to place his or her seal signature or thumb impression on each part, if the person requires; and

(e) deliver the parts specified in sub-paragraphs (b) (iii) and (iv) to either the owner, the owner's agent or employee or the person in charge of the owners business.

(2) An authorised officer is deemed to have complied with subsection (1)(e) despite the failure by the person to accept the part delivered.

(3) If in the opinion of the authorised officer a division of the sample into parts required by subsection (1)(b)-

- (a) affects or impairs the composition or quality of the sample for accurate analysis;
- (b) provides parts insufficient for analysis; or
- (c) renders the sample in any other way unsuitable for analysis,

the officer must take such number of separate samples as the officer considers necessary and must deal with the samples in a manner appropriate in the circumstances having regard to this Part.

(4) The Board may prescribe procedures for taking and dealing with the samples and in particular-

- (a) the number, the amount of samples and the manner of taking the samples;
- (b) any sampling plan, and the manner of keeping, sending and handling the samples;

(c) procedures for maintaining of a chain of custody from time of sample collection to delivery for analysis at an approved laboratory;

(d) the records to be kept and the particulars to be recorded for all or any type of sample.

Forwarding of samples by post

45. (1) Any food sample may be forwarded to an analyst by registered post or may be forwarded under seal in any convenient way, in which case a certificate of the analyst of the sample is sufficient evidence of the fact.

(2) If the seal of a food sample has been broken when received by the analyst or the analyst reasonably believed that the registered post has been tampered with the analyst must state that fact in the certificate.

Copy of results of analysis

46. Upon request by any person, a copy of a result of any analysis of any food carried out under section 32(2) the authorised officer may supply to the person from whom the sample was obtained within a reasonable time upon receipt from the analyst.

Certificate of analysis

47. (1) If any food is submitted to an analyst or any approved laboratory, the analyst who analysed or supervised the analysis of the food on behalf of the approved laboratory, as the case may be, must give a certificate in the prescribed form of the result of the analysis.

(2) If any method of analysis is prescribed for any type of food submitted for analysis under this Act, the prescribed method must be followed.

Power to obtain information

48. (1) The Board may direct any person who obtains information about the importation or use of any substance or of any process which contravenes this Act or the regulations to provide to the Board, within a reasonable time specified in the direction, particulars of the importation or use or process.

(2) Without limiting subsection (1), a direction may require the following particulars to be provided in respect of any process or any substance-

(a) any process which might contaminate, damage or affect the wholesomeness or beneficial properties of food or renders the substance inferior or hazardous to health;

(b) the composition and chemical formula of the substance;

(c) the manner in which the substance is used in the preparation of food;

(d) any investigation carried out by or to the knowledge of the person for determining whether or not the substance or any product formed when the substance is used is injurious to health;

(e) any investigation or enquiry carried out to the knowledge of the person for the purpose of determining the cumulative effect on the health of a person consuming the substance in ordinary quantities;

(f) any information regarding any prohibition or restriction on the use of the substance or the process in any country or in any international standards or code of recommended practices; and

(g) any information concerning the source of a food product (including where, when and under what conditions it was grown, taken, obtained, harvested, slaughtered or processed).

(3) Any information and particulars provided or obtained in accordance with a direction under this section (relating to any individual business) must not, without the prior consent in writing of the person carrying on the business, be disclosed except in the discharge of any duty or function under this Act.

(4) A person who contravenes this section commits an offence.

Prohibition of cultivation etc. of food in certain circumstances

49. (1) If the Board is of the opinion that any food or any specified class or description of any food if cultivated, taken, harvested or obtained in or from a specific area may be dangerous or injurious to persons consuming the food, the Board may, by order in the *Gazette*, 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 Board must consult the department before making an order under subsection (1).

(3) A person who cultivates, takes, harvests or obtains any food in or from an area to which a prohibition order applies without obtaining a permit from the Board commits an offence.

Power to prohibit, etc in an emergency situation

50. (1) If in the opinion of the Board there is an emergency or sudden necessity, the Board may, by order in the *Gazette*-

(a) prohibit the production, preparation, sale or supply of any food specified in the order;

(b) prohibit the production, preparation, sale or supply of the food mentioned in paragraph (a) except in accordance with any conditions imposed by the Board;

(c) cause any food prohibited under paragraph (a) to be destroyed or disposed of by direction of the Board;

(d) cause any food prohibited under paragraph (a) to be tested or examined in accordance with the directions of the Board; or

(e) cause any food prohibited under paragraph (a) to be held or isolated in any place and prohibit the removal of the food from the place in which it is so held or isolated.

(2) If the Board is unable to exercise the power under subsection (1), the Minister may make such order.

(3) An order made under this section is effective from the date the order is signed.

(4) For the purposes of this section, there is an emergency or sudden necessity if an epidemic a bio-terrorism, a toxic spillage, an intentional or unintentional contamination or adulteration or an infestation or other similar thing occurs, which causes or is most likely to cause food to be unsafe, unfit, or unhygienic for consumption or injurious to health.

Power to close insanitary premises, etc

51. (1) If a food authority-

(a) receives information that conditions in any food premises, or vehicle, vessel or aircraft which operates as a food establishment are insanitary or unhygienic; and

(b) is satisfied that such conditions are insanitary or unhygienic,

the authority may, serve an abatement notice on the owner or person in possession of the premises requiring the person to remedy the condition within a reasonable time specified.

(2) The abatement notice under subsection (1) must

(a) state that, in the opinion of the authority, the issuing of such notice is necessary and contain a warning that non-compliance with the notice may result in issuing an order of closure;

(b) state the reasons for issuing the notice, and state the nature of the contravention;

(c) specify any repair or work to be carried out or any other thing to be done;

(d) specify if necessary, any appliance requiring specific action;

(e) state any other directions; and

- (f) state any other relevant matter applicable to a particular case.
- (3) If the owner or the person in possession of any premises, vehicle, vessel or aircraft served with the abatement notice does not comply with the notice within the time specified, the authority must issue an order of closure unless the authority is satisfied that the notice has been complied with.
- (4) An order of closure may specify one or more of the following
- (a) that no food is to be prepared, packed, stored for sale, sold or handled for sale in the premise;
 - (b) that no food is to be sold in or from a vehicle, vessel or aircraft or conveyed or delivered for preparing, packing or selling in a vehicle, vessel or aircraft;
 - (c) that an appliance specified in the notice must not be used in or for preparing, packing, storing, handling, serving, selling or supplying of any food or in the cleaning of any other appliance;
- (5) An order of closure remains in force until a certificate of inspection which indicates that the premises, vehicle, vessel or aircraft or appliance have been put into a clean and sanitary condition is given by the food authority.
- (6) The owner or the person in possession of any premises, vehicle, vessel or aircraft served with an order for closure served may, in writing, request the authority to inspect or cause to be inspected the premises, vehicle, vessel or aircraft or appliance specified in the order by an authorised officer within 3 days of receiving the request.
- (7) If an authorised officer, after inspection has been requested under subsection (6), refuses to give a certificate of inspection required under the order of closure, a person may within 14 days from the date of the refusal appeal to the Board against the refusal.
- (8) A person may reapply for inspection under subsection (6)-
- (a) after the expiration of the 14 days for appealing to the Board; or
 - (b) if the person does not intend to appeal to the Board, any time after the refusal.
- (9) If a food authority is for any reason fails or unable to issue an order for closure, the Board may, on the grounds of public interest, exercise the powers under this section and appeal from such order lies to the Minister.
- (10) A person who contravenes an order of closure commits an offence.

Conflict of interest

52. (1) A person must not be appointed as an authorised officer in a locality or district in which the person is, directly or indirectly, engaged in any trade or business connected with the production, preparation, packing, conveyance or sale of food or food processing appliances or equipment.

(2) If an authorised officer has, a direct or indirect personal interest in any matter under this Act, the officer must disqualify himself or herself or by written authority of the Board or the food authority be removed from the matter .

Immunity of authorised officers

53. An authorised officer who acts in good faith and with reasonable care under the circumstances in the performance of any function under this Act does not incur any civil or criminal liability in respect of the act, whether on the ground of want of jurisdiction, mistake of law or fact, or on any other ground.

Services by the Board

54. (1) The Board may provide services in connection with its function under this Act.

(2) Without limiting subsection (1), the Board may provide the following services-

- (a) physical, chemical or microbiological analysis of food;
- (b) quality controls for food products;
- (c) analysis of residues or of contaminants in food;
- (d) training courses for food-handling, mass catering or food safety or hygienic practices ;
- (e) special information on food safety and hygienic practices;
- (f) health and sanitary inspection of food and food premises;
- (g) review of plans and specifications for new, expanded or renovated establishments or appliances;
- (h) provide copies of regulations, schedules, forms, codes, manuals, reports and any other relevant documents.

PART 6 - LEGAL PROCEEDINGS

Offenders separately liable

55. (1) A person who commits an offence under this Act by means of or in relation to any food or other article is liable, unless otherwise provided, for his or her own act or omission regardless

of the acts or omissions of other persons which may also constitute an offence and whether or not there is any proceeding against the other person for that act or omission.

(2) The liability of any person under this Act must be established separately from that of any other person by showing a connection between the person's act or omission and the food or other article.

(3) If an offence under this Act is caused by the joint act or omission of two or more persons, it is sufficient to proceed against one or more without proceeding against the others or either of them.

Valuation of the goods

56. (1) For the purpose of determining the value of the food or other article, the value of food or other article is deemed to be the current market value of the food or article in its sound, good, undeteriorated or unadulterated condition regardless of the actual condition of the food or article at the time of valuation.

(2) The prosecutor must submit to the court all the relevant information in his or her possession or control regarding the amount or value of any food, article, or other similar item, involved in the commission of an offence.

Liabilities of employers, agents, employees, etc.

57. (1) If a process worker works under the supervision of an employer, the employers agent or an employee and prepares, packs, keeps, labels, advertises for sale or sells food as part of his or her employment, the employer, employers agent or employee is liable for the process workers act unless the process worker was negligent.

(2) In case of any preparation, packaging, labelling, keeping, advertisement or sale by an agent or employee, the principal or employer is under the same liability as if the principal or employer had done the act.

Defences

58. (1) It is a defence in a proceeding under this Act if the defendant proves that the offence was committed beyond his or her control.

(2) It is a defence in proceedings under this Act to prove that the defendant has no reason to believe that the food sold and delivered did not conform to the written warranty.

(3) In this section, warranty includes any other written statement having the same purpose and effect even if it is not attached to the package of a pre-packaged food.

Presumptions as to consumption

59. In any proceeding under this Act, the following presumptions apply, unless the contrary is

proved-

(a) in the case of any food that is unfit for consumption and the food is given free of charge - it is presumed to have been given for consumption unless otherwise clearly stated in the packaging that it is unfit for consumption;

(b) in respect of any food

(i) if the food is sold - it is presumed to have been sold for consumption;

(ii) if the food is kept, exposed or offered for sale - it is presumed that the food is kept, exposed or offered for sale for consumption;

(c) in respect of any substance that is used or capable of being used in the composition or preparation of any food as an ingredient and found in the above circumstances - it is presumed that it is intended to be used in food for consumption.

Presumptions as to liability

60. (1) In any proceedings under this Act, the following presumptions apply, unless the contrary is proved-

(a) in the case of an article used in connection with the commission of an offence-

(i) if the article is found in any premises - the owner or person in possession of the premises is presumed to be liable;

(ii) if the article is found in any vehicle, which is not subject to a hire-purchase agreement, lease or other similar agreement - the owner or the person in possession of the vehicle is presumed to be liable;

(iii) if the article is found in any vehicle, which is subject to a hire-purchase agreement, lease agreement or other similar agreement - the hirer or the lessee of the vehicle is presumed to be liable;

(iv) if the article is pre-packed food in any unopened package - any of the person who appears from any statement on or attached to the package to be the importer, manufacturer or the packer or the person who prepared the pre-packed food for sale is liable as the case may be.

(2) For the purpose of this section, the contents of any package appearing to be intact and in the original state of packaging by the manufacturer or packer are presumed to be of the description specified on the label unless the contrary is proved.

Limitation of time

61. (1) No proceedings under this Act may be instituted after 12 months from the time when the charge arose unless the prior leave of the court is obtained to institute the proceedings.

(2) For the purposes of subsection (1), the time when a charge arose against a defendant is the time of seizure of any article or the obtaining of a sample of any article to be used as evidence in proceedings under this Act.

Certificate of analyst to be evidence

62. (1) In any proceedings under this Act, a certificate of analysis purporting to be given and signed by an analyst is admissible as evidence of the matters stated in the certificate unless the analyst is required to attend as a witness by-

(a) the court; or

(b) the accused, in which case the accused must give notice to the prosecution 14 days before the proceedings.

(2) A copy of a certificate obtained by or on behalf of the prosecution and intended to be used in evidence must be served on the accused at least 21 days before the proceedings.

(3) The court may presume that signature to the certificate of analysis is genuine and that the person signing it was an analyst at the time the certificate was signed by him or her.

Court may order independent analysis

63. (1) The court may, on an application by a party or on its own volition, order an authorised officer or a defendant to deliver part of any sample taken or obtained under sections 43 and 44 to an independent analyst for analysis.

(2) Any analysis to be carried out by an independent analyst under subsection (1) must not be carried out by an analyst who was directly or indirectly involved in the analysis of sample to which the proceedings relate.

(3) In this section, independent analyst means an independent analyst listed on a panel of analyst published in the *Gazette* by the Board.

Court may order additional penalty

64. When sentencing a person convicted of an offence under this Act, the court may, in addition to a fine or imprisonment-

(a) vary, suspend or revoke any licence, or other authority relating to food issued to the person under any written law; or

(b) order any article, item or package containing similar item to which the conviction

relates, belonging to or found on the defendant or the defendant's premises or in his or her possession or control at the time of the offence be forfeited to the State;

(c) order that any article or item used in the commission of the offence be confiscated and be disposed of by the Board as the Board thinks fit.

Officers of body corporate

65. (1) If a body corporate is convicted of an offence under this Act, the managing director or similar officer of the body corporate may also be charged with the same offence as if the act of the body corporate was a personal act of such director or officer.

Penalties

66. (1) A person convicted of an offence under this Act is liable to the penalty specified in respect of the offence in the second column of Schedule 2.

(2) The penalties specified in Schedule 2 are maxima and a court may impose either a fine or imprisonment or both a fine and imprisonment up to the maximum specified.

(3) A person who commits an offence for which no penalty is prescribed in Schedule 2 is liable on conviction to a maximum fine of \$2,000 or to imprisonment for 2 years.

Proceedings on behalf of the Board

67. The Board or a food authority may appear before any court or in any legal proceeding by an authorised officer or by any official authorised in writing, generally or in respect of any specific proceeding, by the Board or food authority, and persons so authorised may institute and carry on any proceedings under this Act.

PART 7 - MISCELLANEOUS

Annual Report

68. The Board must in every year prepare an annual report of its activities during a financial year and the report shall be submitted to the Minister who shall, as soon as practicable after receiving the report, table the report in both Houses of Parliament.

Codex Alimentarius

69. (1) The Codex Alimentarius made by the Codex Alimentarius Commission for standards and codes regarding food safety and any other matter under this Act are deemed to be regulations made under this Act unless modified by the Board by regulations, but such regulations must not restrict or disadvantage free trade.

(2) If there is a conflict between this Act and the regulations made under it and the rules of the

Codex Alimentarius Commission, this Act or the regulations prevail.

Regulations

70. (1) The Board may make regulations to give effect to the provisions of this Act, in particular-

(a) to declare any food or class of food adulterated if any prescribed substance or class of substance-

- (i) is present on or in the food, in an amount which exceeds the prescribed limit;
- (ii) has been added to the food or has been added to an extent more than allowed;
- (iii) has been extracted from the food, or extracted to an extent more than is allowed; or
- (iv) has been omitted from the food;

(b) to prescribe standards;

(c) in general or for specified classes of food, to prohibit-

- (i) the addition to, mixing with, use in the preparation of, or presence on or in, any food or class of any specified substance or any specified class of substance; or
- (ii) a substance mentioned in subparagraph (i) exceeding a prescribed limit, quantity or proportion; or
- (iii) food, or class of or food components obtained from unapproved sources;

(d) to prescribe the limit, quantity or proportion as-

- (i) absolute value;
- (ii) maximum value;
- (iii) minimum value;
- (iv) minimum and maximum value,

or in any other appropriate way;

(e) to prescribe standards for microbiological quality of food;

(f) in general or for specified classes of food, to prohibit the sale of food-

- (i) containing any micro-organism of any specified kind;
- (ii) containing any micro-organism of any specified kind in excess of a specified number or of a specified quantity; or
- (iii) containing any foreign matter;

(g) to regulate specified modes of preparation of food or of specified classes of food;

(h) to regulate specified modes of packing, keeping, storing, handling, serving, conveying or transporting food or specified classes of food;

(i) to regulate the size, dimensions, fillings and packing materials to be used or other specifications for packages of pre-packaged food;

(j) to regulate the mode of labelling food or specified classes of food, whether sold in packages or otherwise, and the matter to be contained or not to be contained in such labels;

(k) to regulate or restrict the sale, manner of sale, advertisement or importation of any food or any article to which this Act applies;

(l) to exempt any food, or any package of food, of any specified class or description from any provision of this Act or the regulations relating to labelling;

(m) to exempt any food, or packaging or wrapping of food, or any method of preparations thereof, of any specified class or description, in relation to traditional, customary or religious functions or purposes; and

(n) to exempt a class of individuals who are occasionally engaged in selling of fresh agricultural, fresh water or marine products outside a town or city.

(o) to regulate the method of preparing, preserving, packing, storing, conveying or testing any food, in the interest of, or for the prevention of injury to health of the public, and the observance of adequate standards of hygiene in carrying out these activities;

(p) to regulate the carriage of foods which are subject to this Act, including the licensing as food carriers of vehicles, vessels or aircrafts used in such carriage;

(q) to regulate the approval of premises, vehicles, vessels, or aircrafts appliances, methods, processes, packages, seals or closures and sources of water for the purposes of this Act;

(r) to regulate and approve any food establishment or premises that is constructed, renovated, repaired, expanded or in any way altered;

(s) to regulate the use of any appliance or material used in the sale, preparation, packing, storing, conveying, handling, serving or supply for sale of any food or any specified class of food;

(t) to provide for the procedures and fees for licensing of persons and establishments and the registration and or licensing of premises, vehicles, vessels or aircrafts and appliances required under this Act;

(u) to regulate training of persons who prepare, pack, keep, convey or sell food;

(v) to regulate preparation, packaging, keeping, conveyance or selling of food to maintain such books and records as the Board considers necessary for the proper enforcement and administration of this Act;

(w) to regulate proper disposal of food by prescribing ways and means including but not limited to-

- (i) keeping of records and putting batch or lot numbers to facilitate tracing the whereabouts of food;
- (ii) the circumstances in which food must be recalled and the procedure for recall of food;
- (iii) specifying circumstances in which food is to be destroyed or denatured;
- (iv) specifying circumstances in which food may be saved by reconditioning, reprocessing, repackaging or re-labelling;

(x) to classify establishments according to type of food processed or sold and establish specific regulations for that particular type establishment;

(y) to regulate matters related to sampling, including but not limited to-

- (i) the manner of taking samples of any articles in general or for specific purposes;
- (ii) the minimum and maximum amount of samples and the number of samples required for the analysis intended;
- (iii) the manner of packing, labelling, recording, keeping and forwarding for analysis any sample taken;

(z) to regulate matters related to the analysis of samples including methods of analysis;

(za) to prescribe form and fees for the purpose of this Act;

(zb) to prescribe other matters related to the administration of this Act, including but not limited to-

- (i) prescribing the qualifications and responsibilities of authorised officers;
- (ii) prescribing the procedure to be followed in general or under specified circumstances;
- (iii) prescribing internal reporting requirements of food authorities and authorised persons;
- (iv) prescribing the method of recording, allocating, spending and auditing money collected under this Act.

(3) In making regulations the Board must, 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;
- (b) restricting the sale of food products that may be hazardous to health;
- (c) providing necessary dietary supplements for better nutrition.

(4) A regulation made under this Act may specify a maximum penalty not exceeding \$2,000.

(5) The Minister may amend Schedule 1 by order in the *Gazette*.

This Act is in addition to any other law

71. This Act is in addition to and does not derogate from any other written law.

Repeals and savings

72. (1) The Pure Food Act (Cap. 116) is repealed except that the regulations made under it remain in force until revoked or replaced by regulations made under this Act.

(2) Sections 40 to 48 of the Public Health Act (Cap. 111) are repealed.

(3) Section 18 of the Interpretation Act applies to legal proceedings pending in court that were commenced prior to the commencement of this Act.

(4) At the commencement of this Act-

- (a) any existing licence or permit or similar authority in respect of a food establishment issued under the Public Health Act continues as if it has been issued under this Act until the licence expires or is revoked;
 - (b) any existing food establishment that are required to be licensed under this Act must apply for a licence within 12 months after this Act commences.
- (5) Until a list is published in accordance with subsection (3) of section 32, every person or laboratory authorised to make an analysis under the Pure Food Act or the Public Health Act at the date of commencement of this Act is deemed to be an authorised analyst or analytical laboratory under this Act.
- (6) A person authorised to inspect food or food premises under the Pure Food Act or the Public Health Act or any other written law at the date of commencement of this Act is deemed to be an authorised officer under this Act.

SCHEDULE 1
(Section 29)

PANEL OF OTHER MEMBERS OF THE FOOD ADVISORY COMMITTEE

- (a) the Head of the Pathological Laboratory of the Colonial War Memorial Hospital or his or her nominee;
- (b) the Head of the Chemical Laboratory of the Agriculture Department at Koronivia or his or her nominee;
- (c) the Director of Animal Health and Production Division or his or her nominee;
- (d) the Chairperson of the Consumer Council of Fiji or his or her nominee;
- (e) the Chairperson of the National Food and Nutrition Committee of his or her nominee;
- (f) the Director of the Fiji Meat Industries Board or his or her nominee;
- (g) the Director of Fisheries;
- (h) the Chairperson of the National Codex Committee;
- (i) the Director of Occupational Health and Safety at Work;
- (j) a representative of the Ministry of Commerce, Business Development and Investment;
- (k) a representative of the Ministry responsible for Women;

- (l) a representative of the Ministry of Tourism and Transport;
- (m) a representative of the Local Government Association.

SCHEDULE 2
(Section 66)

PENALTIES

Section	Offence	Penalty
3(1)	Preparing, packing, keeping, conveying, selling or giving free of charge any food which is unsafe, unhygienic or unfit for consumption;	\$5,000
4(1)	Selling, or preparing, packing, keeping or conveying for the purpose of sale, any food that is adulterated;	\$10,000 or 5 years imprisonment
5(3)	Preparing or selling a mixture in contravention of this section;	\$3,000 or 2 years imprisonment
8(1)	Selling or preparing, packing, keeping, conveying, labelling or advertising for sale any food in a manner that is false, misleading or deceptive in relation to any particular aspect of the food, which induces a consumer to buy the food;	\$10,000 or 5 years imprisonment
9	Selling or preparing, packing, keeping, conveying, labelling or advertising for sale any food that does not comply with the standard prescribed for such food in such a manner that is likely to be mistaken for food of the prescribed standard;	\$50,000 or 10 years imprisonment
10	Selling, preparing, packing, keeping or conveying for sale any food under insanitary conditions that might render the food injurious or dangerous to health;	\$50,000 or 10 years imprisonment
13(6)	(a) Labelling of package of food does not comply with subsection (1); (b) Labelling of pre-packaged food does not comply with subsection (2); (c) Information required on labels is not provided in the English language in a manner that is visible and likely to be read and understood by ordinary consumer;	\$50,000 or 10 years imprisonment \$50,000 or 10 years imprisonment \$50,000 or 10 years imprisonment
14(1)(a)	Promoting or causing the advertisement or promotion of any food which is prohibited	\$2,000 or 12 months

	or the sale of which is not permitted under this Act or regulations;	
14(1)(b)	Promoting or causing the advertisement of any food in any particular aspect that is false, misleading or deceptive;	\$2,000 or 12 months
15	Promoting any breast milk substitute or baby accessory by advertisement, by offering or giving any gift, prize, discount coupon or any free item or by other similar means;	\$50,000 or 10 years imprisonment
16(2)	Operating a food establishment which is not licensed under this Act;	\$10,000 or 5 years imprisonment
17(6)	Failing to comply with any of the conditions of a licence imposed by the Board or prescribed by regulations;	\$2,000 or 12 months imprisonment
24(1)	Importing any food or food ingredient which does not comply with this Act or regulations;	\$50,000 or 10 years imprisonment
25(2)	Failing to re-label imported food within 30 days or reprocess food within 3 months or any shorter period specified in the permit issued under section 24(5);	\$50,000 or 10 years imprisonment
36(2)(a)	Assaulting, intimidating, obstructing, impeding or attempting to obstruct or to impede any authorised officer in the performance of his or her functions under this Act or the regulations;	\$2,500 or 12 months imprisonment
36(2)(b)	Knowingly making a false or misleading statement, either verbally or in writing, to any authorised officer engaged in the performance of functions under this Act or the regulations;	\$2,500 or 12 months imprisonment
36(2)(c)	Refusing to state name and address or gives a false name or address;	\$2,500 or 12 months imprisonment
36(2)(d)	Retaking, or attempting to retake any article seized under this Act, or resisting or attempting to prevent the seizure;	\$2,500 or 12 months imprisonment
36(2)(e)	Removing, altering or interfering in any way with any article seized or sealed under this Act, without the authority of an authorised officer;	\$2,500 or 12 months imprisonment
36(2)(f)	Giving, procuring, offering or promising any bribe, recompenses or rewards to influence any authorised officer engaged in the performance of his or her functions under this Act or the regulations	\$2,500 or 12 months imprisonment

43(4)	Refusing or neglecting to comply with any demand or requisition made by an authorised officer under this section	\$2,500 or 12 months imprisonment
48(4)	Disclosing any information or particulars provided or obtained in accordance with a direction under this section (relating to any individual business) without the prior consent in writing of the person carrying on the business	\$2,500 or 12 months imprisonment
49(3)	Cultivating, taking, harvesting, or obtaining any food in or from an area to which a prohibition order applies without obtaining a permit;	\$2,000 or 12 months imprisonment
51(9)	Contravening an order of closure	\$5,000 for the first offence or 2 years imprisonment and \$10,000 for a second or subsequent offence or 5 years imprisonment

Passed by the House of Representatives this 12th day of June 2003.

Passed by the Senate with amendments this 2nd day of July 2003.

Passed by the House of Representatives with Senate amendments this 13th day of August 2003.
