

FOOD SAFETY ACT 2006

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REPUBLIC OF KIRIBATI

(No 5 of 2006)

I assent,

Beretitenti
30 August 2007

**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 PURPOSES**

Commencement:
2006

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti

PART I—PRELIMINARY

1. Short title and commencement

- (1) This Act may be cited as the *Food Safety Act 2006*.
- (2) This Act shall come into force on such date as the Minister may by notice published in the *Gazette* appoint.

2. Interpretation

In this Act, unless the context otherwise requires –

‘adulterated’ includes –

- (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 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 the use of—

- (a) any words, whether written or spoken;
- (b) any symbolic or pictorial representation or design; or
- (c) any other representation,

that has the effect of promoting a product for sale;

‘article’ means—

- (a) any food;
- (b) anything used to label or advertise food; or
- (c) any thing or machine used for the preparation, preservation, packing, storing or displaying of any food;

‘best before date’ means the date after which food may be unsafe to eat, and includes an expiration date;

‘*Codex Alimentarius* Commission’ means the international body established by the World Organisation and Food and Agriculture Organisation to carry out Food Standard Programmes for the purpose of protecting the health of consumers and facilitating international trade in food;

‘food’ means any substance or matter, whether processed, semi-processed or raw, which is intended for human consumption as food or drink, 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) water which is meant for consumption, including bottled water and water that is used in food or beverages or in conjunction with the processing of food;

but does not include cosmetics, tobacco or a substance or matter used only as a medicine or drug;

‘food business’ means any undertaking 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, and, while not limited to the following, includes a restaurant, bakery, caterer, food wholesaler, food retailer, fish vendor, food hawker, meat butchery, food processor, food importer and food exporter;

‘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 good hygienic practices;

‘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 or circumstances as might cause contamination or adulteration of 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 or mark, and any statement or pictorial or other descriptive matter written, printed, stenciled, 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;

‘Minister’ means the Minister responsible for health;

‘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 food business premises;

‘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;
- (e) any vehicle or vessel; and
- (f) any place, including a street, open space, or place of public resort, used in the preparation, preservation, packaging or storage of any article;

‘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) Package 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 Kiribati language in a manner that is easily visible and likely to be read and understood by an ordinary consumer under customary conditions of purchase.

4. Best before dates

Food that carries a best before date or that is required by regulations 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.

PART III—PROHIBITIONS

5. Obtaining food from closed areas

- (1) If the Minister 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 Minister may by order prohibit the cultivation, taking, harvesting or obtaining of the food in or from that area.
- (2) If the subject matter of any prohibition order made under subsection (1) is within the responsibility of any other Ministry, the Minister must consult the Minister of that Ministry before making an order under subsection (1).

6. Power to subscribe food as a prohibited product where a public health concern exists

- (1) If in the opinion of the Minister there is a public health concern, the Minister may, by order, declare any food a prohibited food.
- (2) A food declared as a prohibited product under subsection (1) shall not be imported, produced, prepared, stored, displayed or sold.

PART IV—FOOD INSPECTORS, ANALYSTS AND POWERS

7. Appointment of food inspectors

- (1) Subject to section 99 of the *Constitution* and section 2 of the *Public Service Commission (Functions) Act* 1983, the Minister may appoint such persons as food inspectors as he or she considers necessary for the proper carrying out of the provisions of this Act.
- (2) The Minister may designate any other suitably qualified officers or class of officers in the public service as food inspectors for the purposes of this Act.

8. Powers of inspectors

- (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 article; 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 any regulation or standard.
 - (b) enter any premises the inspector knows or reasonably suspects are being used for the production, processing, handling, storage, display or sale of any article.
- (2) In any vehicle or vessel detained, or premises entered under subsection (1), a food inspector may—
 - (a) search for, examine and take samples of any article;

- (b) open and inspect any room, place, container or package that the food inspector knows or reasonably suspects contains any article;
 - (c) examine any documents (including any electronic documents) that may contain any relevant information about articles, and make copies of them;
 - (d) obtain photographic evidence of any article;
 - (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 authorise 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 or she considers necessary.
- (6) A search warrant issued under subsection (4) is, for a period of one month from its issue, sufficient authority—
- (a) for the food inspector to whom it is directed, and for all persons acting in aid of the food inspector, to enter the place specified in the search warrant; and
 - (b) on the Minister's own motion.
- (7) Before exercising any power under this section, the food inspector shall upon request produce identification

9. 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 the Act or the regulations. A copy of this report shall be given to the Minister.

10. Sampling

- (1) The Minister may vary or amend a building approval—
- (a) upon an application in writing from the person to whom the building approval was issued; or
 - (b) on the Minister's own motion.
- (2) An application by a person for an amendment to a building approval must be accompanied by the fee that would be payable under section 15 if the application was an application for a building approval.
- (3) The Minister may waive or reduce the fee required by subsection (2).
- (4) Any variation of or amendment to a building approval must be by notice in writing.

- (5) The Minister may, by notice in writing to a person to whom a building approval has been issued, terminate the building approval.

11. Appointment of analysts

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

12. Certificate of analyst to be evidence

- (1) Any analyst analysing 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.

13. 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.

14. Seizing articles

- (1) A food inspector may seize any article which he or she reasonably believes contravenes the Act or any regulation or standard.
- (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 is practicable.
- (3) If food inspector has seized articles or records or other property under 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 is practicable with a copy certified by the food inspector to be a true copy of such certified copy shall be received in all courts and elsewhere as evidence of the matters contained in it as if it were the original; or
 - (c) in the case of articles or other property, thereafter dispose of them as a court may direct.
- (2) An owner or operator from whom an article has been seized may apply to the court within seven days from the date of seizure for an order to revoke the seizure and release the seized article.

15. Destruction and disposal of seized articles

- (1) Any article seized by a food inspector under section 14 shall be destroyed and disposed of by the food inspector where—
- (a) the food inspector reasonably believes that public health is at immediate risk unless the article is destroyed and disposed of; or
 - (b) the article is in contravention of this Act, any regulation or standard and the owner consents in writing to its destruction and disposal; or

(c) the court has so ordered under section 32.

- (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 32, the person so convicted.

16. Closure of business premises

- (1) The Minister may order the temporary closure of any food business premises where either—
- (a) a food inspector reasonably believes that public health is at immediate risk until corrective action identified as necessary in an inspection is taken ; or
 - (b) the premises fails within a reasonable period to implement a corrective action identified as necessary by a food inspector.
- (2) Temporary closure shall be a minimum period of three days.
- (3) After three days' temporary closure under subsection (2), an owner or operator may request a food inspector to inspect the premises to determine the compliance of the premises with this Act, regulations and standards, and the food inspector shall carry out that inspection within 72 hours of receiving the request for inspection.
- (4) Where premises are found, upon inspection under subsection (3) to be in compliance with this Act, the regulations and standards, the Minister 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 Minister ordering the temporary closure of its premises under subsection (1); or
 - (b) fails to comply with the requirements of this Act, the regulations and standards within 14 days of the Minister ordering the temporary closure of the 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 Minister shall request the relevant local government council to immediately revoke the business licence of the food business.
- (6) The local government council shall comply with the request of the Minister under subsection (5) as soon as practicable.
- (7) Where a food business has its licence revoked under subsection (6), the owner or operator shall not be permitted to apply for a licence within three months of having the licence revoked.

17. 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.

PART V—OFFENCES

18. Food that is not suitable for human consumption

Any person who imports, produces, processes, handles, stores, displays or sells food that is—

- (a) unfit for human consumption;

- (b) adulterated;
- (c) damaged;
- (d) deteriorated; or
- (e) perished,

commits an offence and is liable upon conviction to imprisonment for two years or a fine of \$10,000 or both.

19. Misleading or deceptive labelling, etc.

Any person who labels, packages, 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 imprisonment for two years or a fine of \$10,000, or both.

20. Labelling not complying with requirements

Any person who labels, packages, handles, stores, displays, sells or advertises any food that is not labelled in accordance with section 3 or any regulation commits an offence and is liable upon conviction to imprisonment for one year or a fine of \$5,000, or both.

21. Food not complying with a prescribed standard

Any 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 imprisonment for one year or a fine of \$5,000, or both.

22. Food not complying with regulations

Any person who labels, imports, exports, packages, processes, handles, stores, displays, sells or advertises any food in a manner that is in contravention of any regulation made under this Act commits an offence and is liable upon conviction to imprisonment for one year or a fine of \$5,000, or both.

23. Insanitary conditions

Any person who produces, processes, handles, stores, displays, sells food under insanity conditions commits an offence and is liable upon conviction to imprisonment for two years or a fine of \$10,000, or both.

24. Selling food after its best before date

Any person who imports, exports, stores, displays, sells or advertises any food after its best before date, unless otherwise permitted by regulations, commits an offence and is liable upon conviction to imprisonment for one year or a fine of \$5,000, or both.

25. Obliterating a best before date

Any person who marks any article or takes any other action so as to make a best before date not easily visible commits an offence and is liable upon conviction to imprisonment for one year or a fine of \$5,000, or both.

26. Failure to provide reasonable assistance

Any 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 imprisonment for one year or a fine of \$5,000, or both.

27. Powers in relation to premises

Any 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, regulations or standard; 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 imprisonment for two years or a fine of \$10,000, or both.

28. Providing inspectors false or misleading information

Any 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 imprisonment for two years or a fine of \$10,000, or both.

29. Power to ask for information and records

Any person who—

- (a) cultivates, takes, harvests or otherwise obtains food from an area declared closed for such by the Minister under section 5; or
- (b) imports, produces, prepares, stores, displays or sell a food prohibited under section 6,

commits an offence and is liable upon conviction to imprisonment for two years or a fine of \$10,000, or both.

PART VI—LEGAL PROCEEDINGS**30. 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 as committed, or is suspected of committing, within the jurisdiction of such court any offence under this Act.

31. 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.

32. Additional powers of the court

- (1) When sentencing a person convicted of an offence under this Act the court in addition to imposing any other penalty, may order that—
 - (a) any article seized be destroyed and disposed of by a food inspector;
 - (b) the person convicted pay the reasonable costs incurred in the destruction and disposal of any such article; and
 - (c) the person convicted pay the costs of any analysis conducted in the course of the investigation.
- (2) Any costs ordered payable under subsection (1) may be recovered in the same way as a fine.

PART VII—MISCELLANEOUS**33. Regulations**

- (1) The Minister, acting in accordance with the advice of the Cabinet, may make regulations prescribing matters necessary or convenient to be made for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulation may—
 - (a) prescribe standards;
 - (b) regulate specified modes of preparation of food or of specified classes of food such as organic food;
 - (c) prescribe labelling requirements;
 - (d) regulate the importation and exportation of food;
 - (e) regulate fish and fisheries products
 - (f) give effect to obligations from Kiribati being a signatory to any international agreement;
 - (g) regulate genetically modified food;
 - (h) exempt any article from any provision of the Act;
 - (i) regulate production, processing, preparation, packaging, storage, transportation, display and selling practices;
 - (j) provide for fees for inspection and analysis;
 - (k) provide for licensing and conditions for licences to be awarded;
 - (l) provide for the tracing and recall of food where necessary;
 - (m) regulate breast milk substances;
 - (n) regulate advertising in relation to food;
 - (o) regulate the inspection, sampling and analysis of food;
 - (p) regulate the training and certification of food handlers
 - (q) regulate the sale of food after its best before date;
 - (r) provide for the establishment of a food safety committee to address food from production to consumption; and
 - (s) regulate plant and animal feed and chemicals as they relate to food safety.
- (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.

34. Repeal

The *Pure Food Ordinance* (Cap.84) is repealed.

- (2) Any costs ordered payable under subsection (1) may be recovered in the same way as a fine.

FOOD SAFETY ACT 2006

EXPLANATORY MEMORANDUM

This Act is intended to replace the *Pure Food Ordinance* (Cap.84), which became law in 1913. A review of our food safety legislation is long overdue. This Bill has been drafted with the assistance of the Secretariat of the Pacific Community, as part of a project that aims to improve the standard of such legislation across the region. The Bill seeks to improve food quality in Kiribati, to safeguard public health and to regulate the standard of imported foods.

The Bill is divided into seven Parts, the first of which deals with preliminary matters, including definitions.

Part II imposes certain labelling requirements for packaged food and provides for the placement of best before dates on such packages.

Part III empowers the Minister to close certain areas where taking food from such areas would pose a health risk. The Minister can also prohibit the import and sale of food that poses a public health concern.

Part IV provides for the appointment of food inspectors and analysts, as well as setting out powers of inspection, seizure, sampling and closure of premises.

Part V lists the various offences under the Act.

Part VI provides for the jurisdiction and powers of the courts, as well as setting out the liability of officers of bodies corporate.

Part VII makes provision for regulations under the Act, and repeals the *Pure Food Ordinance*.

Titabu Tabane
Attorney-General
April 2005