



Tuvalu

# BIOSECURITY ACT 2017





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## BIOSECURITY ACT 2017

### Arrangement of Sections

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#### Section

<b>PART I - PRELIMINARY</b>	<b>7</b>
1 Short Title .....	7
2 Commencement .....	7
3 Interpretation.....	7
4 Application of the Act.....	16
5 Responsibility .....	16
6 Purpose of the Act.....	17
7 Relationship with other Acts.....	17
8 Regulated pests and disease .....	18
<b>PART II – BOARD BIOSECURITY CONTROL</b>	<b>18</b>
9 Prohibited Imports .....	18
10 Biosecurity points of entry and departure .....	19
11 Designation of Biosecurity holding areas .....	20
12 Management of Biosecurity holding areas.....	21
13 Biosecurity Clearance Agents.....	21
<b>PART III – VESSELS AND AIRCRAFTS</b>	<b>22</b>
14 Biosecurity arrival declaration .....	22
15 Biosecurity Landing Clearances .....	23
16 Biosecurity seaport quarantine of vessels and aircraft.....	24
17 Management of biosecurity seaport quarantine areas .....	25
18 Conduct of vessels and aircraft in biosecurity seaport quarantine.....	25
19 Biosecurity seaport quarantine clearance of vessels and aircraft.....	26
20 Outgoing vessels and aircraft.....	26
21 Environment obligations of masters and captains.....	27
22 Passengers and Crew Members .....	28
<b>PART IV – BIOSECURITY IMPORT PROCEDURES</b>	<b>29</b>
23 Biosecurity entry inspection of incoming articles.....	29

24	Biosecurity import clearance of regulated articles .....	30
25	Grant and refusal of biosecurity import clearance .....	31
26	Biosecurity import specification .....	32
27	Biosecurity access arrangements .....	33
28	Application for a biosecurity import permit .....	34
29	Issue of biosecurity import permit .....	34
30	Revocation of a biosecurity import permit .....	35
31	Exemption from Biosecurity import requirement .....	35
32	Articles and passengers in transit .....	36

## **PART V – BIOSECURITY EXPORT PROCEDURES** **36**

33	Biosecurity export inspection of outgoing articles .....	36
34	Requirement for biosecurity export clearance .....	37
35	Issue of sanitary and phytosanitary certificates .....	37
36	Biosecurity export specification .....	38
37	Application for biosecurity export clearance .....	39
38	Grant of Biosecurity export clearance .....	39

## **PART VI – BIOSECURITY QUARANTINE** **40**

39	Biosecurity quarantine of regulated articles .....	40
40	Biosecurity quarantine stations .....	41
41	Conditions of biosecurity quarantine .....	41
42	Management of biosecurity quarantine stations .....	42
43	Release from biosecurity quarantine .....	42
44	Biosecurity quarantine notices .....	42
45	No plant or animal to be at large .....	43

## **PART VII – POWERS OF BIOSECURITY OFFICERS** **43**

46	General rules as to exercise powers .....	43
47	Entry, search and seizure .....	44
48	Inspection of documents .....	45
49	Inspection of articles .....	46
50	Detention of articles .....	47
51	Taking of samples .....	48
52	Testing of articles .....	49
53	Treatment of articles .....	49
54	Recognising of articles .....	50
55	Destruction of articles .....	51
56	Post mortem examination of an animal .....	52
57	Powers in relation to people .....	52

## **PART VIII – BIOSECURITY INTERNAL CONTROL** **53**

58	Pest and disease surveys .....	53
59	Entry, search and seizure .....	54
60	Detention and testing of animals and plants and their products .....	55

61	Treatment or destruction of animals and plants and their products .....	56
62	Infested biosecurity controlled area .....	56
63	Regulation of infested biosecurity controlled areas .....	57
64	Pest-free biosecurity controlled areas .....	58
65	Regulation of pest-free biosecurity controlled areas.....	58
66	Destruction of wild animals .....	59
67	Notifiable pests and diseases .....	59
68	Beneficial organisms and biological agents.....	60

**PART IX – BIOSECURITY EMERGENCIES** **61**

69	Declaration of a biosecurity emergency area.....	61
70	Response to a biosecurity emergency .....	61
71	Action in a biosecurity emergency area.....	62
72	Biosecurity Emergency Regulations.....	63

**PART X - THE DIRECTOR OF BIOSECURITY ETC** **65**

73	Designation of Director of Biosecurity.....	65
74	Designation of biosecurity officers.....	65
75	Functions of the Director .....	66
76	Functions of the Ministry.....	66
77	Directions.....	67
78	Delegation of functions.....	67
79	Biosecurity register and records.....	68
80	Status of biosecurity register and records .....	69

**PART XI - ADMINISTRATION OF THE ACT** **70**

81	Financial Provisions.....	70
82	Powers of the Kaupule .....	71
83	Consultation and outsourcing .....	71
84	Duty to Coordinate.....	72
85	Facilities at biosecurity points of entry or departure.....	73
86	Safe carriage and safe working environment.....	73
87	Compliance agreements.....	74
88	Biosecurity approved premises .....	74
89	International cooperation .....	75
90	Notifications.....	76

**PART XII - OFFENCES AND PENALTIES** **76**

91	Dereliction of duty by officers.....	76
92	Obstruction, false information etc.....	77
93	Fraudulent use of official documents.....	77
94	Maximum penalties.....	78
95	Forfeiture .....	78
96	Fixed penalty system .....	78
97	Offences by corporate bodies.....	80

<b>PART XIII - MISCELLANEOUS PROVISIONS</b>		<b>80</b>
98	Civil and Criminal Proceedings .....	80
99	Abandoned goods.....	80
100	Compensation.....	81
101	Appeals from decisions .....	81
102	Limitation of liability .....	82
103	Evidence .....	82
104	Publication of orders and notices .....	83
105	Specification.....	84
106	Regulations.....	84
107	Repeals and savings .....	85
108	Transitional provisions.....	86
109	Consequential amendments.....	86
110	Amendment of Schedule .....	87
<b>SCHEDULE</b>		<b>88</b>
<b>MAXIMUM PENALTIES AND FIXED PENALTIES</b>		<b>88</b>



Tuvalu

## BIOSECURITY ACT 2017

### AN ACT TO ESTABLISH THE BIOSECURITY ADMINISTRATION FOR THE SAFE IMPORTATION AND MONITORING OF ANIMALS, PLANTS AND THEIR PRODUCTS INTO TUVALU.

Commencement [ 21<sup>st</sup> December, 2017]

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#### PART I - PRELIMINARY

##### 1 Short Title

This Act may be cited as the Biosecurity Act 2017.

##### 2 Commencement

The Act shall come into on such date as the Minister by notice appoint.

##### 3 Interpretation

In this Act, unless the context otherwise requires:

“**aircraft**” means any conveyance that may be used in navigation by air;

“**animal**” means any mammal (other than a human), bird, insect, amphibian, reptile, fish, mollusk or other member of the animal kingdom, whether alive or dead, and includes the egg, embryo, ova or semen and any organic animal tissue from which another animal could be produced, and the hide, skin, hair, feathers, shell, horns, hoof, viscera or any other part or portion of the body of an animal;

“**animal product**” means any article or substance derived from an animal, whether or not in combination with any other article or substance, and includes –

- (a) meat, fat, milk, whey, cream, butter, cheese, eggs and other foodstuffs derived from an animal;

- (b) the dung, urine, faeces, saliva, bone or blood of an animal, or any article or substance derived from the dung, urine, faeces, saliva, bone or blood of an animal;
- (c) the secretions of any animal;
- (d) any product or biological preparation derived from any animal tissue or animal secretion;

**“article”** means a single unit of any goods;

**“authorised”** means duly authorised by the Minister, the Secretary, the Director or a public officer for the purposes of this Act;

**“baggage”** means any goods which accompany a passenger or crew member on a conveyance, including clothing and any article attached or otherwise connected to the body or clothing of any passenger or crew member;

**“ballast water”** means water (including sediment that is or has been contained in water) used as ballast in a vessel;

**“biosecurity”** means the control by legal and administrative means of pests and diseases affecting animals, plants and their products, in order to avoid adverse effects from such pests and diseases on the economy and health of Tuvalu;

**“biosecurity access arrangements”** means arrangements under section 27(1) for specifications in respect of new imports;

**“biosecurity approved premises”** means premises approved for the inspection, testing and treatment of regulated articles under section 88;

**“biosecurity authority”** of a receiving country means the authority or officer in that country which administers its biosecurity Acts;

**“biosecurity certification requirement”**, in relation to an article, means a requirement by a receiving country for a sanitary or phytosanitary certificate or a certificate of origin in respect of the article;

**“biosecurity clearance”**, in respect of a regulated article or consignment, means biosecurity import clearance or biosecurity export clearance;

**“biosecurity clearance agent”** means a person in Tuvalu appointed by an importer or exporter under section 13 for the purposes of this Act as the agent of the importer or exporter to supervise the biosecurity clearance of a conveyance, container, animal, plant, animal or plant product or any other goods;

**“biosecurity control”** of a regulated article means submission of the article for inspection under this Act, and thereafter taking such biosecurity measures, or permitting such measures to be taken, as are directed pursuant to this Act, until biosecurity clearance is granted in respect of the article;

**“biosecurity controlled area”** means an infested biosecurity controlled area declared under section 62 or a pest-free biosecurity controlled area declared under section 64;

**“biosecurity declaration”** in relation to an article or consignment means a written statement of the nature, quantity and origin of the article or consignment, and of other details relating to it required by or under this Act;

**“biosecurity emergency”** means the incursion or suspected incursion of a regulated pest or disease into any area of Tuvalu, or the existence of some other biosecurity threat, which requires urgent action, whether by eradication, containment or other response, and for which the powers under this Act are not otherwise adequate;

**“biosecurity emergency area”** means an area declared in response to a biosecurity emergency under section 69;

**“biosecurity entry inspection”** of an incoming article means inspection of it pursuant to section 23;

**“biosecurity export clearance”** of an article means permission under section 38 for the article or consignment to be exported;

**“biosecurity export inspection”** of an outgoing article means inspection of it pursuant to section 33;

**“biosecurity functions of the Government”** means the functions set out in section 6;

**“biosecurity goods holding area”** means an area of land at or adjacent to a seaport or airport designated under section 11(3) for the biosecurity inspection of incoming or outgoing articles and consignments;

**“biosecurity holding area”** means a biosecurity seaport holding area, a biosecurity goods holding area or a biosecurity postal holding area;

**“biosecurity import clearance”** of an article means permission under section 25 for the article or consignment to be removed from a biosecurity holding area;

**“biosecurity import clearance inspection”** of an incoming article means inspection of it pursuant to section 24;

**“biosecurity import permit”** means a biosecurity import permit issued under section 29;

**“biosecurity import requirements”** in relation to an article or consignment means:

- (a) the conditions of a biosecurity import permit, if one is required;
- (b) the requirements of any sanitary or phytosanitary certificate relating to the article or consignment;
- (c) any other biosecurity measures specified under section 26(1)(c);

**“biosecurity inspection”** of an incoming or outgoing conveyance, article or consignment means an inspection to ascertain whether the conveyance, article or consignment presents a biosecurity risk to Tuvalu or a receiving country and whether in other respects it conforms to the requirements of this Act;

**“biosecurity landing clearance”** means clearance for a vessel or aircraft to land cargo or passengers under section 15;

**“biosecurity measure”** means the inspection, detention, quarantining, testing, treatment, re-consignment or destruction of a regulated article to eliminate or reduce the biosecurity threat presented by the article;

**“biosecurity officer”** means –

- (a) the Director and his or her deputy, if any;
- (b) any person designated as a biosecurity officer under section 76;
- (c) in respect of any particular function, a biosecurity officer to whom the function has been assigned or delegated under section 76 or 78;

**“biosecurity point of departure”** means a seaport, airport or mail exchange designated under section 10(4) for the exportation of regulated articles;

**“biosecurity point of entry”** means a seaport, airport or mail exchange designated under section 10(1) for the importation of regulated articles;

**“biosecurity seaport holding area”** means an area designated under section 11(1) for the biosecurity inspection of incoming vessels or aircraft;

**“biosecurity seaport quarantine”** means quarantine of a vessel or aircraft in a biosecurity seaport quarantine area under section 16;

**“biosecurity seaport quarantine area”** means an area designated under section 16(1) for the quarantine of vessels and aircraft;

**“biosecurity seaport quarantine clearance”** means permission under section 19 for a vessel or aircraft to unload passengers and cargo after being in biosecurity seaport quarantine;

**“biosecurity postal holding area”** means an area of a mail exchange designated under section 11(5) for the biosecurity inspection of incoming or outgoing postal items;

**“biosecurity quarantine”** means confinement in isolation of a regulated article and any conveyance, container or packaging in which the article is carried, for inspection, testing and/or treatment; in order to prevent or limit the entry, introduction, establishment or spread of a regulated pest or disease;

**“biosecurity quarantine station”** means a facility under the control of the Director and designated under section 40 for the performance of biosecurity quarantine, and includes a temporary biosecurity quarantine station;

**“biosecurity register”** means the register kept by the Director under section 79;

**“biosecurity risk”** means the likelihood of the introduction, establishment or spread of a pest or disease which would adversely affect animals, plants, human beings, the environment or economic activities, and the likely extent of such harm;

**“biosecurity risk assessment”** in relation to a regulated article means evaluation of the biosecurity risk posed by the article;

**“biosecurity specifications”** means biosecurity import specifications made under section 26 or biosecurity export specifications made under section 36;

**“biosecurity threat”** means the threat of harm being caused or adverse effects resulting to animals, plants, human beings, the environment or economic activities as a result of the introduction, establishment or spread of a regulated pest or disease;

**“captain”**, in relation to an aircraft, means the person for the time being in command of the aircraft;

**“compliance agreement”** means an agreement between the Director and another person as provided for in section 87;

**“consignment”** means a quantity of goods which arrive in the same vessel or aircraft and which in accordance with this Act can be covered by a single import permit or sanitary or phytosanitary certificate;

**“container”** means anything in which or by which goods are encased, covered, enclosed or packed, including any material in contact with the goods;

**“contamination”** means the presence in any item of a pest, not constituting an infestation;

**“conveyance”** means a ship, aircraft, vehicle or other means of transporting people, goods or animals from one location to another, while it is being used or prepared for such transport;

**“country of origin”** includes a re-exporting country;

**“custodian”**, in respect of an item, means the occupier of a place or the person in possession and charge of an article, whether lawfully or not, but does not include a person who has possession or control of the item only for the purpose of taking biosecurity measures in respect of it;

**“Deputy Director”** means the Deputy Director of Biosecurity designated under section 73;

**“Director”** means the Director of Biosecurity designated under section 73, any person for the time being performing the functions of Director and, in respect of any particular function, a person to whom the function has been delegated under section 78;

**“disease”** means any unhealthy condition in an animal or plant which is known or suspected to be caused by an organism, and includes a disease transmissible from animals to humans and a disease capable of harming the environment;

**“document”** means any mode of communicating information in a retrievable form, including electronically;

**“environment”** includes -

- (a) the ecosystem and its constituent parts, including people and communities;
- (b) all natural and physical resources;
- (c) the qualities and characteristics of locations, places and areas.

**“eradication”** means the application of measures to eliminate a pest or disease from an area;

**“establishment”**, in relation to a pest or disease, means the perpetuation in an area of the pest or disease for the foreseeable future after its entry into the area;

**“export”** means to take or send goods out of Tuvalu;

**“exporter”** means a person who exports or seeks to export goods, other than as the master of the vessel or captain of the aircraft in which the goods are carried; and includes a biosecurity clearance agent;

**“fittings”** means any stall, box, cage, enclosure, pen, net or other material used for penning, yarding, confining or containing any animal and includes any harness, saddlery, rope, bucket, trough, bedding, utensil or implement used in the handling or keeping of animals or animal products;

**“fodder”** means any water, meat, vegetables, grain or material used for the food or litter of animals, or the storage of animal products;

**“garbage”** means waste material derived in whole or in part from plants, fruit, vegetables, meat or other plant or animal material, or other refuse of any kind that has been associated with any plants, fruits, vegetables, meat or other plant or animal material;

**“genetic material”** means any material of plant, animal, microbial or other origin containing functional units of heredity;

**“goods”** means any kind of moveable property or thing;

**“host material”** means any packing material, container, fittings, litter, manure, fodder or similar goods that might have had contact with animals or plants or their products;

**“import”** means to bring goods, or cause goods to be brought, into Tuvalu;

**“importer”** means a person who imports or seeks to import goods, other than as the master of a vessel or captain of the aircraft in which the goods are carried; and includes a biosecurity clearance agent;

**“in transit”**, in relation to goods, means the goods are not imported into an area but pass through it to another area, whether by the same or another conveyance, during which time they remain enclosed, are not split up, are not combined with other goods, and do not have their packaging changed;

**“infected”**, in relation an animal or plant, means that the animal or plant is diseased or may have been exposed to the risk of infection during the preceding 6 months;

**“infested”**, in relation an item or area, means that there is present in the item or area a living pest or disease;

**“inspection”**, in relation to an item, means an official examination of the item to determine if any pest or disease is present in the item and whether in other respects the item conforms to the requirements of this Act;

“**IPPC**” means the International Plant Protection Convention of the Food and Agriculture Organization of the United Nations;

“**introduction**”, in relation to a pest or disease, means the entry of the pest or disease into an area, resulting in its establishment in the area;

“**item**” means any kind of moveable or immovable property or thing, including premises;

“**Kaupule**” means kaupule in accordance with section 5 of the Falekaupule Act.

“**living organism**” means any organism capable of transferring or replicating genetic material, including sterile organisms, viruses, viroids, plasmids, bacteriophages and prions;

“**magistrate**” includes an Island Magistrate or a Senior Magistrate;

“**master**”, in relation to a vessel, means the person for the time being in charge of the vessel, not being the pilot;

“**microbe**” means any organism or biotic entity of microscopic proportions, whether unicellular, multi-cellular or sub-cellular in common form;

“**Minister**” means the Minister who has responsibility for the administration of this Act;

“**Ministry**” means the Ministry of the Minister;

“**notifiable pest or disease**” means a pest or disease which is declared under section 67(1) to be notifiable;

“**OIE**” means the Organisation Internationale Epizoötique;

“**organism**” means a biotic entity capable of reproduction or replication [other than a human];

“**packing material**” means any fabric, paper, cardboard, plastic, wood, straw, grass or leaves used in packing any goods, and any other type of material in which goods are covered, enclosed, contained or wrapped;

“**pest**” means any species, strain or biotype of a plant, animal, microbe or pathogenic agent, or any organism, which –

(a) causes disease; or

(b) is detrimental to or capable of harming or adversely affecting animals or animal products, plants or plant products, human beings or the environment;

“**pest risk analysis**” means the evaluation by a qualified person of biological or other scientific and economic evidence to determine whether a pest or disease should be regulated and the nature of any biosecurity measures to be taken against it;

“**phytosanitary certificate**” means a certificate relating to a plant or plant product which:

- (a) is issued by the biosecurity authority of the country of origin or re- exporting country;
- (b) certifies that the plant or plant product is substantially free from plant pests and diseases and in other respects meets the plant health import requirements of the receiving country; and
- (c) is patterned after the model certificates of the IPPC;

**“plant”** includes seeds, germ plasm, any other part of a plant and a dead or preserved plant;

**“plant material”** means unmanufactured material of plant origin, including grain;

**“plant product”** means –

- (a) plant material;
- (b) timber; and
- (c) any product manufactured wholly or partly from one or more plants;

**“PPPO”** means the Pacific Plant Protection Organization;

**“precautionary principle”** means the principle that it is not unreasonable to refuse permission for an activity that has great potential negative impact, even if there is not sufficient scientific data to support a refusal, as incorporated in Article 5.7 of the SPS Agreement;

**“premises”** means any immoveable property, other than land;

**“prescribed”** means prescribed by this Act or by regulations made under it;

**“prohibited import”** means a regulated article the importation or ownership of which is prohibited under section 9;

**“re-exporting country”**, in relation any goods, means a country which is not the country of origin of the goods, but where a container or consignment of goods is opened and re-packed for export;

**“receiving country”** means a country which is the intended destination of an article being or proposed to be exported;

**“reconsign”**, in relation to a regulated article or consignment which has been refused biosecurity import clearance, means to send the article or consignment out of Tuvalu, either by the vessel or aircraft on which it was imported or by another vessel or aircraft;

**“regulated article”** means –

- (a) any animal or animal product;
- (b) any plant or plant product;
- (c) any living organism, whether modified or not;

- (d) soil, sand gravel and aggregate;
- (e) any genetic material;
- (f) human remains;
- (g) any host material;
- (h) a regulated pest or disease;
- (i) any clothing, machinery or other article that contains or has adhering to it anything mentioned in paragraph (a), (b), (c) or (d);
- (j) garbage;
- (k) any other article, substance, goods or thing declared by the Minister by order under subsection (2) to be a regulated article for the purposes of this Act;

**“regulated consignment”** means a consignment of regulated articles;

**“regulated pest or disease”** means a pest of disease –

- (a) the importation of which into Tuvalu is prohibited or restricted under section 8 ; or
- (b) which is under official control;

**“regulations”** means regulations, orders and any other subsidiary legislation made under this Act;

**“repealed laws”** means the Acts and subsidiary legislation repealed by section 107(1);

**“sanitary certificate”** means an international health certificate relating to an animal or animal product which -

- (a) is issued by the biosecurity or agricultural Director of the country of origin or re-exporting country;
- (b) certifies that the animal or animal product is substantially free from animal pests and diseases and in other respects meets the animal health import requirements of the receiving country; and
- (c) complies with relevant requirements of the SPS Agreement or the exporting country, as the case may be;

**“Secretary”** also known as Secretary of the Ministry;

**“ship’s stores”** means any food or other regulated articles carried on a vessel or aircraft for consumption or use on the vessel or aircraft;

**“specified”**, in relation to a requirement, document, procedure or any other matter, means specified by the Director under section 105;

**“spread”**, in relation to a pest or disease, means the expansion of the geographical distribution of the pest or disease within an area;

“**SPS Agreement**” means the World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures;

“**status**”, in relation to a pest or disease, means its presence, absence, prevalence, incidence, distribution and occurrence in an area;

“**technical section head**” means the head of the department or section of government responsible for animal health, plant health, fisheries, environment and health quarantine matters respectively, not being the Director;

“**test**” means an examination which goes beyond a visual inspection, to determine if a pest or disease is, or is likely to be, present or to identify a pest or disease, and includes chemical tests of plant material and diagnostic tests in respect of an animal;

“**this Act**” includes regulations and orders made under it;

“**timber**” includes round wood, sawn wood, wood chips and dunnage, with or without bark;

“**treatment**” means an authorised procedure for the killing, removal, modification or rendering infertile or non-viable of a pest or disease by way of cleansing, fumigation, inoculation, disinfection, disinfestation, decontamination, or otherwise;

“**uncleared**”, in relation to a regulated article, means that the article has not received biosecurity clearance;

“**under official control**”, in relation to a pest or disease, means that its presence is known, its distribution is limited and its further spread is controlled by the exercise of powers under this Act;

“**vehicle**” includes a bicycle (whether motorized or not), a cart and any other wheeled conveyance;

“**vessel**” includes a ship, hovercraft, boat, ferry, raft, yacht, canoe or pontoon that is used as a conveyance in or on water, whether or not it is self-propelled;

“**written**” and “**in writing**” mean any mode of communicating information in a retrievable form, including electronically (as to which see section 104(2)).

- (2) The Minister, on the advice of the Director, may by order declare any article, substance goods or thing to be a regulated article for the purposes of this Act.

#### **4 Application of the Act**

This Act binds the Crown, including every Government department and statutory authority and every person in the employment of the Government.

#### **5 Responsibility**

- (1) The Minister is responsible to the Parliament for the implementation of this Act and the performance of the biosecurity functions of the Government, within the resources available to the Ministry.

- (2) The Secretary is responsible to the Minister for the efficient and effective running of the Ministry.
- (3) The Director is responsible to the Secretary for the performance of the functions of the Director set out in section 74.

## **6 Purpose of the Act**

- (1) The purposes of this Act are –
  - (a) to protect Tuvalu against the entry of regulated pests and diseases affecting animals, plants, human beings and the environment;
  - (b) to carry out surveillance and monitoring of pests and diseases in Tuvalu and assess the status of regulated pests and diseases;
  - (c) to prevent the establishment and spread of regulated pests and diseases and the release of organisms that might adversely affect animals, plants, human beings and the environment in Tuvalu;
  - (d) to eradicate, contain or control the movement of regulated pests and diseases that are already present in Tuvalu;
  - (e) to prevent the introduction and spread of regulated pests and diseases not already present in Tuvalu;
  - (f) to facilitate the safe importation of animals and plants and their products, and related equipment and technology;
  - (g) to facilitate the export of animals and plants and their products in accordance with the biosecurity requirements of the receiving countries;
  - (h) to facilitate international cooperation to prevent the spread of pests and diseases affecting plants, animals, human beings and the environment.

## **7 Relationship with other Acts**

- (1) This Act is in addition to and does not derogate from any other Act. In particular, but without limiting this rule -
  - (a) the notification requirements in section 14 relating to human health do not displace any other statutory requirement relating to such notification;
  - (b) the provisions of Part III relating to biosecurity seaport quarantine of vessels and aircraft do not displace any other provisions relating to quarantine of vessels and aircraft;
  - (c) the requirements relating to imports and exports in Parts 4 and 5 do not displace any other statutory requirements relating to imports and

exports, trade in endangered species, biosafety, biodiversity or environmental Acts generally.

- (2) To the extent of any inconsistency between this Act and any other Act, every other Act must so far as possible be construed so as to fulfill the purpose of this Act.

## 8 Regulated pests and disease

- (1) The Minister may by order declare the pests or diseases –
- (a) the importation of which is prohibited for all purposes;
  - (b) the importation of which is permitted subject to conditions specified by the Director under section 26;
  - (c) which are under official control.
- (2) A person who imports or attempts to import a pest or disease which is prohibited under subsection (1)(a) commits an offence.
- (3) A person who imports or attempts to import a pest or disease which is regulated under subsection (1)(b) in breach of the conditions of import commits an offence.
- (4) Before making an order under this section, the Minister must obtain -
- (a) a pest risk analysis;
  - (b) the advice of the Director and of relevant technical section heads.

## PART II – BOARD BIOSECURITY CONTROL

### 9 Prohibited Imports

- (1) The Minister may by order prohibit the importation of –
- (a) particular regulated articles from all countries; or
  - (b) particular regulated articles from one or more particular countries of origin,
- if the importation would present an unacceptable biosecurity risk to Tuvalu.
- (2) An order under this section in respect of an article –
- (a) may be made at any time before biosecurity import clearance is granted in respect of the article;
  - (b) continues in force until the prohibition is revoked or varied, but must be reviewed every 12 months.
- (3) In making a decision under this section, the Minister –

- (a) must have regard to the international obligations of Tuvalu in respect of biosecurity;
  - (b) may apply the precautionary principle.
- (4) Before making an order under this section the Minister must obtain –
  - (a) a pest risk analysis in relation to the article;
  - (b) the advice of the Director and of relevant technical section heads.
- (5) If a person imports or attempts to import a prohibited article –
  - (a) the person commits an offence;
  - (b) biosecurity import clearance under section 25 will be refused for the article.
- (6) A person who without lawful excuse owns or is in possession of any prohibited article commits an offence.

## **10 Biosecurity points of entry and departure**

- (1) The Minister may by order designate as biosecurity points of entry the seaports, airports and mail exchanges at which regulated articles may enter Tuvalu.
- (2) Subject to subsection (9), a master or captain who causes or permits an incoming vessel or aircraft to berth or land except at a seaport or airport that is a biosecurity point of entry commits an offence.
- (3) A person who imports, or attempts to import, a regulated article or consignment except at a biosecurity point of entry commits an offence.
- (4) The Minister may by order designate as biosecurity points of departure the seaports, airports and mail exchanges at which regulated articles may be exported.
- (5) A master or captain who causes or permits a vessel or aircraft to leave Tuvalu except from a seaport or airport that is a biosecurity point of departure commits an offence.
- (6) A person who exports, or attempts to export, a regulated article or consignment except at a biosecurity point of departure commits an offence.
- (7) A designation of a biosecurity point of entry or departure may be limited to particular types of vessels, aircraft or articles or to arrivals from or exports to particular countries.
- (8) A mail exchange may only be designated as a biosecurity point of entry or departure in respect of regulated articles that at the time of entry or departure are in a mail bag or other container that conforms to the requirements of the postal legislation of Tuvalu.

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- (9) A vessel or aircraft may berth or land elsewhere than at a biosecurity point of entry –
    - (a) if constrained by adverse weather, mechanical failure or superior force;  
or
    - (b) if so directed or permitted by the Director or a biosecurity officer.
  - (10) In the circumstances mentioned in subsection (9), the place where the vessel has berthed or the aircraft has landed is deemed to be a biosecurity point of entry for the purposes of this Act, once the Director has been notified of the berthing or landing.
  - (11) Before making an order under subsection (1) or (4) the Minister must obtain the advice of the Director and consult, as the case may be, the officers or authorities responsible for the movement of vessels, aircraft and postal items in Tuvalu.

## **11 Designation of Biosecurity holding areas**

- (1) The Minister may by order designate –
  - (a) any territorial waters or any part of a seaport as a biosecurity seaport holding area for vessels;
  - (b) any part of an airport as a biosecurity seaport holding area for aircraft.
- (2) A biosecurity seaport holding area is one where incoming conveyances may be held for biosecurity inspection pending biosecurity landing clearance or other disposition under this Act.
- (3) The Minister may by order designate any area of land at or adjacent to a seaport or airport as a biosecurity goods holding area for incoming or outgoing containers and goods.
- (4) A biosecurity goods holding area is one where incoming or outgoing containers or goods may be held for biosecurity inspection pending biosecurity clearance or other disposition under this Act.
- (5) The Minister may designate any part of a mail exchange that has been designated as a biosecurity point of entry or departure as a biosecurity postal holding area for incoming or outgoing postal items.
- (6) A biosecurity postal holding area is one where incoming or outgoing postal items may be held for biosecurity inspection pending biosecurity clearance or other disposition under this Act.
- (7) Before making an order under subsection (1) the Minister must obtain the advice of the Director and consult, as the case may be, the officers or authorities responsible for the movement of vessels and aircraft in Tuvalu.

- (8) A mail exchange may only be designated as a biosecurity holding area in respect of regulated articles that at the time of entry or departure are in a mail bag or other container that conforms to the requirement of the Post Office Act.

## **12 Management of Biosecurity holding areas**

- (1) Section 40 (2) and (3) apply to biosecurity holding areas as they apply to biosecurity quarantine stations.
- (2) No person, other than the person in charge of the area or a biosecurity officer acting in the course of duty, may enter a biosecurity holding area without the written permission of the Director, or the permission of the person in charge of the area or of a biosecurity officer.
- (3) A biosecurity officer may, in order to reduce a biosecurity threat, lock, seal or otherwise prevent entry to and exit from a biosecurity holding area or any building in it.
- (4) A person commits an offence if the person –
  - (a) enters a biosecurity holding area without permission given under subsection (2); or
  - (b) damages, interferes with or in any way reduces the effectiveness of measures taken to secure a biosecurity holding area, or any regulated article or other item in the area.
- (5) The Director may issue written directions to the person in charge of a biosecurity holding area as to the management of the area.
- (6) A person who removes or attempts to remove from a biosecurity holding area any regulated article without obtaining biosecurity clearance in respect of it, unless for the purpose of biosecurity measures being applied to the article in accordance with this Act, commits an offence.

## **13 Biosecurity Clearance Agents**

- (1) A person who proposes to import or export regulated articles through a seaport or airport and who will not be present when biosecurity inspection is to take place must –
  - (a) in writing appoint a person resident in Tuvalu as a biosecurity clearance agent for the purposes of this Act; and
  - (b) notify the Director in writing of the appointment before the agent performs any agency functions.
- (2) A biosecurity clearance agent appointed under subsection (1) ceases to be an agent for the purposes of this Act if the Director notifies the importer or exporter in writing that, in the opinion of the Director, the agent's conduct in

the performance of functions under this Act renders the agent unacceptable for purposes of this Act.

- (3) Notice under subsection (2) must be given in sufficient time to allow the importer or exporter to appoint another agent.
- (4) A biosecurity clearance agent who performs or purports to perform any functions of an importer or exporter under this Act is liable to the same extent as the importer or exporter for any act or omission which amounts to an offence or which creates any legal obligation under this Act.
- (5) If a person referred to in subsection (1) fails to comply with that subsection, biosecurity clearance will not be granted for any regulated article or consignment which the person seeks to import or export.

### **PART III – VESSELS AND AIRCRAFTS**

#### **14 Biosecurity arrival declaration**

- (1) The master or captain of every vessel or aircraft destined for Tuvalu must make to the Director a biosecurity arrival declaration stating –
  - (a) the destination seaport or airport in Tuvalu and the estimated time of arrival of the vessel or aircraft;
  - (b) its immediately preceding seaport or place of call;
  - (c) the proposed itinerary of the vessel or aircraft until it leaves Tuvalu;
  - (d) the nature and country of origin of its cargo;
  - (e) the number of passengers and crew;
  - (f) the presence of any live animal or live plant on the vessel or aircraft;
  - (g) the nature of any illness or malady affecting any live animal, plant, crew member, passenger or other individual on board the vessel or aircraft; and
  - (h) any other matter relevant to facilitating biosecurity landing clearance of the vessel or aircraft that is specified by the Director.
- (2) The declaration required by subsection (1) –
  - (a) must be made not less than 2 working days in the case of a vessel, or 60 minutes in the case of an aircraft, before the estimated time of arrival;
  - (b) may be made by electronic means, in accordance with directions of the Director issued from time to time;
  - (c) may be made through a biosecurity clearance agent;

- (d) may be made in conjunction with or as part of a declaration made for customs or other border control purposes.
- (3) A master or captain who fails to make a biosecurity arrival declaration, either directly or through a biosecurity clearance agent, commits an offence.

## **15 Biosecurity Landing Clearances**

- (1) The master or captain of every incoming vessel or aircraft must –
  - (a) take the vessel or aircraft directly to a biosecurity seaport holding area as directed by a biosecurity officer;
  - (b) permit a biosecurity officer to board and search the vessel or aircraft in accordance with section 47(1);
  - (c) provide to the officer the log, cargo manifest, bill of lading, stores list, passenger list, crew list and any other document that is on or in and relates to the vessel or aircraft and that the officer reasonably requests for the purposes of this Act;
  - (d) complete an incoming conveyance biosecurity certificate, in the form specified or approved by the Director, certifying that all garbage, live animals, meat or animal products and plants or plant material on board the vessel or aircraft will be lawfully disposed of.
- (2) After inspecting relevant documents and conducting any necessary search of an incoming vessel or aircraft, and if satisfied –
  - (a) that the vessel or aircraft does not have on board any regulated article that might pose a biosecurity threat to Tuvalu; and
  - (b) that the prescribed fee, if any, has been paid, a biosecurity officer may grant biosecurity landing clearance to the vessel or aircraft.
- (3) Biosecurity landing clearance means that a vessel or aircraft may land crew members and any cargo or passengers on board, but the crew and any cargo or passengers remain subject to biosecurity control under this Act.
- (4) Biosecurity landing clearance must be refused if a biosecurity officer orders the vessel or aircraft into seaport quarantine pursuant to section 16(2).
- (5) A master or captain who contravenes a provision of subsection (1) commits an offence.
- (6) A master or captain who lands any crew, cargo or passengers from a vessel or aircraft without biosecurity landing clearance, except with the permission of a biosecurity officer, commits an offence.
- (7) A crew member or passenger who lands from a vessel or aircraft before it has received biosecurity landing clearance, except with the permission of a biosecurity officer, commits an offence.

- (8) Biosecurity landing clearance of a vessel or aircraft may be granted unconditionally, or conditioned on entry into a bond to the Government, in the form specified or approved by the Director, by the master of the vessel or captain of the aircraft, for compliance with any requirements imposed pursuant to this Act in respect of the vessel or aircraft or cargo.

## 16 Biosecurity seaport quarantine of vessels and aircraft

- (1) The Minister may by order designate –
- (a) any territorial waters or any part of a seaport as a biosecurity seaport quarantine area for vessels;
  - (b) any part of an airport as a biosecurity seaport quarantine area for aircraft.
- (2) Before making an order under subsection (1) the Minister must obtain the advice of the Director and consult, as the case may be, the officers or authorities responsible for the movement of vessels and aircraft in Tuvalu.
- (3) If a biosecurity officer reasonably suspects that an incoming vessel or aircraft is –
- (a) infected or infested with a regulated pest or disease; or
  - (b) carrying any regulated article which might pose a biosecurity threat to Tuvalu,
- the officer may order the vessel or aircraft into biosecurity seaport quarantine.
- (4) If a vessel or aircraft is ordered into biosecurity seaport quarantine under subsection (2), a biosecurity officer may –
- (a) order the master or captain to remove the vessel or aircraft to quarantine in a biosecurity seaport quarantine area; or
  - (b) if necessary (because the master or captain refuses to obey the order, or because of the nature of the biosecurity threat) arrange for the vessel or aircraft to be removed to the biosecurity seaport quarantine area.
- (5) The cost of removal of a vessel or aircraft to biosecurity seaport quarantine is to be borne by the owner or charterer, and no compensation is payable for any loss or destruction or consequential loss caused as a result of any such removal, unless negligence or malice is proved.
- (6) The owner or charterer and master or captain must each be given written notice stating the reasons for an order under this section in respect of the vessel or aircraft and, if it was removed under subsection (3), the whereabouts of the vessel or aircraft.
- (7) If the Director reasonably believes that a vessel or aircraft poses a serious biosecurity threat to Tuvalu which cannot adequately be dealt with by

appropriate biosecurity measures, the Director may in writing direct the vessel or aircraft to leave the waters of Tuvalu.

- (8) Before issuing a direction under this section, the Director must consult, as the case may be, the officers or authorities responsible for the movement of vessels or aircraft in Tuvalu.

## **17 Management of biosecurity seaport quarantine areas**

- (1) No person, other than the person in charge of the area or a biosecurity officer acting in the course of duty, may enter a biosecurity seaport quarantine area without the written permission of the Director or of the person in charge of the area.
- (2) A person commits an offence if the person –
- (a) enters a biosecurity seaport quarantine area without permission; or
  - (b) damages, interferes with or in any way reduces the effectiveness of measures taken to secure a biosecurity seaport quarantine area, or any regulated article or other item in the area.
- (3) The Director may issue written instructions to the person in charge of a biosecurity seaport quarantine area as to the management of the area.
- (4) A biosecurity officer may affix a notice at any biosecurity seaport quarantine area, and on any vessel or aircraft held in the area, stating the conditions and duration of quarantine and other information relating to the area or the item as specified by the Director.
- (5) A person who removes a notice affixed under subsection (4) without lawful authority commits an offence.

## **18 Conduct of vessels and aircraft in biosecurity seaport quarantine**

- (1) The Director may give written directions to the master of a vessel or captain of an aircraft in biosecurity seaport quarantine –
- (a) as to the movement of the vessel or aircraft while it is in quarantine;
  - (b) as to the movement of passengers, crew and cargo while the vessel or aircraft is in quarantine;
  - (c) as to any treatment or other biosecurity measure that must be applied to the vessel or aircraft.
- (2) The cost of keeping a vessel or aircraft in biosecurity seaport quarantine is to be borne by the owner or charterer.
- (3) No compensation is payable for any loss or destruction or consequential loss caused by a vessel or aircraft being detained in quarantine, unless negligence or malice is proved.

- (4) A master or captain who fails to take all reasonable steps to ensure that the vessel or aircraft and its cargo, crew and passengers conform to directions given under subsection (1) commits an offence.

## 19 Biosecurity seaport quarantine clearance of vessels and aircraft

- (1) If satisfied –
- (a) that a vessel or aircraft in biosecurity seaport quarantine is substantially free from regulated pests and diseases;
  - (b) that any potential biosecurity risk from ships' stores and other regulated articles on the vessel or aircraft is suitably contained; and
  - (c) that the prescribed fee, if any, has been paid,
- a biosecurity officer may grant biosecurity seaport quarantine clearance for the vessel or aircraft to unload passengers and cargo.
- (2) Biosecurity seaport quarantine clearance of a vessel or aircraft may be granted unconditionally, or conditioned on entry into a bond to the Government, in the form specified or approved by the Director, by the master of the vessel or captain of the aircraft, for compliance with any requirements imposed pursuant to this Act in respect of the vessel or aircraft or cargo.
- (3) Biosecurity seaport quarantine clearance of a vessel or aircraft has the same effect as biosecurity landing clearance granted under section 15.

## 20 Outgoing vessels and aircraft

- (1) If a biosecurity officer has reason to believe that there is on board an outgoing vessel or aircraft any regulated article that requires biosecurity export clearance and that has not been cleared, the officer may –
- (a) board and search the vessel or aircraft in accordance with section 47(1);
  - (b) request the master or captain to produce for inspection the cargo manifest, bill of lading, stores list, passenger list, crew list and any other document that is on or in and relates to the vessel or aircraft and that the officer reasonably requires for the purposes of this Act;
  - (c) direct the master or captain not to move the vessel or aircraft unless permitted by the officer, and then only as directed by the officer;
  - (d) direct the vessel or aircraft to be subjected to any treatment or other biosecurity measure that is prescribed or specified;
  - (e) give to the master or captain any other lawful direction that is reasonably required to protect the destination country from a biosecurity threat posed by the vessel or aircraft.

- (2) A master or captain who –
  - (a) refuses to permit a search pursuant to subsection (1)(a); or
  - (b) fails to comply with a request or direction given under subsection (1)(b) to (e),commits an offence.

## **21 Environment obligations of masters and captains**

- (1) The master of every incoming vessel must, while the vessel is in Tuvalu -
  - (a) take all necessary steps to prevent any animal on board the vessel from making contact with any animal on shore unless permitted by a biosecurity officer, and then only as directed by the officer;
  - (b) seal all hatches and holds and enclosed cargo areas during the hours of darkness, except as needed for the working of the vessel or its cargo.
  
- (2) The master of every incoming vessel must take all reasonable steps to ensure that –
  - (a) no garbage containing any animal, plant, animal product or plant product; or
  - (b) no bilge water or ballast water; or
  - (c) no sewage or foul wastewater; or
  - (d) no poison, chemical or noxious substancesis discharged from the vessel into the sea while the vessel is in Tuvalu
  
- (3) The master of every incoming vessel and captain of every incoming aircraft must, while the vessel or aircraft is in Tuvalu, take all reasonable steps to ensure that -
  - (a) all garbage generated on the vessel or aircraft is placed in a suitable leak-proof container, with a lid, and the container is securely fastened at all times and kept within the vessel or aircraft;
  - (b) garbage is not disposed of in the sea, and is only removed from the vessel or aircraft under and in accordance with the directions of a biosecurity officer.
  
- (4) The master of every incoming vessel and captain of every incoming aircraft must take all reasonable steps to ensure that no ships' stores are removed from the vessel or aircraft while it is in Tuvalu, except under and in accordance with the directions of a biosecurity officer.
  
- (5) A biosecurity officer may lock or seal the stores of any incoming vessel or aircraft while it is in Tuvalu.

- (6) The cost of disposal of garbage under this section is to be borne by the owner or charterer of the vessel or aircraft.
- (7) A master who contravenes subsection (1)(b), fails to take all reasonable steps as required by subsection (1)(a), (2), (3) or (4) or fails to obey a direction of a biosecurity officer given under any of those subsections commits an offence.
- (8) A captain who fails to take all reasonable steps as required by subsection (3) or (4) or fails to obey a direction of a biosecurity officer given under either of those subsections commits an offence.
- (9) An incoming vessel must comply with any de-ratting requirements prescribed by regulations.

## 22 Passengers and Crew Members

- (1) Subject to subsections (2) and (3), every passenger or crew member who arrives in Tuvalu on board a vessel or aircraft must make to a biosecurity officer a passenger arrival biosecurity declaration.
- (2) The passenger arrival biosecurity declaration must be in the form specified or approved by the Director and contain all required particulars relating to the person and any baggage that accompanies the person.
- (3) A passenger or crew member does not need to declare -
  - (a) articles of clothing worn on the body;
  - (b) articles visibly attached or connected to the body or clothing; or
  - (c) suitcases and other visible containers of personal baggage,
 unless a biosecurity officer so requests because of the biosecurity risk posed by the item, and in the absence of any such request, the article or container is deemed to have biosecurity entry clearance.
- (4) A single declaration under subsection (1) may be made by a person in respect of the person and the person's spouse and any member of the family aged 16 years or less travelling on the same vessel or aircraft.
- (5) When a declaration is tendered under this section, a biosecurity officer may –
  - (a) question the passenger or crew member;
  - (b) inspect the baggage to which it relates.
  - (c) if necessary, question a spouse or family member included on the declaration.
- (6) After taking the steps in subsection (5), a biosecurity officer may either grant biosecurity entry clearance of the persons and baggage to which the declaration relates, or –
  - (a) detain the passenger or crew member for further questioning and search;

- (b) detain the baggage and other articles in the possession of the passenger or crew member for further inspection and application of other biosecurity measures as the officer considers appropriate.
- (7) An arriving passenger or crew member who fails –
  - (a) to make a declaration as required by subsection (1);
  - (b) to submit baggage for inspection when so directed under subsection (5), commits an offence.
- (8) Every passenger or crew member departing from Tuvalu must –
  - (a) submit for inspection on request by a biosecurity officer any regulated article on the person or in the person’s baggage;
  - (b) permit the officer to search the person’s baggage.
- (9) A departing passenger or crew member who fails to comply with subsection (8) commits an offence.
- (10) Section 57 applies to the questioning, detention and searching of persons and baggage under this section.

## **PART IV – BIOSECURITY IMPORT PROCEDURES**

### **23 Biosecurity entry inspection of incoming articles**

- (1) Every incoming article or consignment of articles is liable to biosecurity entry inspection by a biosecurity officer at the biosecurity point of entry to ascertain whether it is or includes a regulated article.
- (2) If an importer of goods fails to make the goods available for biosecurity entry inspection at the biosecurity point of entry at the request of a biosecurity officer –
  - (a) the importer commits an offence; and
  - (b) the goods may be reconstituted or destroyed as if they were a regulated article for which biosecurity entry clearance had been refused.
- (3) If, after inspecting an incoming article or consignment, a biosecurity officer is satisfied –
  - (a) that it is or includes a regulated article - the provisions of this Part apply to it;
  - (b) that it is not or does not include a regulated article – the article or consignment may be released from the biosecurity point of entry upon payment of the prescribed fee, if any.

- (4) If an incoming article or consignment is not inspected under this section, a biosecurity officer is deemed to be satisfied that it is not or does not include a regulated article, and subsection (3)(b) applies to it.
- (5) Section 49 applies to an inspection under this section.
- (6) Subject to section 101(Appeals), the actual or deemed opinion of a biosecurity officer under this section as to whether an article or consignment is or includes a regulated article is conclusive for the purposes of this Act.
- (7) This section does not apply in respect of baggage accompanying passengers or crew members, but section 22 applies to such baggage.

## **24 Biosecurity import clearance of regulated articles**

- (1) Every incoming article or consignment of regulated articles –
  - (a) is liable to biosecurity import clearance inspection by a biosecurity officer;
  - (b) for that purpose must be taken to or retained in a biosecurity holding area for inspection
- (2) An application for biosecurity import clearance of a regulated article or consignment must –
  - (a) be made to a biosecurity officer in the manner specified or approved by the Director;
  - (b) be accompanied by the prescribed fee, if any;
  - (c) state the country of origin of the article or consignment;
  - (d) state the nature and quantity of the article or consignment;
  - (e) attach any sanitary or phytosanitary certificate issued by the country of origin in relation to the article or consignment;
  - (f) attach any biosecurity import permit relating to the document;
  - (g) attach documentation relating to any other biosecurity measures specified under section 26(1) in relation to the article or consignment.
- (3) The importer of a regulated article or consignment must on the request of a biosecurity officer –
  - (a) if the article or consignment is in a container - open the container or enable the officer to do so;
  - (b) allow the officer to inspect the article or consignment in accordance with section 49;
  - (c) allow the officer to take samples and conduct tests in accordance with Part 7 to enable the officer to determine whether biosecurity import clearance should be granted;

- (d) if the article or consignment requires biosecurity measures to be applied to it - submit the article or consignment to such measures.
- (4) The cost of taking an article to a biosecurity holding area, and of keeping it there, is to be borne by the importer of the article, and no compensation is payable for any loss or destruction or consequential loss caused as a result of the taking or keeping, unless negligence or malice is proved.
- (5) If the importer of a regulated article or consignment fails to comply with any of the requirements of subsection (3) –
  - (a) the person commits an offence; and
  - (b) a biosecurity officer may refuse to grant import clearance for the article or consignment, and may order the article or consignment to be reconsigned or destroyed.
- (6) This section does not apply to passengers or crew members, but section 22 applies to such persons.

## **25 Grant and refusal of biosecurity import clearance**

- (1) Before granting biosecurity import clearance of an article or consignment, a biosecurity officer must be satisfied that the article meets the biosecurity import requirements in relation to it, that is to say –
  - (a) if a biosecurity import permit is required, it has been obtained in respect of the article or consignment and the conditions of the permit have been complied with;
  - (b) if a sanitary or phytosanitary certificate is required for an article - the relevant certificate has been issued by the country of origin, and any requirement in it complied with;
  - (c) if any other biosecurity measures are specified under section 26(1)(c) - they have been applied to or in respect of the article or consignment.
- (2) If satisfied in respect of an article or consignment –
  - (a) of the matters mentioned in subsection (1); and
  - (b) that all prescribed fees and charges relating to the article or consignment have been paid,a biosecurity officer must grant biosecurity import clearance for the article or consignment.
- (3) If the biosecurity risk presented by an incoming regulated article or consignment so requires, a biosecurity officer may refuse to grant biosecurity import clearance for the article or consignment, or may require additional biosecurity measures to be applied to it, even if the article or consignment meets the biosecurity import specifications in relation to it.

- (4) Biosecurity import clearance may be made conditional on the article performing biosecurity quarantine if -
  - (a) quarantine is a biosecurity import requirement for the article; or
  - (b) during biosecurity entry inspection or biosecurity import clearance inspection the article is found to be, or is suspected to be, infested, infected or contaminated.
- (5) Biosecurity import clearance must be refused for an incoming article which is a prohibited import.
- (6) A biosecurity officer may cause any incoming article or consignment in respect of which biosecurity import clearance is refused to be reconsigned or destroyed, but the importer must be given reasonable time to make arrangements for reconsignment of the article or consignment before it is destroyed.
- (7) No compensation is payable in respect of a refusal in good faith to grant biosecurity import clearance under this section.

## **26 Biosecurity import specification**

- (1) The Director may specify in respect of incoming regulated articles –
  - (a) whether a sanitary or phytosanitary certificate from the biosecurity authority in the country of origin is required for an article and if so the matters that must be certified;
  - (b) whether a biosecurity import permit must be obtained for the article and if so the conditions to be attached to the permit;
  - (c) what biosecurity measures, if any, must be applied to the article on arrival in Tuvalu before biosecurity import clearance can be granted.
- (2) Specifications under subsection (1) –
  - (a) may be different for different types and quantities of regulated article;
  - (b) may be by reference to the country or area of origin of the article;
  - (c) must only be those reasonably necessary to reduce or eliminate the biosecurity risk to Tuvalu presented by the article.
- (3) In determining specifications under subsection (1), the Director –
  - (a) must make a biosecurity risk assessment;
  - (b) must have regard to the requirements of the SPS Agreement and other international standards relating to biosecurity matters;
  - (c) must have regard to the resources available for biosecurity control;
  - (d) may apply the precautionary principle.

- (4) The biosecurity risk assessment needed for making a specification under this section –
  - (a) may be performed by any qualified person (other than the importer) at the request of the Director;
  - (b) is performed at the importer's expense.
- (5) Specifications made under subsection (1) in respect of an article may be changed at any time before biosecurity import clearance is obtained in respect of the article if the biosecurity risk presented by the article or consignment changes.
- (6) Notice of a change in an import specification in respect of an article should be given to intending importers as soon as practicable but no liability arises from a failure to do so.
- (7) Before making or changing a specification under this section, the Director must obtain the advice of relevant technical section heads.
- (8) Specifications made under this section must be -
  - (a) published in the biosecurity register and at the office of the Director; and
  - (b) made available to the public for inspection or purchase.

## **27 Biosecurity access arrangements**

- (1) A person proposing to import a regulated article of a type that is not the subject of a biosecurity import specification must apply in writing to the Director for a specification under section 26 in respect of the article.
- (2) An application under subsection (1) in respect of an article must –
  - (a) be made in sufficient time before the intended importation; and
  - (b) give adequate information about the biosecurity procedures of the country of origin, the nature of the article and the proposed importation, to enable the Director to make a biosecurity risk assessment in relation to the article.
- (3) Upon receipt of an application under subsection (1), and on payment of the prescribed fee, if any, the Director must as soon as practicable, unless the article is or becomes a prohibited import under section 9, make a specification in respect of it in accordance with section 26.
- (4) Section 26(2), (3) and (4) apply to the making of a specification under this section.

**28 Application for a biosecurity import permit**

- (1) If a biosecurity import permit is required under section 26(1) in respect of a regulated article or consignment, an application for a permit must –
  - (a) be made before the article or consignment leaves the country of origin or, in the case of re-exported goods, the re-exporting country.
  - (b) be made to the Director in the manner specified or approved by the Director; and
  - (c) be accompanied by the prescribed fee, if any.
- (2) An application for a biosecurity import permit must –
  - (a) include evidence of the country of origin of the regulated article or consignment;
  - (b) state the nature and amount of the article or consignment;
  - (c) state the expected date of arrival in Tuvalu; and
  - (d) give any other information the Director reasonably requires to enable the Director to make a biosecurity risk assessment.
- (3) A decision on an application for a biosecurity import permit must be communicated to the applicant as soon as reasonably practicable after the application is received duly completed.
- (4) If the decision is to refuse the permit, the applicant must be notified in writing, with brief reasons.

**29 Issue of biosecurity import permit**

- (1) If satisfied of the matters set out in section 28(1) and (2), and on payment of the prescribed fee, if any, the Director, or a biosecurity officer, must as soon as practicable issue a biosecurity import permit.
- (2) The form of a biosecurity import permit is as specified or approved by the Director.
- (3) A biosecurity import permit may –
  - (a) be general or specific;
  - (b) relate to a single article or to a consignment of articles;
  - (c) be different for different types of regulated article and relate to different countries of origin.
- (4) A general permit may relate to all imports of a type specified in the permit, or from an area specified in the permit, and may relate to continuing imports over a period specified in the permit. A specific permit will relate to a single article or consignment and may specify an expiry date.

### **30 Revocation of a biosecurity import permit**

- (1) The Director may at any time, on written notice to the holder of a biosecurity import permit, revoke the permit, or vary the conditions of the permit, if a change in the biosecurity risk to Tuvalu presented by the article or consignment to which the permit relates so requires.
- (2) Biosecurity import clearance must be refused for an article or consignment in respect of which a biosecurity import permit is revoked, but section 26(5) applies to a revocation as it does to the change of a biosecurity specification.
- (3) When a biosecurity import permit is revoked, the holder of the permit must surrender it to a biosecurity officer as soon as practicable.
- (4) A person who contravenes subsection (3) commits an offence.
- (5) No compensation is payable in respect of the revocation in good faith of a permit under this section.

### **31 Exemption from Biosecurity import requirement**

- (1) The Director may in writing exempt any regulated article, class of regulated articles or consignment of regulated articles –
  - (a) from any or all of the biosecurity import specifications that would otherwise apply to the article or class of articles;
  - (b) from a requirement for a biosecurity import permit that would otherwise apply to the article or consignment.
- (2) An exemption under subsection (1) applies only to a single importation.
- (3) An exemption under subsection (1) may specify the conditions on which the article, class of articles or consignment is exempt. If the conditions are not met the exemption ceases to apply.
- (4) The Director may only grant an exemption under subsection (1) upon receipt of advice from relevant technical section heads, and if satisfied that the biosecurity risk to Tuvalu is not increased as a result.
- (5) A request for exemption under this section must be –
  - (a) made in writing to the Director;
  - (b) accompanied by the prescribed fee, if any, and the specified documents;
  - (c) made in sufficient time to allow the Director to give due consideration to the request.
- (6) Articles exempted from biosecurity import specifications or the requirement for an import permit under this section are not exempt from the requirement for biosecurity import clearance.

### **32 Articles and passengers in transit**

- (1) Regulated articles in transit are liable to biosecurity import control, and require biosecurity import clearance at a biosecurity holding area.
- (2) The Director or a biosecurity officer may in writing waive any requirement for a sanitary or phytosanitary certificate or biosecurity import permit that would otherwise apply to articles in transit.
- (3) If a waiver is granted under subsection (2), the Director or officer may attach conditions to the waiver.
- (4) A person commits an offence if the person –
  - (a) deals with articles to which this section applies other than by way of transit; or
  - (b) contravenes a condition specified under subsection (3) in relation to them,
- (5) A request for a waiver under this section must be –
  - (a) made in writing to the Director;
  - (b) accompanied by the prescribed fee, if any, and the specified documents;
  - (c) made in sufficient time to allow the Director or a biosecurity officer to give due consideration to the request.
- (6) In the case of regulated articles which accompany a crew member or passenger in transit –
  - (a) subsection (5) is deemed to have been complied with if the passenger or crew member complies with other requirements for regulated articles in transit;
  - (b) the requirement in subsection (2) for a waiver to be in writing does not apply.
- (7) A biosecurity officer may at any time inspect an article in transit if the officer reasonably suspects the article might pose a biosecurity threat to Tuvalu or a receiving country.
- (8) A person in charge of an article in transit who refuses to comply with a request for inspection under subsection (7) commits an offence.

## **PART V – BIOSECURITY EXPORT PROCEDURES**

### **33 Biosecurity export inspection of outgoing articles**

- (1) Every outgoing regulated article or consignment of regulated articles is liable to biosecurity export inspection at the biosecurity point of departure to enable a biosecurity officer –

- (a) to ascertain whether it is or includes an article that requires biosecurity export clearance pursuant to section 34;
  - (b) if so – to decide whether to grant export clearance under section 38.
- (2) An exporter of goods who fails to make the goods available for biosecurity export inspection at the biosecurity point of departure at the request of a biosecurity officer commits an offence.
- (3) A biosecurity officer may only request to inspect an outgoing article or consignment if the officer has reasonable cause to suspect that it is or includes a regulated article that requires biosecurity export clearance pursuant to section 34.
- (4) If, after inspecting an outgoing article or consignment under this section, a biosecurity officer is satisfied –
  - (a) that it is or includes an article that requires biosecurity export clearance – the provisions of this Part apply to it;
  - (b) that it is not or does not include such an article – the article or consignment may be released from the biosecurity point of departure upon payment of the prescribed fee, if any. .
- (5) Section 49 applies to an inspection under this section.
- (6) This section does not apply in respect of baggage accompanying passengers or crew members.

### **34 Requirement for biosecurity export clearance**

- (1) An article intended for export to a receiving country that requires -
  - (a) a sanitary or phytosanitary certificate for importation into that country;  
or
  - (b) any biosecurity measures to be applied to it under section 36(2) before being exported to that country,must have biosecurity export clearance for export to that country.
- (2) A person who exports or attempts to export an article or consignment that requires biosecurity export clearance without such clearance commits an offence.

### **35 Issue of sanitary and phytosanitary certificates**

- (1) A person who wishes to obtain a sanitary or phytosanitary certificate or a certificate of origin in respect of an article in order to comply with the biosecurity certification requirements of the receiving country must –
  - (a) apply to the Director in writing;

- (b) pay the prescribed fee, if any;
  - (c) submit the article for inspection or other biosecurity measures as required by the receiving country.
- (2) Upon receipt of an application under subsection (1), the Director must -
- (a) ascertain the biosecurity certification requirements of the receiving country, through the applicant or directly from the country;
  - (b) perform appropriate inspection and apply appropriate biosecurity measures to the article as required by the receiving country;
  - (c) if satisfied that the biosecurity certification requirements of the receiving country have been met, issue the appropriate certificate upon payment of the prescribed fee.
- (3) A biosecurity certification requirement entered in the biosecurity register:
- (a) if certified by or on behalf of the Director, is conclusive evidence of the requirement for purposes of this Act; but
  - (b) does not create any liability on the Government or the Director if relied on by an exporter to the exporter's detriment.

### **36 Biosecurity export specification**

- (1) The Director may specify in respect of outgoing animals or plants, or their products, any biosecurity measures, in addition to biosecurity certification requirements of the receiving country that must be applied to the animal, plant or product before export.
- (2) Specifications under subsection (1) may only be made if required by an international agreement to which Tuvalu and the receiving country are party in respect of the movement of animals, plants or animal or plant products, and must conform to any such agreement.
- (3) Specifications under subsection (1) in respect of an animal or animal product may be changed at any time before biosecurity export clearance is granted, if there is a change in the relevant international obligations relating to the animal or animal product, and section 26(6) applies to any such change.
- (4) Before making or changing a specification under this section, the Director must obtain the advice of relevant technical section heads.
- (5) Specifications made under this section must be -
  - (a) published in the biosecurity register and at the office of the Director; and
  - (b) made available to the public for inspection or purchase.

### **37 Application for biosecurity export clearance**

- (1) An application for biosecurity export clearance of an article or consignment must be made to a biosecurity officer in the manner specified or approved by the Director and be accompanied by the prescribed fee, if any.
- (2) An application for biosecurity export clearance for a regulated article or consignment must –
  - (a) be made before the regulated article or consignment arrives at a biosecurity point of departure; and
  - (b) allow sufficient time for processing of the application.
- (3) An application for biosecurity export clearance for an article or consignment must –
  - (a) specify the receiving country;
  - (b) specify the nature and quantity of the article or consignment;
  - (c) attach any sanitary or phytosanitary certificate issued under section 35(2) in relation to the article or consignment;
  - (d) attach documentation relating to any other biosecurity measures required under section 36(1) in relation to animals or plants or animal or plant products.
- (4) If the article or consignment requires biosecurity measures to be applied to it, the person seeking to export it must submit the article or consignment to such measures, failing which biosecurity export clearance will not be granted.
- (5) If a person seeking to export an article or consignment fails to comply with any of the requirements of this section, a biosecurity officer may refuse to grant biosecurity export clearance for the article or consignment.
- (6) This section does not apply to passengers or crew members, but section 22 applies to such persons.

### **38 Grant of Biosecurity export clearance**

- (1) Before granting biosecurity export clearance in respect of an article or consignment, a biosecurity officer must be satisfied –
  - (a) that the biosecurity certification requirements of the receiving country have been complied with;
  - (b) that any biosecurity measures specified under section 36(1) in respect of an animal or animal product have been applied.
  - (c) that the prescribed fee, if any, has been paid.

- (2) If an outgoing article that requires biosecurity export clearance is found to be infected, infested or contaminated by a regulated pest or disease, biosecurity clearance will be refused in respect of it.
- (3) A decision on an application for biosecurity export clearance must be communicated to the applicant as soon as reasonably practicable after the application is received duly completed.
- (4) If the decision is to refuse clearance, the applicant must be notified in writing, with brief reasons.
- (5) If a biosecurity officer considers it necessary to inspect any outgoing article or consignment for the purposes of this section, section 49 applies.

## **PART VI – BIOSECURITY QUARANTINE**

### **39 Biosecurity quarantine of regulated articles**

- (1) A biosecurity officer may, by notice in writing to the importer, order into biosecurity quarantine any incoming regulated article if –
  - (a) the article is a prohibited import and must therefore be reconsigned or destroyed;
  - (b) quarantine is a biosecurity import requirement for the article; or
  - (c) during biosecurity entry inspection or biosecurity import clearance inspection the article is found to be, or is suspected to be, infested, infected or contaminated.
- (2) If an article is ordered into biosecurity quarantine under this section, a biosecurity officer may –
  - (a) in writing direct the importer to remove the article to a specified biosecurity quarantine station;
  - (b) if necessary (because the importer, exporter, owner or custodian refuses to obey the direction, or because of the nature of the biosecurity threat) arrange for the article to be removed to a biosecurity quarantine station.
- (3) An importer who refuses to remove an article to biosecurity quarantine as directed under this section commits an offence.
- (4) The cost of removal of an article to biosecurity quarantine is to be borne by the importer of the article, and no compensation is payable for any loss or destruction or consequential loss caused as a result of any such removal, unless negligence or malice is proved.

- (5) If an article is quarantined under this section, the importer must be given written notice stating the reasons for the quarantine and, if it was removed under subsection (2)(b), the location of the article.

#### **40 Biosecurity quarantine stations**

- (1) The Minister, on the advice of the Director, and after consulting other relevant Ministries, may by order designate any public or private land as a biosecurity quarantine station for animals, animal products, plants, plant products, conveyances, containers or other goods for the purposes of this Act.
- (2) Before designating any private land as a biosecurity quarantine station, the Minister, through the Director, must consult the owner, and must pay compensation as agreed or as determined by a court for use of the land as a quarantine station.
- (3) The Secretary must ensure that every biosecurity quarantine station is provided with such buildings and facilities as are reasonably needed –
  - (a) to hold regulated articles in biosecurity quarantine;
  - (b) to prevent unauthorized persons from entering the station or removing items from the station;
  - (c) to enable the Director to perform tests, provide treatment and apply other biosecurity measures as required by or under this Act.

#### **41 Conditions of biosecurity quarantine**

- (1) The Director may issue specifications as to –
  - (a) the examination, treatment, disposal or destruction of articles while in a biosecurity quarantine station or in transit to or from a quarantine station;
  - (b) the period for which different types of regulated articles must remain in a biosecurity quarantine station.
- (2) The fees or charges payable for keeping items in biosecurity quarantine are as prescribed.
- (3) The cost of keeping an article in biosecurity quarantine is to be borne by the importer of the article.
- (4) No compensation is payable for any loss or destruction or consequential loss caused by an item being detained in biosecurity quarantine, unless negligence or malice is proved.

## **42 Management of biosecurity quarantine stations**

- (1) No person, other than the person in charge of the station or a biosecurity officer acting in the course of duty, may enter a biosecurity quarantine station without the written permission of the Director or of the person in charge of the station.
- (2) A biosecurity officer may, in order to reduce a biosecurity threat, lock, seal or otherwise prevent entry to and exit from a biosecurity quarantine station or any building in it, regardless of the ownership of the station.
- (3) A person commits an offence if the person –
  - (a) enters a biosecurity quarantine station without permission pursuant to subsection (1); or
  - (b) damages, interferes with or in any way reduces the effectiveness of measures taken to secure a biosecurity quarantine station, or any regulated article or other item in the station,
- (4) The Director may issue written instructions to the person in charge of a biosecurity quarantine station as to the management of the station.

## **43 Release from biosecurity quarantine**

- (1) A conveyance, container or article must not be released from biosecurity quarantine except upon the Director of a biosecurity quarantine release certificate issued by a biosecurity officer.
- (2) Before an article can be released from biosecurity quarantine –
  - (a) any treatment required as a condition of importation of the article must have been applied; and
  - (b) all quarantine fees must have been paid.
- (3) Subject to subsection (2), the conveyance, container or article must be released from biosecurity quarantine as soon as practicable and a biosecurity release certificate issued.
- (4) A person who releases an article from a biosecurity quarantine station contrary to subsection (1) commits an offence.

## **44 Biosecurity quarantine notices**

- (1) A biosecurity officer may affix a notice on any biosecurity quarantine station, and on any conveyance, container or article held in biosecurity quarantine, stating the conditions and duration of quarantine and other information relating to the station or the item as specified by the Director.

- (2) A person who removes a notice affixed under subsection (1) without Lawful authority commits an offence.

#### **45 No plant or animal to be at large**

- (1) No person may liberate or cause to be liberated from a biosecurity quarantine station, biosecurity seaport quarantine area, or biosecurity holding area or let go at large in Tuvalu any animal, plant or organism which is subject to biosecurity control under this Act.
- (2) A person who contravenes subsection (1) is not entitled to any compensation for loss of or damage to the animal, plant or organism occasioned by its being recaptured and confined or if necessary destroyed in accordance with Parts 7 and 8.
- (3) A person who contravenes subsection (1) commits an offence and, in addition to the prescribed maximum penalty, is liable to pay the Director the cost of recapturing and confining or if necessary destroying the animal, plant or organism.

## **PART VII – POWERS OF BIOSECURITY OFFICERS**

#### **46 General rules as to exercise of powers**

- (1) The powers conferred by this Act on biosecurity officers may be exercised only for the purpose of ascertaining whether there is a biosecurity risk presented by a conveyance, container or item and eliminating or reducing the risk to an acceptable extent.
- (2) A reference in this Act to a biosecurity officer, when exercising powers, means a duly authorised biosecurity officer acting in the performance of his or her duties.
- (3) A biosecurity officer may use only such force as is reasonably necessary when exercising a power under this Act. If necessary, the officer should obtain the assistance of a police officer to effect an arrest or enter premises.
- (4) Before exercising a power to enter and search premises, to search a conveyance or container or to inspect or test any article, a biosecurity officer must, if practical, request the assistance of the person in control of the premises, conveyance, container or article.
- (5) Except as otherwise provided in this Act, a biosecurity officer may exercise a power under this Act without a warrant or other order of a magistrate, provided the action is taken in good faith for the purposes of this Act.

- (6) A biosecurity officer exercising powers under this Part must produce for inspection his or her identification as an officer, upon request by the person in charge of the conveyance, premises or area, or the importer, exporter, owner or custodian of the item, in respect of which the power is being exercised.
- (7) Before exercising a power in a situation that involves shipping, civil aviation, human health, the environment or any other activity governed by another Act, a biosecurity officer must if practicable consult the officer or authority responsible under that Act for that activity.
- (8) The powers conferred on biosecurity officers by or under this Act must be exercised subject to –
  - (a) any regulations made by the Minister under this Act in respect of those powers;
  - (b) any biosecurity specifications made in respect of regulated articles;
  - (c) any written directions of the Director given under section 77.
  - (d) the provisions of –
    - (i) the Vienna Convention on Diplomatic Relations relating to the premises of a diplomatic mission, diplomatic bags and the personal baggage of diplomatic agents;
    - (ii) the Vienna Convention on Consular Relations relating to consular premises, archives and documents.

#### **47 Entry, search and seizure**

- (1) A biosecurity officer may -
  - (a) search an incoming vessel or aircraft at a biosecurity seaport holding area to ascertain whether the vessel or aircraft has on board any regulated article that might pose a biosecurity threat to Tuvalu;
  - (b) search an outgoing vessel or aircraft if the officer has reason to believe there are on board any uncleared articles that require export clearance;
  - (c) at any time enter and search any premises, building or area, including a biosecurity holding area, biosecurity quarantine station or biosecurity approved premises and land adjacent to a dwelling house, but not a dwelling house, in order to ascertain the presence of uncleared regulated articles that have not received biosecurity import clearance;
  - (d) at any time with the consent of the owner, enter and search a dwelling house for purposes of this Act;
  - (e) at any time, on a warrant issued under subsection (2), enter and search a dwelling house for uncleared regulated articles that the officer reasonably suspects to be in it.

- (2) If a magistrate is satisfied on affidavit evidence by a biosecurity officer that –
- (a) there may be in a dwelling house uncleared regulated articles; and
  - (b) the consent of the owner or occupier to entry and search of the dwelling house cannot be obtained,
- the magistrate may issue a warrant authorising the officer to enter and search the dwelling house for uncleared regulated articles.
- (3) A biosecurity officer may at any time enter and search any store, warehouse, silo, pen or similar premises, or any conveyance, in which regulated articles intended for importation to or exportation from Tuvalu are kept.
- (4) A person who keeps regulated articles in or on any premises, or in a conveyance, prior to importation or exportation of them must make the premises or conveyance available for inspection by a biosecurity officer upon request at any reasonable time.
- (5) Subsections (1), (3) and (4) apply to premises and conveyances outside Tuvalu in respect of articles intended for importation to Tuvalu.
- (6) A person who contravenes subsection (4) commits an offence.
- (7) During a search of premises or a conveyance under this section a biosecurity officer may seize anything which –
- (a) is an uncleared regulated article ; or
  - (b) may be used as evidence of the commission of an offence under this Act.
- (8) A biosecurity officer who seizes anything from a person under subsection (7) must –
- (a) inform the person of the reason for the seizure;
  - (b) give the person a receipt for the thing seized; and
  - (c) remove the thing to a place of safekeeping and deal with it in accordance with this Act.
- (9) A biosecurity officer may, at the expense of the importer, submit to appropriate biosecurity measures any regulated article seized pursuant to this section.

#### **48 Inspection of documents**

- (1) A biosecurity officer may –
- (a) call for and inspect documents on or in incoming or outgoing vessels and aircraft as provided in sections 15 and 20 respectively;

- (b) open and inspect at a biosecurity point of entry any incoming document, including mail, in order to ascertain whether the document contains or relates to a regulated article;
  - (c) open and inspect at a biosecurity point of departure any outgoing document, including mail, if the officer reasonably suspects that the document contains or relates to -
    - (i) an uncleared regulated article that requires biosecurity export clearance; or
    - (ii) a regulated article that could pose a serious biosecurity threat to the country of destination of the document.
- (2) The powers relating to mail in subsection (1)(b) and (c) must only be exercised in respect of personal letters if the officer reasonably suspects that a letter contains or relates to a biosecurity threat.

#### **49 Inspection of articles**

- (1) A biosecurity officer may at a biosecurity holding area inspect any incoming regulated article, and any conveyance, container or baggage in which the article is carried, in order to assess the biosecurity risk presented by the article, conveyance, container or baggage.
- (2) A biosecurity officer may at a biosecurity point of departure inspect any article, which requires biosecurity export clearance, in order to facilitate such clearance.
- (3) The powers of inspection in subsection (1) and (2) are in addition to the powers of inspection in sections 23 and 33 and any other powers of inspection in or under this Act.
- (4) For the purpose of exercising the powers of inspection under this Act, a biosecurity officer may request an importer or exporter to unpack and/or break up a consignment, or to open a container, at the person's risk and expense.
- (5) If an importer or exporter refuses to comply with a request under subsection (4) –
  - (a) the person commits an offence;
  - (b) the biosecurity officer may break up the consignment or open the container or cause it to be broken or opened;
  - (c) the cost of action under paragraph (b) is a debt owing to the Government by the importer or exporter, as the case may be;

- (d) no liability lies on the Government, the Director or any biosecurity officer and no compensation is payable, for the action of breaking up or opening, unless negligence or malice is proved.
- (6) When conducting an inspection under this Act, a biosecurity officer may seek access to, and take photographic, electronic or other copies of any evidence, information, records and things related to the regulated article or consignment that the officer reasonably requires in order to ensure compliance with this Act or to investigate a possible offence under it.
- (7) Inspection of articles in transit is governed by section 32(7).

## **50 Detention of articles**

- (1) If an incoming regulated article requires biosecurity measures to be taken in respect of it before biosecurity import clearance can be granted, a biosecurity officer may detain the article, and any conveyance, container or baggage in which the article is carried, for biosecurity measures to be taken.
- (2) If an outgoing regulated article that requires biosecurity export clearance has not been cleared, a biosecurity officer may detain the article, and any conveyance, container or baggage in which the article is carried, until clearance or other disposition of the article under this Act.
- (3) An article detained under this section must be detained in a place specified by the officer, being a biosecurity holding area, biosecurity quarantine station or biosecurity approved premises.
- (4) If an article is to be detained under this section, a biosecurity officer may –
  - (a) direct the importer or exporter of the article to remove it to the specified place;
  - (b) if necessary (because the importer or exporter refuses to obey the direction, or because of the nature of the biosecurity threat,) arrange for the article to be removed to the specified place.
- (5) If an article is detained under this section, a biosecurity officer must give to the importer or exporter a notice in writing stating the reasons for the detention and, if it was removed under subsection (4)(b), the specified place.
- (6) The cost of removal of an article to and its detention in a specified place is to be borne by the importer or exporter, and no compensation is payable for any loss or destruction or consequential loss caused as a result of any such removal or detention, unless negligence or malice is proved.
- (7) The charges for detention of an article under this section are as specified.

## 51 Taking of samples

- (1) A biosecurity officer may, with the consent of the importer, owner or custodian, take samples from -
  - (a) any part of an incoming vessel or aircraft that has on board regulated articles;
  - (b) any warehouse containing regulated articles intended for importation ;
  - (c) any consignment of incoming regulated articles, wherever located;
  - (d) any incoming container, baggage or thing that the officer reasonably suspects to be or include a regulated article.
- (2) If an importer refuses consent under subsection (1), the biosecurity officer may require the person to provide appropriate samples.
- (3) An importer who refuses either to allow samples to be taken or to provide samples, when required to do so under this section, commits an offence.
- (4) A biosecurity officer may, with the consent of the person in charge of the article, take samples of any outgoing regulated article if the taking of a sample is necessary for the issue of a sanitary or phytosanitary certificate.
- (5) If the person in charge of a regulated article refuses consent under subsection (4), the biosecurity officer may require the person to provide a sample, failing which the sanitary or phytosanitary certificate will not be issued.
- (6) A biosecurity officer may request the importer or exporter of a consignment to unpack it or break it up to facilitate sampling, at the risk and expense of the importer or exporter.
- (7) When exercising powers under subsection (1) or (2), a biosecurity officer must give the importer or exporter a written notice, identifying the quantity of the sample and the place where the sample is to be analysed.
- (8) In other respects, the procedure for taking and analysing samples, recording the results and disposing of the samples is as prescribed or specified.
- (9) If, in the course of sampling, goods are destroyed or damaged, without negligence or malice, no compensation is payable to the importer or exporter of the goods.
- (10) The importer or exporter of a regulated article from which samples are taken under subsection (1) must be notified in writing of the findings in respect of the samples as soon as reasonably practicable.
- (11) The charges for taking and analysis of samples under this section are as specified.

## **52 Testing of articles**

- (1) A biosecurity officer may test, or cause tests to be conducted on, any incoming regulated article, in order to ascertain whether the article meets the biosecurity import requirements in respect of it.
- (2) Following a test of an incoming article, and on payment of the prescribed fee, if any, the article must be either released to the importer, and biosecurity import clearance granted in respect of it, or it must be treated in accordance with section 53 or reconsigned or destroyed.
- (3) A biosecurity officer may test, or cause tests to be conducted on, any outgoing regulated article that requires biosecurity export clearance if such tests are a condition for importation into the receiving country.
- (4) Following tests on an outgoing article, biosecurity export clearance must either be granted or refused in respect of the article.
- (5) Section 50(3) to (6) apply to articles detained for testing under this section.
- (6) The importer or exporter of a regulated article which is tested under subsection (1) or (3) must be notified in writing of the results of the test before the article is released or otherwise disposed of.
- (7) If a test conducted under subsection (1) or (3) without negligence or malice destroys or damages an animal or other article being tested, no compensation is payable to the importer of the animal or other article.
- (8) The charges for testing of an article under this section are as specified

## **53 Treatment of articles**

- (1) If an incoming regulated article requires treatment in order to meet the biosecurity import requirements in respect of it, the article must be treated before biosecurity import clearance is granted in respect of it.
- (2) If an incoming article is found to be infected, infested or contaminated by a regulated pest or disease, the article may be treated to reduce the biosecurity risk to an acceptable level, whether or not treatment is a specified requirement or a condition of an import permit.
- (3) Section 50(3) to (6) apply to articles detained for treatment under this section.
- (4) Subject to treatment been administered to the satisfaction of the biosecurity officer, and on payment of any applicable charges, the article must, be released to the importer and biosecurity import clearance granted in respect of it.
- (5) The cost of treatment is to be borne by the importer of the item, but the importer may instead opt to have the article reconsigned or destroyed .

- (6) If an importer fails to have an article which requires treatment under this section treated within a reasonable time, the biosecurity officer may require the article to be destroyed.
- (7) If;
  - (a) appropriate treatment is not available in Tuvalu;
  - (b) in the opinion of a biosecurity officer, there would still be a biosecurity risk after treatment; or
  - (c) the importer chooses not to have the article treated,
 the article must be reconsigned or, if the importer chooses, or if section 54(3) applies, destroyed.
- (8) Notice of action to be taken under subsection (6) or (7) must be given to the importer in writing before the action is taken, except for articles in passenger baggage which are detained for destruction in the presence of the owner or custodian.
- (9) If an outgoing regulated article requires treatment as a condition of importation into the receiving country, the article must be treated at the expense of the exporter before biosecurity export clearance is granted in respect of it.
- (10) If, in the course of treatment, goods are destroyed or damaged, without negligence or malice, no compensation is payable to the importer or exporter of the goods.
- (11) Treatment of an article –
  - (a) should be the minimum required to remove or adequately reduce the biosecurity risk posed by the article;
  - (b) may be administered by an appropriately qualified biosecurity officer, or by any other suitably qualified person at the request of the officer or the importer.
- (12) The charges for treatment of an article under this section are as specified.

#### **54 Recognising of articles**

- (1) If an incoming regulated article which requires an import permit or a sanitary or phytosanitary certificate does not have the permit or certificate attached to it, a biosecurity officer may, after informing the importer, detain the article for reconsignment or destruction.
- (2) An incoming article that is a prohibited import must be reconsigned or destroyed.
- (3) Reconsignment is at the option and cost of the importer, but –

- (a) reconsignment must be effected within a time specified by the officer, which must be reasonable in the circumstances;
  - (b) if the biosecurity officer considers that the biosecurity risk of reconsignment is unacceptable, the option is not available.
- (4) The power to order reconsignment of an article under this section applies also to any container, crate, baggage, package or mail which carries it.
- (5) If reconsignment is not effected within the time specified under subsection (3)(a), or is not acceptable, the article or consignment must be destroyed.
- (6) No compensation is payable to the importer for the cost of reconsignment under this section.

## **55 Destruction of articles**

- (1) This Act requires or authorizes an article to be destroyed, the destruction of the article must be in accordance with this section.
- (2) Any incoming article is found to be infected, infested or contaminated by a regulated pest or disease, and –
  - (a) appropriate treatment is not available in Tuvalu;
  - (b) in the opinion of the Director, there would still be a biosecurity risk after treatment; or
  - (c) the importer chooses not to have the article treated,the article must be reconsigned or, if the importer chooses, or if section 54(3) applies, destroyed.
- (3) The power of destruction of articles in subsection (2) is in addition to any other power of destruction in or under this Act.
- (4) Destruction of an article under this Act may include any container, crate, baggage, package or mail which carries it.
- (5) Packaging of an article may be considered as not part of a consignment and may be destroyed, if considered to pose a biosecurity risk, whether or not the article is destroyed.
- (6) If the article to be destroyed appears to be of or above the value of \$1,000, the Director must obtain the written approval of the Secretary before arranging for its destruction.
- (7) The manner of destruction of articles under this section is as specified or approved by the Director and the importer or owner of the article, if known, must be invited to witness the destruction.

- (8) The Director must give notice of an intention to destroy any article to the importer or owner in writing before the action is taken, if the importer or owner is known.
- (9) No compensation is payable to the importer for destruction of an article under this section.
- (10) The charges for destruction of an article under this section are as specified.

## **56 Post mortem examination of an animal**

- (1) If a biosecurity officer examining an animal pursuant to this Act suspects that the animal is diseased and considers a post mortem examination to be necessary to establish a diagnosis, the officer may, on the written authority of the Director, and without the consent of the owner –
  - (a) take or cause to be taken the life of the animal;
  - (b) cause a post mortem examination to be conducted to decide whether the animal is diseased; and
  - (c) obtain specimens from the animal for laboratory examination and diagnosis.
- (2) If an examination is conducted pursuant to subsection (1), the results of the examination and of any laboratory reports resulting from the examination must be provided in writing to the Director and to the owner of the animal, if the owner can be identified and located.

## **57 Powers in relation to people**

- (1) If a biosecurity officer on reasonable ground suspects that any person –
  - (a) seeking to enter or leave Tuvalu;
  - (b) employed at a biosecurity point of entry or departure, in a designated area or quarantine station, or at approved premises; or
  - (c) engaged in importing or exporting regulated articles,is in possession or control of an article that poses a biosecurity threat to Tuvalu, the officer may detain and question the person.
- (2) If a biosecurity officer reasonably suspects that there may be upon a person seeking to enter Tuvalu an article that would, if imported, constitute an offence under this Act, the officer may cause the person and the person's baggage to be searched.
- (3) If a biosecurity officer reasonably suspects that there may be upon a person seeking to leave Tuvalu an article that would, if exported, constitute an

offence under this Act, the officer may cause the person and the person's baggage to be searched.

- (4) A search of a person under this section must be carried out by 2 officers of the same sex as the person searched.
- (5) A person may be detained under this section only for as long as is required to question and search the person and the person's baggage and to arrange for biosecurity measures to be taken in respect of it.
- (6) A person commits an offence if he/she refuses –
  - (a) to answer to the best of his or her knowledge and ability questions reasonably put by a biosecurity officer; or
  - (b) to submit to a search reasonably required under this section,
- (7) In this section, "person" means an individual.

## **PART VIII – BIOSECURITY INTERNAL CONTROL**

### **58 Pest and disease surveys**

- (1) The Minister, on the advice of the Director, may order a survey of any area of Tuvalu to be conducted to ascertain the status of pests and diseases in the area and the biosecurity risk of moving animals, plants, humans or organisms into, out of, or through the area.
- (2) An order under this section –
  - (a) must be published as required by section 104(1);
  - (b) does not take effect until published in the *Gazette*.
- (3) For the purposes of a survey under this section, a biosecurity officer may, in the area of the survey –
  - (a) inspect premises and equipment;
  - (b) take photographs and films and make drawings;
  - (c) inspect animals and plants and their products;
  - (d) question persons;
  - (e) collect specimens and perform tests relating to animals, plants, animal and plant products, land, water and the environment.
- (4) For the purposes of a survey under this section, the Director may direct the owners of animals or plants in the area of the survey, or persons who have custody or control of them, to make them available for inspection at places designated by the Director.

- (5) A person commits an offence if he or she refuses, in the course of a survey under this section –
  - (a) to permit an officer to enter property, collect specimens or perform tests as reasonably required;
  - (b) to answer to the best of his or her knowledge and ability oral or written questions reasonably put to the person by a biosecurity officer; or
  - (c) to make animals or plants in the ownership, custody or control of the person available as required under subsection (4),
- (6) The Secretary may provide for the publication and transmission of survey results to other interested governments and organisations in compliance with international agreements.

## 59 Entry, search and seizure

- (1) If a biosecurity officer reasonably suspects the presence of a regulated pest or disease that is not under official control, the officer may -
  - (a) at any time stop, board and search any conveyance;
  - (b) at any time enter and search any premises, building or area, including a biosecurity holding area, biosecurity quarantine station or biosecurity approved premises and land adjacent to a dwelling house, but not a dwelling house;
  - (c) at any time with the consent of the owner, enter and search a dwelling house for animals, plants and their products;
  - (d) at any time, on a warrant issued under subsection (2), enter and search a dwelling-house for any regulated article that the officer reasonably suspects to be in it and to pose a biosecurity threat to Tuvalu.
- (2) If Magistrate is satisfied on affidavit evidence by a biosecurity officer that-
  - (a) there may be in a dwelling house a regulated article that poses a biosecurity threat to Tuvalu; and
  - (b) the consent of the owner or occupier to entry and search of the dwelling house cannot be obtained,

the Magistrate may issue a warrant authorising the officer to enter and search the dwelling house for the article.
- (3) During a search of premises or a conveyance under this section a biosecurity officer may seize anything which -
  - (a) is a regulated article which the officer reasonably suspects poses a biosecurity threat to Tuvalu; or
  - (b) may be used as evidence of the commission of an offence under this Act.

- (4) A biosecurity officer who seizes anything from a person under subsection (3) must -
  - (a) inform the person of the reason for the seizure;
  - (b) give the person a receipt for the thing seized; and
  - (c) at the expense of the owner, remove the thing to a place of safekeeping and deal with it in accordance with this Act.
- (5) A biosecurity officer may submit to appropriate biosecurity measures any regulated article seized pursuant to this section.

## **60 Detention and testing of animals and plants and their products**

- (1) If an animal or plant or animal or plant product in Tuvalu is suspected of being infected or infested by a regulated pest or disease, a biosecurity officer may direct the animal, plant or product to be detained and confined in a place specified by the Director for tests to be conducted.
- (2) Following detention under subsection (1), a biosecurity officer may test, or cause to be tested, any animal or plant or animal or plant product. Such tests may include –
  - (a) the taking of samples in accordance with section 51 (replacing references to the importer of an article by references to the owner or custodian of it);
  - (b) conducting a post mortem examination in accordance with section 56.
- (3) If after testing as in subsection (2) the animal, plant or product is considered to pose a biosecurity threat to Tuvalu, the officer may further detain it in the specified place for biosecurity measures to be taken in respect of it, but an animal, plant or product may be detained only for so long as is required for biosecurity measures to be taken in respect of it.
- (4) If an animal or plant or animal or plant product is to be detained under this section, a biosecurity officer may –
  - (a) direct the owner or custodian to remove it to the place specified under subsection (1);
  - (b) if necessary (because the owner or custodian refuses to obey the direction, or because of the nature of the biosecurity threat) arrange for the animal, plant or product to be removed to the specified place.
- (5) If an animal or plant or animal or plant product is detained under this section, the owner or custodian must be given a written notice stating the reasons for the detention and, if it was removed under subsection (4)(b), the specified place.

- (6) The cost of removal of an article to and its detention in a specified place under this section is to be borne by the Ministry, and the owner is entitled to compensation for damage to or destruction of an article (but not consequential loss) caused as a result of any such removal or detention.
- (7) Section 12 (Management of biosecurity holding areas) applies to places specified under this section as it applies to biosecurity holding areas, except that section 40(2) and (3) do not apply.

## **61 Treatment or destruction of animals and plants and their products**

- (1) If treatment is available to eliminate or reduce to an acceptable level the biosecurity threat posed by an animal or plant or animal or plant product that has been detained under section 60, a biosecurity officer may –
  - (a) with the consent of the owner or custodian of the animal, plant or product, administer such treatment, or cause it to be administered;
  - (b) after treatment, release the animal, plant or product to the owner or custodian.
- (2) If –
  - (a) in the opinion of a biosecurity officer, appropriate treatment is not available in Tuvalu;
  - (b) in the opinion of a biosecurity officer, there would still be a biosecurity risk after treatment; or
  - (c) the owner or custodian does not consent to the treatment being administered,a biosecurity officer may order the animal or plant or product to be destroyed.
- (3) Notice of action to be taken under subsection (2) must be given to the owner or custodian in writing before the action is taken.
- (4) Subject to subsection (5), section 55 applies to the destruction of animals and plants and their products under this section, replacing references to the importer of an article by references to the owner or custodian of it.
- (5) The cost of treatment or destruction under this section is to be borne by the Ministry, and the owner is entitled to compensation (but not consequential loss) for destruction of an article under this section.

## **62 Infested biosecurity controlled area**

- (1) If –
  - (a) an animal or plant on land or premises in any area of Tuvalu is found to be infested by a pest or disease; and

- (b) the powers in sections 59 to 61 are inadequate to control the outbreak, the Minister, on the advice of the Secretary, may by order declare the land or premises to be an infested biosecurity controlled area in respect of that pest or disease.
- (2) An order under this section –
  - (a) may include an area of adjacent land if necessary to effectively contain the infestation;
  - (b) must be made as soon as practicable after the finding of the infestation;
  - (c) must be published as required by section 104(1);
  - (d) comes into effect on making, if so declared.
- (3) In an infested biosecurity controlled area, a biosecurity officer may enter upon any land at any time in order to ascertain the status of a regulated pest or disease.
- (4) In an infested biosecurity controlled area, pending the making of an order under section 63, no animal or animal product, or plant or plant product, fodder, fitting or other thing as specified in the declaration, may be moved out of, into or within the area except with the permission of a biosecurity officer and in accordance with any conditions reasonably imposed by the officer.
- (5) A person who contravenes subsection (4) commits an offence.

### **63 Regulation of infested biosecurity controlled areas**

- (1) In an infested biosecurity controlled area, the Director may by order direct:
  - (a) the treatment or disposal of diseased animals and plants;
  - (b) the destocking, cleaning, disinfecting or other treatment of land, premises and conveyances;
  - (c) the inspection and treatment of regulated articles in or entering or leaving the area;
  - (d) any other biosecurity measures the Director considers necessary to control the infestation.
- (2) In respect of an infested biosecurity controlled area, the Director may by order control –
  - (a) the movement of animals or plants or their products or other regulated articles into, out of or within the area;
  - (b) the movement of humans and conveyances into, out of or within the area;
  - (c) any other activity the Director considers needs to be controlled to prevent the movement of host material into and out of the area.

- (3) An order under subsection (1) or (2) may create offences for breaches of it and prescribe maximum penalties not exceeding a fine of \$20,000 for an individual and \$100,000 for a corporate body.
- (4) An order under this section –
  - (a) must be published as required by section 104(1);
  - (b) does not take effect until published in the *Gazette*.
- (5) Section 62(4) ceases to have effect upon the coming into force of an order under this section.
- (6) The cost of treatment or destruction under this section is to be borne by the Ministry, and the owner is entitled to compensation (but not consequential loss) for destruction of an article under this section.

#### **64 Pest-free biosecurity controlled areas**

- (1) The Minister, on the advice of the Secretary, may by order declare any area of Tuvalu to be a pest-free biosecurity controlled area in respect of a specified pest or disease.
- (2) A pest-free biosecurity controlled area is one where the specified pest or disease does not occur, so far as is known, and where incursions of that pest or disease should be prevented.
- (3) An order under this section –
  - (a) must be published as required by section 104(1);
  - (b) does not take effect until published in the *Gazette*.
- (4) Following a further survey conducted under section 58, and on the advice of the Director, the Minister may amend or revoke an order made under subsection (1).
- (5) Before advising the Minister under this section, the Director must obtain appropriate scientific advice.

#### **65 Regulation of pest-free biosecurity controlled areas**

- (1) In respect of a pest-free biosecurity controlled area the Director may by order –
  - (a) control the movement of regulated articles, humans and conveyances into, out of, and within the area;
  - (b) direct the inspection and treatment of regulated articles in or entering or leaving the area;
  - (c) establish surveillance procedures for the specified pest or disease in the area.

- (2) An order under subsection (1) –
  - (a) must only be made for the purposes of preventing incursions of the specified pest or disease into the biosecurity controlled area;
  - (b) may create offences for breaches of the order and prescribe maximum penalties not exceeding a fine of \$20,000 for an individual and \$100,000 for a corporate body.
- (3) An order under this section –
  - (a) must be published as required by section 104(1);
  - (b) does not take effect until published in the *Gazette*.
- (4) The Director may by administrative means institute other measures to keep the biosecurity controlled area free of the specified pest or disease.

## **66 Destruction of wild animals**

- (1) If the Director has reason to suspect that a wild or feral animal is carrying a regulated pest or disease, the Director may, in order to prevent the pest or disease from being established or spreading in Tuvalu, after consultation with relevant technical section heads, and with the approval of the Secretary, cause the animal to be destroyed.
- (2) The carcass of an animal destroyed under subsection (1) must be disposed of in a manner that will not create the risk of the spread of any regulated pest or disease.

## **67 Notifiable pests and diseases**

- (1) The Director may by order declare -
  - (a) the pests and diseases that are notifiable for purposes of this section;
  - (b) the manner of notifying such pests and diseases to the Director.
- (2) An order under this section –
  - (a) must be published as required by section 104(1);
  - (b) does not take effect until published in the *Gazette*.
- (3) A person who knows of or suspects the occurrence of a notifiable pest or disease in Tuvalu must as soon as reasonably practicable notify the Director in the manner declared under subsection (1), unless the person reasonably believes that the Director has already been notified of the occurrence.
- (4) A person who fails to comply with subsection (3) commits an offence.

- (5) The master of a vessel or captain of an aircraft in Tuvalu who knows of or suspects the occurrence of a notifiable pest or disease on board the vessel or aircraft must –
  - (a) as soon as reasonably practicable notify the Director in the manner declared under subsection (1); and
  - (b) take such action in relation to the vessel or aircraft as is directed by the Director or a biosecurity officer.
- (6) A master or captain who fails to comply with subsection (5)(a) or (b) commits an offence.
- (7) The Director must record in the biosecurity register all occurrences of notifiable diseases that are notified under this section or that otherwise come to the notice of the Director.

## **68 Beneficial organisms and biological agents**

- (1) The Minister may in writing authorise the release of beneficial organisms or biocontrol agents that are necessary or appropriate for the control or eradication of a particular pest or disease in Tuvalu.
- (2) Before authorising a release under subsection (1) the Minister must obtain the advice of the Director as to the biosecurity risk posed by the release and consult as appropriate the officers or authorities responsible for agriculture, fisheries, environment and natural resources.
- (3) An authorisation under subsection (1) must identify –
  - (a) the organism or agent;
  - (b) the pest or disease which it is intended to control;
  - (c) the area where it may be released;
  - (d) the period during which it may be released;
  - (e) the person or persons who may release it; and
  - (f) any conditions subject to which the approval is granted.
- (4) No liability attaches to the Minister, the Director or any public officer in respect of the release of organisms or biocontrol agents in accordance with this section, except on proof of negligence or malice.
- (5) The Director must record in the biosecurity register -
  - (a) the names of any beneficial organisms or biological agents released under this section; and
  - (b) the place of and extent of release of such organisms and agents.

- (6) In this section, “beneficial organism” and “biocontrol agent” mean a natural enemy, antagonist or competitor of a pest or disease, and any other self-replicating biotic entity used for pest and disease control.
- (7) Before advising the Minister under subsection (2), the Director must obtain appropriate scientific advice.

## **PART IX – BIOSECURITY EMERGENCIES**

### **69 Declaration of a biosecurity emergency area**

- (1) On receiving evidence that a biosecurity emergency has arisen in the whole or any part of Tuvalu, the Minister may declare a biosecurity emergency in respect of the whole of or that part of Tuvalu.
- (2) Before making a declaration under subsection (1), the Minister must obtain the advice of the Director and consult the National Disaster Committee.
- (3) A biosecurity emergency area may include an area where an animal or plant is found to be infested or infected, and adjacent areas to the extent reasonably necessary.
- (4) Notice of a declaration under this section must be –
  - (a) published as required by section 104(1);
  - (b) displayed on notice boards or similar throughout the biosecurity emergency area.
- (5) A declaration under subsection (1) –
  - (a) does not take effect until it has been published in the Gazette;
  - (b) must be revoked as soon as the biosecurity threat is removed or reduced to an acceptable degree.
- (6) A declaration under subsection (1) expires on the date which is 6 months after it comes into force unless it is revoked or extended on or before that date by the Minister in accordance with subsection (1).
- (7) An extension of a biosecurity emergency declaration by the Minister may not be for more than 6 months, but may be renewed in the same manner before the end of that period.

### **70 Response to a biosecurity emergency**

- (1) When a biosecurity emergency area is declared under section 69, the Director must undertake a detailed survey, using the powers in section 58, to ascertain the precise extent and severity of the incursion or other threat and the most appropriate measures to take in response.

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- (2) In deciding on an appropriate response to a biosecurity emergency, the Director should –
    - (a) be guided by any Biosecurity Emergency Response Plan that has been devised by the Ministry in consultation with other departments of government and statutory authorities;
    - (b) as appropriate, consult and liaise with the National Disaster Committee.
  - (3) If the cost of a response to an emergency exceeds or is likely to exceed the current budget of the Ministry, the Minister should request the Parliament for additional funds, as provided by section 81(4).

## **71 Action in a biosecurity emergency area**

- (1) In respect of a biosecurity emergency area –
  - (a) the Secretary shall request the Commissioner of Police and any department of government or statutory Director to use their powers and resources to assist in the control or eradication of any pest or disease in the area;
  - (b) the Secretary shall in writing requisition for the use of the Director any conveyance or equipment which the Director reasonably considers is necessary or useful for preventing, eradicating or limiting the spread of a pest or disease;
  - (c) a biosecurity officer may enter upon any land at any time in order to ascertain the status of a pest or disease;
  - (d) the Secretary shall appoint temporary additional personnel, whether or not having the powers of biosecurity officers, to effectively respond to the biosecurity emergency.
- (2) In a biosecurity emergency area, the Director may do or cause to be done any of the following –
  - (a) mark the boundaries of the emergency area;
  - (b) set up roadblocks at all exits from the area;
  - (c) set up facilities for the cleansing and disinfection of all persons and conveyances entering or leaving the area and any other thing likely to spread any pest or disease;
  - (d) disinfect all conveyances, crates, packing, animals, plants and other things which are likely to carry pests or diseases and which are being sent out of the area;
  - (e) inspect and disinfect all persons and their possessions leaving the area so as to prevent any host material that may be infected from leaving the area;

- (f) for the purposes of paragraphs (d) and (e), detain persons, animals, plants, animal and plant products, goods and vehicles for as long as is necessary to minimise or eliminate the biosecurity risk presented by them;
  - (g) perform surveillance activities to ascertain the extent and status of the emergency.
- (3) A person commits an offence if he/she –
- (a) resists, knowingly obstructs, or knowingly and without reasonable excuse fails to comply with a direction of the Director, a biosecurity officer or any police officer or other person performing duties under this section;
  - (b) knowingly enters or leaves a biosecurity emergency area except with and in accordance with the permission of the Director or a biosecurity officer;
  - (c) knowingly moves any article out of or into a biosecurity emergency area, or from one place within the area to another place within that area, except with and in accordance with the written permission of the Director or a biosecurity officer.
- (4) Articles moved in contravention of subsection (3)(c) may be seized by a biosecurity officer and –
- (a) held pending criminal proceedings for the contravention; or
  - (b) if necessary to remove a biosecurity threat, destroyed as the Director directs, without a court order.
- (5) In respect of action taken under this section –
- (a) the cost of treatment or destruction of any article is to be borne by the Ministry;
  - (b) compensation (but not for consequential loss) is payable to the owner of any land, premises, conveyance or article that is used, lost, destroyed or damaged.

## **72 Biosecurity Emergency Regulations**

- (1) The Minister, on the advice of the Secretary, may at any time make regulations (“Biosecurity Emergency Regulations”) which –
- (a) supplement the powers given to the Secretary and Director and biosecurity officers by section 71; and
  - (b) take effect upon the declaration of a biosecurity emergency area under section 70.

- (2) Biosecurity Emergency Regulations may, in respect of a biosecurity emergency area –
  - (a) create one or more exclusion zones within the area and control the movement of conveyances, humans, animals and plants and host material into, out of and within such a zone;
  - (b) prohibit specified activities in the area;
  - (c) provide for the destruction or treatment of specified goods and the treatment of land in the area;
  - (d) regulate the use of the area for a specified period after the lifting of emergency restrictions;
  - (e) generally, specify the conditions which apply to the area to control the biosecurity emergency.
- (3) Biosecurity Emergency Regulations may –
  - (a) confer on the Secretary and Director and on biosecurity officers powers additional to those conferred by this Act and reasonably needed to deal with the emergency;
  - (b) prescribe the disposal, destruction, treatment or other measures to be adopted in respect of any item which is infected, infested or contaminated;
  - (c) require the cleansing or disinfecting of soil, conveyances, machinery, tools, equipment, clothing, footwear or other things which may have come into contact with those items;
  - (d) prescribe measures to be taken to prevent pests and diseases from spreading, including but not limited to cleansing of homes and utensils, removal of stagnant water and disposal of garbage;
  - (e) prohibit or restrict the use of any seaport or airport, or of any facilities at any seaport or airport, to the extent specified.
- (4) Biosecurity Emergency Regulations may create offences for breaches of them and prescribe maximum penalties not exceeding a fine of \$40,000 for an individual or \$200,000 for a corporate body.
- (5) Biosecurity Emergency Regulations come into force on the day on which a biosecurity emergency declaration takes effect under section 69 and lapse upon the expiry of the declaration under that section. They come into force again if a further declaration is made under section 69.
- (6) In respect of action taken under Biosecurity Emergency Regulations –
  - (a) the cost of treatment or destruction of any article is to be borne by the Ministry;

- (b) compensation (but not for consequential loss) is payable to the owner of any land, premises, conveyance or article that is used, lost, destroyed or damaged.

## **PART X - THE DIRECTOR OF BIOSECURITY ETC**

### **73 Designation of Director of Biosecurity**

- (1) The Minister must in writing designate a public officer in the Ministry to be the Director of Biosecurity for the purposes of this Act.
- (2) The Minister may in writing designate a public officer in the Ministry to be the Deputy Director of Biosecurity and to perform the functions of the Director whenever the Director is unable to do so.
- (3) The Director and Deputy Director (if any) are by virtue of their office biosecurity officers for all purposes of this Act.
- (4) If the Director is temporarily absent from Tuvalu, or is temporarily unable to perform his or her duties for any other reason, and if no Deputy Director has been designated under subsection (2), the Minister may designate a suitably qualified public officer to act in the place of the Director during that period.
- (5) Designations under this section must be published in the *Gazette* and do not take effect until they are so published.
- (6) The powers of designation under this section are subject to the powers of the Public Service Commission with regard to designation of public officers.

### **74 Designation of biosecurity officers**

- (1) The Minister must in writing designate one or more suitably qualified public officers as biosecurity officers for the purposes of this Act.
- (2) The Secretary in writing designate any public officer or employee of a statutory authority to be a biosecurity officer for a particular purpose or at a particular location.
- (3) The Minister shall in writing designate any suitably qualified officer to be a temporary biosecurity officer for a period not exceeding 6 months for a particular purpose or at a particular location.
- (4) Before designating a public officer from another Ministry, the Secretary should consult the relevant Minister, but failure to do so does not invalidate the designation.
- (5) (a) The powers of a biosecurity officer are as prescribed by or under this Act.

- (b) A biosecurity officer must perform such duties, not inconsistent with this Act, as are assigned to the officer by the Director.
  - (c) The Director may limit the functions to be performed by a biosecurity officer to those within the officer's technical sphere of competence;
  - (d) The functions assigned to an officer designated under subsection (2) or (3) must be consistent with the terms of the designation.
- (6) The Director must provide every biosecurity officer with a suitable form of identification as such officer.
- (7) A person commits an offence if he/she –
- (a) upon the termination of his or her appointment as a biosecurity officer fails to surrender up any identification issued under subsection (6) within a specified period; or
  - (b) copies, forges or alters a form of identification issued under subsection (6) without the written authority of the Secretary.
- (8) A person who is to perform duties as a biosecurity officer under this section must be given adequate training in biosecurity control measures and in the provisions of this Act before embarking on those duties.
- (9) The powers of appointment and designation under this section are subject to the powers of the Public Service Commission with regard to appointment and designation of public officers.

## **75 Functions of the Director**

- (1) The Director must –
- (a) perform the functions assigned to the Director by or under this Act;
  - (b) advise the Secretary on matters relating to animal and plant quarantine and biosecurity and liaise with appropriate Ministries and statutory bodies on such matters;
  - (c) report to the Secretary and Minister as required by either of them from time to time;
  - (d) perform any other functions relating to this Act that the Minister or Secretary by directions in writing confers on the Director from time to time.
- (2) Before performing technical functions under this Act, the Director and Deputy Director must as appropriate obtain advice from technical section heads.

## **76 Functions of the Ministry**

- (1) The Minister -

- (a) has the functions assigned to the Minister by or under this Act;
  - (b) may call for reports from the Secretary and the Director on any matter pertaining to this Act or the biosecurity functions of the Government;
  - (c) subject to the approval of the Cabinet, may arrange for Tuvalu to be represented internationally in respect of matters relating to biosecurity.
- (2) The Secretary -
- (a) has the functions assigned to the Secretary by or under this Act;
  - (b) may call for reports from the Director on any matter pertaining to this Act or the functions of the Director;
  - (c) must endeavour to ensure that adequate staff and funds are available to the Director for the performance of the Director's functions under section 75, in accordance with any policy laid down by the Minister.
- (3) The Ministry should -
- (a) in consultation with other government departments and statutory authorities and the National Disaster Committee, devise a Biosecurity Emergency Response Plan to deal with an incursion of a regulated pest or disease in Tuvalu and keep the plan under review;
  - (b) produce an operations manual for the guidance of biosecurity officers in electronic or hard format or both;
  - (c) to the extent possible, publicise the requirements of this Act and increase public awareness of the importance of biosecurity.

## **77 Directions**

- (1) The Minister may give directions in writing to the Secretary and to the Director concerning administrative action needed to implement this Act and to achieve the biosecurity functions of the Government.
- (2) The Secretary may give written directions to the Director concerning administrative action needed to implement this Act and to achieve the biosecurity functions of the Government.
- (3) The Director may give written directions to biosecurity officers as to the manner in which their functions are to be performed, consistent with this Act and the regulations.

## **78 Delegation of functions**

- (1) The Minister may in writing delegate any of the Minister's functions, powers and duties under this Act to the Secretary or the Director, other than any legislative or appellate function or this power to delegate.

- (2) Subject to subsection (3), the Director may in writing delegate any of the Director's functions under this Act or the regulations to the Deputy Director or to a named biosecurity officer.
- (3) The Director may not delegate any legislative, judicial or appellate function, the power of giving directions under section 77, or the power of delegation under this section, except to the Deputy Director.
- (4) A delegation under this section may be to a specified person or to the holder for the time being of a specified office or to the holders of offices of a specified class.
- (5) A delegation under this section may be made subject to such restrictions and conditions as the delegator thinks fit, and may be made either generally or in relation to any particular case or class of cases.
- (6) A person purporting to perform any function by virtue of a delegation under this section must, when required to do so, produce evidence of the authority to perform the function.
- (7) A delegation under this section continues in force notwithstanding a change in the identity of the delegator, until revoked.
- (8) Delegations under this section must be published in the *Gazette*.

## **79 Biosecurity register and records**

- (1) The Director must maintain a biosecurity register and other records needed for the administration of this Act and the performance of the biosecurity functions of the Government.
- (2) Without limiting the matters to be recorded in the biosecurity register, details of the following must be included –
  - (a) regulated pests and diseases;
  - (b) prohibited imports;
  - (c) biosecurity points of entry and departure;
  - (d) biosecurity holding areas;
  - (e) biosecurity clearance agents;
  - (f) biosecurity seaport quarantine areas;
  - (g) biosecurity quarantine stations;
  - (h) biosecurity approved premises;
  - (i) biosecurity import permits issued, refused and revoked under Part 4;
  - (j) exemptions granted under section 31;

- (k) transit waivers issued under section 32, other than in-transit passenger waivers;
  - (l) biosecurity controlled areas declared under section 62 or 64;
  - (m) occurrences of notifiable pests and diseases notified under section 67;
  - (n) beneficial organisms and biocontrol agents released under section 68;
  - (o) agreements and memoranda of understanding with other government departments, statutory authorities and overseas agencies under section 83(3);
  - (p) compliance agreements entered into by the Director under section 87;
  - (q) bilateral agreements entered into with potential receiving countries under section 89;
  - (r) any other public biosecurity register required by or under this Act or considered by the Director to be necessary or appropriate.
- (3) The biosecurity register must include details of –
- (a) specifications for regulated articles made under sections 26 and 36, including the biosecurity measures appropriate to each type of regulated article;
  - (b) any other form or matter specified by the Director under this Act.
- (4) In respect of the biosecurity requirements of receiving countries, the biosecurity register must include details of –
- (a) the requirements of those countries for which biosecurity export clearance has been granted in the past 12 months;
  - (b) source material for ascertaining the biosecurity requirements of all potential receiving countries.
- (5) The Director must maintain records relating to the biosecurity functions of the Government, including, but not limited to –
- (a) financial and resource management records, with budgets and records of expenditure and revenue;
  - (b) personnel records including the identities, duty statements and terms and conditions of employment of all biosecurity officers.
  - (c) operational statistics relating to the biosecurity functions of the Government.

## **80 Status of biosecurity register and records**

- (1) The biosecurity register kept pursuant to section 79(1) must be made available for inspection and copying by members of the public during office hours at the office of the Director on payment of the prescribed fee.

- (2) Copies of relevant extracts from the biosecurity register must be made available for inspection and copying by members of the public at the offices of the Ministry and at all Kaupule offices on payment of the prescribed fee.
- (3) Subject to any other Act, the biosecurity register and other records kept under section 79 must only be used for the purposes of this Act.
- (4) A copy of an entry in the biosecurity register which is certified by the Director to be an accurate copy may be produced in court as prima facie evidence of the entry.
- (5) The biosecurity register and other records kept under section 79 may be in electronic format, provided the information is readily retrievable and is protected against unintended loss and unauthorised alteration.
- (6) The Minister, on the advice of the Director, may by order determine the period for which entries in the biosecurity register and other records under section 79 must be kept, consistent with any other Act relating to public records.

## **PART XI - ADMINISTRATION OF THE ACT**

### **81 Financial Provisions**

- (1) The biosecurity funds of the Ministry consist of money appropriated by the Parliament of Tuvalu and paid to the Ministry in respect of biosecurity functions of the Government.
- (2) The Minister may request the Parliament to provide finance for the implementation of this Act in addition to an annual appropriation.
- (3) If -
  - (a) there is an incursion of a regulated pest, disease or organism into Tuvalu which may threaten the livelihood and environment of the country or any part of it; and
  - (b) a response is immediately required, whether by way of the declaration of a biosecurity emergency area or otherwise,

the Parliament may approve the payment from the Consolidated Fund of a sum equal to one third of the budget of the Ministry pending a supplementary appropriation by the Parliament.

- (4) Fines, fees and charges payable under this Act are to be paid into the Consolidated Fund and dealt with in accordance with the Public Finance Act
- (5) If a fee or charge payable under this Act is not paid –

- (a) if the service for which the fee or charge is payable has not been provided - it may be withheld until the fee is paid;
- (b) if the service has been provided - the fee or charge may be recovered as a debt owing to the Government;
- (c) if the fee or charge is in respect of an item in quarantine - the item may be sold once it has cleared quarantine, or otherwise be treated as abandoned goods.

## **82 Powers of the Kaupule**

- (1) Every Kaupule may in relation to its area of Falekaupule –
  - (a) carry out, for the purposes of this Act, monitoring and surveillance of pests and diseases;
  - (b) propose pest and disease management strategies in consultation with the Director;
  - (c) if a pest management strategy proposed by the Kaupule has been approved by the Director –
    - (i) perform the functions of the management agency in respect of the strategy;
    - (ii) provide for the management or eradication of pests and diseases;
    - (iii) review, extend or revoke the strategy.
- (2) The Kaupule may, in consultation with the Director, gather information, keep records, undertake research, and do any other similar thing that the Kaupule considers necessary or desirable to enable it to act effectively under this Act.

## **83 Consultation and outsourcing**

- (1) Before making subsidiary legislation, issuing directions or exercising other powers under this Act, the Minister, Secretary and Director should each obtain appropriate technical advice and consult relevant interested parties, but failure to do so does not invalidate the exercise of the relevant powers.
- (2) Before exercising a power under this Act that will or might affect matters within the responsibility of another government department or statutory authority (including but not limited to human health, natural resources, environment, tourism, postal services, shipping, aviation, transport and trade) the Minister, Secretary and Director should each consult the relevant department, authority or officer, but failure to do so does not invalidate the exercise of the power.

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- (3) The Ministry may, for the effective implementation of this Act, enter into memoranda of understanding or other agreements with other government departments and statutory authorities and with official agencies and private organizations in Tuvalu or elsewhere.
  - (4) The Ministry may, subject to rules relating to procurement, tenders and other matters governing Government contracts –
    - (a) hire the services of a laboratory for testing of samples;
    - (b) hire consultants to perform biosecurity risk assessments and to carry out surveys authorised under this Act;
    - (c) hire any treatment or other service deemed necessary for the effective implementation of this Act.
  - (5) Outsourcing of services under subsection (4) –
    - (a) requires legal capacity to enter into contracts;
    - (b) does not confer on any person the powers of a biosecurity officer.

#### **84 Duty to Coordinate**

- (1) Biosecurity officers and other persons administering this Act should so far as possible coordinate their functions with those of officers of other government departments and statutory authorities, in respect of border control, the movement of vessels and aircraft, human health, biosecurity internal control and compliance with the laws of Tuvalu generally.
- (2) Without limiting subsection (1) –
  - (a) biosecurity officers should notify officers of the customs and immigration services of any breach of the customs or immigration Acts that comes to their notice;
  - (b) officers of the customs and immigration services and of the postal service should -
    - (i) notify a biosecurity officer of the importation or proposed exportation of any uncleared regulated article that comes to their notice;
    - (ii) hand over to a biosecurity officer any such article which comes into their possession for inspection and treatment in accordance with this Act;
  - (c) police officers, customs officers, immigration officers, postal service officers, environmental officers, agriculture officers, livestock officers, forestry officers and fisheries officers should co-operate with biosecurity officers in the performance of their functions under this Act and render such assistance as they can lawfully do when called upon by the Director or a biosecurity officer.

- (3) The Ministry should seek so far as possible to coordinate the biosecurity functions of the Government with those of other government departments and statutory authorities dealing with the police, customs, immigration, marine, harbours, civil aviation, health, environment, fisheries, natural resources and similar services.

## **85 Facilities at biosecurity points of entry or departure**

- (1) The operator of every biosecurity point of entry or departure in Tuvalu must, to the extent possible, provide on the premises, for the purposes of this Act and to the satisfaction of the Director –
- (a) an area suitable for use as offices by biosecurity officers stationed at the point;
  - (b) adequate space for the display of notices regarding the biosecurity requirements of this Act;
  - (c) areas for interview and, if necessary, physical examination of incoming passengers and crew, if required;
  - (d) biosecurity holding areas as designated under section 11;
  - (e) facilities and suitable containers for garbage collection and incineration or other disposal;
  - (f) facilities for the incineration or other disposal of regulated articles without creating an unacceptable biosecurity risk;
  - (g) fencing of premises in which garbage holding and disposal equipment is situated;
  - (h) any other facilities the Director reasonably requests in writing as being needed for the performance of biosecurity functions at the point of entry or departure.
- (2) The operator of a biosecurity entry or departure point, whether or not a public officer, must keep the premises and facilities mentioned in subsection (1)(e), (f) and (g) free from weeds and vermin to the satisfaction of the Director. An operator who fails to do so commits an offence.
- (3) No charge is payable by the Ministry for the facilities to be provided under this section. If an operator fails to provide facilities as required by this section they may be provided by the Ministry and the cost of such provision is a debt owing by the operator to the Government.

## **86 Safe carriage and safe working environment**

- (1) If it is necessary for the purposes of this Act for a biosecurity officer to be transported to a conveyance, premises or place, the owner of the conveyance,

premises or place must ensure that the mode of transport provides safe carriage having regard to the conditions of travel.

- (2) If it is necessary for an officer to undertake inspection duties on a conveyance or premises, including a conveyance or premises owned by the Government, the person in charge of the conveyance or premises must provide –
  - (a) a safe working environment for the officer;
  - (b) adequate refreshment every 4 hours.
  - (c) overnight accommodation, if required
- (3) The Minister’s power to make regulations under section 106 includes the power to make regulations, consistent with the health and safety Acts of Tuvalu, to enforce the obligations stated in subsection (1) and (2).

## **87 Compliance agreements**

- (1) The Director may enter into a written agreement with an importer, exporter, producer or any other person in connection with -
  - (a) the application of particular biosecurity measures in respect of any item;
  - (b) the way in which any requirement under this Act can be satisfied by the person; and
  - (c) the supervision, monitoring and testing of the person's compliance with those measures or that requirement.
- (2) A compliance agreement may provide that, in circumstances stated in the agreement, the Director may, by written notice, cancel or vary the agreement or suspend its operation for a period. The circumstances may include, but are not limited to, the person’s failure to comply with specified measures or meet specified requirements.
- (3) A biosecurity officer may release an article to which a compliance agreement applies, and if it is a regulated article grant biosecurity clearance in respect of it, on the basis of a written certificate, given by a person authorised under the agreement to give such a certificate, that all the measures to which the agreement refers have been complied with in respect of the article.

## **88 Biosecurity approved premises**

- (1) The Director, on written application by the owner or occupier of any premises and on payment of the prescribed fee, may in writing –
  - (a) approve the premises as premises where the inspection, testing and treatment of regulated articles can take place; and

- (b) approve specified action being taken under this Act in relation to all regulated articles, or specified articles, while they are in the approved premises.
- (2) In deciding whether to give approval under subsection (1), the Director, after inspection of the premises by a biosecurity officer, must take into account -
  - (a) whether the specified action can be taken in the premises without an unacceptable biosecurity risk and without contravening this Act or the conditions of any permit;
  - (b) whether the premises and facilities in them are adequate to enable such action to be taken efficiently and safely;
  - (c) whether the location of the premises is appropriate having regard to the nature of the articles, the specified action and the level of biosecurity risk;
  - (d) whether the premises are located in a place where biosecurity officers can conveniently check that this Act and the regulations are being complied with in the premises; and
  - (e) any other matter the Director considers relevant.
- (3) An approval under this section may be expressed to be subject to conditions stated in the approval and is of no effect if the conditions are not met.
- (4) An approval under this section has effect for a period not exceeding [12] months but may be renewed by following the procedure for a new approval.
- (5) An approval under this section may be cancelled if the Director is satisfied –
  - (a) that the premises or facilities or action taken do not comply with this Act or the regulations; or
  - (b) that the premises are otherwise no longer suitable for approval.
- (6) The provisions of this Act relating to biosecurity quarantine stations (other than section 40) apply to premises approved under this section.

## **89 International cooperation**

- (1) The Minister in consultation with the Ministers for foreign affairs and trade may, with the approval of the Cabinet, enter into bilateral or multilateral agreements with countries and international organisations for effective international control in biosecurity matters.
- (2) The Director may pursuant to such agreements –
  - (a) exchange information with other countries and international organisations;
  - (b) contribute to the development of international sanitary and phytosanitary standards.

- (3) Agreements under subsection (1) may include agreements on procedures for implementing this Act, but not so as to vary the effect of any of its provisions except as provided by this Act.
- (4) The Minister must use his or her best endeavours to implement in Tuvalu international standards and requirements relating to biosecurity, and to that end should –
  - (a) designate one or more officers in the Ministry as the enquiry point and notification authority for purposes of the IPPC, the OIE and the PPPO;
  - (b) seek to ensure that notification and reporting requirements of the IPPC, the OIE, the PPPO and any other international agreement relating to biosecurity imposed on Tuvalu are met in a timely manner.

## **90 Notifications**

- (1) The Minister, on the advice of the Director, may at any time issue a notice -
  - (a) stating that a specified pest or disease is known to exist in Tuvalu;
  - (b) stating that, to the best of the Minister's knowledge, a specified pest or disease does not exist in Tuvalu;
  - (c) specifying the classification, name or identity by which any animal, animal product, plant, plant product, pest or disease is known in Tuvalu.
- (2) A notice issued under subsection (1) is, for the purposes of this Act, conclusive until revoked or amended under that subsection and is admissible in any court or other proceedings as evidence of the matters stated in it.

## **PART XII - OFFENCES AND PENALTIES**

### **91 Dereliction of duty by officers**

A biosecurity officer commits an offence if he or she; -

- (a) fails without reasonable excuse to perform any of his or her duties under this Act or the regulations;
- (b) disposes of a regulated article or other item under the control of the officer other than in accordance with this Act;
- (c) discloses information of a confidential or commercial nature which has come into the officer's possession while performing functions under this Act, except for purposes of this Act;

- (d) in the course of performing his or her duties molests or intimidates unlawfully assaults any person;
- (e) in connection with his or her duties solicits or accepts a bribe; or
- (f) knowingly or recklessly makes a false or misleading statement, or issues a false or misleading certificate or other document, while purporting to perform his or her duties.

## **92 Obstruction, false information etc**

A person commits an offence if he or she; –

- (a) wilfully fails to comply with a lawful request made or direction given by a biosecurity officer under this Act;
- (b) knowingly obstructs a biosecurity officer in the performance of his or her functions under this Act;
- (c) assaults, or threatens to assault a biosecurity officer performing functions under this Act;
- (d) bribes a biosecurity officer in relation to the performance of functions under this Act;
- (e) makes a false or incomplete statement, whether orally or in writing, in relation to any matter under this Act, intending to mislead a biosecurity officer in the performance of functions under this Act,
- (f) for purposes of this Act knowingly or recklessly –
  - (i) makes a false or misleading biosecurity declaration; or
  - (ii) issues any false or misleading certificate;
- (g) knowingly or recklessly gives false or misleading information to a biosecurity officer while the officer is performing functions under this Act.

## **93 Fraudulent use of official documents**

- (1) A person to whom a permit or other document is issued under this Act commits an offence if he or she –
  - (a) forges or unlawfully alters the document;
  - (b) allows any other person to use or attempt to use the document for any purpose of this Act,
- (2) A person who, for the purposes of this Act, produces a document which is false or misleading, knowing it to be so and intending another person to rely on it, commits an offence.

- (3) A person who uses or affixes an official stamp or seal required under this Act, without lawful authority and with intent to defraud or deceive, commits an offence.

#### **94 Maximum penalties**

- (1) An individual who commits an offence under a section of this Act listed in column 2 of the Schedule is liable on summary conviction to the maximum penalties respectively listed in columns 4 and 5 of the Schedule.
- (2) The penalties listed in the Schedule are maxima and a court may impose on an individual any penalty for an offence up to the amount of fine or period of imprisonment (or both) listed in respect of the offence.
- (3) A body corporate that commits an offence is liable to a maximum fine of 5 times the maximum fine for the same offence if committed by an individual, as prescribed in the Schedule.

#### **95 Forfeiture**

- (1) A court convicting a person of an offence under this Act or the regulations may, in addition to any other penalty imposed, order that any article used in committing the offence, or, if the article has been sold, the proceeds of the sale, be confiscated.
- (2) If an article or proceeds are confiscated under subsection (1) –
  - (a) the article or proceeds are forfeited to the State;
  - (b) a forfeited article may be sold and the proceeds of sale paid into the Consolidated Fund; or
  - (c) if the article poses a biosecurity threat it must be destroyed as directed by the Director.
- (3) For the purposes of subsection (1), “article used in committing the offence” includes equipment, a conveyance and any other movable thing owned by the offender which was used directly in the commission of the offence, but does not include land or buildings and fixtures on land.
- (4) In deciding whether to order confiscation of any article or proceeds under this section, a court must have regard to the principle of proportionality.

#### **96 Fixed penalty system**

- (1) The Director, if of the opinion that a person has committed an offence under this Act, may as an alternative to prosecuting the person –
  - (a) order the person to pay a fixed penalty as described in subsection (2); and
  - (b) order any goods liable to confiscation in connection with the offence to

- be forfeited to the State or, if they pose a biosecurity threat, to be destroyed.
- (2) The fixed penalty referred to in subsection (1) is as set out in column 6 of the Schedule. If no figure is shown in that column, the fixed penalty option is not available.
  - (3) The fixed penalty for a body corporate is 5 times that for an individual.
  - (4) Before imposing a fixed penalty order on a person for an offence, the Director must notify the person in writing, giving particulars of the offence, the maximum penalty that a court could impose the fixed penalty that is proposed, and any item that will be confiscated.
  - (5) If a person on whom a notice is served under subsection (4) -
    - (a) within the time specified in the notice, and in writing, admits the offence, requests the Director to deal with it under this section and consents to the confiscation of the item (if appropriate) - the Director may impose a fixed penalty order on the person;
    - (b) does not respond as in paragraph (a) within the time specified in the notice - the Director may prosecute the offence.
  - (6) A fixed penalty order must –
    - (a) be in writing and specify the offence which the person has committed, the fixed penalty that is imposed, the place where it is to be paid and the date by which it is to be paid;
    - (b) specify any item that is to be forfeited or destroyed.
  - (7) A person against whom an order is made under this section is not liable to any further criminal proceedings in respect of the offence and if in custody must be discharged.
  - (8) If a fixed penalty payable under this section, or any part of it, is not paid by the date specified in the order, the sum payable becomes a debt owing to the Government and the Director may –
    - (a) request the Director of Immigration to place a stop order on the person leaving the country until the sum is paid; and either –
    - (b) send a copy of the order to a court of competent Tuvalu, which may enforce payment of the sum outstanding as if it were a fine imposed by the court., including imposing costs and confiscation as appropriate; or
    - (c) prosecute the offence.
  - (9) The Minister’s power to make regulations under section 106 includes the power to make regulations to supplement the provisions of this section in relation to fixed penalty notices, including the imposing of stop orders to prevent a person leaving the country until the sum is paid.

**97 Offences by corporate bodies**

- (1) A corporate body cannot be imprisoned for an offence under this Act or the regulations, but the maximum fine for such an offence by a corporate body is as stated in section 94(3).
- (2) If a corporate body commits an offence against this Act, every person who is a board member or director or otherwise concerned in the management of the body also commits the offence as an individual, unless the person proves –
  - (a) that the offence was committed without his or her consent or connivance; and
  - (b) that he or she exercised reasonable diligence to prevent the commission of the offence, having regard to the nature of his or her functions in the corporate body and to all the circumstances.

**PART XIII - MISCELLANEOUS PROVISIONS****98 Civil and Criminal Proceedings**

- (1) Notwithstanding any limit on its jurisdiction in any other Act, a magistrate's court is competent to impose any penalty or to make any order provided for in or under this Act.
- (2) The Director may institute and conduct proceedings for an offence under this Act subject to the right of the Attorney General to institute, take over or terminate criminal proceedings at any time.
- (3) The Director may institute and conduct proceedings for the recovery of a debt owing to the Government under this Act.

**99 Abandoned goods**

- (1) An article may be treated as abandoned and disposed of under this section if -
  - (a) any fee or charge payable by a person under this Act or the regulations in respect of the article is not paid within 3 months of the notice of the fee or charge being served on the person;
  - (b) the article is in a biosecurity holding area and is not removed from the area within 14 days after biosecurity entry clearance has been granted in respect of it; or
  - (c) the article is in biosecurity quarantine and is not removed from a biosecurity quarantine station or biosecurity approved premises within 14 days after the end of the quarantine period in respect of it.

- (2) An article that has been abandoned may be destroyed, sold or otherwise disposed of in the prescribed manner, or, in the absence of regulations, in any manner the Director thinks fit that does not present a biosecurity risk.
- (3) The cost of disposal of an abandoned article is a debt due to the Government by the person who was the owner of it, and proceeds of any sale or disposal of an abandoned article revert to the Government.

## **100 Compensation**

- (1) Except as otherwise provided in or under this Act, no compensation is payable for loss of or damage to any item as a result of any search, inspection, examination, sampling, testing, detention, treatment, quarantine or other biosecurity measure taken under this Act or the regulations, unless negligence or malice on the part of the person taking the measure is proved.
- (2) Compensation is not payable under this Act, or may be reduced proportionately, if the biosecurity measures that caused the loss or damage were occasioned by a willful or negligent act or omission of the person claiming compensation.
- (3) If this Act provides for payment of compensation in any circumstances, the compensation must be –
  - (a) claimed in accordance with a specified procedure;
  - (b) if not agreed, determined by the Secretary in accordance with specified rates, not exceeding the market value of the item plus consequential loss reflecting contemporary costs;
  - (c) paid out of the funds of the Ministry.
- (4) An appeal against a determination under subsection (3) lies to the Senior Magistrate.

## **101 Appeals from decisions**

- (1) A person who is aggrieved by a decision of a biosecurity officer under this Act made at a biosecurity point of entry or departure, in a biosecurity holding area or at a biosecurity quarantine station, may within 24 hours appeal to the officer's supervisor at that place.
- (2) A person who is aggrieved by any other decision of a biosecurity officer, or by the decision of a supervisor under subsection (1), may within 7 days appeal in writing to the Director.
- (3) A person who is aggrieved by a decision of the Director, including a decision on an appeal under subsection (2), may, within 21 days of the decision, appeal in writing to the Secretary, whose decision is final.

- (4) The lodging of an appeal in respect of an article does not prevent biosecurity measures being taken in respect of the article to reduce or eliminate the biosecurity risk posed by the article, and section 102 applies to the taking of such measures.
- (5) The person deciding an appeal must give the appellant and the respondent the opportunity to be heard, in writing or in person, and to produce evidence and call witnesses, and must give reasons for the decision on the appeal.
- (6) If an appeal involves a technical issue, the person hearing the appeal must obtain the advice of the relevant technical section head, not being the person appealed from.
- (7) An appeal in respect of compensation is to be dealt with as provided in section 100(4).

## **102 Limitation of liability**

- (1) Neither the Minister, the Secretary, the Director nor any biosecurity officer or other public officer is personally liable for action taken under this Act in good faith and without negligence.
- (2) A breach of a duty imposed on the Minister, the Secretary, the Director, a biosecurity officer or any other public officer by or under this Act does not give rise to any civil liability except as provided by or under this Act.

## **103 Evidence**

- (1) In any proceedings under this Act -
  - (a) a document purporting to have been issued by the Minister, Secretary or Director or by a biosecurity officer or other public officer for the purposes of this Act is presumed, until the contrary is proved, to have been duly executed or signed by that person;
  - (b) a copy of or extract from a document issued by the Minister, Secretary or Director or by a biosecurity officer or other public officer, and certified by the Director or person to be true and correct is, unless the contrary is proved -
    - (i) presumed to be a true and correct copy or extract;
    - (ii) on its production in court be prima facie proof of any matter contained in it.
- (2) In any proceedings under this Act –
  - (a) a certificate, in a form approved by the Director, of the results of any test conducted on an article by the person who conducted the test may be tendered in evidence and is prima facie evidence of the facts stated in it;

- (b) a certificate of analysis of a sample of any article or thing may be tendered in evidence and is prima facie evidence of the facts stated in it if the procedure prescribed in relation to the sample has been substantially followed.
- (3) Section 80 governs the evidential status of the biosecurity register and records kept under this Act.

#### **104 Publication of orders and notices**

- (1) Regulations and legislative orders made under this Act must be published –
  - (a) in the *Gazette*;
  - (b) at the office of the Director and on the Ministry website, if any;
  - (c) on any radio or television station that broadcasts in the affected area;
  - (d) in any newspaper that circulates in the affected area;
  - (e) at any Kaupule or Government offices that are in or adjacent to the affected area,and made available to the public for inspection or purchase.
- (2) Regulations and legislative orders made under this Act do not take effect until published in the *Gazette*, unless otherwise provided.
- (3) Unless otherwise provided, and subject to subsection (4), notice required by this Act to be given may be given electronically –
  - (a) by a person to the Director or Ministry;
  - (b) by the Director or Ministry to a person, if the person has given the Director or Ministry an electronic address for receipt of such notices.
- (4) If service of a notice or other document on a person is to be proved in a court, it must be effected -
  - (a) by personal service on the person; or
  - (b) by registered post to the address of the person given to the Director or Ministry, in which case service is presumed to have been effected 2 days after posting, or 14 days after posting if the notice is between islands.
- (5) The Director may give instructions and directions to biosecurity officers by electronic means.
- (6) A printed copy of an electronic record of a notice, instruction or direction given or received by electronic means is prima facie evidence of the notice if the record purports to have been made at the time of sending or receipt.

**105 Specification**

- (1) The Director may in writing specify –
  - (a) documents and forms for use in connection with this Act, including the format of documents transmitted by electronic means;
  - (b) the procedures for applying for and issuing permits and other documents;
  - (c) all other matters that can or must be specified, as provided for in this Act.
- (2) If a matter is prescribed by regulations or an order, the regulations or order take precedence over a specification on the same matter.
- (3) Specifications must be entered in a biosecurity register maintained under section 79(2) and do not take effect until so entered.
- (4) Section 80 governs the evidential status of a specification contained in a biosecurity register.
- (5) Unless otherwise provided, section 104(1) does not apply to specifications made under this Act and entered in a biosecurity register, but they must be –
  - (a) published in the biosecurity register and at the offices of the Director;
  - (b) published in any operations manual provided to biosecurity officers pursuant to section 76(3)(b); and
  - (c) made available to the public for inspection or purchase.

**106 Regulations**

- (1) The Minister may make regulations not inconsistent with this Act for the effective implementation of this Act. and the performance of the biosecurity functions of the Government.
- (2) Without limiting subsection (1) or affecting any other regulation-making power in this Act, regulations made by the Minister may –
  - (a) prescribe fees and charges for the biosecurity services provided by the Ministry;
  - (b) prescribe the method of taking and analyzing samples, recording the results and disposing of the samples;
  - (c) prescribe the manner of disposal of abandoned goods under section 99;
  - (d) prescribe the procedure for claiming compensation, and the rates payable, pursuant to section 100;
  - (e) regulate the procedure on appeals under section 101;
  - (f) provide for the de-ratting of vessels, and the form of de-ratting certificate;

- (g) regulate the disposal of garbage and waste and second-hand clothing and bedding so as to minimise any biosecurity risk;
  - (h) provide for the electronic filing of declarations and applications required by this Act and the electronic keeping of registers;
  - (j) prescribe the language of documents required by this Act;
  - (j) prescribe the manner and language of markings on containers of incoming and outgoing regulated articles;
  - (k) prescribe the methods of handling, sealing, treating and disposing of containers of regulated articles;
  - (l) provide for the placing and use of amnesty bins or other containers for regulated articles at points of entry;
  - (m) subject to the approval of the civil aviation and maritime authorities, require a video film about biosecurity to be shown on all aircraft and vessels arriving in Tuvalu and carrying passengers;
  - (n) require treatment to be applied in respect of a vessel or aircraft before it arrives in Tuvalu;
  - (o) prescribe additional measures, consistent with this Act, to implement in Tuvalu the standards and requirements relating to biosecurity of the IPPC, the OIE and the PPPO;
  - (p) prescribe any other matter which this Act requires to be prescribed or which is necessary for carrying out or giving effect to this Act.
- (3) Before making regulations under this section, the Minister must –
- (a) obtain the advice of the Director and of any Kaupule affected by the proposed regulation;
  - (b) consult other government departments and statutory authorities as appropriate.
- (4) Regulations made under this section may create offences for breaches of them and prescribe maximum penalties not exceeding a fine of \$20,000 for an individual or \$100,000 for a corporate body.

## **107 Repeals and savings**

- (1) The following Acts and any items of subsidiary legislation [made under them] are repealed –
  - (a) Plants Act (Cap. 39) as amended by the Plants (Amendment) Act 1991;
  - (b) Animal Act
- (2) Subsidiary legislation made under the repealed laws that could be made under this Act (leaving aside any requirement for advice) continue in force as if

made under this Act until amended, replaced or repealed under this Act, unless and to the extent that –

- (a) the matter is provided for in this Act;
  - (b) the subsidiary legislation is inconsistent with the provisions of this Act or any other Act .
- (3) Provisions of regulations made under the repealed laws dealing with the treatment of animals, plants and their products on arrival in Tuvalu –
- (a) are deemed to have been made by the Director as specifications under section 26;
  - (b) may be varied by the Director under that section;
  - (c) if included in a biosecurity register are governed by section 80 as to their evidential status.
- (4) Delegations, directions, notices, agreements and other administrative actions or decisions of the Minister, the Secretary, the Director of Agriculture and quarantine officers issued or made under the repealed laws which could be issued or made by equivalent officers under this Act continue to have effect as if issued or made under this Act until varied or revoked under this Act.

## **108 Transitional provisions**

- (1) Permits equivalent to import permits issued under any provision of the repealed laws remain in force until they expire in accordance with their terms, or until revoked under this Act.
- (2) Any bond, agreement, instrument or arrangement to which the Government is a party subsisting immediately before the commencement of this Act and relating to the biosecurity functions of the Government continues to have effect after that date and is enforceable by or against the Government as if it had been entered into under the provisions of this Act.
- (3) Subject to subsection (4), any action, arbitration, proceeding or cause of action that relates to a biosecurity function of the Government and that immediately before the commencement of this Act is pending or existing by, against, or in favour of the Government, or to which the Government is a party, may be continued and enforced under the provisions of this Act.
- (4) A prosecution for an offence committed against a repealed law must be brought and continued under that law.

## **109 Consequential amendments**

- (1) A reference in another Act to any of the repealed laws is, to the extent possible, to be read as a reference to this Act.

- (2) A reference in another Act to a [quarantine officer, plant protection officer or animal health officer] is, to the extent possible, to be read as a reference to the Director or a biosecurity officer exercising equivalent functions under this Act.

#### **110 Amendment of Schedule**

- (1) The Minister, after consultation with the Director, may by order amend column 3, 4 or 5 of the Schedule.
- (2) An order under subsection (1) must be laid before the Parliament and does not come into effect until it has been passed by affirmative resolution of the Parliament.

## SCHEDULE

(Section 94 and 96)

### MAXIMUM PENALTIES AND FIXED PENALTIES

Item	Section	Offence	Fine \$	Prison	FP \$
1	8 (2)	Import prohibited pest/disease	5,000	5 years	1000
2	8 (3)	Import regulated pest/disease	5000	5 years	1000
3	9 (5)	Import a prohibited article	5000	5 years	1000
4	9 (6)	Own or possess a prohibited article	5000	1 year	500
5	10 (2)	Landing except at point of entry	5000	5 years	1000
6	10 (3)	Import except at point of entry	2000	2 years	200
7	10 (5)	Depart except at point of departure	5000	5 years	
8	10 (6)	Export except at point of departure	2000	2 years	400
9	12 (4)	Interference with holding area	1000	1 year	200
10	12 (6)	Import without clearance	10,000	7 years	2000
11	14 (3)	Fail to make arrival declaration	1000	1 year	1000
12	15 (5)	Fail to comply on arrival	5000	1 year	1000
13	15 (6)	Master fail to obtain landing clearance	5000	1 year	1600
14	15 (7)	Crew or passenger unlawful landing	5000	1 year	400
15	17 (2)	Interference with seaport quarantine area.	5000	1 year	800
16	17 (5)	Removing a seaport quarantine notice	5000	1 year	
17	18 (3)	Fail to conform to seaport quarantine	5000	1 year	1000
18	20 (2)(a)	Fail to allow search of vessel/aircraft	10,000	7 years	1000
19	20 (2)(b)	Fail to comply with request etc	2,000	2 years	1000
20	21(1)(a)	Fail to secure animal	1,000	1 year	800
21	21(1)(b)	Fail to secure hatches	1000	1 year	800
22	21(2)(a)	Discharge garbage	5000	5 years	1200
23	21(2)(b)	Discharge ballast/bilge	5000	5 years	1200
24	21(3)	Fail to control garbage	1000	1 year	800
25	21(4)	Release of ships' stores	2000	2 years	800
26	22(6)(a)	Passenger fail to declare	1000	1 year	200

27	22(6)(b)	Fail to submit incoming baggage for inspection	5000	5 years	200
28	22 (8)	Fail to submit outgoing articles for inspection	5000	5 years	200
29	23(2)	Fail to make incoming goods available	1000	1 year	200
30	24(5)	Fail to allow import clearance inspection	2000	2 years	200
31	30 (4)	Fail to surrender revoked permit	1000	1 year	100
32	32 (8)	Contravene transit waiver	1000	1 year	400
33	32 (7)	Fail allow inspection in transit	1000	1 year	400
34	34 (2)	Fail to make outgoing goods available	1000	1 year	200
35	39 (3)	Export without clearance	5000	5 years	1000
36	39(3)	Refusal to move to quarantine	2000	4 years	400
37	42(3)	Interference with quarantine station	2000	4 years	400
38	43 (4)	Unlawful release from quarantine	1000	1 year	800
39	44 (2)	Refusal to move to quarantine	1000	1 year	100
40	45 (3)	Unlawfully release animal etc.	1000	1 year	400
41	47 (6)	Fail to make premises available	1000	1 year	200
42	49 (4)	Fail to open container etc.	5000	5 years	200
43	51(3)	Refusal to provide samples	2000	2 years	200
44	57(6)	Person refusing to answer etc	2000	2 years	400
45	58(5)	Fail to cooperate with survey	1000	1 year	200
46	62(5)	Movement in infested controlled area	1000	1 year	800
47	67(4)	Fail to notify occurrence	1000	1 year	200
48	71(3)	Breach of emergency directions	2000	2 years	1000
49	74(7)(a)	Officer fail surrender ID	1000	1 year	
50	74(7)(b)	Forge etc. officer's ID	1000	1 year	
51	91	Dereliction of duty by officer	1000	1 year	
52	92	Obstruction etc. of an officer	1000	1 year	400
53	93 (1)	Forgery etc. of a document	1000	1 year	
54	93 (2)	Producing a false document	5000	5 years	
55	93 (3)	Unlawful use of official stamp or seal	5000	5 years	

