FINAL REPORT

Review of NCD - Related Legislation in Tonga 2024

Submitted: 24 December 2024

Prepared by:

FAKATOUKATEA
LAW FIRM

TABLE OF CONTENT

0. ACRONYMS	
BAC	Blood Alcohol Concentration
CA	Competent Authority
COA	Criminal Offences Act
FA	Food Act
IDCA	Illicit Drugs Control Act
ILA	Intoxicating Liquor Act
ISA	Intoxicating Substances Act
MAFFF	Ministry of Agriculture, Forestry & Food
MANA	Pacific Monitoring Alliance for NCD Action
MET	Ministry of Education and Training
MILA	Manufacture of Intoxicating Liquor Act
MILO	Manufacture of Intoxicating Liquor (License Fees) Order
MOH	Ministry of Health
MOP	Ministry of Police
NCD	Non communicable diseases
NNCDC	National Non-Communicable Disease Committee
NGO	Non-governmental organisation
PLF	Pacific Legislative Framework
PSC	Public Service Commission
SSBs	Sugar-sweetened beverages
TGA	Therapeutic Goods Act
TGR	Therapeutic Goods Regulation
TongaHealth	Tonga Health Promotion Foundation
TOR	Terms of Reference
TA	Traffic Act

I. INTRODUCTION

A. This report is the fourth and final deliverable under the Contract for Consultancy Services between Tonga Health Promotion Foundation ("Tonga Health") and Joycelyn Lomu of Fakatoukatea Law Firm ("Consultant").

B. The scope of the review was to assess Tonga's NCD related legislative framework, identify any gaps and propose recommendations to have Tonga's legal framework aligned with the Pacific Legislative Framework ("PLF") endorsed by the Pacific Ministers of Health in 2021.

C. The gaps analysis in this report summarizes the findings of the Gap Analysis Report submitted on 25 November 2024. Therefore, both reports should be reviewed together to ensure a comprehensive understanding.

D. A comparison of the outcomes for Fiji, Samoa, and Tonga based on the MANA Dashboard update report for 2021-2022 was conducted and incorporated into this report. The comparison focused specifically on areas such as alcohol advertising, the marketing of unhealthy foods and SSBs to children, the marketing of breastmilk substitutes, and the regulation of salt and trans-fat ingredients in food.

E. The Consultant conducted a preliminary stakeholder consultation on 23 October 2024 with the stakeholders who have statutory roles under the reviewed laws. Since the preliminary consultation, the Consultant has conducted one on one meetings with stakeholders who had indicated technical challenges with carrying out their statutory roles.

F. On 6 December 2024, a first draft report was circulated to the key stakeholders for their review and comments.

G. The Consultant conducted a final stakeholder consultation on 16 December 2024 to discuss the findings, the recommendations and the conclusions in the first draft report. The key stakeholders provided comments and feedback and as such these have been incorporated into this report.

H. The findings of this legal review should guide and inform the TongaHealth and the Ministry of Health ("MOH") in identifying gaps in the NCD related legislation and to identify priority actions which requires immediate attention especially for planning, implementation, monitoring and reporting purposes.

II. LAWS RELATED TO ALCOHOL

A. LEGISLATION REVIEWED

1. Intoxicating Liquor Act

The Intoxicating Liquor Act ("ILA") was enacted on 1 July 1951, with subsequent amendments in 1990, 1995, and 2010 which have shaped the Act as it exists today. The Act is divided into three parts: the first part addresses various types of licenses, the second part outlines liquor prohibition, and the third part covers general provisions. Several schedules are annexed to the ILA, detailing the licensing fees, license application forms, the liquor prohibition order, and the format for the liquor sales book.

The primary purpose of the Act is to regulate the sale and consumption of intoxicating liquor in Tonga. It establishes rules for licensing, as well as the conditions under which liquor can be sold or consumed. The Act also outlines the procedure for applying for a liquor prohibition order and the consequences of such orders. Additionally, it contains general provisions related to prosecution procedures, time limitations for bringing matters under the ILA, the presumption that any liquid complained about under the Act is considered liquor unless proven otherwise, and the presumption that the delivery of liquor constitutes prima facie evidence of a sale.

The highest penalty under the ILA is outlined in section 75, which stipulates a maximum penalty of 10 years imprisonment or a fine of up to $10,000 for any officer found guilty of accepting a bribe. This provision is designed to deter corruption among enforcement officers and uphold the integrity of the regulatory framework.

The time limit for bringing charges against any person under the ILA is four months. Section 105 states that no conviction can be made under the Act unless the complaint is filed within four months from the date the alleged offence occurred. This ensures that complaints are made in a timely manner and prevents the prosecution of outdated offences.

2. Manufacture of Intoxicating Liquor Act

The Manufacture of Intoxicating Liquor Act ("MILA") was enacted on 14 October 1942, with subsequent amendments in 1944, 1952, 1959, 1981, 1986, 1988, and 2010. The Act consists of eleven sections and its primary purpose is to regulate the manufacture and distillation of intoxicating liquor in Tonga. The MILA makes it an offence for any person to (i) manufacture or distil intoxicating liquor, or assist in doing so, without the proper licence; (ii) supply materials

for making or distilling intoxicating liquor to anyone other than a licenced manufacturer; (iii) possess, transport, or conceal intoxicating liquor that has been manufactured or distilled illegally in Tonga; and (iv) aid in the conveyance of, or be found with, intoxicating liquor that was made or distilled without a valid license.

The maximum penalty under MILA applies to the offence of selling, supplying, or allowing the sale or supply of intoxicating liquor to a person under 19 years old, if the liquor was manufactured illegally under section 3(a) of the Act. The penalty for this offence is a fine of up to $1,000, imprisonment for up to 5 years, or both. To secure a conviction under this provision, the prosecution must prove beyond a reasonable doubt that the accused (i) sold or supplied intoxicating liquor to a person under 19 years old and (ii) the liquor was manufactured without the proper licence, making it an illegal product. These provisions are designed to regulate the production and sale of intoxicating liquor while ensuring public safety, particularly protecting minors from exposure to illegal and potentially harmful substances.

2.1 Manufacture of Intoxicating Liquor (Licence Fees) Order

The Manufacture of Intoxicating Liquor (License Fees) Order ("MILO") came into effect on 18 December 2008. It was issued by His Majesty in Council under section 11(1) of the MILA, which grants the Cabinet the power to make, amend, or revoke rules necessary for the implementation of the Act. This includes setting licence fees, prescribing required forms, and addressing other related matters. The MILO consists of three sections, one of which specifies a license fee of $1,00 for the manufacture of intoxicating liquor. It is possible that the fee amount contains a typographical error and may need to be corrected.

3. Traffic Act

The Traffic Act ("TA") was enacted on 1 January 1959. There were numerous amendments to the TA along with the passing of several regulations and notices. The Act is divided into five parts and four schedules. Relevantly, the TA imposes some significant penalties dealing with driving offences and other related violations including alcohol related offences.

In section 34 of the TA, it penalizes the driving under the influence of alcohol and causing bodily injury or death (with a breath alcohol content exceeding 350 micrograms per liter) to be punishable by up to 15 years imprisonment. The court may also impose a disqualification from driving for up to 3 years.

Whereas section 43 of the TA makes it an offence to consume or offer intoxicating liquor in a vehicle used for passenger transport for hire or reward. This includes offering liquor to the driver or any passenger. Violating this section can result in a fine of up to $200.

Further, section 45 of the TA provides an avenue for injured persons under section 27 or section 33 of the TA to recover compensation of up to $10,000 from the perpetrator. The compensation is recoverable like a fine and does not affect the injured party's right to pursue civil damages. If a civil claim is successful, the compensation paid will be deducted from any damages awarded.

3.1. Traffic (Amendment) Act 2012

This amendment came into force on 21 November 2012 which increased the penalties for reckless and careless driving under section 25 of the TA. The more serious offences include reckless driving which could lead to a fine of up to $2,000 and imprisonment for up to two years. If reckless driving results in bodily harm, the penalty increases to a fine of up to $10,000 and imprisonment for up to three years. If the driving causes grievous harm, the penalty can reach up to $25,000 in fines and seven years in prison. The most severe offence, reckless driving causing death, can result in imprisonment for up to 15 years.

3.2. Traffic (Alcohol Breath Tests) Notice 2023

This Notice was issued by the Minister of Police on 6 February 2023, pursuant to section 32 of the TA, which authorizes the Minister to declare the approved breath analysis instruments for conducting breath screening and evidential breath tests under the Act. The Notice consists of eleven sections and outlines the approved procedures for performing alcohol breath tests on drivers in Tonga. It provides clear guidelines for authorities to assess drivers suspected of being under the influence of alcohol, detailing the proper testing process and protocols to be followed.

B. CASE LAWS RELEVANT TO ALCOHOL RELATED OFFENCES

1. **Case Citation:** *Ikahihifo v R* [2021] TOCA 21

   Relevance: First case after the 2012 amendments to the TA

   Case Summary:

   This was the first case where the Court was asked to consider sentencing for reckless or dangerous driving causing death or serious harm following the 2012 amendments to the TA, which increased the maximum penalty from 10 to 15 years imprisonment for causing death. The Court concluded that sentencing for such offences should not be a simple mathematical calculation but should reflect the degree of recklessness and its consequences. Ultimately, the Court emphasized that the 2012 amendments to the TA aimed for harsher penalties for reckless driving causing death and injury, which should be considered in future sentencing decisions.

   Comment:

   This case marks a significant moment in the interpretation and application of the 2012 amendments to the TA, which increased the maximum penalty for reckless or dangerous driving causing death or serious harm reflecting the intention of parliament. The case sets a precedent guiding how courts should balance deterrence and punishment whilst also assessing the degree of recklessness involved and the impact on victims and the society.

2. **Case Citation:** *R v Palu* [2024] TOSC 52

   Relevance: Factors the court considers in sentencing

   Case Summary:

   The Accused was charged with three counts of causing bodily injury while driving under the influence of alcohol, as per section 34(1) of the TA.

   Under the TA 2020, the legal limit for alcohol consumption is 250 micrograms per litre of breath, while causing bodily injury or death while intoxicated triggers a serious offence at 350 micrograms per litre. The Accused's alcohol breath level was 1100 micrograms per litre of breath, which was significantly over the legal limit. The Accused pleaded guilty to all charges. The Court took into account his youth, remorse, positive references, and the detrimental impact of prison on him. The starting point for sentencing was 2 ½ years, increased due to his high intoxication and speed. This was further adjusted with an overall tariff of 4 years. A 12-month reduction was given for his guilty plea and mitigating factors. Ultimately, he was sentenced to 3 years in prison,

with the last 18 months suspended for 2 years under strict conditions, including probation, an alcohol awareness course, and a 2-year driving ban.

Comment:

This case is significant as it reflects how the courts balance multiple factors, such as the level of intoxication, speed, and the defendant's personal circumstances, including youth, remorse, and positive references when determining an appropriate sentence. This case also serves as an example of how the judicial system applies the law to ensure that sentences align with both the severity of the offence and the rehabilitative potential of the offender. The court's decision to suspend part of the sentence with conditions, such as probation, an alcohol awareness course, and a driving ban, demonstrates an approach that encourages rehabilitation while still holding the offender accountable for their actions.

3. **Case Citation:** *R v Vakalahi* [2022] TOSC 12

Relevance: Enforcement officer vulnerable to corruption

Case Summary:

The Accused a police officer, engaged in a case where he conducted two alcohol breath tests on a female driver, following a traffic accident on 26 October 2019. The Accused used the Dräger alcohol testing machines to conduct the tests, recording alcohol levels of 630 micrograms and 540 micrograms. The second result of 540 micrograms was accepted as the valid reading, and the Victim was charged with drunk driving and careless driving under the TA.

However, the case took a different turn when it was revealed that the Accused demanded a bribe of $640 from the Victim to avoid formal prosecution. Although the initial charges were filed, the Accused did not forward the case to the prosecution division, suggesting that he was withholding his duty to process the case in exchange for the bribe. During this period, he maintained communication with the Victim through phone calls and texts. The court found that the Accused had indeed demanded the $640 bribe in exchange for not prosecuting the Victim which was a violation of his duties as a police officer.

Comment:

This case highlights the vulnerability of law enforcement officers to bribery, especially in situations where they have discretion over legal processes such as alcohol testing and charging. The Dräger assesses themselves were performed according to protocol, but the officer’s failure to fulfil his responsibilities after conducting the tests coupled with

the bribery demand, seriously undermined the legal process and led to his conviction for bribery.

4. **Case Citation:** *Tuputupu v Rex* [2014] TOCA 8

   Relevance: Incorrect calibration of alcohol breath test device

   Case Summary:

   The Appellant was convicted of causing death while driving under the influence of alcohol after a fatal accident. He was sentenced to one year and ten months in prison, with the final twelve months suspended. He appealed against both his conviction and sentence. The prosecution argued that the Appellant, having consumed alcohol earlier, crashed into a road-making machine, causing the death of a woman in his vehicle. Witnesses testified that the Appellant was speeding, and breath tests revealed alcohol levels nearly doubling the legal limit. The Appellant argued that the charge was defective considering that one of the alcohol breath test certificates had an incorrect date, and the jury was misdirected about the cause of the accident.

   The court found that the breath test certificate contained an incorrect date and time. The court ruled that the prosecution failed to meet the necessary standards for proving the Appellant's alcohol level. As a result, the conviction was quashed, and the appeal was allowed on both grounds. The possibility of a retrial was considered but rejected due to the prosecution’s inability to provide two valid breath test results. Therefore, the verdict and sentence were both quashed.

   Comment:

   The court's decision to quash the conviction emphasizes that the prosecution must meet strict standards of proof, including ensuring that all evidence such as breath alcohol printouts, are valid and accurately recorded. The finding that one of the breath test certificates contained an error in the date and time rendered the evidence unreliable and incapable of supporting a conviction beyond a reasonable doubt.

5. **Case Citation:** *Rex v 'Inia* [2016] TOSC 7

   Relevance: Non-compliance with legal procedure under the TA

   Case Summary:

   The case involves the Accused being charged with causing death and bodily injury while driving under the influence of alcohol, as per section 26A of the TA. The Crown sought to admit evidential breath test results, which showed alcohol levels well above the legal limit (480 and 500 micrograms per liter). However, the defence challenged the

admissibility of these results, arguing that a required breath screening test had not been conducted at the scene before the evidential breath test was administered at the police station.

The court reviewed the relevant sections of the Traffic Amendment Act, which grant police officers the power to administer breath screening tests in various situations, including accidents. It was determined that under section 25B(1)(c) of the TA, an evidential breath test could be administered without a prior breath screening test, if the test was not available or could not be conducted, and there was good cause to suspect the person had consumed alcohol. The court further noted that even if there was a procedural mistake, it was not a deliberate or reckless disregard of the law. Therefore, the court allowed the evidential breath test to be admitted, deeming the officers' actions as an honest mistake, not a violation of the Accused's rights.

Comment:

This case highlights that minor procedural errors should not necessarily render evidence inadmissible, especially when police officers made these mistakes in good faith. It does not limit the importance of complying with the provisions outlined in the law, however, it shows the importance of police discretion and their ability to take necessary action to address dangerous driving considering the circumstances, especially when there is reasonable cause to suspect that the perpetrator was impaired due to alcohol consumption.

6. **Case Citation:** *Sullivan v Police* [2023] TOSC 42

Relevance: Powers of the police under the ILA

Case Summary:

The case involves the appeal of a licensee (Appellant) of the Billfish Bar in Nuku'alofa against a decision made by Senior Magistrate Kaufusi on 31 May 2023. The Appellant had been charged with swearing at an officer and obstruction after an incident on 17 March 2023, when two Police Constables entered the Billfish Bar. The Appellant argued that the police entry was unlawful, and therefore, the charges against him should be dismissed.

Section 70 of the ILA grants the police the authority to enter licensed premises at any time to prevent or detect violations of the Act, which they are obligated to enforce. The Magistrate ruled that the entry was lawful under this provision, a decision which the Appellant subsequently appealed. The Supreme Court upheld the ruling, affirming that

Section 70 allows police broad discretion to enter liquor-licensed premises to identify or prevent violations, such as serving alcohol to intoxicated individuals or minors.

The police entry was part of a general patrol for public safety, and the Magistrate ruled that their duty to detect and prevent violations of the ILA justified the action. The Court also noted that the entry did not violate constitutional protections against unlawful searches or forceful entry, as the police did not use force to enter, nor were they conducting a search or seizure at the time. The Appellant's confrontational response to the police, which included swearing and physical resistance, led to his arrest under the Criminal Offences Act. The Court affirmed the Magistrate's decision, ruling that the police entry was lawful, and dismissed the appeal.

Comment:

The case emphasizes the broad authority granted to law enforcement under section 70 of the ILA, which allows them to enter premises without a warrant, provided it is to ensure compliance with the law, such as preventing the sale of alcohol to intoxicated persons or minors. The ruling confirms that police officers are duty-bound to enforce the ILA, and their actions in entering the premises for such purposes are lawful and justified, if they adhere to the conditions outlined in the law.

7. **Case Citation:** *Mafi v Police* [1995] TOLawRp 34

   Relevance: Role of enforcement officers under the MILA

   Case Summary:

   The Appellant was convicted of violating section 3(a) of the MILA for allegedly making or distilling intoxicating liquor (specifically "hopi," a home brew). The Magistrate found sufficient evidence to convict based on a confession by the Appellant. However, the Appellant appealed the conviction on the ground that the prosecution failed to prove whether the Appellant had a license to manufacture intoxicating liquor, as required by section 4 of the Act. The court highlighted that section 3(a) of the Act prohibits manufacturing intoxicating liquor without a license, but section 4 provides a defence for those with a valid license. Section 6 of the Act shifts the burden of proof onto the Accused to show that the liquid is not intoxicating liquor. However, this does not shift the responsibility for proving the other elements of the charge, including proving that the Appellant was unlicensed. The court ruled that the prosecution failed to provide evidence that the Appellant was unlicensed, which was a crucial element of the charge. Since the prosecution did not prove this, the conviction was overturned, and a verdict of "not guilty" was entered.

Comment:

This case highlights the importance for enforcement officers to thoroughly understand their roles and responsibilities in enforcing laws effectively. While the Appellant was initially convicted based on a confession, the prosecution failed to prove that the Appellant was unlicensed to manufacture intoxicating liquor. This oversight underscores the need for law enforcement to ensure they gather and present all necessary evidence to meet the legal requirements of a charge.

C. GAPS ANALYSIS

The Pacific Legislative Framework ("PLF") provides that the overall policy objective for alcohol control is to regulate the manufacture, importation, sale, consumption, advertisement, promotion, and sponsorship of alcohol to mitigate its harmful use. As outlined in the Pacific MANA Dashboard, there are four key legislative strategies for alcohol control across Pacific Island Countries: (i) restricting alcohol advertising, (ii) implementing liquor licensing requirements, including setting minimum legal drinking ages, regulating days and hours of sale, and imposing density and service restrictions, (iii) increasing alcohol taxes, and (iv) enforcing measures to prevent drunk driving, including establishing a maximum allowable blood alcohol concentration (BAC) for drivers.[1]

According to the MANA Dashboard for the year 2021/2022, the ratings for alcohol advertising and taxation across Fiji, Samoa, and Tonga vary. In terms of alcohol advertising, Fiji is rated red, indicating that no alcohol advertisement policies, regulations, or actions are in place. Samoa is rated green with no star, meaning that alcohol advertisement regulations exist, but their implementation strength is low. Tonga is rated amber, indicating that policies or actions are under development.

For alcohol taxation, Fiji is rated green with no star, which signifies that there are policies or regulations in place, but their implementation is low. Samoa is rated green with two stars, meaning regulations are in place with medium implementation. Tonga is rated green with three stars, reflecting a high level of implementation.

1. **<u>Advertising</u>**
    a. The ILA does not address or regulate alcohol advertising in Tonga. There are no prohibitions on the promotion or advertisement of alcohol in any form, and there

[1] Pacific Islands Forum Secretariat, *Pacific Legislative Framework for Non-Communicable Diseases, 2021*

are no specific restrictions on alcohol sponsorship of sporting or cultural events. This gap could lead to unrestricted and potentially harmful alcohol promotion, especially to vulnerable populations such as young people. Unregulated advertising can normalize excessive drinking and contribute to alcohol-related harm in the community.

b. While the ILA requires the Licensing Authority to assess an applicant's measures to prevent violence or disorder around licensed premises,[2] the Act does not explicitly impose a general duty on licencee to create a safe environment or mitigate negative impacts on the surrounding area.
c. Although the ILA outlines some unacceptable practices (e.g. refusing entry to intoxicated individuals, prohibiting gaming on premises, and penalizing the supply of alcohol to intoxicated persons)[3], it does not define or prescribe positive practices for licensees, nor does it specify prohibited behaviours. The lack of clear guidance on what constitutes responsible practice and behaviours leaves room for inconsistency in how licencees operate.
d. The ILA does not clearly outline the grounds or process for issuing compliance notices to liquor licecsees. While the ILA grants the Authority the power to summon and question licencees[4], there is no detailed framework for issuing formal compliance notices or for enforcing corrective actions. Without a clearly defined process for issuing compliance notices, enforcement may be inconsistent, and licencees may not fully understand their obligations or the consequences of their non-compliance.

[2] **Section 5(2)(i)** of the ILA- "In considering any application for a licence, the Authority shall have regard to the: (2) the applicant's proposals relating to— steps proposed to be taken by the applicant to prevent acts of violence and disorder on or in the immediate vicinity of the proposed licensed premises

[3] **Section 60 of the ILA**- "Notwithstanding anything in section 59, any licensee may refuse to admit into, and may turn out of, his licensed premises, any person who is drunk, violent, quarrelsome, disorderly, or who is using profane or foul language, or any person who is suffering from any infectious disease, or whose presence on his premises would subject him to a penalty….", **Section 61 of the ILA** – "Every licensee, who knowingly suffers or permits any common prostitutes, thieves, drunken or disorderly persons, or persons of notoriously bad character, to assemble or continue upon his licensed premises or the appurtenances thereto, shall be liable to a fine not exceeding $500. If any licensee is convicted of permitting his premises to be used as a brothel he shall be liable to a fine not exceeding $5,000 and he shall be disqualified from holding a licence for a period of 2 years….." , **Section 63 of the ILA**-" If any licensee suffers any unlawful game whatsoever to be played on his licensed premises, or if such licensee or any servant or person in charge of such premises, connives at the playing of any such game thereon, every such person so offending shall be liable to a fine not exceeding for the first offence $1,000, and not exceeding for the second and any subsequent offence $2,000….", **Section 66 of the ILA** - "If any licensee or his servant supplies liquor to any person who is at the time in a state of intoxication, such licensee shall for the first offence be liable to a fine not exceeding $500 and for any subsequent offence to a fine not exceeding $1,000."

[4] **Section 6(2)(i) of the ILA**- "The Authority shall have the following powers: summon a licensee to be questioned in relation to compliance with a licence issued under this Act; and…"

e. The ILA allows the Authority to impose conditions on a liquor license (e.g. regulating noise levels, lighting, and security measures[5]), but these provisions are broad and do not include detailed requirements for ongoing monitoring or enforcement. This may result in licencees failing to uphold their obligations, leading to unsafe premises or negative impacts on the surrounding area.

2. Labelling

a. Firstly, the ILA does not mandate the sale of liquor with a label that clearly indicates the alcohol content of the beverage. While the Act provides guidelines for specific types of spirituous liquors (e.g. the alcohol content for rum and other spirits[6]), there is no general requirement for alcohol content to be labelled for all types of liquor. Without clear labelling, consumers cannot easily determine the strength or potency of the alcohol they are purchasing, which could lead to unintentional overconsumption and health risks.

b. Further, the ILA does not require alcohol content to be expressed in terms of "standard drinks," which is a common practice in many countries to help consumers understand the impact of alcohol on their health. Consumers may not be fully aware of the quantity of alcohol in a particular drink, making it harder for them to make informed decisions about their alcohol consumption.

c. While there are some rules in the ILA regarding the alcohol content of certain spirituous liquors (e.g. rum must have a minimum of 45% alcohol under proof)[7], the ILA does not address other key aspects of liquor labelling such as health warnings, ingredients, or the presence of allergens, which are important for consumer safety. The lack of comprehensive labelling standards could lead to consumer confusion or health risks, especially for individuals with allergies or those trying to make informed decisions about alcohol consumption.

d. Moreover, the ILA does not prohibit certain representations or claims about alcohol content, leaving room for misleading or ambiguous marketing practices. Producers may label their products in ways that suggest they have certain

[5] **Section 5A(2)(d)(e) of the ILA** –" The conditions the Authority may impose on a licence under subsections: (d) the level of noise that can be made from a licensed premises; and (e) the lighting for licensed premises, including car parks, for safety of customers or patrons and their vehicles"

[6] **Section 64 of the ILA**- "No licensee shall sell or dispose of any spirituous liquors (bitters, liquers and cordials excluded) of less strength than 35 per cent under proof with the exception of rum which must not be less than 45 per cent under proof and all spirituous liquors (bitters, liquers and cordials excluded) of less strength than that prescribed by this section found on the premises of any licensee shall be forfeited."

[7] Ibid #6

alcohol strengths or characteristics that may not be accurate or clear. Misleading marketing can lead to consumer deception, especially if the strength or nature of the alcohol is not clearly communicated.

e. In addition, while section 5 of the MILA grants the Chief Executive Officer for Health the authority to assess the alcohol percentage in liquids[8], it does not require that the alcohol content be expressed as standard drinks on the label. Without the standard drinks' information, consumers may have difficulty understanding how much alcohol they are consuming, which could lead to unsafe drinking practices.

f. Furthermore, while all pre-packaged food and beverage products must comply with the Codex General Standard for the Labelling of Prepackaged Food (CODEX STAND 1-1985, Rev. 1-1991)[9], this standard does not specifically address alcoholic beverages in terms of alcohol content or health related warnings. The Codex standards primarily focus on food products, not alcohol.

3. Licensing Authority

a. The ILA establishes the Authority, which is composed of the Police Commissioner (as Chairperson) and representatives from the Ministries of Labour, Commerce and Industries, Revenue, and Health. The Tonga Police provides the secretariat[10]. However, the Act does not specify whether a female member should be included. The absence of provisions requiring gender diversity may result in an unbalanced composition of the Authority, which may not reflect the full spectrum of views and perspectives in society.

b. The ILA does not clarify which "Minister" holds the authority to make the appointments, creating some ambiguity causing confusion and overlapping responsibilities between different government departments.

c. While Cabinet consent is required for appointment of the Authority[11], the ILA does not outline the terms of appointment or reappointment, nor does it provide

[8] **Section 5 of the MILA**-"In any proceedings under this Act a certificate purporting to be signed by the Chief Executive Officer for Health or any person authorized in that behalf by him, stating the percentage of alcohol contained in any liquid submitted for his examination, shall be admissible in evidence.

[9] CODEX STAND 1-1985

[10] **Section 3 of the ILA**, "There shall be established under this Act the Liquor Licensing Authority who shall be responsible for the administration of this Act. (2) The Minister shall, with the consent of Cabinet, appoint the members of the Authority, and the members shall consist of the following persons — (a) Police Commissioner, who shall be the chairperson; (b) a representative from the Ministry of Labour, Commerce and Industries; (c) a representative from the Ministry of Revenue; (d) a representative from the Ministry of Health; and (e) the secretariat shall be from Tonga Police."

[11] Ibid n10

guidelines for sitting allowances or member resignation. Without clear guidelines on appointment terms and reappointment processes, the Authority could face challenges in maintaining continuity which may lead to unnecessary delays or issues in managing vacancies.

d. The ILA also lacks provisions to disqualify members with ties to the alcohol, beverage, or hospitality industries. Without specific disqualification provisions, members with conflicts of interest, such as ties to the alcohol industry, could be appointed to the Authority, undermining the integrity and impartiality of the Authority's decisions. Without a requirement for members to declare conflicts of interest, decisions made by the Authority could be perceived as biased or influenced by personal interests, compromising the legitimacy of its actions.
e. Furthermore, the ILA does not grant the power or grounds for suspending or terminating members. Without specific grounds or procedures for suspending or removing members from the Authority, it may be difficult to address issues related to underperformance, misconduct, or conflicts of interest that could arise during a member's tenure.
f. The ILA does not include specific rules governing Authority meetings or require members to declare conflicts of interest on matters before the Board. Without clear rules for how meetings are to be conducted, how decisions are to be made, or how votes are to be managed, the Authority may lack consistency and procedural clarity in its operations.
g. The gaps identified above could undermine the effectiveness, transparency and accountability of the Authority. By addressing these gaps such as clarifying the Ministerial authority for appointments, ensuring impartiality through conflict-of-interest provisions, introducing governance rules, and improving the inclusiveness and accountability of the Authority, it can strengthen the legal framework and enhance the Authority's ability to regulate the alcohol sector in a fair and consistent manner.

4. Liquor Licensing

a. The ILA establishes the legal framework for licensing liquor sales within Tonga. Under section 4 of the ILA, individuals or businesses wishing to sell liquor must obtain one of the following licences: wholesale, retail bottle store, club, special events, bar, restaurant, or night-club licence. Additionally, section 4 of the MILA grants the Minister of Police, with Cabinet approval, the authority to issue

licences for the manufacture and wholesale sale of intoxicating liquor. However, the ILA does not clearly define the grounds for granting or refusing a liquor licence, leaving room for subjective decision-making by the Authority. This ambiguity undermines consistency and fairness in the licensing process.

b. Retail licences, however, are subject to terms and conditions set by the Privy Council[12], but the ILA does not specifically regulate the importation of liquor under these licences. Instead, the Ministry of Trade and Economic Development is responsible for issuing import licences. While section 6(1)(c) of the ILA mandates that the Authority monitor the importation, sale, manufacture, and consumption of liquor in Tonga, however it does not provide the Authority with the power to issue import licences.

c. The ILA allows wholesale licence holders to sell liquor for off-premises consumption, as specified in section 9. However, section 11(3) prohibits consumption of liquor at retail bottle stores, and section 16 imposes penalties on individuals who consume alcohol on premises where it is not permitted. Section 21(2) restricts club liquor consumption to club premises, while section 28(2)(b) places similar limits on special events. For bars, section 29(2) outlines where liquor may be consumed, such as within the bar area, designated spaces near the bar, or in guest rooms located within the same establishment.

d. In section 5 of the ILA, it outlines the application process for a liquor licence. Applicants must submit a written application to the Authority, using the prescribed form and including necessary documents and fees. Section 5(2) specifies factors that the Authority may consider when evaluating applications. Once received, the Authority can notify the public and invite submissions, as outlined in section 5(3). However, there are no requirements for applicants to publicly display a notice at the premises or inform other relevant authorities, which limits the transparency of the process.

e. The ILA ensures transparency by requiring that the applicant be provided with copies of any submissions received about their application[13], allowing the applicant an opportunity to respond. The Authority can also hold a public hearing

[12] **Section 4 of the MILA**-"The Minister of Police may, with the consent of the Cabinet, issue a licence to manufacture, and sell wholesale, intoxicating liquor, such licence to be granted on terms and conditions approved by the Privy Council"

[13] **Section 5(4) of the ILA** – "The Authority shall provide the applicant any submission received in relation to an application and invite the applicant to respond."

to consider submissions.[14] Whilst the ILA provides for the possibility of public hearings, it fails to provide clear guidelines on how these hearings should be conducted or how decisions should be made based on submissions. This lack of procedural clarity could lead to inconsistent decision-making and challenges to the fairness of the process.

f. The ILA empowers the Authority to make decisions about granting or rejecting licences, section 5A does not specify the grounds on which a licence should be issued. The Authority can grant a provisional licence or impose conditions on the licence, but the Act does not define the criteria or grounds for these decisions.

g. Further, while section 5C of the ILA outlines conditions for licence renewal, it does not explicitly frame these as grounds for renewal, which may create confusion and inconsistencies in decision-making. Section 5B of the ILA also allows for the transfer of licences, provided the transferee meets the necessary requirements outlined in that provision.

h. The Act also addresses the suspension or revocation of licences in cases of non-compliance. Section 6(2)(c) grants the Authority the power to suspend or revoke a licence for various reasons, such as non-compliance with the Act. Section 8A allows for the suspension of a licence for up to six months or its permanent revocation if the licensee fails to meet the provisions of the Act. The ILA does not provide a clear process for licensees to be heard before their licence is revoked. Given that licences can be revoked for non-compliance or criminal convictions, this is a significant gap in procedural fairness. Establishing an appeals process, or tribunal would help address this issue.

5. Protection of young persons

a. The ILA does not define the term "young person." While the Act prohibits the sale or supply of alcohol to those under 18 (or 19, depending on the legislation)[15],

[14] **Section 5(5) of the ILA** – "Notwithstanding subsection (4), the Authority may convene a public hearing to hear submissions regarding an application."

[15] **Section 65 of the ILA** –"Any person who: (a) knowingly sells or supplies or allows to be sold or supplied, to any person under the age of 18 years, any liquor at any licensed premises for consumption therein; (b) is under the age of 18 years who purchases or attempts to purchase any liquor at any licensed premises for his own consumption therein; (c) knowingly sends a person under the age of 18 years to any licensed premises for the purpose of purchasing liquor; or (d) allows any person who is under the age of 18 to be at any bar or nightclub, commits an offence, and shall be liable upon conviction to a fine not exceeding $1,000" **, Section 10 (1)(2) of the MILA**- "(1) Any person over the age of 18 years who sells or supplies or allows to be sold or supplied to any person under 19 years of age any intoxicating liquor the manufacture of which is an offence against section 3(a) shall be guilty of an offence and shall be liable to a fine not exceeding $1,000 or not exceeding 5 years' imprisonment or both such fine and imprisonment. (2) Any person who consumes any liquor such as is

the absence of a clear definition creates ambiguity, especially in distinguishing between minors and young adults who may fall into a grey area between 18 and 19 years old.

b. Further, section 59 of the ILA gives licencees the authority to refuse entry to, or remove, anyone whose presence could result in a penalty for the licensee. This empowers establishments to act against minors attempting to gain entry to licensed premises where alcohol is served. Section 65 specifically prohibits entry to bars or nightclubs for anyone under the age of 18, reinforcing the responsibility of licensees to ensure minors are not allowed access to these establishments. Therefore, licensees are required to conduct due diligence on all individuals seeking entry to their premises to verify their age. They must ensure that no minors are admitted, which could lead to penalties for both the business and the individual.

c. Moreover, the ILA does not explicitly address the issue of forged identification, although section 170 and section 171 of the Criminal Offences Act ("COA") criminalizes forgery[16]. The ILA does not recognize the forging of identification as an offence directly related to the sale or supply of alcohol. This creates a gap in enforcement, as a licensee may unknowingly serve alcohol to a minor with a forged ID.

d. While the ILA does allow a licensee or their agent to refuse service to young people[17], the Act does not explicitly recognize the defence that a licencee can rely on when they have checked an ID and reasonably concluded that the individual is of legal drinking age. This places an additional burden on licencees, who may have conducted proper due diligence but still face penalties due to the lack of a clear legal defence. This gap in the law leaves licencees vulnerable, as the ILA does not provide them with a clear legal defence when they have acted in good faith by conducting proper due diligence.

mentioned in subsection (1) hereof in the presence of a person under 18 years of age shall be guilty of an offence and liable to punishment as provided in section 9 of this act"

[16] **Section 170 (4) of the COA**- "Forgery is complete if the false document is so made and is such as to show that it was intended to be acted on as genuine even though it may be incomplete or may not purport to be such a document as would be valid in law " **Section 171 of the COA**-" Every person who commits forgery shall be liable to imprisonment for any period not exceeding 7 years."

[17] Ibid n15

6. Drink Driving

a. The TA does not explicitly define the breath alcohol limit, but it is generally understood that a breath alcohol level exceeding 250 micrograms per litre of breath constitutes an offence[18]. While the TA provides for breath alcohol testing, it does not provide for blood alcohol testing, which remains an impractical option due to resource constraints in Tonga.

b. There is also ambiguity in the presumption of test results, as the TA does not explicitly define the legal weight of test variations. Courts have accepted a 20% variation between breath alcohol test results as an acceptable range[19], but this practice has been questioned in cases where inaccurate or conflicting results arise from faulty calibration. A clearer, standardized approach to test result discrepancies could help mitigate such issues.

c. Under the TA, it is an offence for anyone in charge of a motor vehicle to have a breath alcohol level of 250 micrograms or more per litre of breath, as determined by both screening and evidential tests[20]. If a driver's alcohol level falls between 250 and 400 micrograms, they will receive a Notice of Infringement and will be required to pay a $500 fine within 21 days[21]. However, if the alcohol level exceeds 400 micrograms, the consequences are more severe, with potential penalties including a fine of up to $5,000, imprisonment for up to two years, or both[22].

d. For more serious offences, section 34 comes into play when a driver causes injury or death while their alcohol level exceeds 350 micrograms per litre. In such cases, a conviction can lead to up to 15 years imprisonment and a driver's licence disqualification for up to three years.

---

[18] **Section 33 (1) of the TA**- "Any person who is in charge of a motor vehicle on any road, and after being subjected to a breath screening and evidential breath test under this Act, and the lowest result of such tests is equivalent to or more than 250 micrograms of alcohol per litre of breath, commits an offence."

[19] ***Tuputupu v Rex* [2014] TOCA 8**- "*Those printouts are capable, in themselves, of proving the level of alcohol in the driver's breath and the results of the two tests were exhibited. However, a difficulty, noticed by the prosecutor at the trial and brought to the attention of the court, was that, whilst the printout from the device with a figure of 450 correctly showed the date and time for the test as 1 August 2011, 22.37, the other was recorded as having been taken on 26 July 2011 at 20.25."*

[20] Ibid n19

[21] **Section 33(2) of the TA** "Any person who commits an offence under subsection (1), and the lowest result of either the breath screening or evidential breath test result is - (a) between 250 micrograms and 400 micrograms of alcohol per litre of breath, shall be issued a Notice of Infringement in the form set out in Form 1 of the Schedule, and shall pay a fine of $500 within 21 days; or (b) in excess of 400 micrograms of alcohol per litre, shall be prosecuted, and if convicted, shall be liable to be imprisoned for a period not exceeding 2 years or a fine not exceeding $5,000, or both"

[22] Ibid n 21

e. Additionally, section 33(8) of the TA sets a zero-alcohol limit for individuals with learner's permits or no driver's licence. If they are found driving with any detectable alcohol level, even between 1 and 250 micrograms, they face a $500 fine, imprisonment for up to two years, and the revocation of their learner's permit.

f. The court is empowered in section 41 of the TA to cancel a person's driving licence and prevent them from obtaining a new one for a set period if they are convicted of an alcohol-related driving offence. Additionally, section 27 expands the court's authority to disqualify an individual from driving if they are convicted of reckless driving, highlighting the need for responsible behaviour on the road.

g. The Traffic (Alcohol Breath Tests) Notice 2023 (ABTN) outlines the approved devices for breath testing, including the Dräger 6000 and Dräger 7000 for breath screening, with the Dräger 7000 also serving as the evidential breath-testing device.[23] However, the ABTN does not mandate regular calibration or certification of these devices, although it is standard practice for the Tonga Police to ensure the equipment is properly calibrated. This is a critical point, as discrepancies in breath test results can lead to legal challenges. For example, in the case of *Tuputupu v Rex* [2014] TOCA 8, the court dismissed charges due to the inaccurate readings from improperly calibrated breathalyzer devices.

h. Under section 28 of the TA, police officers have the authority to request that a driver undergo a breath screening test if there is suspicion of an alcohol-related offence, if the driver participates in an accident, or if their identity is unknown. If a driver refuses to comply with the test or leaves the scene, the officer is permitted to arrest them without a warrant. Additionally, section 28(3) grants officers the power to conduct a passive breath test if deemed necessary. If the results of the screening test indicate a breath alcohol level exceeding 250 micrograms per litre, section 29 allows for an evidential breath test to be conducted.

i. The TA also includes provisions for special defences in certain circumstances. For example, section 26 allows individuals charged with speeding to defend themselves if they were driving a vehicle under specific conditions (e.g. as an ambulance, police vehicle, or fire services vehicle). Additionally, section 31 provides a defence for individuals who can prove, through medical evidence,

[23] **Section 3 of the Traffic (Alcohol Breath Tests Notice 2023)-** "The following devices are approved as kinds of passive breath-testing devices – (a) Dräger 6000; and (b) Drager 7000"

which taking the breath screening or evidential breath test would be harmful to their health. A police officer is empowered under section 44 to arrest individuals suspected of committing an alcohol-related offence if the police officer has reasonable grounds to do so.

j. While the TA provides important legal measures for tackling alcohol-related driving offences, there are key gaps that need to be addressed to improve the effectiveness of enforcement and ensure fairness in the legal process. Addressing these gaps would improve the Act's ability to effectively regulate alcohol-related driving offences and ensure that penalties are applied consistently and fairly across all cases.

D. AREAS FOR IMPROVEMENT

1. Legislative Strengthening

a. Clearly identify the specific Minister (e.g. the Minister for Police, Health, or another relevant portfolio) who has the power under the ILA to appoint the Authority. This could also clarify the extent of that Minister's powers regarding the appointment, reappointment and other administrative aspects of the Authority.

b. Introduce clear provisions that disqualify individuals with direct or indirect financial interests in the alcohol, beverage, or hospitality industries from serving on the Authority to ensure impartiality in decision-making.

c. Define the terms of office for Authority members, including the length of appointments, conditions for reappointment and a clear process for resignation. These provisions would support smoother governance and ensure operational continuity.

d. Include provisions that grant the Minister, with Cabinet consent, the power to suspend or terminate members of the Liquor Licensing Authority based on clearly defined grounds (e.g. misconduct, conflict of interest, or failure to perform duties).

e. Introduce a requirement for all members of the Authority to declare any potential conflicts of interest in matters before the Board. This should be a regular practice, ideally during meetings or whenever relevant decisions are being made.

f. Establish clear rules and procedures for how meetings are to be conducted (e.g., quorum requirements, voting procedures, frequency of meetings) and how the

Authority should oversee decision-making, particularly in complex or contentious matters.

g. Consider introducing a requirement for gender balance or at least one female member on the Liquor Licensing Authority to ensure diverse perspectives in decision-making and improve the overall representation in the Authority.
h. Provide specific rulemaking authority within the Act to allow for the establishment of clear, consistent guidelines on meeting protocols, decision-making processes, and member responsibilities to ensure efficient and transparent operations of the Authority.
i. Include specific provisions on how the Authority should assess, respond to and enforce actions against public nuisance or safety issues that arise from licensed premises, including the power to enforce remedies, impose temporary suspensions, or revoke licence when necessary.
j. Amend the ILA to include specific provisions that regulate alcohol advertising, including restrictions on the times and places where alcohol can be advertised, and prohibitions on targeting vulnerable groups, such as minors or those in recovery. Regulations should also address the sponsorship of events, especially sports and cultural events.
k. Amend the ILA to explicitly impose a duty on licencees to create and maintain a safe environment for patrons, including measures to prevent public disturbances, violence and alcohol-related harm. The duty should extend to both inside and around licensed premises.
l. Introduce a set of positive practices or best practices for licensees to follow, focusing on responsible alcohol service, staff training, and harm reduction measures. This could include guidelines for handling intoxicated customers, serving alcohol in moderation and preventing alcohol-related harm.
m. Amend the ILA to clearly define the process for issuing compliance notices to liquor licensees, including grounds for issuing such notices, the process for resolving non-compliance, and the consequences for failing to comply with the regulations.
n. The ILA should be amended to require that all alcoholic beverages sold in Tonga be labelled with their alcohol content, expressed clearly in percentage terms (e.g. "15% ABV" for wines or spirits). This would provide consumers with essential information about the strength of the drink, enabling them to make more informed decisions. Clear labelling of alcohol content ensures that consumers are aware

of what they are purchasing and consuming, reducing the likelihood of excessive consumption.

o. Amend the ILA to require that alcohol content be expressed in terms of "standard drinks." A standard drink is a unit that allows consumers to better understand the effects of alcohol consumption, helping to mitigate health risks associated with overconsumption.

p. The ILA should require that all alcoholic beverages include important information on the label, such as health warnings, potential allergens and the ingredients used in production. This would provide consumers with more transparency about what they are consuming and any potential health risks.

q. The ILA should prohibit misleading or inaccurate representations of alcohol content on labels or in advertising. This includes making claims about the alcohol strength or nature of a product that are not substantiated or clearly communicated. Clear and truthful labelling will help prevent misleading claims and ensure that consumers can trust the information they receive when making purchasing decisions.

r. While the TA does not mandate this currently, it should require that all alcohol-testing devices (e.g. breathalysers, laboratory equipment) used be regularly calibrated and certified by an accredited body.

s. In terms of liquor licensing it is recommended that the ILA be amended to include (i) clear grounds for granting, refusing, and renewing licences; (ii) a requirement for applicants to notify the public and relevant authorities about their applications; (iii) a more defined and transparent process for public hearings and submissions, with clear guidelines on how decisions will be made; and (iv) the establishment of an appellate body or tribunal to review licensing decisions, ensuring fairness and procedural transparency.

t. The ILA should also allow the Authority to delegate its powers to appointed persons/representatives in the outer islands to facilitate issuing of liquor licences.

u. It is recommended that the ILA include a clear definition of the term "young person" to eliminate any ambiguity regarding the age limits for alcohol consumption and sale. This would ensure consistency in enforcement and understanding across various stakeholders in the liquor industry.

v. The ILA should be amended to directly address the issue of forged identification in the context of liquor licensing. While forgery is covered under the Criminal

Offences Act, it would be more effective to explicitly outline the offence in the ILA in relation to the sale or supply of alcohol.

w. To protect licencees who are diligent in checking identification, the ILA should explicitly recognize that a licensee or their agent has a defence if they can demonstrate that they took reasonable steps to verify a customer's age, such as checking a government-issued ID. This would offer a reasonable safeguard for licensees who have made efforts to comply with the law but are still penalized due to fraudulent identification.

x. By strengthening these aspects, the ILA can enhance its ability to regulate the liquor industry in Tonga effectively, ensuring that the licensing process is transparent, accountable, and fair.

2. Strengthening Government commitment

a. Reduce the harmful use of alcohol in the workplace especially for government and enforcement stakeholders. It is important for key public figures in government and in the health sector to conduct themselves as role models especially with consuming alcohol at public events and functions which undermines the effort to promote responsible consumption of alcohol within the community

b. Implement clear workplace policies that limit alcohol consumption during work hours and prohibit alcohol use in the workplace. Policies should also outline the consequences for breaches.

c. Offer training and information to employees about the risks of alcohol misuse and the impact of excessive alcohol consumption on health and work performance.

d. Promote alcohol-free work events and gatherings to create a healthy and supportive work culture.

3. **Capacity building and strengthening**

a. Providing opportunities for enforcement officers and relevant stakeholders to conduct secondment and attachments to international and regional organisations to gain specialized skills and laboratory expertise. Local personnel are required to operate the necessary equipment, and as such, acquiring these specialized skills is crucial for the long-term sustainability of operations. Ensuring that local staff are adequately trained not only enhances operational efficiency

but also reduces reliance on external expertise, fostering self-sufficiency and resilience within the community.

4. **Enhancing resource availability**
    a. Strengthen Tonga Police to enable them to conduct their respective roles under the current legal framework.
    b. Provide more alcohol breathalyser devices for the main islands and for the outer islands.

E. LEGISLATIVE RECOMMENDATIONS

1. It is recommended that the draft legislative provisions for the *Liquor Control Bill*, as outlined in Annex 2-1 and Annex 2-2 of the PLF, be adopted as the foundation for the proposed legislative amendments.
2. However, rather than introducing a new regulation, it is suggested that amendments be made to the existing laws by incorporating the relevant provisions from Annex 2-1 and Annex 2-2.
3. For instance, amendments to the ILA should focus on incorporating provisions that are currently lacking, such as those outlined in Annex 2-1, which includes:
    a. Part 2: Liquor Licensing Authority
    b. Part 3: Liquor Licenses
    c. Part 4: Permitted Hours
    d. Part 5: Advertising and Labelling
    e. Part 6: Protection of Young Persons

    Other provisions in Annex 2-1 may be incorporated if deemed necessary.

4. Regarding the drink driving provisions, amendments should be made to the *TA* by integrating the provisions from Annex 2-2 that are currently missing from the existing law.
5. However, it is essential to conduct consultations with key stakeholders, particularly the Tonga Police and the Ministry of Health, to discuss certain proposed amendments, such as the introduction of blood testing for alcohol-related traffic offences.
6. The proposed draft legislative provisions for the Liquor Control Bill, as outlined in the PLF, are attached as **Annexure A** to this report.
7. Similarly, the proposed draft legislative provisions for the Drink Driving regulations as outlined in the PLF, are attached as **Annexure B** to this report.

III.LAWS RELATED TO ILLICIT DRUGS AND ILLICIT SUBSTANCES

A. LEGISLATION REVIEWED

1. Illicit Drugs Control Act 2003

The Illicit Drugs Control Act ("IDCA") came into force on 18 August 2003, with amendments made in 2012, 2013, and 2015. The Act is organized into five parts and includes three schedules. Part 1 outlines the preliminary provisions, Part 2 addresses offences, Part 3 covers investigation, search, and seizure, Part 4 deals with evidentiary matters, and Part 5 covers other miscellaneous matters. Schedule 1 lists substances considered as illicit drugs, Schedule 2 provides a list for the controlled chemicals, and Schedule 3 provides a list for the controlled equipment.

The IDCA aims to regulate illicit drugs, controlled chemicals, and equipment by prohibiting their unlawful import, export, possession, manufacture, cultivation, use, and supply. The police and customs officers are authorized under the Act to prevent the importation of illicit drugs into the country and the unlawful supply within the country. They are empowered to conduct covert operations, including the use of tracking devices in drug-related activities, conducting searches of vehicles, crafts and persons. The highest penalty imposed under the IDCA is a fine of up to $1,000,000 or up to 30 years of imprisonment for the unlawful import, export, possession, manufacture, cultivation, use, or supply of a Class A drug.

1.1 Illicit Drugs Control Act Amendment 2020

This Act, which amends the IDCA 2003, came into force on 26 November 2020. It introduces increased penalties for the unlawful import or export of Class A drugs. Specifically, for quantities of less than 1 gram, the penalty is a fine of up to $10,000, imprisonment for up to 3 years, or both, for quantities of 1 gram or more, the penalty is a fine of up to $1,000,000, imprisonment for up to life, or both and for quantities of 28 grams or more, the penalty is life imprisonment.

The Act also increases penalties for the unlawful possession, manufacture, cultivation, use, or supply of Class A drugs, with the same fines and imprisonment terms as for import/export offences for less than 1 gram and 1 gram or more.

In addition, the Act introduces new provisions, including making it an offence to possess drug utensils, allowing police officers to conduct controlled purchases, and regulating the use of unauthorized plates or licenses on vehicles involved in operations under the IDCA. Police officers were also granted powers equivalent to those of customs officers as per the IDCA or the Customs and Excise Management Act.

1.2. Illicit Drugs Control Act Amendment 2021

This Act, which amends the IDCA 2020, came into force on 28 October 2021, introducing specific offences involving children. Under this provision, anyone who supplies or administers an illicit drug to a child, compels a child to use an illicit drug, or engages, employs, or uses a child in the import, export, manufacture, cultivation, or supply of illicit drugs will face severe penalties. A first-time offender could be fined up to $500,000 or face up to 30 years in prison, or both. For a second time offender, the penalty increases to a fine of up to $1,000,000 or imprisonment for up to 50 years, or both. A third-time offender will be subjected to life imprisonment. For the purposes of this Act, a child is defined as anyone under the age of 18.

2. Intoxicating Substances Act 2021

The Intoxicating Substances Act (“ISA”) came into force on 28 October 2021, and it consists of seven sections. The primary purpose of the ISA is to prohibit the misuse of intoxicating substances, which are defined as any substance that releases toxic vapors or fumes, and when inhaled or consumed, induces a state of intoxication, euphoria, exhilaration, distortion, or any other mind-altering effect.

Under the ISA, it is an offence to inhale, consume, supply to a minor, or supply intoxicating substances for inhalation. Police officers are authorized to seize intoxicating substances from individuals who are inhaling or consuming them, or from those the officer reasonably suspects may do so without lawful excuse, if the substances are not already seized.

The highest penalty under the ISA is for the offence of inhaling or consuming intoxicating substances, which carries a fine of up to $10,000, imprisonment for up to 3 years, or both.

3. Therapeutic Goods Act 2001

The Therapeutic Goods Act (TGA), which came into effect in 2001, has undergone several amendments since its inception, with revisions in 2004, 2012, and 2014. The Act is structured into eight parts and one schedule. The TGA establishes the National Drugs and Medical

Supplies Committee which is responsible for overseeing the regulation of medicinal drugs and therapeutic goods Tonga. It also evaluates the therapeutic goods purchased by the Ministry of Health and has the authority to approve or reject tender decisions for their supply. Additionally, the Committee monitors adverse drug reactions, manages the procurement and distribution of therapeutic goods, and promotes the rational use of medicines.

The Committee consists of key healthcare officials, including the Chief Executive Officer for Health, the Principal Pharmacist, hospital personnel, and representatives from medical and nursing associations. Some members are nominated for two-year terms, with eligibility for renomination. The Committee can also co-opt external members such as a pharmacist and a wholesaler as needed. The Chief Executive Officer for Health chairs the Committee, while the Principal Pharmacist serves as the secretary. The Committee sets its own procedures for meetings, reports its activities annually to the Minister, and provides meeting minutes to the National Health Development Committee. Importantly, members of the Committee are protected from liability when acting in good faith.

The TGA establishes the Tongan Registered List of Medicinal Drugs, which is maintained by the Committee. This list outlines the drugs allowed for import into Tonga and is divided into six classes: Class 1: Medicinal drugs available at licensed retail outlets; Class 2: Drugs available at registered pharmacies, supervised by a pharmacist, further divided into: Class 2A: Drugs not requiring pharmacist advice at the point of sale and Class 2B: Drugs requiring pharmacist advice at the point of sale; Class 3: Prescription-only drugs dispensed by a pharmacist or assistant pharmacist; Class 4: Special prescription-only drugs, dispensed by a pharmacist or assistant pharmacist; Class 5: Narcotic drugs and psychotropic substances, subject to special import controls; and Class 6: Drugs available for animal use through veterinary practitioners. The Committee reviews and updates the list annually, publishing revisions in the Gazette, and may maintain an electronic version for easier access. The process for adding or removing drugs from the list is also specified.

The TGA also provides for the import, export, manufacture, and quality control of therapeutic goods to ensure high standards for products entering or being produced within Tonga. It also sets out special import controls for narcotic drugs and psychotropic substances, authorizing the Minister to import these substances based on the "Yellow List" and "Green List" provided by the International Narcotics Control Board, with delegation rights to the Principal Pharmacist.

Further the TGA provides the regulations for the supply of registered drugs, specifying who can distribute, prescribe, and dispense medications, as well as labelling requirements. It also

governs the licensing of retail outlets and prohibits the wholesale sale of therapeutic goods without the appropriate license.

The Schedule annexed to the TGA provides the list of countries where therapeutic goods can be manufactured, ensuring that these products meet international standards.

Individuals who make false or fraudulent representations in applications for the inclusion of medicinal drugs on the registered list or for the issuance of any licenses, whether in writing or verbally, are committing an offence. Those who knowingly assist in such actions are also liable. Upon conviction, offenders may face a fine of up to $2,000, imprisonment for up to 12 months, or both.

Additionally, anyone who contravenes or fails to comply with any provision of the TGA or its regulations is committing an offence. If no specific penalty is outlined, they may face a fine of up to $2,000, imprisonment for up to 12 months, or both. In the case of a continuing offence, a fine of up to $100 may be imposed for each day the offence persists.

3.1. Therapeutic Goods (Amendment) Act 2021

The introduction of the Therapeutic Goods (Amendment) Act in 2021 addresses the regulation of the supply, acquisition, and use of substances like ephedrine or pseudoephedrine, which are often used in the illegal production of methamphetamine. These substances, when used in over-the-counter drugs, are known as "targeted methamphetamine precursor products."
The amendment permits the Minister of Health to appoint individuals or businesses as authorized suppliers for these products. Only authorized suppliers can legally distribute these precursor products. Anyone supplying such products without authorization faces significant penalties, including a fine not exceeding $50,000 or up to 7 years imprisonment or both.
Further, the supplying of targeted precursor products to anyone under 18 years of age is prohibited and shall be liable upon conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 3 years or both. In addition, individuals cannot acquire more than a certain amount of these products (ephedrine or pseudoephedrine) within a 30-day period without lawful excuse. Violations result in a possible fine of $50,000 or to imprisonment for a term not exceeding 7 years or both. Authorized suppliers are required to verify the identity of the buyer and maintain detailed records of the transaction, including product details, personal information, and quantities involved.

Authorized suppliers must maintain accurate records of all transactions, which should be kept for at least five years and be available for inspection by law enforcement. These products must be stored in restricted, behind-the-counter areas where the public cannot directly access them. Any person who acquires precursor products on behalf of another person to circumvent the regulations is also committing an offence. Certain professionals or individuals are exempt from the law when the precursor products are used for lawful professional purposes or medical reasons within their family or household. The quantity of products involved must not exceed prescribed limits.

This framework aims to tightly regulate the distribution and use of substances that can be misused in methamphetamine production, while also allowing exceptions for legitimate medical and professional purposes.

3.2. Therapeutic Goods Regulation 2011

The Therapeutic Goods Regulation ("TGR") was introduced in 2001 and has undergone amendments, with significant updates made in 2011. This regulation consists of twelve sections and three schedules, each serving a distinct purpose. Schedule 1 outlines the forms required for various applications, including requests for licenses to import therapeutic goods, supply medicinal drugs (excluding wholesale), supply therapeutic goods wholesale, and manufacture therapeutic goods. It also details the application process for including medicinal drugs on the registered list.

Meanwhile, schedule two specifies the fees associated with different activities under the TGA, while schedule three presents the template for a licence issued by the National Drugs and Medical Supplies Committee. Together, these sections and schedules provide a framework for regulating the import, supply, manufacture, and registration of therapeutic goods in the country.

B. CASE LAWS RELEVANT TO ILLICIT DRUGS RELATED OFFENCES

1. **Case Citation:** *R v Afu [2021]* TOSC 84

   Relevance: Substantial number of illicit drugs resulting in legislative amendments

   Case Summary:

   The Accused was sentenced for several offences involving methamphetamines and cannabis. On 20 February 2019, he was found in possession of 0.24 grams of methamphetamines. Later, on 6 February 2020, a police search of his residence revealed a significant amount of drugs: 27.49 grams of methamphetamines and 196.53 grams of cannabis. Additionally, cash and drug-related paraphernalia were found, indicating the Accused's involvement in drug dealing.

   The Crown argued that the Accused's actions were aggravated by the substantial amounts of drugs, particularly methamphetamines, which posed a serious issue in Tongan society. The Crown sought a sentence of 4 ½ years, considering the amounts of drugs involved and comparable cases.

   The defence acknowledged the aggravating factors but pointed to the Accused's remorse and voluntary participation in a rehabilitation program. The court considered the Accused past drug conviction, guilty pleas, and family responsibilities. Ultimately, the court sentenced the Accused to a total of 4 ½ years in prison, with the final 18 months suspended on conditions for rehabilitation. Additionally, the Accused was ordered to forfeit the seized cash and drugs.

   Comment:

   The substantial quantities of methamphetamine and cannabis seized in this case highlights the serious social threat that illicit drug trade poses to the community. This case also reflects a shift in how drug offences are treated, with the legal landscape becoming harsher after the amendment to the IDCA in 2020. The increased penalties for possession of Class A drugs, particularly for quantities above 1 gram, reflect the growing severity of the drug problem in Tonga. This evolving approach emphasizes that drug-related offences, particularly those involving methamphetamines, are significant societal problems requiring strict penalties and effective deterrence mechanisms.

2. **Case Citation:** *R v Vete* [2024] TOSC 90

   Relevance: Harmful impacts of drug abuse

   Case Summary:

   The Accused pleaded guilty to serious housebreaking and theft on two separate occasions. The offences involved breaking into his sister's home while she and her

husband were away, stealing goods valued at $16,000 and $30,798. The Accused admitted to committing the crimes to feed his methamphetamine addiction.

Comment:

This case highlights the devastating effects of methamphetamine addiction, which harms not only the individual but also wreaks havoc on relationships and communities. The Accused's crimes, driven by his need to fuel his addiction, led to substantial theft from his own family, underscoring how drug dependence can result in destructive criminal behaviour and disrupt the fabric of the community.

3. **Case Citation:** *Kivalu v R* [2024] TOSC 82

   Relevance: Vulnerability of law enforcement officers to corruption

   Case Summary:

   The Accused, a 45-year-old serving Customs Officer, is charged with unlawfully engaging with others to import illicit drugs, specifically around 2687.43 grams, in violation of section 4(1)(b)(iv) of the IDCA. He is accused of knowingly collaborating with Sili Ki 'Asa Tonga to facilitate the illegal importation of these drugs. This matter is related to an appeal by the Accused regarding his bail application being denied in the preliminary stages and this case is ongoing.

   Comment:

   Although the Accused is still presumed innocent until proven guilty, this case highlights the vulnerability of enforcement officers to corruption which undermines and weakens the integrity of law enforcement. It highlights the challenge of maintaining accountability and ensuring public officials uphold the law.

4. **Case Citation:** *R v Halatokoua* [2024] TOSC 62

   Relevance: Opportunity for rehabilitation of drug offenders

   Case Summary:

   On 20 March 2024, the Accused was caught in the act of dealing methamphetamine, setting himself up at a bus stop in the Lopaukamea area, equipped with over 20 dealer-sized packets of meth, cash, and drug utensils. His actions were part of a determined effort to supply illicit drugs, with his position strategically chosen to avoid detection by police. The police, having received a tip-off, detained the Accused after a search which revealed methamphetamine and drug paraphernalia in a sling bag he was carrying. The seized items included 2.77 grams of methamphetamine, weighing scales, empty dealer bags, and cash.

The Accused, a 26-year-old with no prior criminal convictions, entered a guilty plea to charges of possession of methamphetamine and drug utensils. He had a history of good character, being dedicated to church and family activities. However, his involvement in drug dealing marked a clear break from his past behaviour. The court considered the Accused's age, lack of criminal history, and guilty plea, as well as his potential for rehabilitation. The Accused was sentenced to 2 years imprisonment, with the last 6 months of the sentence suspended for 18 months on the condition that he reports to probation, does not commit further offences, and completes a drug rehabilitation course at the Salvation Army.

Comment:

The sentence imposed in this case reflects a balanced approach, considering the seriousness of drug dealing while also offering the Accused the opportunity of rehabilitation. The court hopes that with the right support, the Accused can turn his life around and avoid future criminal behaviour. However, as previously highlighted, the necessary support structures for effective rehabilitation are currently lacking in Tonga.

5. **Case Citation:** *R v Ali* [2020] TOSC 94

Relevance: Role of the court & the devastating impacts of illicit drugs in Tonga

Relevant Excerpt:

In his sentencing remarks, the former Lord Chief Justice Whitten KC highlighted the harmful impacts of Class A drugs, such as methamphetamines. This observation has since been adopted and referenced by other judges in the Supreme Court of Tonga when determining sentences in drug-related cases.

"Methamphetamines continue to be a scourge on society, not only here in Tonga, but around the world. Like other class A drugs, methamphetamine is not just a drug of dependence; it is a drug of destruction, causing untold damage to countless individuals, their families and their communities. The courts play an important role in the fight against the manufacture, importation, supply and use of insidious illicit drugs like methamphetamines. Part of that role is to ensure that sentences imposed for such offending are adequate and effective in denouncing and punishing such crimes, provide a strong deterrent effect, not just for individual offenders but also for the general community and those who may contemplate succumbing to the toxic allure of illegal drugs and to provide incentive and opportunity for rehabilitation of those who have succumbed."

Comment:

This case underscores the vital role of the courts in addressing the societal impact of drugs like methamphetamine. While it is essential for the courts to impose appropriate punishments and condemn drug-related crimes, they also play a key role in offering rehabilitation opportunities for offenders. By doing so, the courts can assist individuals struggling with addiction to reintegrate into society and break the cycle of substance abuse. This approach, balancing deterrence with rehabilitation, is crucial to effectively combating the drug crisis. However, Tonga faces a significant gap in this area, as there are no available drug rehabilitation centres for this purpose apart from the Salvation Army.

6. **Case Citation:** *Rex v Manu* [2014] TOSC 11

   Relevance: Enforcement office involvement in the unlawful importation of pseudoephedrine (methamphetamine precursor)

   Case Summary:

   The Accused, a former police officer in Tonga, played a key role in facilitating the importation of pseudoephedrine, which is a controlled substance- a precursor for methamphetamine production. He, along with co-defendants Kevin Liu, Shiquing Lin, and Xiu Ming Lin, were charged with importing pseudoephedrine, a controlled chemical, into Tonga on 23 June 2011, in violation of the IDCA 2003.

   The evidence showed that the Accused was actively involved in clearing both the first and second consignments of the controlled chemical upon their arrival in Tonga. The Accused's role in the operation was to ensure the safe delivery of the consignment into Tonga, which he did by interacting with customs officials and absconding from his police duties to manage the importation. The evidence presented revealed that the Accused knowingly participated in the illicit activity.

   The court imposed a sentence of five years and four months imprisonment. The court declined to suspend his sentence, citing the need for deterrence, particularly given the gravity of the offence and the Accused's role in facilitating the importation of a controlled substance for illicit purposes.

   Comment:

   The key lesson from this case is the importance of integrity and accountability within law enforcement. The involvement of a serving police officer in a criminal enterprise, particularly in facilitating the importation of a controlled substance, highlights the potential for abuse of power and the severe consequences of corruption. It underscores

the need for rigorous internal controls, oversight, and continuous monitoring to ensure that those entrusted with upholding the law are not complicit in illegal activities.

7. **Case Citation:** *R v Talia'uli* [2007] TOLawRp 41
   Relevance: Negative impacts of misusing intoxicating substances
   Case Summary:
   The Accused, a 23-year-old first-time offender, pleaded guilty to possessing illicit drugs, specifically cannabis, in substantial quantities. The case involves three plastic bags containing a total of approximately 54 grams of cannabis. Unlike typical cases where individuals are caught with small amounts for personal use, the Accused's involvement appears more serious, suggesting active participation in the drug culture. He was implicated in picking up imported drugs from the airport, potentially exposing him to more severe charges like abetment or conspiracy. The Accused's situation is further troubling because of his long-standing history of sniffing intoxicating substances such as *ados* and benzene for over 15 years. This prolonged substance abuse has reportedly caused him permanent health issues, including headaches and back pain.
   Comment:
   This case highlights the critical need for the regulating of the sale of intoxicating substances, given their destructive impact on both physical health and individual well-being. The misuse of such substances not only jeopardizes individuals' health but can also lead them down a path of criminal behaviour such as illicit drug dealing. While it is understandable that there are numerous challenges in effectively enforcing these laws, it is imperative that stronger measures be put in place to curb the availability and misuse of these substances.

C. GAPS ANALYSIS

1. Illicit drugs control does not form part of the scope in the PLF as an NCD prevention and control area. However, the IDCA, ISA and the TGA form the foundation of Tonga's legal framework aimed at controlling the misuse of intoxicating substances, including illicit drugs. Despite these laws, several gaps remain in addressing the issues connected to NCD.
2. The current legal framework primarily focuses on controlling illicit drugs and prohibiting the misuse of intoxicating substances. While these laws are essential in curbing the illegal use of drugs, they do not address the broader health factors contributing to NCDs, particularly those linked to substance abuse. Notably, the relationship between

substance misuse and its role in the development of NCDs is not directly tackled by the current legal framework and there is little understanding as to the correlation between the two, which may hinder a more holistic approach to addressing NCD concerns from this perspective.

3. Another notable gap is the absence of provisions for public education and awareness within the current legal framework. The importance of educating the public about the health risks associated with illicit drug use, including its links to NCDs, is critical. However, this area appears to have been excluded, possibly with the intention that public education and awareness programs could be addressed under separate legal or policy frameworks. Nevertheless, the lack of explicit mandates or funding for such programs under the existing legislation represents a missed opportunity for comprehensive prevention efforts.
4. While current laws empower border control agencies to combat the illicit importation of drugs, there is a significant lack of resources to implement these measures effectively. Insufficient surveillance technology, a shortage of trained personnel, and gaps in inspection and monitoring infrastructure make it challenging to detect and intercept illegal drugs entering Tonga. This resource deficiency leaves the country vulnerable to the illegal trafficking of substances, undermining the effectiveness of border controls and exposing the population to increased risk of substance misuse.
5. In response to growing concerns about illicit drug use, the Government of Tonga established the Illicit Drugs Steering Committee on 18 July 2018. This committee, which includes representatives from law enforcement, customs, finance, health, education, and internal affairs, was formed as part of the government's commitment to a unified and effective response to drug-related issues. The committee's formation, prompted by rising drug-related crimes such as the increase in methamphetamine use, drug sales involving school children, violent robberies, and the discovery of large quantities of illicit drugs, marks a significant step in tackling drug misuse[24].
6. One significant achievement in Tonga's fight against illicit drugs is the enhancement of local drug testing capacity. Previously, drug testing for court purposes required overseas laboratory testing, but now, locally trained personnel conduct these tests, with the results being accepted by the Supreme Court of Tonga. This improvement has significantly enhanced the efficiency of drug-related legal proceedings and contributed

[24] *Kingdom of Tonga PILON Report*, Attorney General's Office Tonga, 8 – 11 October 2018.

to securing convictions, thus strengthening the legal framework's ability to tackle the illicit drug problem effectively.

D. AREAS FOR IMPROVEMENT

1. **Strengthen Stakeholder collaboration**
    a. Improve collaboration between Customs, Police, and International Agencies to address trafficking considering the rise in illicit drugs cases.
2. **Strengthen Government support**
    a. Implement mandatory/random drug testing for civil servants, including enforcement officers and all relevant stakeholders. While this may require significant resources and commitment, it is essential to ensure transparency and accountability, particularly from those involved in the fight against illicit drugs and law enforcement.
    b. Mandate public health campaigns in schools, churches, and community centres to educate people on the dangers of illicit substance use.
3. **Enhance resources availability**
    a. Strengthen the Tonga Police through the provision of vehicles for the drug covert operations.
    b. Strengthen the Attorney General's Office with funding and necessary resources to upskill their current staff and to retain the experienced prosecutors to ensure stability and efficiency in their prosecutorial roles.
    c. Establish a drug rehabilitation centre to provide a critical support system for individuals struggling with substance abuse. Such a facility would offer a structured environment for rehabilitation, focusing on both physical and psychological recovery.

E. LEGISLATIVE RECOMMENDATIONS

1. There are currently no legislative recommendations, as this topic was not included within the scope of the PLF. Tonga Police confirmed that they are in the process of amending the IDCA however, these amendments are not related to the issue of NCD.

IV. LAWS RELATED TO HEALTHY FOOD AND BEVERAGES ENVIRONMENT

A. LEGISLATION REVIEWED

1. Food Act 2020

The Food Act (FA), which came into force on 16 November 2020, is designed to regulate the food sector to protect public health and ensure food safety. Through its comprehensive provisions, the FA supports a robust food safety system that addresses everything from food handling to emergencies, ensuring public health is always safeguarded. The Act is structured into eighteen parts and two schedules, each focusing on different aspects of food regulation, administration, enforcement, and safety.

Relevantly, the National Food Authority is established as a key body responsible for overseeing the regulation of food in Tonga. The FA provides for the National Food Authority's powers, functions, and responsibilities, enabling it to function as the central authority in the food sector. It provides for the general administrative processes and operations of the Authority, and it also empowers the Food Authority to act in the event of emergencies such as an outbreak or contamination to protect public health. This includes taking immediate actions such as food recalls or issuing emergency orders.

Further, the FA establishes a National Food Council which plays a consultative and advisory role, providing guidance and expertise on food safety matters. The FA also governs the regulation of food imports and exports ensuring that food entering or leaving the country meets safety and quality standards. The FA also provides an appeals process for individuals or entities to challenge decisions made by the National Food Authority ensuring that there is transparency and accountability in the enforcement of food safety regulations. The FA also outlines enforcement mechanisms, detailing the powers of inspectors, penalties for non-compliance, and procedures. The FA recognizes the importance of collaboration between different government agencies and authorities in enforcing food safety laws and as such provides for joint enforcement efforts between the National Food Authority and other relevant bodies.

Schedule 1 contains the rules of procedure for the National Food Council and Schedule 2 provides a range of forms necessary for food safety operations. These forms include notices for food safety events or issues, orders for food recalls, destruction or sealing of food, and other actions needed to manage food safety incidents effectively.

1.1 Food Regulation 2024 (not yet passed)

The Food Regulation 2024 has been drafted but has not yet come into force. It is a comprehensive document comprising eighteen parts and thirty-eight schedules, each addressing various aspects of food safety, standards, and procedures. Relevantly to the NCD prevention and control, the Regulation mandates the adoption of a Food Standards Code for Tonga within twenty-four months of its commencement, which will set the specific standards for food products such as the level of sugar, salt and trans-fat to be consumed in Tonga. The Regulation also focuses on ensuring that both permanent and temporary food operations adhere to the required standards, provides for the medical requirements necessary for those involved in food handling and it sets out general food standards and labelling requirements for food items sold within Tonga. In the event of food-related emergencies, the regulation outlines the emergency protocol that the Food Council would be required to follow. The Schedules attached to the Regulation provide essential supporting information, including application forms, relevant fees, and the certificates issued under the Regulation.

2. Consumer Protection Act

The Consumer Protection Act (“CPA”) came into force on 2 July 2001 with subsequent amendments in 2009 and 2012. There are five parts in the CPA which focuses on various matters. The purpose of the CPA is to safeguard the rights and interests of consumers in Tonga. It establishes legal provisions to protect consumers from unfair trade practices, unsafe products, and exploitation. Section 12 empowers the Minister for Trade and Economic Development to establish approved standards for goods through regulations, after necessary consultations. These standards may include requirements for performance, composition, design, manufacturing, processing, packaging, and labelling of goods, for testing goods during or after production, for markings, labels, warnings, or instructions for the goods. Under the CPA, any individual who violates its provisions or the regulations associated with it, is committing an offence. If no specific penalty is outlined for the offence, the person can be penalized as a first-time offender to a fine up to $3,000, imprisonment for up to 1 year, or both a fine and imprisonment, however, for repeated offenders the penalty increases to a fine of up

to $7,000, imprisonment for up to 2 years, or both a fine and imprisonment. In addition, the court has the authority to order the forfeiture of any goods involved in the offence. Furthermore, the court may issue an order prohibiting the offender from conducting business or selling goods or services for a specified period.

2.1 Consumer Protection (Product Safety and Labelling Standards) Regulations 2006

The Consumer Protection (Product Safety and Labelling Standards) Regulations 2006 was enacted on 9 November 2006, in accordance with section 36 of the CPA. The regulation comprises seven sections, one schedule, and four forms. It establishes the standards for ensuring the safety and proper labelling of products sold in Tonga. In addition to setting these standards, the regulation outlines a procedure for consumers to file complaints and ensures their right to request a review. It also empowers authorities to issue orders for compensation, product replacement, or refunds. Furthermore, the regulation allows for the recall of defective products to protect consumers.

3. Public Health Act (“PHA”) 2015

The PHA which came into force on 2 June 2015, replaced the earlier Public Health Act of 1992. The PHA was amended in 2021 by inserting a new provision to mandate vaccination during a public health emergency. Failure to comply with the compulsory vaccination without lawful excuse is punishable to a fine not exceeding $1,000 or imprisonment for not more than 6 months or both. The PHA covers a wide range of public health issues to protect and improve the well-being of the population. The PHA is structured into fifteen parts, with each part addressing a distinct aspect of public health and safety. Relevantly, part 3 grants authorities the power to issue public health orders, which are crucial in managing public health risks. The regulation also addresses water supply control, sanitary facilities, nuisance and pollution. It also provides the process to be followed when there is a notifiable condition detected and the process for declaring public health emergencies.

3.1. Public Health (Meat) Regulations 1967

This regulation came into force on 29 September 1967, and it was made pursuant to the PHA. These regulations govern the safe handling, processing, and distribution of meat in Tonga. Their primary purpose is to ensure that meat sold to the public is safe for consumption, free

from harmful bacteria, and prepared in hygienic conditions. Any person violating the regulation is liable to a fine not exceeding $40.

3.2. Public Health (Bakeries and Bread Vendors) 1940

This regulation came into force on 3 December 1940 it was deemed to have been made pursuant to the PHA. These regulations set health and safety standards for bakeries and bread vendors, focusing on hygiene, food safety, and the quality of baked goods. Their goal is to ensure that bread and bakery products are produced in sanitary conditions and are safe for consumption, reducing the risk of contamination and foodborne diseases. Anyone found violating these regulations will be subject to a fine of up to $20 upon conviction by a Magistrate. If the fine is not paid, the individual may face imprisonment for a period of up to 3 months.

3.3. Public Health (Restaurants and Food Stores) 1940

This regulation came into force on 20 December 1940, and it is deemed to have been made under the PHA. These regulations establish guidelines for the operation of restaurants and food stores, aiming to ensure that food establishments meet essential health and safety standards. Anyone found violating these regulations will be subject to a fine of up to $20 upon conviction by a Magistrate. If the fine is not paid, the individual may face imprisonment for a period of up to 3 months.

B. CASE LAWS RELEVANT TO PUBLIC HEALTH

1. **Case Citation:** *Fifita v Mafi* [1999] TOSC 7
   Relevance: Enforcement of the relevant public health law
   Case Summary:
   This case involves a family seeking damages for illness they allegedly suffered after consuming hamburger meat purchased from a supermarket operated by the defendants. The family claimed that the cause of the illness was the meat, while the defendants disputed this and maintained that the meat was safe. The defendants presented several witnesses, including a supervisor who explained how the meat had been managed and tested, and a health inspector who certified that the store had met health requirements. The court noted that while the family blamed the meat, there were other potential causes for their illness, and the testing conducted by the defendants'

staff showed no issues with the meat. Additionally, the health inspector had inspected the store the day before the incident and found no problems. As a result, the claim was dismissed.

Comment:

This case highlights the critical role of public health officers and the important role of the law in ensuring the safety of food for the public. It demonstrates the importance of regulatory oversight, such as regular health inspections, testing, and the enforcement of food safety standards. In this case, the health inspector's certification that the store met health requirements was pivotal, as it provided reassurance that the meat was managed properly and met safety standards.

C. GAPS ANALYSIS

1. According to the PLF, reducing children's consumption of unhealthy foods and sugar-sweetened beverages (SSBs), ensuring that both children and parents are aware of the health risks associated with these products, and creating an environment that promotes good nutrition for children, requires reducing their exposure to the unhealthy foods and SSBs. The only effective way to achieve this is through regulating the marketing of these unhealthy products to children.
2. According to the MANA Dashboard update reports for the year 2021-2022, the ratings for unhealthy food marketing to children across Fiji, Samoa, and Tonga vary. For Tonga and Fiji, they are rated amber indicating that policies or actions are under development, whereas for Samoa it was rated green with one star indicating that there are regulations in place, however enforcement is low. Samoa's progress relates to the restrictions they currently have in place for the advertising of unhealthy foods and SSBs on national TV, radio, and local magazines/newspapers.
3. For Tonga, while there are no laws currently in place specifically regulating the marketing of unhealthy food to children, there are policies in place that prohibit the sale of unhealthy foods in school canteens, and children are not allowed to bring unhealthy food onto school premises. Additionally, there are policies restricting the marketing of unhealthy foods to children.
4. According to the PLF, reducing the intake of free salt and added sugar in food products, as well as eliminating industrially produced trans fats from the national food supply, requires the implementation of regulatory measures.

5. The PLF recommends that regulating salt content across the food supply can be accomplished through several measures, including establishing standards for salt labelling on processed foods, setting mandatory maximum salt levels in processed products, reformulating the salt content in food items, regulating health claims related to salt, and developing, implementing, and monitoring strategies and policies to reduce salt consumption. Additionally, the PLF suggests that regulating the level of sugar or added sugar in food products should follow a similar approach to the regulation of salt content.
6. The PLF recommends that trans-fat in food should either be prohibited or strictly limited. However, it allows each country the discretion to make this decision based on factors such as the source of trans-fat, the supply chain, stakeholders, regulatory agencies, and legal processes and requirements, to determine the most effective approach to regulation.
7. The primary legislative focus is on eliminating partially hydrogenated oils from the food supply. Typically, limiting trans-fat involves setting a maximum allowable level—commonly two percent for vegetable oils and margarines, and five percent for other processed foods.
8. According to the MANA Dashboard update report for the year 2021-2022, the ratings for reducing salt and trans-fat ingredients in food across Fiji, Samoa, and Tonga vary. In terms of reducing salt consumption all countries were rated green; however, Fiji is rated with no star, Tonga with one star and Samoa on the lead with 3 stars indicating high implementation. In relation to reducing trans-fat ingredients in food, all countries are rated green with Fiji having no star, Tonga one star and Samoa two stars.
9. However, there are currently no regulations in Tonga governing the levels of salt, sugar, and trans fats in food products. Although the proposed Food Regulation 2024 (“Regulation”) has been drafted and is awaiting submission to parliament, it does not directly address these concerns.
10. Nevertheless, the Regulation presents an opportunity for Tonga to establish standards for salt, sugar, and trans-fat content in food products. This could serve as a transitional step towards implementing more comprehensive regulatory measures in line with the recommendations outlined in the PLF regarding these ingredients.
11. In addition to these legislative gaps, confusion among enforcement officers as to their respective roles in the current legal framework resulting in the overlapping responsibilities between ministries such as the Ministry of Health, the Ministry of

Agriculture, Food and Forestry, Tonga Police and the Ministry of Labour, Trade, and Economic Development causing inefficient allocation of resources.

12. The situation is further complicated by limited resources, which means that food standards are primarily assessed through labelling, and not all imported goods undergo inspection. Imported consignments are categorized by traffic light colours based on their country of origin: the green lane for countries with no identified risks (no inspection), the yellow lane for countries with some risk (occasional inspections), and the red lane for high-risk countries (mandatory inspections).
13. Additionally, Tonga lacks the necessary facilities to properly evaluate food products to determine their actual standards. This inability to conduct comprehensive testing further hinders the country's capacity to assess food safety accurately.
14. The effectiveness of food safety enforcement is hindered by a combination of inadequate legislation, unclear role definitions, limited resources, and a lack of testing facilities and capabilities. These factors create inefficiencies within the current system and present significant challenges for the development and implementation of any future regulatory framework to prevent and control NCD.

D. AREAS FOR IMPROVEMENT

1. Legislative Strengthening

a. The Attorney General's Office needs to prioritize the submission of the Food Regulation 2024 to the Law Committee and Cabinet for review and hopefully receive timely approval of the final draft. This will provide an immediate foundation for regulating the salt, sugar, and trans-fat content in imported and processed food whilst the proposed new regulatory framework is being drafted.
b. In anticipation of introducing a new regulatory framework to regulate the salt, sugar, and trans-fat content in food, the Ministry of Health should consider establishing appropriate thresholds for Tonga, considering the NCD risk factors specific to Tonga's context and circumstances. These thresholds should be supported by credible scientific evidence to justify their relevance and effectiveness.
c. Draft regulation to address the marketing of unhealthy food to children as recommended in the PLF.
d. Draft regulation to regulate the reducing of salt, sugar and trans-fat content in food products as recommended in the PLF.

2. **Strengthening Government commitment**
    a. Reduce unhealthy diets in the workplace especially for government and enforcement stakeholders. It is important for key public figures in government and in the health sector to conduct themselves as role models especially with consuming unhealthy food at public events and functions which undermines the effort to promote healthy eating within the community
    b. Encourage or mandate the provision of nutritious, low-calorie, and well-balanced meal options in workplace catering and events. This could include providing fruits, vegetables, and whole grains, and limiting sugary snacks, processed foods, and high-fat options.
    c. Organize quarterly workshops or seminars for employees that focus on healthy eating, balanced diets, and the risks associated with poor nutrition, such as obesity, heart disease, and diabetes.
    d. Provide incentives for employees to adopt healthy eating habits, such as subsidized healthy meal options or rewards for employees who meet nutrition goals (e.g. participation in a healthy eating challenge).

3. **Capacity building and strengthening**
    a. Providing opportunities for enforcement officers and relevant stakeholders to conduct secondment and attachments to international and regional organisations to gain specialized skills and laboratory expertise. Local personnel are required to operate the necessary equipment, and as such, acquiring these specialized skills is crucial for the long-term sustainability of operations. Ensuring that local staff are adequately trained not only enhances operational efficiency but also reduces reliance on external expertise, fostering self-sufficiency and resilience within the country.
    b. Explore the option of partnering with regional testing facilities or institutes, allowing for a more cost-effective approach while building local expertise considering that training programs for local enforcement officers and laboratory technicians would also be essential to ensure accurate testing and monitoring of products.

4. **Enhancing resource availability**
    a. Investment in proper facilities and resources to enable personnels to ascertain the salt, sugar and trans fatty content. This includes finding adequate space to

set up these facilities, also considering the additional expenses required to properly function the equipment such as certification, calibration and other annual permits.

b. Strengthen each stakeholder with funding and necessary resources, especially the Ministry of Revenue and Customs, Ministry of Agriculture, Food and Forestry, Ministry of Trade and Economic Development and Tonga Police. These are the main stakeholders who will be responsible for enforcing the new proposed legislative measures.

5. Strengthening Stakeholder Collaboration

a. Relevant agencies to establish clear protocols for testing and certification of imported food products to streamline the process which will ensure that goods meet the required standards for food safety standard purposes, consumer protection purposes before being subjected to taxes.

E. LEGISLATIVE RECOMMENDATIONS

1. It is recommended that the draft legislative provisions for the *Food (Marketing of Unhealthy Food and Sugar-sweetened Beverages to Children) Regulations* and the *Food (Salt, Sugar and Trans-fat) Regulations*, as outlined in Annex 5 and Annex 6 of the PLF respectively, be adopted as the foundation for the proposed legislative amendments.
2. According to the Attorney General's Office Legislative Drafting Manual 2019, the following process should be followed:
    a. Step 1: To commence the drafting process, the Ministry responsible must initiate the policy and legislative proposals, including preparing the necessary drafting instructions. This stage also involves coordinating and facilitating consultations on the policy to ensure broad input and alignment with stakeholders.
    b. Step 2: Once the policy proposal has been developed, it must be submitted to the Cabinet for review and approval. If the Cabinet approves the policy, a formal decision is issued that authorizes the commencement of the drafting of subsidiary legislation.
    c. Step 3: At this stage, the Ministry will seek assistance from the Attorney General's Office or a legislative drafting consultant. This is the stage where the

drafting instructions are clarified, and the draft legislation is developed. Consultations on the draft are conducted to gather feedback and ensure that it aligns with both local needs and international standards. The draft legislation will also be translated into both Tongan and English.

d. Step 4: The next step involves submitting the draft legislation to the Government Law Committee for review. The committee will consider both the Tongan and English versions of the draft and recommend any changes before it is sent for Cabinet approval.
e. Step 5: The final draft of the legislation is then submitted to the Cabinet for approval. Once the Cabinet approves the final version, the regulations can be formally enacted.

3. The proposed draft legislative provisions for *Food (Marketing of Unhealthy Food and Sugar-sweetened Beverages to Children) Regulations* are attached herein as **Annexure C.**
4. The proposed draft legislative provisions for *Food (Salt, Sugar and Trans-fat) Regulations are* attached herein as **Annexure D.**

V. LAWS RELATED TO NCD TAX MEASURES

A. Legislation Reviewed

1. Excise Tax Act 2007

The Excise Tax Act regulates and imposes excise tax on goods manufactured or imported into the Kingdom. This includes specifying what constitutes excisable goods, the processes involved in their manufacture, and the approval process for setting tax rates. It aims to generate government revenue, control certain goods, and manage economic activities related to the production and movement of excisable goods.

1.1. Excise Tax (Amendment) Order 2018

This Order imposed an excise tax rate on goods such as butter, dairy spreads, food with sugar content exceeding a certain measurement, turkey tail, alcohol and tobacco. This Order commenced on 9 July 2018.

1.2. Excise Tax (Amendment) (No.2) Order 2018

This Order amended the Order commencing on 9 July 2018 by deleting butter and dairy spreads from the table. This Order commenced on 15 August 2018.

1.3. Excise Tax (Amendment) Order 2020

This Order amended description and the excise tax for food with sugar content which was listed in the Order commencing on 9 July 2018. This Order commenced on the date of gazettal.

1.4. Excise Tax (Amendment) (No.2) Order 2020

This Order imposed an excise tax rate on mutton flaps and mutton breast. This Order commenced on 1 July 2020.

2. Consumption Tax 2003

This Act provides for consumption tax to be levied on both taxable supplies by a taxable person and taxable imports. The current tax rate is 15%, and it is payable on all imports into Tonga.

3. Customs Tariff Schedule – Customs Duty Amendment effective 5/7/2016

This schedule embodies a classification of goods for import and goods for export for both tariff and statistical purposes. For the purposes of classification of all imported goods an international system has been used, designated the Harmonized System Nomenclature published by the World Customs Organisation in Brussels. His Majesty in Council under clause 3 of the Customs Act 2007 approved the Customs Tariff which was effective 8 January 2014 and amended on 5 July 2016.

B. GAPS ANALYSIS

1. According to the PLF, the recommended tax rate is 10%-20% of the consumer price for tax measures to influence unhealthy foods. For Tonga, much of the tax imposed on imported alcohol is normally imposed through custom duties at a rate of 15% for volume of alcohol content with not more than 10% and others. However as for the locally manufactured alcohol these goods are subjected to excise tax.
2. Most of the imported sweetened foods and beverages are taxed at a rate of 15% - 20% for custom duties.
3. All imported products are subject to Consumption Tax of 15% which is calculated based on the total value of the goods.
4. There are no significant gaps identified in the current legal framework. To some extent, the existing laws and practices in Tonga align with the objectives of the PLF legislation plan, especially in terms of the imposition of taxes on alcohol, sweetened foods, and beverages.
5. However, potential gaps could arise if the proposal to impose import and excise taxes on food products containing certain levels of salt and trans fats is implemented.
6. The main challenge is that Tonga currently lacks the necessary facilities and infrastructure to effectively measure and enforce such taxes. Without the ability to evaluate and verify the salt and trans-fat content in food products, it would be challenging to implement and monitor these taxes accurately.
7. This limitation could hinder the effectiveness of such a proposal, highlighting a need for further investment in testing capabilities and resources to ensure the success of these regulatory measures.

C. AREAS FOR IMPROVEMENT

1. **Strengthen Government support**
    a. Government should re-direct tax revenues from alcohol, tobacco and unhealthy food to support public health initiatives including community health programs, such as building community gardens and health education outreach throughout the main island and to the outer islands. Also, these revenues can be used to establish an alcohol and drugs rehabilitation centre.
    b. Regular review of the tax regimes in Tonga and tax experts should be involved in designing health tax regimes that suit Tonga's circumstances and contexts.

2. **Enhancing resource capability**
    a. Strengthen monitoring and enforcement agencies to ensure price controls and tax policies are complied with. For instance, some retailers overprice exempt products like fruits, and consistent oversight is needed to ensure compliance.

3. **Capacity building and strengthening**
    a. Explore the option of partnering with regional testing facilities or institutes, allowing for a more cost-effective approach while building local expertise considering that training programs for local enforcement officers and laboratory technicians would also be essential to ensure accurate testing and monitoring of products for the imposition of relevant tax.

D. LEGISLATIVE RECOMMENDATIONS

1. There are no specific legislative recommendations. However, it is crucial to emphasize the importance of regularly reviewing Tonga's tax regimes. Given the rising burden of NCDs in the country, it is essential that tax experts participate in designing health-focused tax policies that are tailored to Tonga's unique context and challenges.
2. Additionally, there is a strong need for the government to consider re-directing tax revenues generated from these harmful products toward funding public health initiatives. These funds could be utilized to support a variety of community health programs, including the establishment of community gardens, which promote healthy eating and local food production. Furthermore, the revenue could be invested in setting up alcohol and drugs rehabilitation centres or health facilities to enable recovery.

VI. LAWS RELATED TO THE MARKETING OF BREASTMILK SUBSTITUTES

A. LEGISLATION REVIEWED

1. Price Control and Wages Act 1947

This Act commenced on 8 September 1947 with subsequent amendments in 1947, 1950, 1956, 1984, 2010 and 2013. It contains 25 sections altogether which aims to control the price of goods and services. The Act empowers the Competent Authority to fix maximum prices at which goods may be sold, to secure their availability at fair prices.

1.1 Latest List of Mark up for regulated goods approved by the Competent Authority

The most recent approved pricing on the regulated goods has 30 goods on it including food and beverages. Importantly, milk is a regulated product which extends to all types of milk including breastmilk substitutes or baby formulas. The most recent price for milk including baby formula is 10% over landed cost in Tongatapu.

2. Tonga National Strategy for the Prevention and Control of NCDs 2021-2025

Output 3.3 of the Persevering together through the Crisis to a Healthier Tonga sets down several activities to ensure breastfeeding campaigns are developed, implemented and reported on. The first activity is to advocate for the Government to adopt the International Code of Marketing Breastmilk Substitutes to support and protect exclusive breastfeeding.

3. International Code of Marketing of Breastmilk Substitute (“Code”)

The Code was adopted by the WHO in 1981 and the Code sets guidelines to regulate the marketing of breastmilk substitutes to protect and promote breastfeeding. The Code seeks to ensure that mothers make informed decisions about infant feeding based on accurate, unbiased information and that breastfeeding is not undermined by commercial influences.

B. GAPS ANALYSIS

1. Under the PLF, the promotion and protection of breastfeeding is primarily achieved through the implementation of the Code. The policy's overarching goal is to encourage, promote, and support breastfeeding, while regulating the marketing and promotion of breastmilk substitutes and other infant food products.
2. Additionally, it aims to provide accurate and consistent information on breastfeeding and the appropriate use of breastmilk substitutes. The framework aligns with the obligations set forth in Article 24 of the Convention on the Rights of the Child, which asserts the child's right to the highest attainable standard of health. Ultimately, the framework seeks to harness political commitment to promote, protect, and support breastfeeding through robust policy initiatives and legislation.
3. According to the MANA Dashboard updated report for the year 2021-2022, the ratings for marketing breastmilk substitutes across Fiji, Samoa, and Tonga vary. Fiji is rated green with two stars indicating that Fiji has the Marketing Controls (Foods for Infants and Young Children) Regulations 2010, which aims to protect breastfeeding and nutrition for children under five years old. Samoa is rated green with no star indicating there are regulations, but the implementation is low. Tonga is rated amber indicating that policies are under development.
4. Currently, there are no laws in Tonga regulating the marketing, labelling, advertisement, or promotion of breastmilk substitutes or any other infant food products, including skimmed or condensed milk, low-fat and standard milk, as well as feeding bottles, teats, and pacifiers.
5. This gap also extends to the rights of women to breastfeed publicly, as there are no laws specifically permitting or prohibiting breastfeeding in public spaces, on public transport, or in the workplace. While it is generally understood in theory that mothers are given time to breastfeed or may bring their babies to the workplace, this is not the practice nor is it encouraged and often remains unaddressed due to cultural sensitivities surrounding the issue.
6. As highlighted, the Prices and Wages Control Act designates the Competent Authority to regulate the pricing of certain goods, including milk. This regulation extends to all types of milk, including breastmilk substitutes. The most recent price for milk was set at 10% above the landed cost in Tongatapu. However, despite this pricing regulation, there are no specific laws addressing the marketing or promotion of breastmilk substitutes.

7. While the Consumer Protection (Product Safety & Labelling Standards) Regulations provide product safety and labelling standards for goods imported, manufactured, or traded in Tonga, these regulations do not specifically address breastmilk substitutes.
8. The labelling standards mandate that product labels must not be misleading or deceptive and must include necessary details such as the manufacturer's name, country of origin, usage instructions, content, storage information, and any potential risks or harms related to the product. However, these standards are general and do not include specific provisions for breastmilk substitutes.
9. Furthermore, all pre-packaged food products, including infant formula, must adhere to the Codex General Standard for the Labelling of Prepackaged Food, which sets requirements for clear and legible labels in either English or Tongan. Despite these general standards, there is still no specific regulation to ensure that the marketing and promotion of breastmilk substitutes are conducted in a manner that aligns with the principles of responsible advertising and the protection of breastfeeding.

C. AREAS FOR IMPROVEMENT

1. **Legislative Strengthening**
    a. Integrate the Code into local law through a new regulation, as proposed in the PLF. This Code can play a crucial role in improving infant health, supporting breastfeeding practices, and reducing health inequities caused by the aggressive marketing of breastmilk substitutes. With this regulation in place, the sale and distribution of breastmilk substitutes can be effectively monitored and regulated.

2. **Government Support through these areas**
    a. Advocate for more flexible policies concerning maternity leave and breastfeeding-friendly workplaces. These policies would support breastfeeding mothers by providing them with the necessary time and environment to continue breastfeeding after returning to work. By creating such policies, the government can make significant strides in encouraging and enabling breastfeeding while addressing the needs of working mothers.
    b. Introduce programs in schools and universities that educate young people about the importance of breastfeeding. By promoting breastfeeding education from an early age, Tonga can create a culture that values breastfeeding and understands

its long-term health benefits. Educational programs could be incorporated into the health curriculum, targeting both students and parents.

3. **Community engagement and support**
    a. Launch community awareness programmes about the importance of breastfeeding with a focus on educating the public about the numerous benefits of breastfeeding, not only for the health of infants but also for the well-being of mothers. These efforts should also emphasize the risks involved with feeding breastmilk substitutes to infants without proper advice from medical personnel, especially the selling of these baby formulas.

4. **Support for health professionals**
    a. Provide ongoing training for healthcare workers, including doctors, nurses, and midwives, on the importance of breastfeeding. Health professionals play a key role in guiding and supporting mothers, and they should be well-equipped to offer evidence-based advice on breastfeeding, as well as help mothers navigate challenges. Regular professional development opportunities will also ensure that healthcare providers are informed about the latest practices and policies that support breastfeeding.

5. Support for employers in the private sector
    a. Encourage businesses to implement breastfeeding-friendly policies, such as designated lactation rooms and flexible working hours for breastfeeding mothers. These policies would ensure that women can return to work while continuing to breastfeed, making it easier for them to balance their professional and maternal responsibilities. Employers could also be incentivized to adopt these practices through tax breaks or recognition programs.

D. LEGISLATIVE RECOMMENDATIONS

1. It is recommended that the draft legislative provisions for the *Food (Breastfeeding Promotion and Protection) Regulations* as outlined in Annex 4 of the PLF, be adopted as the foundation for the proposed legislative amendments.
2. According to the Attorney General's Office Legislative Drafting Manual 2019, the following process should be followed:

a. Step 1: To commence the drafting process, the Ministry responsible must initiate the policy and legislative proposals, including preparing the necessary drafting instructions. This stage also involves coordinating and facilitating consultations on the policy to ensure broad input and alignment with stakeholders.
b. Step 2: Once the policy proposal has been developed, it must be submitted to the Cabinet for review and approval. If the Cabinet approves the policy, a formal decision is issued that authorizes the commencement of the drafting of subsidiary legislation.
c. Step 3: At this stage, the Ministry will seek assistance from the Attorney General's Office or a legislative drafting consultant. This is the stage where the drafting instructions are clarified, and the draft legislation is developed. Consultations on the draft are conducted to gather feedback and ensure that it aligns with both local needs and international standards. The draft legislation will also be translated into both Tongan and English.
d. Step 4: The next step involves submitting the draft legislation to the Government Law Committee for review. The committee will consider both the Tongan and English versions of the draft and recommend any changes before it is sent for Cabinet approval.
e. Step 5: The final draft of the legislation is then submitted to the Cabinet for approval. Once the Cabinet approves the final version, the regulations can be formally enacted.

3. The proposed draft legislative provisions can be found in Annex 4 of the PLF, attached herein as **Annexure E**.

VII. CONCLUSION & JUSTIFICATION

A. In conclusion, the review highlights that while there are existing laws regulating liquor control, there are significant gaps when compared to the recommendations outlined in the PLF. Similarly, in areas such as the regulation of unhealthy food marketing to children, the marketing of breast milk substitutes, and efforts to reduce the salt, sugar, and trans-fat content in food, there are no laws currently addressing these issues. This creates a considerable gap when compared to the PLF's recommended legislative proposal.

B. Legislative measures, while essential, are only effective if they are properly implemented and enforced. At present, Tonga faces significant challenges in this area, indicating that the country is not yet prepared to introduce new legislative measures. This is primarily due to concerns about the ability to effectively implement and enforce such laws.

C. Extensive consultations with relevant stakeholders revealed that a major challenge in the effective implementation and enforcement of existing NCD-related laws is the insufficient allocation of resources. This issue is compounded by the critical need for capacity building and the competing priorities that, over time, contribute to a growing disinterest and diminished willpower in the fight against NCDs especially at the leadership level.

D. Considering this, it is suggested that Tonga's primary focus over the next twenty-four months should be on implementing policies, strengthening its enforcement capabilities and investing in capacity building initiatives. This can be achieved by equipping enforcement officers with the necessary resources, facilities, and training to ensure they are fully prepared to perform their duties.

E. Simultaneously, while efforts to enhance enforcement capacity are underway, Tonga should prioritize alternative strategies to combat the rising prevalence of NCDs.

F. Rather than relying solely on legislative measures at this stage, efforts should be directed towards public education campaigns that promote healthier lifestyles, such as proper nutrition and balanced diets. These initiatives can help raise awareness among the population and encourage behavioural changes that can reduce the burden of NCDs in the long term.

G. There are various resources that offer a comprehensive look at traditional Pacific Island foods, emphasizing their cultural importance, nutritional value, and potential health benefits. By promoting the consumption of these traditional foods, it seeks to reduce

reliance on processed imports, which are linked to rising rates of NCDs in Pacific communities. Some resources highlight the long-standing role food has played in the diet of Pacific Islanders, offering essential nutrients that contribute to overall health and well-being.

H. These resources can inform policies that encourage the consumption of locally grown, nutrient-rich traditional foods while supporting local farming initiatives and reducing dependency on imported, processed foods. Additionally, they can serve as valuable tools for educational campaigns within schools and local communities in Tonga. This approach should be closely aligned with the preparatory work for the proposed legislative amendments identified in the PLF.

I. To address the gaps in the liquor control area, it is evident that amendments to both the ILA and the TA are necessary. These changes will help strengthen the legal framework governing alcohol consumption.

J. However, for the other key areas highlighted in the PLF—such as the marketing of unhealthy food and SSBs to children, reducing salt, sugar, and trans-fats in food, and the marketing of breast-milk substitutes—new regulations need to be drafted for each.

K. Unlike the liquor and traffic-related amendments, these areas will require entirely new regulatory frameworks to address the specific health concerns as indicated in the PLF.

L. Each of these new regulations will demand a legislative drafting process of its own which will involve careful planning, extensive consultation, and close coordination across various sectors.

M. Successful implementation of these draft legislation will be contingent on securing the necessary funding, resources, and the active collaboration of all relevant stakeholders, including government agencies, law enforcement, civil society organizations, the private sector and the community.

N. Given the complexity of these tasks, it is recommended that the Ministry of Health and Tonga Health prioritize identifying the legislative measures that require immediate attention. This will ensure the effective allocation of resources and enable focused efforts on the most urgent areas in the fight against NCDs.

O. In summary, Tonga's immediate priority should be to strengthen enforcement capacity and implement policies, while simultaneously laying the groundwork for future legislative reforms. This balanced approach will ensure that both short-term and long-term strategies are in place to effectively combat NCDs and to ensure sustainability in these measures.

VIII. RECOMMENDATIONS

A. **Government of Tonga**

1. Implementation of policies or directions to address the following:

a. Reduce the harmful use of alcohol and unhealthy diets in the workplace especially for government and enforcement stakeholders. It is important for key public figures in government and in the health sector to conduct themselves as role models especially with consuming alcohol and unhealthy food at public events and functions which undermines the effort to promote responsible consumption of alcohol and promote healthy eating within the community

b. Implement clear workplace policies that limit alcohol consumption during work hours and prohibit alcohol use in the workplace. Policies should also outline the consequences for breaches.

c. Implement mandatory/random drug testing for civil servants, including enforcement officers and all relevant stakeholders. While this may require significant resources and commitment, it is essential to ensure transparency and accountability, particularly from those involved in the fight against illicit drugs.

d. Encourage or mandate the provision of nutritious, low-calorie, and well-balanced meal options in workplace catering and events. This could include providing fruits, vegetables, and whole grains, and limiting sugary snacks, processed foods, and high-fat options.

e. Re-direct tax revenues from alcohol, tobacco and unhealthy food to support public health initiatives including community health programs, such as the establishment of a drugs and alcohol rehabilitation centre.

f. Regular review of the tax regimes in Tonga and tax experts should be involved in designing health tax regimes that suit Tonga's circumstances and contexts.

g. Implement flexible policies concerning maternity leave and breastfeeding-friendly workplaces.

h. Encourage businesses to implement breastfeeding-friendly policies, such as designated lactation rooms and flexible working hours for breastfeeding mothers. Government could consider offering incentives to employers to adopt these practices through tax breaks or recognition programs.

2. **Strengthen resource allocation**
    a. Tonga Police have requested for vehicles for drug covert operations and there is a need for more alcohol breathalyser devices to be distributed across the main island and to the outer islands.
    b. Strengthen the Attorney General's Office with funding to upskill their current staff and to retain the experienced prosecutors to ensure stability and efficiency in their prosecutorial roles.
    c. Establish a drug rehabilitation centre to provide a critical support system for individuals struggling with substance abuse. Such a facility would offer a structured environment for rehabilitation, focusing on both physical and psychological recovery.
    d. Investment in proper facilities and resources to enable personnels to ascertain the salt, sugar and trans fatty content. This includes finding adequate space to set up these facilities, also considering the additional expenses required to properly function the equipment such as certification, calibration and other annual permits.
    e. Strengthen each stakeholder with funding and necessary resources, especially the Ministry of Revenue and Customs, Ministry of Agriculture, Food and Forestry, Ministry of Trade and Economic Development and Tonga Police.

3. **Capacity building**
    a. Funding or facilitating opportunities for enforcement officers and relevant stakeholders to conduct secondment and attachments to international and regional organisations to gain specialized skills and laboratory expertise and to train local personnels to operate the necessary equipment.
    b. Explore the option of partnering with regional testing facilities or institutes, allowing for a more cost-effective approach while building local expertise considering that training programs for local enforcement officers and laboratory technicians would also be essential to ensure accurate testing and monitoring of products.

B. **<u>Ministry of Health and Tonga Health</u>**

1. **Legislative Strengthening through the following**:
    a. Implement the recommended amendments to the ILA to bridge the identified gaps.

b. Implement the recommended amendments to the Traffic Act to bridge the identified gaps.
c. Draft new regulations to address the marketing of unhealthy food to children as recommended in the PLF.
d. Draft regulation to regulate the reducing of salt, sugar and trans-fat content in food products as recommended in the PLF.
e. Draft regulation to domesticate the Code as proposed in the PLF to regulate and monitor the sale and distribution of breastmilk substitutes

Considering the number of resources required, it is recommended that the Ministry of Health and Tonga Health prioritize identifying the legislative measures that require immediate attention. This will ensure the effective allocation of resources and enable focused efforts on the most urgent areas in the fight against NCDs.

2. In anticipation of introducing a new regulatory framework to regulate the salt, sugar, and trans-fat content in food, the Ministry of Health should consider establishing appropriate thresholds for Tonga, considering the NCD risk factors specific to Tonga's context and circumstances. These thresholds should be supported by credible scientific evidence to justify their relevance and effectiveness.
3. Offer training and information to employees about the risks of alcohol misuse, and the impact of excessive alcohol consumption on health and work performance.
4. Promote alcohol-free work events and gatherings to create a healthy and supportive work culture.
5. Introduce programs in schools and universities that educate young people about the importance of breastfeeding.
6. Provide ongoing training for healthcare workers, including doctors, nurses, and midwives, on the importance of breastfeeding.
7. Launch community awareness programmes about the importance of breastfeeding with a focus on educating the public about the numerous benefits of breastfeeding, not only for the health of infants but also for the well-being of mothers and communities.

C. **Other Relevant Stakeholders**

1. Improve collaboration between relevant stakeholders to establish clear protocols for testing and certification of imported food products to streamline the process which will ensure that goods meet the required standards for food safety standard purposes, consumer protection purposes before being subjected to taxes.
2. The Attorney General's Office needs to prioritize the submission of the Food Regulation 2024 to the Law Committee and Cabinet for review and hopefully to receive a timely approval of the final draft.

D. **Development Partners**

1. Provide technical and financial support and assistance to the Government of Tonga to strengthen NCD prevention and control measures and initiatives as recommended in Part A above.

IX. STAKEHOLDERS COMMENTS

On 16 December 2024, four out of the ten invited stakeholders attended the final consultation for the review of NCD-related legislation. The attendees included representatives from Tonga Police (Ms. Loluhama Mausia), the Ministry of Agriculture, Food and Forestry (Ms. Mele Kioa and Ms. Malina Lolo), the Public Service Commission (Ms. Tuitamala Vaka), and Tonga Health (Ms. ‘Ofeina Filimoehala and Ms. Joana Lavemai). Ms. Karen Fukofuka, an independent consultant, was unable to attend in person but provided her comments via email.

The following organizations were invited but did not attend the consultation, nor were any apologies provided: the Attorney General’s Office, Ministry of Health, Ministry of Revenue and Customs, Ministry of Trade and Economic Development, and the Ministry of Education and Training.

Tonga Police clarified the role of the Police Commissioner as Chairperson of the Liquor Licensing Authority, explaining that the Authority operates as a separate entity from Tonga Police. The Consultant clarified that the gap highlighted in the report did not specifically concern the Police Commissioner’s role in the Authority but the absence of a definition of the term "Minister" within the ILA. Tonga Police acknowledged the clarification and withdrew their comment. They agreed with the recommendation for enforcement officers to conduct random drug testing, noting that their management team was already exploring this initiative. Additionally, they supported recommendations to enhance their resources, including vehicles and financial support, and fully backed the proposal to establish a drug rehabilitation center. Tonga Police also indicated that they believe no further amendments to the Illicit Drugs Control Act are necessary. When asked about the status of the regulations for alcohol advertising, the Tonga Police representative stated that she was not aware of the current status.

The Ministry of Agriculture, Food and Forestry (MAFF) expressed their agreement with all the conclusions and recommendations, particularly emphasizing the urgent need to strengthen capacity building and resources.

The Public Service Commission (PSC) highlighted that current policies prohibit alcohol consumption in the office, while consumption outside working hours remains a personal choice. PSC acknowledged that alcohol is often available at government functions, which can lead to overconsumption. Regarding maternity leave, PSC noted that the current 90-day leave policy is generous, especially compared to the previous one-month policy. This leave is intended to support breastfeeding mothers, though some may opt not to breastfeed for

personal reasons. PSC also commented on the proposal to redirect health tax revenue from unhealthy foods to health initiatives, pointing out that much of the revenue is already allocated to health and education sectors, with the Ministry of Health receiving a significant portion.

Tonga Health agreed with all recommendations, particularly those aimed at strengthening the role of current stakeholders and enforcing existing policies. They acknowledged that the policy prohibiting the marketing of unhealthy foods in schools is enforced within the schools, but the proximity of shops outside school premises continues to facilitate children's access to unhealthy foods. Tonga Health also proposed banning the importation of foods from countries that produce high levels of salt, sugar, and trans fats. The Consultant confirmed once the Food Regulations 2024 is enforced, it requires that a food standards code be developed within 24 months, and this will set the threshold for the contents of salt, sugar and trans-fat in food. Tonga Health supported the recommendation for breastfeeding mothers to work remotely, citing the successful implementation during COVID-19. They sought clarification on their immediate responsibilities and expressed willingness to engage consultants to finalize draft laws regarding alcohol advertising and unhealthy food marketing to children if Tonga Police would not proceed due to disagreements with the WHO's health objectives. Tonga Health confirmed that, while the Ministry of Health receives most health tax revenue, a small portion is allocated to Tonga Health, with an approved budget of T$500,000 for the last financial year and an additional T$200,000 requested.

Independent Consultant commended the report as a thorough and comprehensive review of NCD-related legislation, praising its clarity and structure. The Independent Consultant suggested that a similar review of tobacco legislation would be valuable, although it was acknowledged that the Ministry of Health had already addressed this. The Independent Consultant particularly appreciated the inclusion of case laws, which highlighted key issues. She also pointed out that the connection between illicit drugs and NCDs is through mental health and acknowledged Tonga's leadership in addressing this issue as a national priority. Regarding food-related legislation, progress was noted as slower compared to alcohol and tobacco regulation, but the Independent Consultant agreed with the recommendations for advancing this work. She emphasized that while legislation is crucial, it must be clear, well-implemented, and enforced, with health promotion and advocacy actions also playing a key role. The Independent Consultant also acknowledged that while sugar-sweetened beverages are taxed at WHO-recommended rates, this has not led to significant changes in consumption patterns. She supported the recommendations related to breastmilk substitutes and suggested

that MOH and TongaHealth work with UNICEF to further this area. Ultimately, the Independent Consultant fully endorsed all the recommendations, recognizing them as clear and actionable, and emphasizing the importance of prioritizing these activities for 2025 SCI.

ANNEXURE A – LIQUOR CONTROL BILL

LIQUOR CONTROL BILL

Table of Contents

[A BILL FOR]

AN ACT to control and regulate liquor [and for related purposes][25]

ENACTED by [Parliament…] –

PART 1 – PRELIMINARY

[1] Short title and commencement

(1) This Act may be cited as the Liquor Control[26] Act [20…].

(2) This Act commences on [...][27]

[2] Interpretation/Definition

In this Act[28]:

"bar" means an area of the off-licensed premises where the predominant activity at the licensed times is to serve liquor to be consumed at the premises.

"bottle shop" means an off-licence issued under section [xx – LA to issue licence].

---

[25] This is a short form of a long title. The long form may be used by expressing the main parts of the Bill i.e. "to regulate and control the supply and demand for liquor [and to provide for administration and enforcement [and for related purposes]".

[26] PICTs to decide name of the Bill - whether "liquor" or "alcohol" (alcoholic beverages). However, "liquor' refers to beverages containing alcohol.

[27] Either on "on a date [appointed/nominated] by the Minister, [by notice in the Gazette]" or a '[fixed date]". The date should be retroactive 9future date) not retrospective (past date)

[28] Other terms to be added.

"licensed time" means the time specified in the licence for which liquor may be sold at the licensed premises.

"liquor"[29] —

(a) means a beverage that, at 20 degrees Celsius, has more than [1.15 per cent] alcohol by volume; and

(b) includes —

(i) any spirit, wine, ale, beer, porter, cider, berry, hop beer or any liquor of a strength exceeding [3 per cent] of proof spirit except methylated spirits; or

(ii) any other substance that comprises, makes up, contains or may be converted into a beverage under paragraph (a); or

(iii) any other liquid that contains ethanol (ethyl alcohol) that is intended for drinking.

"nightclub" means a premises where the predominant activity at the licensed times is dancing and entertainment.

"off-licence" means a licence issued under section [xx– LA to issue licence].

"on-licence" means a licence issued under section [xx– LA to issue licence].

"Liquor business" includes a business that manufactures, supplies or sells liquor for commercial gain, and includes an industry association that represents hotel and bar owners, liquor manufacturers, wholesalers or retailers, or other businesses that hold a liquor licence.

[3] Objects of Act

(1) The objects of this Act are:

(a) to protect the right of others to public health;

(b) to reduce harm associated with the consumption of liquor and drink driving;

(c) to discourage or deter others who do not consume alcohol from consuming it;

(d) to prevent consumption of liquor by young persons;

(e) to protect others from exposure to liquor advertisements or sponsorships or exposure to liquor generally;

(f) to ensure that liquor is properly labelled;

(g) to enhance awareness of the risks associated with the consumption of alcohol and drink driving;

(h) to facilitate the responsible development of the liquor and hospitality industries in a way that takes into account community safety; and

(i) to ensure that consumers are responsible —

(i) when consuming liquor; and

[29] This is adapted from the current PICT liquor laws.

(ii) for their behaviour if it is affected by consuming liquor.

(2) A decision made under this Act must have regard to the following principles on harm minimisation and community safety:

(a) protection of public health as the paramount consideration;

(b) responsible attitudes and practices towards the sale, supply, promotion and consumption of liquor should be encouraged;

(c) community safety should not be jeopardised;

(d) the liquor industry should be regulated in a way that minimises harm caused by liquor, including —

(i) adverse effects on health; and

(ii) personal injury; and

(iii) property damage; and

(iv) violent or anti-social behaviour; and

(e) community amenity, social harmony and wellbeing should be protected and enhanced through the responsible sale, supply, promotion and consumption of liquor; and

(f) the safety, health and welfare of people using licensed premises should be paramount; and

(g) noise from licensed premises should not be excessive; and

(h) licensed premises should not be located where they would be likely to cause undue disturbance, inconvenience or offence to people —

(i) lawfully at adjacent or nearby premises; or

(ii) because of the premises' proximity to a place of public worship, a hospital or a school; and

(i) licences should only be issued to people who comply with the law, and are likely to continue to comply with the law; and

(j) licences should only be issued for premises that comply with the law, and are likely to continue to comply with the law.

[4] Application

This Act extends to the exclusive economic zone [and contiguous zone].[30]

[5] Exemptions from liquor licences

This Act does not apply to the following:

(a) the dispensing or sale of liquor in medicines supplied by a doctor or pharmacist;

(b) the supply, possession, consumption or purchase of liquor that is authorised by any other enactment;

[30] Use cross-referential definitions to your marine space's legislation e.g. Marine Spaces Act [Fiji]. "EEZ" has the meaning in the [Marine Spaces Act].

(c) the sale and supply of liquor at a mess or other outlets for military, police or prison officers;

(d) the sale of liquor by an auctioneer under an auction;

(e) the sale of liquor seized, confiscated or forfeited by law;

(f)) any other prescribed sale, purchase, supply, possession or consumption.

PART 2 – LIQUOR LICENSING AUTHORITY

[6] Establishment [and members]

(1) The [Licensing Authority] (LA) is established.[31]

(2) The members[32] of the [LA/Board145[33]] are: …

(3) At least […] members are to be women.

[7] Appointment

(1) The [Minister] may appoint members.

(2) The following persons are not eligible to be appointed:

(a) a person who is or in the last [2] years was[34] employed in or engaged by a liquor business;

[8] Terms

(1) A member is:

(a) appointed for a term of up to [3] years; and

(b) eligible to be re-appointed; and

(c) entitled to a sitting allowance fixed by the [Minister].

(2) If the term of a member expires, the member continues in office until re-appointed or the date of appointment of a new member.

[9] Resignation

A member may resign in writing to the [LA].

[10] Suspension and termination

(1) The [Minister] may suspend a member if the member:

(a) is alleged to have committed misconduct in office;

(b) is being investigated for a crime;

(2) The [Minister] may terminate the appointment of a member if the member:

[31] Most PICTs have non-legal personality status.
[32] The precedent in some other countries (such as Samoa) is to have some public officers (Police, etc.) as members also.
[33] For a statutory corporation it should be referred to as Board of the LA.
[34] Consider whether it is a blanket (total) prohibition or to tag it for a certain number of years.

(a) commits misconduct in the office; or

(b) fails to disclose any interest relating to the issuing of a licence; or

(c) contravenes a provision of this Act; or

(d) purchases or attempts to purchase liquor from any licensee at a special or discounted cost, including any complimentary item or gifts; or

(e) fails to perform their functions, powers and duties under this Act due to illness, incapacity or any other reason.

(3) The [Minister] must give a member the right to be heard before deciding to suspend or terminate the appointment of the member.

(4) The appointment of a member is automatically terminated:

(a) from the date of conviction if the member is convicted of an offence; or

(b) from the date the member acquires a share or interest in the business of a licensee.

[11] Meetings and declaration of interests

(1) The following applies to a meeting of the [LA/Board]:

(a) the chairperson convenes and presides at meetings; and

(b) if the chairperson is absent, a member elected by the members present presides at that meeting; and

(c) […] members constitutes a quorum; and

(d) the Board may, by resolution, determine other rules and procedures of meetings.

(2) A member who has an interest in a matter before the Board:

(a) must immediately declare the interest to the Board; and

(b) must not be present when the Board deliberates or votes on the matter.

[12] Secretary

The [xx] may appoint a public officer as secretary to the [LA] to carry out secretarial functions for the [LA].

PART 3 – LIQUOR LICENCES

Division 1 – Obtaining licences

[13] Power to issue liquor licences

The [LA] may issue the following licences:

(a) a manufacturing licence;

(b) an import licence;

(c) an export licence;

(d) any type of off-licence;

(e) any type of on-licence;

(f) a club licence;

(g) a special licence.

[14] Manufacturing licences

A manufacturing licence authorises the licensee:

(a) to manufacture liquor at the single licensed premises; and

(b) to sell the manufactured liquor to a retail licensee.

[15] Import [and export[35]] licences

(1) An import licence authorises the licensee to import liquor to be sold under a retail licence.

(2) An export licence authorises the licensee to export liquor].

[16] Off-licences

(1) The types of off-licences are:

(a) wholesale licence for licensed wholesale premises; and

(b) retail licence for licensed retail premises; and

(c) [bottle-shop] licence for licensed bottle-shop premises; and

(d) any other prescribed type of off-licence.

(2) An off-licence authorises the licensee to sell liquor:

(a) at the single licensed premises; and

(b) in a sealed container for consumption off the premises; and

(c) at the licensed times.

[17] On-licences

(1) The types of on-licences are:

(a) bar licence for licensed bar premises; and

(b) nightclub licence for licensed nightclub premises; and

(c) restaurant licence for licensed restaurant premises; and

(d) special event licence for licensed event premises; and

(e) vessel or aircraft licence; and

(f) any other prescribed type of on-licence.

[35] Only relevant if your jurisdiction also manufactures and exports liquor.

(2) An on-licence authorises the licensee to sell liquor:

(a) at the single licensed premises; and

(b) in an open container for consumption at the premises; and

(c) at the licensed times.

[18] Club licences

(1) A club licence authorises the club to sell liquor:

(a) in stated parts of the single licensed premises; and

(b) in —

(i) open containers for consumption at the premises; or

(ii) sealed containers for consumption off the premises; and

(c) at the licensed times.

(2) The club must only sell liquor to a person aged [21] or over:

(a) who is a member of the club; or

(b) who is at the licensed premises as a temporary member of the club; or

(c) who is —

(i) at the licensed premises at the invitation of a member (aged [21] years or over) of the club who is also at the premises; and

(ii) authorised by the club to be at the premises.

[19] Applications for licences

(1) A person may apply to the [LA] for a licence in [an approved form/a prescribed form]. (2) The form must:

(a) state the type of licence; and

(b) include complete details about —

(i) the applicant and any licensee associate; and

(ii) the proposed licensed premises; and

(c) include a police certificate (dated not earlier than [3] months before the date of the application) for the applicant and any licensee associate; and

(d) include evidence that the operation of the business at the premises under the proposed licence complies with the lease where the premises are located; and

(e) include —

(i) the final floor plans of the premises approved by the planning authority in the development approval for the premises; and

(ii) the occupancy or ownership certificate of the premises; and

(f) include a risk-assessment management plan for the premises, covering occupational safety and health, noise, security and any prescribed other matter; and (g) include the application fee.

[20] Renewal applications

(1) A licensee may apply to the [LA] for renewal of the licence.

(2) The application is:

(a) to be in a [prescribed/approved form]; and

(b) to be filed [insert time]; and

(c) to include the application fees and any other prescribed matters.

(3) Sections [xx – publication] and [xx – reports] apply to this section, with necessary modifications.

[21] Publication of applications

(1) The applicant must:

(a) display a notice about the application at the proposed licensed premises; and

(b) publish the notice in [a newspaper or any other prescribed manner]; and

(c) display or publish the notice within [5 working] days of filing the application.

(2) The notice must set out:

(a) the name, address and contact of the applicant; and

(b) the type of licence applied for; and

(c) the address of the proposed licensed premises; and

(d) any other prescribed information.

(3) The [LA] must not process the application if notice under subsection (1) is not given.

[22] Report of agencies

(1) The applicant must also send a copy of the application to the following government agencies:

(a) the Police for a police report; and

(b) the Ministry of Health for a health report; and

(c) [the provincial/local/town authority for planning report;]

(2) An agency under subsection (1) must:

(a) inspect the proposed premises to be licensed; and

(b) discuss the application with —

(i) the applicant; or

(ii) the applicant associate; or

(iii) any other person who may provide information that is relevant to the application or relates to the applicant or the licensee associate; and

(c) obtain any view or recommendation of the fire authority for the fire safety measures of the proposed premises; and

(d) prepare a written report to the [LA].

(3) The police report must include the following matters:

(a) suitability, safety or security of the premises, including any security personnel arrangements; and

(b) security of display or storage areas for liquor; and

(c) any criminal record of the applicant or licensee associate; and

(d) any other prescribed matters.

(4) The health report must include the following matters:

(a) health and sanitary conditions of the premises; and

(b) fire safety conditions of the premises, with the views and recommendations of the fire authority on any cooking facilities; and

(c) any other matters relating to health and the public interest including the desirability of reducing or limiting the number of liquor licences within a given area; the desirability of ensuring the secure storage of liquor; and the desirability of protecting the amenity of the local area and preventing public disturbances and intoxication on the premises.

[23] Objections

(1) After a notice is given under section [xx – publication of applications], a person may give written objections to the [LA] about the:

(a) suitability of the premises to be licensed; or

(b) suitability of the applicant or licensee associate.

(2) The [LA] must take into account any objection that is relevant to the matters referred to in subsection (1) when deciding a new or renewal application.

[24] Hearing/determining applications

(1) This section applies when the police report and health report are received.

(2) The [LA] may [hear and[36]] determine the application when the police report and the health report are both received.

[36] '[hear and]" to be included if the process of determining applications requires a hearing.

(3) The [LA] must issue a notice of [hearing/determining] of the application setting out: (a) the applicant and any reference to the application and licence type; and

(b) the place, address, date and time of [hearing/determination] of an application; and (c) any other prescribed matter.

(4) The [LA] must serve the notice on:

(a) the applicant; and

(b) any person making an objection under section [xx – objections]

(5) Regulations may prescribe any other matter about [hearing/determining] of applications.

[25] Decisions

(1) The [LA] must issue or renew a licence only if satisfied that:

(a) the age for an individual applicant is aged over [21] years; and

(b) the applicant is suitable to be licensed; and

(c) the associate is suitable to be involved with the licence; and

(d) if the [LA] requires the applicant to give information about the associate, the information does not affect the applicant's suitability to hold the licence; and

(e) the proposed premises —

(i) are suitable premises for the licence; and

(ii) comply with this Act; and

(f) the applicant complies, and is likely to continue to comply, with the requirements of this Act.

(2) The [LA] must:

(a) decide the application, not later than [40] working days after all the reports under section [xx – reports] are received; and

(b) tell the applicant about the decision on the application, within [10] working days of date of the decision; and

(c) give reasons if the application is refused.

Division 2 – Other provisions on licences

[26] Conditions of licences

(1) A licence is subject to:

(a) the condition that the licensee —

(i) complies with this Act; and

(ii) must ensure that the licensed premises continues to comply with this Act; and

(b) any other condition —

(i) imposed by the [LA] when the licence is issued, renewed, transferred or amended; or (ii) prescribed by Regulation.

(2) Without limiting subsection (1)(b)(i), the [LA] may impose one or more of the following conditions on a licence:

(a) that stated inspection requirements must be complied with;

(b) that stated reporting requirements must be complied with;

(c) that stated records must be kept;

(d) that security measures (including security personnel) must be provided generally or for stated events;

(e) that staff and any security personnel must be trained to a required level of competency;

(f)) that people must not be allowed to enter the licensed premises after a stated time; (g) for an on-licence, that after midnight —

(i) liquor must not be served in glass; and

(ii) shots of liquor must not be served;

(h) that the licensee keeps a register, in a form approved by the [LA] that records details of any violence or anti-social behaviour occurring on the premises;

(i) that other security measures, such cameras, must be provided on the licensed premises or in other areas under the control of the licensee in the vicinity of the licensed premises;

(j) that stated requirements about security measures must be complied with.

(3) A Regulation may prescribe requirements for security measures mentioned in subsection (2).

[27] Terms of licences

A licence:[37]

(a) commences on the date the new or renewed application is granted; and

(b) expires on [31 December] following the date of granting the new or renewed licence.

[28] Amendment of licences

(1) The [LA] may, with or without conditions, amend a licence:

(a) on its own initiative; or

(b) on application by the licensee setting out the nature of amendment.

(2) The [LA] must first notify and hear the licensee before making any amendment under subsection (1)(a).

[37] Consider whether certain licences dealing with supply and not consumption on premises (for example, manufacturing, off-licences, etc.) could be granted for a longer period (for example, up to five years) subject to annual inspections.

[29] Transfer and replacement

(1) The [LA] may, on application by the licensee, approve the transfer of the licence to another person or new premises.

(2) Section [xx], requiring the provision of reports by government agencies, applies to the transfer of licences.

(3) The [LA] may, on application of the licensee, replace the licence if the licence is damaged or lost.

[30] Ceasing operations

(1) A licensee who intends to cease operating the licence must first apply to the [LA] to cancel the licence.

(2) The licensee must surrender the cancelled licence to the [LA].

[31] Suspension of licences

(1) The [LA] may suspend a licence if the licensee is:

(a) alleged to have contravened or is being investigated for contravening the licence or a condition of the licence; or

(b) is charged with an offence under this Act.

(2) The licence is suspended until:

(a) the final determination of the contravention of the licence or a condition of the licence; or

(b) revoked under section [xx – revocation].

[32] Revocation of licences

The [LA] may revoke a licence if the licensee has been proven to have breached the licence or a condition of the licence or has been convicted of an offence under this Act or any other law.

[33] Right to be heard The [LA] must give the licensee the right to be heard before a decision to suspend or revoke the licence is made.

PART 4 – PERMITTED HOURS

[34] Permitted hours for on-licences and off-licences

The permitted times for the sale of liquor under each licence type are:

	Licence type	Opening hour	Closing hour

(a)	Off-licence		
(b)	Bar		
(c)	Nightclub		
(d)	Vessel		
(e)	Club		
(f)	Restaurant		

[35] Permitted hours for special licences

The LA must specify the permitted hours for sale or supply or liquor under a special licence.

PART 5 – ADVERTISEMENT[38] AND LABELLING

Division 1 – Advertising

[36] Unacceptable practices and promotions

(1) A licensee must not engage in, or allow another person to engage in, an unacceptable practice or promotion in the conduct of business on the licensed premises. (2) For subsection (1), each of the following is an "unacceptable practice or promotion": (a) a practice or promotion that encourages the rapid, irresponsible or excessive consumption of liquor;

(b) a practice or promotion that discourages a customer from monitoring or controlling the customer's consumption of liquor;

(c) a practice or promotion that appeals to children, for example, because of the use of a design, name, motif or character that is likely to be attractive to children;

(d) a practice or promotion that is indecent or offensive;

(e) a practice or promotion that uses an emotive description that is likely to encourage the irresponsible consumption of liquor;

(f) a practice or promotion that involves providing free drinks, or providing drinks at discounts, in a way that encourages customers to consume excessive amounts of liquor or consume liquor more rapidly than they would otherwise do;

(g) a prescribed practice or promotion.

(3) A person commits an offence who contravenes subsection (1).

[37] Responsible practices and promotions

(1) A licensee must ensure that, in the conduct of business on the licensed premises, the consumption of liquor is sold in a manner which is consistent with the law, which shall include the following measures:

[38] Adapted from the Queensland liquor law.

(a) for licensees of an on-licence, having non-alcoholic and low alcohol beverages available;
(b) supplying liquor in standardised quantities that can be recognised by customers;
(c) serving customers half-measures of spirits on request;
(d) any other prescribed practice or promotion that encourages the responsible consumption of liquor.
(e) ensuring that drinking water is available at all times free of charge for customers.
(2) Failure to comply with subsection (1) is a ground to revoke the licence.

[38] Providing a safe environment and preserving amenity

(1) A licensee must, in the conduct of business on the licensed premises:
(a) provide and maintain a safe environment in and around the licensed premises; and (b) take all reasonable steps to ensure the use of the premises does not adversely affect the amenity of the area in which the premises are located; and
(c) take all reasonable steps to ensure the behaviour of persons entering or leaving the premises does not adversely affect the amenity of the area in which the premises are located.
(2) If a licensee knows or has a reason to believe that a licence offence is being, or is about to be, committed in or around the licensed premises, the licensee must take reasonable steps to stop or prevent the commission of the offence.
(3) For subsection (2), an offence is a “licence offence” if the commission of the offence may reasonably be expected to have an adverse impact on:
(a) the health or safety of a person in or around the licensed premises; or
(b) the amenity of the area in which the premises are located.
(4) Failure to comply with subsection (1) or (2) is a ground to revoke the license.
(5) For the purposes of subsection (1) and (2), the amenity of the area in which the premises is located may be adversely affected as a result of excess noise, litter, excess crowding and obstruction of road and foot traffic in the areas adjacent to the licensed premises.

[39] Engaging in prescribed practices

(1) A licensee:
(a) must, in the conduct of business on the licensed premises, engage in a prescribed positive practice; and
(b) must not, in the conduct of business on the licensed premises, engage in, or allow another person to engage in, a prescribed unacceptable practice.
(2) For subsection (1), a Regulation may prescribe a practice to be a positive practice or an unacceptable practice for the purposes of:

(a) providing and maintaining a safe environment in or around licensed premises; and (b) ensuring the use of the premises does not adversely affect the amenity of the areas in which they are located.

(3) Failure to comply with subsection (1)(a) or (1)(b) is a ground to revoke the licence.

(4) A licensee commits an offence who contravenes subsection (1)(a) or (1)(b).

[40] Advertising

(1) A licensee must not advertise or allow any other person to advertise:

(a) the availability of the following for consumption at the licensed premises —

(i) free liquor; or

(ii) multiple quantities of liquor, such as two drinks for the price of one; or

(b) the sale price of liquor at the on-licensed premises; or

(c) a promotion (such as, happy hours or all you can drink) that is likely to indicate to an ordinary person the availability of liquor, for consumption on the on-licensed premises, at a price less than that normally charged for the liquor.

(2) A person does not contravene subsection (1) if:

(a) the advertising happens only within the licensed premises; and

(b) the advertisement is not visible or audible to a person who is outside the licensed premises.

(3) A licensee must not advertise or allow any other person to advertise anything that is, or would be if it were engaged in, an unacceptable practice or promotion under section [37].

(4) A licensee commits an offence who contravenes subsection (1) or (3).

(5) In this section: “advertise” —

(a) means to advertise in any way or means including, in any of the following ways —

(i) by signage (including a billboard or poster);

(ii) in print (including a newspaper or magazine);

(iii) orally; (iv) electronically (including television, radio, cinema or the internet); and

(b) includes any form of commercial communication or message that is designed to increase or has the effect of increasing the recognition, appeal or consumption of liquor.

[41] Ground for issuance of compliance notices

(1) The [LA] may issue a compliance notice if the [LA] has a reason to believe a licensee: (a) is engaging in an unacceptable practice or promotion that contravenes section [37]; or

(b) has engaged in an unacceptable practice or promotion that contravenes section [37] in circumstances that make it likely the contravention will continue or be repeated; or

(c) is advertising in a manner that contravenes section [40]; or

(d) has advertised in a manner that contravenes section [40] in circumstances that make it likely the contravention will continue or be repeated.

(2) The [LA] may issue a compliance notice if the [LA]: (a) has a reason to believe a licensee —

(i) is engaging in a practice or promotion in the conduct of business on the licensed premises; or

(ii) has engaged in a practice or promotion in the conduct of business on the licensed premises in circumstances that make it likely the practice or promotion will continue or be repeated; or 124

(iii) is advertising a matter relating to the business conducted on the licensed premises; or

(iv) has advertised a matter relating to the business conducted on the licensed premises in circumstances that make it likely the advertisement will continue or be repeated; and (b) considers that, having regard to the purposes of this Act, the practice, promotion or advertisement is contrary to the public interest.

(3) A Regulation may be made about practices, promotions or advertisements that may be considered to be contrary to the public interest for subsection (2).

[42] Giving of notice

(1) The [LA] may give to the licensee a notice ("compliance notice") stating the following: (a) that the [LA] —

(i) holds the belief mentioned in section [41](1); or

(ii) holds the belief mentioned in section [41](2)(a) and considers the practice, promotion or advertisement is contrary to the public interest;

(b) a description of the practice, promotion or advertisement;

(c) briefly —

(i) for section [41](1), how it is believed section [37] or [40] is being contravened or has been contravened; or

(ii) for section [41](2), why the [LA] considers the practice, promotion or advertisement is contrary to the public interest;

(d) whichever of the following that applies in the circumstances —

(i) that the licensee must not engage, or continue to engage, in the practice or promotion; (ii) that the licensee must not continue or repeat the advertisement;

(iii) that the licensee must take particular action to remedy the contravention, or avoid further contravention, of section [37] or [40];

(e) that it is an offence to fail to comply with the compliance notice unless the licensee has a reasonable excuse.

(2) For subsection (1)(d)(iii), the compliance notice may require the licensee to ensure stated harm minimisation measures are in place whenever a licensee engages in a particular practice.

[43] Complying with notice

(1) The licensee must comply with the compliance notice issued under section [42] unless the licensee has a reasonable excuse.

(2) The compliance notice may state other matters the [LA] considers appropriate.

(3) Failure to comply with a compliance notice is a ground to revoke the licence.

[44] Licensee may apply to amend or revoke notice

The licensee given a compliance notice may, at any time while the notice is in force, apply to the [LA] to amend or revoke the notice.

[45] Validity and review of notice

(1) A compliance notice continues to have effect until it is revoked unless the compliance notice states otherwise.

(2) While a compliance notice remains in force, the [LA] must review it at [1 yearly interval] to ensure it remains appropriate. 125

Division 2 – Labelling

[46] Labelling of liquor[39]

(1) A person must not sell or supply liquor unless the label states:

(a) the alcohol content in [mL/100 g, mL/100 mL] or as the percentage of alcohol by volume, if liquor contains at least [1.15%] alcohol by volume; or

(b) the alcohol content in words to the effect ‘CONTAINS NOT MORE THAN X% ALCOHOL BY VOLUME if the liquor contains —

(i) up to [1.15%] alcohol by volume; or

(ii) at least [0.5%] and up to [1.15%] alcohol by volume; and

(c) the health warning relating to harm caused by or effect of liquor consumption;

[39] Adapted from the Australia and New Zealand Food Standards Code – Standard 2.7.1 – Labelling of alcoholic beverages and food containing alcohol. Available at: https://www.legislation.gov.au/Details/F2016C00176

(d) any other prescribed matter.

(2) The statement on the label must be accurate to within:

(a) for beer, cider or perry, [0.3%] alcohol by volume;

(b) for spirits, liqueurs, fortified wine, fortified fruit or vegetable wine, and all other alcoholic beverages containing more than [1.15%] alcohol by volume, [0.5%] alcohol by volume;

(c) for wine and fruit wine (including sparkling forms), and wine products and fruit or vegetable wine products containing more than [6.5%] alcohol by volume, [1.5%] alcohol by volume.

(3) A person commits an offence who contravenes subsection (1).

[47] Statement of the number of standard drinks

(1) This section applies if the label states the number of standard drinks in the bottle or package of liquor and the liquor contains more than [0.5%] alcohol by volume, measured at [20°C].

(2) A person must not sell or supply the liquor unless the label on the liquor accurately states the number of standard drinks in the bottle of package of liquor.

(3) The statement in the label must be accurate to:

(a) the first decimal place, for up to [10 standard drinks]; or

(b) the nearest whole number of standard drinks, for more than [10 standard drinks].

(4) In this section: “standard drink”, for a liquor, means the amount which contains [10 grams] of ethanol when measured at 20°C.

(5) A statement is not required for liquor packaged prior to [date].

(6) A person commits an offence who contravenes subsection (2).

[48] Representations

(1) A person must not sell or supply liquor that:

(a) contains more than [1.15%] alcohol by volume; and

(b) is represented as a low alcohol beverage.

(2) A person must not sell or supply liquor with a label that states that the liquor:

(a) is more than 0.5% alcohol by volume; and

(b) includes the words “non intoxicating” or words of similar meaning.

(3) A person must not sell or supply a food product that:

(a) contains liquor; and

(b) is represented in a form which expressly or by implication suggests that the product is a nonalcoholic confection or non-alcoholic beverage.

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

PART 6 – PROTECTION OF YOUNG PERSONS

[49] Definition[40]

In this Part: "young person" means a person aged under [21] years.[41]

[50] Sale and supply of liquor

(1) A person must not:

(a) sell or supply liquor to a young person; or

(b) send a young person to purchase or collect liquor from a licensed premises; or

(c) give possession or control of liquor at the licensed premises to a young person; or (d) allow a young person to possess or control liquor at the licensed premises.

(2) A person commits an offence who contravenes subsection (1).

[51] Presence of young persons on licensed premises

(1) A licensee must not allow a young person into the licensed premises unless:

(a) the licensed premises provide cooked meals; and (b) the young person —

(i) is accompanied by a responsible adult; and

(ii) is at the licensed premises to have a meal only.

(2) A young person has the right to be in a licensed restaurant to have a meal only.

(3) A person commits an offence who contravenes subsection (1).

[52] Due diligence check on age

(1) This section applies:

(a) if there is a doubt about the age of a person who is buying or is intending to buy or to be supplied with liquor; or

(b) to licensed premises.

(2) A young person must not:

(a) for subsection (1)(a) or (b), be sold or supplied with liquor; or

(b) for subsection (1)(b), enter or remain in licensed premises unless the young person—

(i) is accompanied by a responsible adult for a purpose other than the consumption or supply of liquor; or

(ii) is a licensee's employee aged between [18 and 21][42] years when working in the premises.

[40] Definitions may be moved to the general definition clause

[41] A "young person" may be defined as a person aged under 21 years or under 18 years. It is recommended that the age threshold defined here matches the age threshold defined for smoking tobacco products.

[42] PICTs to check range.

(3) A licensee may remove from licensed premises a young person who enters orremains atthe premises contrary to subsection (2)(b).
(4) A licensee commits an offence who contravenes subsection (2)(a) or (b).

[53] False identification

A person commits an offence who uses another person's document of identification, or who forges or fraudulently alters one's own document of identification or the document of another person in order to:
(a) enter or remain (or both) in licensed premises; or
(b) buy or be supplied liquor.

[54] Defence

It is a defence to an offence committed by the licensee or their agent under section [50](1)(a), section [50] (1)(d), section [51], or section [52](2)(a) if the document of identification of the young person was produced, inspected and checked by the licensee ortheir agent, who reasonably concluded thatthe person producing it was not a young person.

PART 7 – OFFENCES

[55] Offences by licensees

(1) A licensee commits an offence if the licensee:
(a) sells liquor from a place that is not licensed premises; or
(b) sells liquor outside the times the licensee is licensed to sell liquor; or
(c) contravenes a condition of the licence.
(2) A liquor placed anywhere in the licensed premises is presumed to be for sale unless proven that it is not for sale.

[56] Licensee to ensure responsible sale and service of liquor

(1) A licensee must not allow a person to sell or serve liquor under the licence unless the person:
(a) has successfully completed a course approved by the [LA]; or
(b) has been engaged in the sale or serving of liquor for up to [3] months and is —
(i) undertaking an approved course; or
(ii) formally enrolled in an approved course to be undertaken within [3] months from the day on which the person is permitted to sell or serve the liquor.
(2) The [LA] may direct an applicant to undertake an approved course.

(3) A licensee must:

(a) keep records on the approved course and the names of persons under subsection (1) who have completed it, or who are or will be undertaking it; and

(b) produce the records if required by the [LA].

(4) The [LA] may exempt the licensee of a [special licence] from the requirements of this section.

(5) A licensee commits an offence if the licensee:

(a) contravenes subsection (1); or

(b) fails to keep, or maintain, or produce records under subsection (3).

[57] Control of business

(1) A licensee must exercise effective control of the liquor business at any off-licensed premises or on-licensed premises.

(2) A licensee who contravenes subsection

(1) commits an offence.

[58] Bar restrictions

(1) It is an offence to sell at a bar:

(a) liquor to a person who has already purchased a reasonable quantity of liquor yet to be consumed; or

(b) more than one drink of liquor at a time to a person to be consumed by the person. (2) In subsection (1)(b):

“one drink of liquor”, for ale, beer, stout, porter or hop beer, means a bottle, jug or glass containing not more than [forty-two fluid ounces or 1.2 litres].

[59] Use of licensed premises to commit offences

(1) The licensee of the on-licensed premises commits an offence who, intentionally or deliberately, allows the licensed premises to be used to commit an offence under this Act or another Act.

(2) A conviction under this section is a ground to suspend or cancel the licence.

[60] Intoxicated persons

(1) This section applies to:

(a) a person at any on-licensed premises; or

(b) a licensee or a licensee’s associate; or

(c) any other person engaged in the sale, supply, service or promotion of liquor at the on-licensed premises.

(2) A person commits an offence who:

(a) being a licensee, authorises an intoxicated person to sell or serve liquor on the licensed premises; or

(b) while being intoxicated, sells or serves liquor on the licensed premises.

(3) A person commits an offence if the person:

(a) sells liquor to an intoxicated person; and

(b) purchases liquor for another person who is intoxicated.

(4) It is a defence to prove that all reasonable steps were taken to prevent the intoxicated person from obtaining liquor.

[61] Preserving order

(1) The licensee of an on-licensed premises:

(a) must ensure that order is maintained at the on-licensed premises; and

(b) must not — 129

(i) permit intoxication at the on-licensed premises; or

(ii) allow into the on-licensed premises a person if the licensee has reason to believe that the person is intoxicated.

(2) The licensee:

(a) must, remove from the on-licensed premises an intoxicated person, with the assistance of a police officer if necessary; and

(b) may, with the assistance of employees or a police officer, use reasonable force, as may be necessary, to remove the intoxicated person.

(3) An intoxicated person commits an offence if the person:

(a) is requested by the licensee to leave the premises; and

(b) refuses or fails to leave voluntarily.

(4) It is a defence to prove that all reasonable steps were taken to prevent intoxication. (5) In this section:

“intoxication” means a person’s speech, balance, co-ordination or behaviour is noticeably affected, and it is reasonable in the circumstances to believe that the affected speech, balance, co-ordination or behaviour is the result of the consumption of liquor; “request by licensee” includes a request by a licensee’s employee or police officer.

[62] Name of manager, etc., to be displayed

(1) A licensee must display in a conspicuous place at the licensed premises:

(a) the name of —

(i) the licensee's associate who manages the licensed premises; or

(ii) for a club, the secretary of the club;

(b) the licence (including a special event licence); or

(c) any additional conditions that apply to the licensed premises; or

(d) the prohibition or restriction of entry of young persons; or

(e) any prohibition order against a person.

(2) A licensee must replace the display if it is defaced, obliterated, destroyed or removed. (3) The [LA] may, byorder, close the licensed premises untilthe licensee complies with subsection (1)or(2).

[63] Liquor to be received and stored only at licensed premises

(1) A licensee (including an employee or agent) must not receive or store liquor at any other place except at the licensed premises.

(2) A licensee commits an offence who contravenes subsection (1) [+ penalty].

[64] Disturbance or disorderly conduct from licensed premises

(1) A licensee must ensure that the sale or consumption of liquor on the licensed premises does not:

(a) unduly annoy or disturb persons who —

(i) reside or work in the neighbourhood of the licensed premises; or

(ii) are customers or clients of any other business in the neighbourhood of the licensed premises; or 130

(iii) are at a religious service or at an institution for education or training in the neighbourhood ofthe premises; or

(iv) are lawfully at the licensed premises; or

(b) cause disorderly conduct —

(i) at the licensed premises; or

(ii) in the neighborhood of the licensed premises.

(2) A licensee who contravenes subsection (1) commits an offence [+ penalty].

[65] Alteration of licensed premises

(1) A licensee:

(a) must first apply to the [LA] for approval to alter the licensed premises; and

(b) must give the [LA] detailed information or a plan that explains the proposed alteration. (2) The application is to be made:

(a) in the [prescribed/approved form]; and

(b) at least [30] days before the alteration is to be made.

(3) The [LA] may give written notice to the licensee to alter the area of the licensed premises.

(4) The licensee must:

(a) comply with the [LA's] notice of alteration; and

(b) give the [LA] written notice within [14] days of completion of the alteration.

(5) A licensee who makes an alteration without approval or fails to comply with the [LA's] notice of alteration commits an offence.

[66] Consumption restrictions at off-licensed and on-licensed premises

(1) A person commits an offence who:

(a) being a licensee, allows liquor to be purchased and consumed at the off-licensed premises; or

(b) purchases and consumes liquor at the off-licensed premises.

(2) A person commits an offence who:

(a) allows liquor to be purchased at the on-licensed premises to be consumed off the on-licensed premises; or

(b) purchases liquor at the on-licensed premises to be consumed off the on-licensed premises.

[67] Restrictions on access to licensed premises outside permitted times

(1) A person must not enter or remain at the licensed premises where liquor is normally sold between:

(a) [15 minutes] after the permitted closing time of the licensed premises; and

(b) the next permitted opening time of the licensed premises.

(2) Subsection (1) does not apply to:

(a) the licensee or a licensee's associate, employee or family member;

(b) a resident of the licensed premises;

(c) any other person required to be at the licensed premises in the course of employment or providing other services.

(3) A person commits an offence who contravenes subsection (1). 131

[68] Absence from licensed premises

(1) This section applies if the licensee will be absent from the licensed premises for at least [14 days].

(2) The licensee must give written notice to the [LA] stating:

(a) period of absence; and

(b) the name and address of the licensee's associate.

(3) A licensee who fails to give notice under subsection (1) commits an offence.

[69] Duty of licensees to prevent offences on licensed premises

(1) This section applies if the licensee knows or has reason to believe that an offence under this Act is being, or is about to be, committed on the licensed premises.

(2) The licensee must:

(a) take immediate action that is reasonable to prevent the offence that is being, or is about to be, committed; and

(b) immediately report the offence to the Police.

[70] Liquor not to be brought onto licensed premises

A person commits an offence who brings liquor onto the licensed premises without the consent of the licensee.

[71] Prohibited behavior and language at licensed premises

(1) This section applies to a person who, when at the licensed premises;

(a) is violent, intoxicated, quarrelsome or acts in a disorderly manner;

(b) is smoking in a smoke-free area;

(c) is in possession of a prohibited drug or substance.

(2) A person must leave the licensed premises if requested by:

(a) the licensee or the licensee's associate or employee; or

(b) a police officer.

(3) The person must not re-enter the licensed premises within [24 hours] of leaving or removal from the premises if the person:

(a) had voluntarily left the licensed premises under subsection (1); or

(b) was removed from licensed premises.

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

(5) A police officer may:

(a) arrest without a warrant a person who is committing, or whom the police officer has a reason to suspect has committed, an offence under subsection (4); and

(b) use force that is necessary and reasonable in the circumstances to remove the person from the vicinity of the licensed premises.

[72] Sanitary conditions

(1) A licensee must keep:

(a) any sanitary appliance in the licensed premises in good sanitary condition;

(b) the licensed premises in a clean and sanitary condition. 132

(2) The [LA] must suspend the licence and the sale and supply of liquor at the licensed premises if the licensee fails to comply with subsection (1).

[73] Liquor sale or storage without licence

(1) A person commits an offence who:

(a) sells liquor —

(i) without a licence; or

(ii) from any unlicensed premises; or

(b) supplies liquor in bulk to any unlicensed premises to be sold;

(c) stores liquor in bulk without a licence or at any unlicensed premises.

(2) This section applies to the owner, or occupier or the tenant of the unlicensed premises.

[74] Signs on unlicensed premises

(1) This section applies to a person who owns, or occupies, or is a tenant, of any unlicensed premises.

(2) A person commits an offence if a sign or notice at the premises shows, or implies, or gives a reasonable beliefthat the premises are licensed.

(3) This section does not apply to posting of a notice of application in the proposed licensed premises.

[75] Public places[43]

A person commits an offence who consumes liquor in a public place. [76] Obstruction of duties A person commits an offence who:

(a) hinders an enforcement officer when carrying out the officer's duties under this Act; or

(b) fails to comply with a reasonable requirement of an enforcement officer made under this Act; or

(c) being a licensee, fails to provide an enforcement officer with reasonable assistance when exercising a power underthis Act.

[43] Check whether "public place" is defined in your general interpretation legislation.

[77] False or misleading statement

(1) This section applies:

(a) to a statement or information contained in an application made under this Act: or

(b) any information given to the [LA] or any person carrying out any duties or powers under this Act;

(c) to any other information required under this Act.

(2) A person commits an offence who, knowingly, makes or gives a statement or information that is false or misleading.

[78] Adulterated liquor

(1) A person commits an offence who:

(a) adulterates liquor; or

(b) supplies or offers to supply any adulterated liquor.

(2) The court may, on conviction of the person, order the disposal of the adulterated liquor, including its containers.

[79] Offence by corporation

(1) This section applies to an officer of a corporation when the corporation commits an offence under this Act.

(2) An officer:

(a) also commits the same offence; and

(b) is liable to be jointly or severally charged with the corporation or any other officer; and

(c) is taken to have been convicted also, on conviction of the corporation.

(3) It is a defence for the officer charged to prove:

(a) that the corporation committed the offence without the officer's knowledge, consent or connivance; and

(b) that reasonable precaution or due diligence was taken to prevent the corporation from committing the offence.

(4) In this section: "officer" includes:

(a) a director or secretary; or

(b) chief executive officer; or

(c) any other employee who manages or supervises the affairs of the corporation.

PART 8 – ENFORCEMENT

[80] Enforcement officers

(1) The [xx] may appoint in writing:

(a) a person to be an enforcement officer; or

(b) a class of persons to be enforcement officers.

(2) The following are taken to be enforcement officers:

(a) a police officer;

(b) a public officer responsible for liquor control;

(c) a public officer designated in writing by [xx].

[81] Identity cards

(1) The [xx] must issue to an enforcement officer (other than a police officer) an identity card:

(a) that specifies the name and appointment of the enforcement officer; and

(b) on which there is a recent photograph and the signature of the enforcement officer. (2) A person who ceases to be an enforcement officer must, in the absence of reasonable excuse, return his or her identity card to the [xx] as soon as practicable after ceasing to hold that appointment.

(3) A person commits an offence who uses an identity card after the expiry of his or her appointment.

[82] Functions

The functions of an enforcement officer are:

(a) to administer and enforce this Act; and

(b) to perform any other function specified in the letter of appointment. 134

[83] Entry and search powers

(1) An enforcement officer may, at all reasonable times, enter a place if the enforcement officer believes liquor is being manufactured or packaged or sold, or displayed for sale. (2) An enforcement officer who enters a place under subsection (1) may do any of the following:

(a) enter and inspect the place and any machines found at the place;

(b) take measurements of the place or a thing found at the place;

(c) take photographs, films or audio, video or other recordings of the place;

(d) if the enforcement officer believes on reasonable grounds that an offence under this Act has been, or is being committed, seize any liquor and any other material or thing that the enforcement officer reasonably believes could assist in the prosecution of the offence;

(e) take a copy of or extract from a document found at the place;

(f) require a person at the place to —

(i) answer questions or provide information; or
(ii) make available documents kept at or on the place; or
(iii) provide reasonable assistance to the enforcement officer in relation to the exercise of his or her powers under this section;
(g) carry on-the-spot checks on any manufacturing, importation or retail facilities to check the packaging or labelling of liquor.
(3) For subsection (2)(d), the enforcement officer must give a receipt for the liquor, things or samples to:
(a) the owner or a person apparently in charge of the place; or
(b) the person who the enforcement officer reasonably believes was in possession of the goods, things or samples.
(4) The following provisions apply in relation to goods, things or samples seized under subsection (2)(d) and 2(f):
(a) if a prosecution for an offence under this Act is instituted within [12] months after the seizure and the defendant is guilty, the court may order that —
(i) the goods, things or samples be forfeited to the State; or
(ii) the defendant pays to the State an amount equal to the market value of the goods, things or samples when seized, being the value determined by the court;
(b) if —
(i) a prosecution for an offence under this Act is not instituted within [12] months after the seizure; or
(ii) on prosecution being instituted within that period, the defendant is not guilty or the court does not make an order under paragraph (a),
the enforcement officer must release the goods, things or samples to the owner or the person from whom they were seized.
(5) An enforcement officer who takes action under subsection (2) must ensure that any offence committed under this Act is investigated and prosecuted, or referred for prosecution, as soon as practicable. 135

[84] Warrant required for residential property

(1) This section applies if a residential place is to be entered and inspected under section [83].
(2) An enforcement officer may apply to [a magistrate] for a warrant to enter and inspect the place, and if necessary,to seize items from the place.
(3) The warrant may authorise other matters required to give effect to the purpose of entry and inspection.

[85] Power to require identification

(1) This section applies if an enforcement officer has a reason to believe that a person whose name, address or age is not known to the officer may be able to assist the officer in inquiries in connection with an offence against this Act that has been, may have been, is being or may be committed.

(2) The officer:

(a) may require the person to give the person's —

(i) full and correct name and age; and

(ii) details of residential address, including contact details, such as a telephone number; and

(iii) without delay, proof of his or her age; and

(b) must warn the person that it is an offence if the person fails to comply with paragraph (a).

(3) A person commits an offence who fails to give the officer the information required under subsection (2)(a).

[86] Power to issue cease and desist orders

(1) This section applies if an enforcement officer has reason to believe that a person:

(a) has contravened or is contravening this Act; or

(b) is distributing, selling or supplying any product that does not comply with a requirement of this Act.

(2) An enforcement officer may issue a person with a notice to show cause stating:

(a) the facts constituting the allegation under subsection (1); and

(b) a period of at least 10 working days within which to show good cause, in writing, why a cease and desist order ("desist order") should not be made.

(3) An enforcement officer:

(a) must consider any representation received during the 10 days period under subsection (2)(b); and

(b) may issue a desist order if the officer is satisfied that the allegation under subsection (1) has been proven.

(4) The person issued with a notice to show cause may provide other documents or sworn statements of other persons to defend the allegation in the notice.

(5) An enforcement officer must issue a desist order if: (a) no written representation is received under subsection (2)(b); and (b) the officer is satisfied that the person has been served with the notice to show cause.

(6) An enforcement officer must serve the desist order on the person: (a) personally; or (b) by sending it through registered post or email or other electronic address provided by the person. 136

(7) The person who is issued with a desist order must comply with the order.

[87] Product recall

(1) This section applies if:

(a) liquor available for wholesale or retail sale does not comply with a requirement this Act, such as labelling; or

(b) other liquor products are sold contrary to this Act.

(2) The [Minister] may, by order, recall the liquor product with the costs of doing so to be borne by the manufacturer, wholesaler or retailer.

(3) The order is also treated as the authority to enter and remove the liquor products that are subject of the order.

(4) The [Minister] may approve the means and methods to dispose of any liquor product recalled.

[88] Investigation and prosecution

(1) An enforcement officer may:

(a) investigate an offence under this Act; and

(b) institute and conduct any legal proceedings in relation to the offence in a [Magistrate's Court].[44]

(2) This section does not prevent the [Director of Public Prosecutions][45] from carrying out his or her powers under section [xx][46] of the Constitution.

[89] Tracking and tracing system[47]

An enforcement officer may use a tracking or tracing system approved by [the Minister/Commissioner of Police] for any of the following purposes:

(a) to track the supply, transportation or distribution of any liquor product suspected of being manufactured or imported illegally; or

(b) to assist in the investigation of the liquor product.

[44] Replace with the subordinate court of your country.
[45] Commissioner of Police can be added if they have constitutional functions to carry out the investigation of offences.
[46] Some PICTs, such as Samoa, refer to it as "Article".
[47] Delete if your country provides for tracking under the Police Powers Act or other crime procedure legislation.

[90] Confiscation and forfeiture[48]

A liquor product, any equipment, or any matter or substance used in the manufacture of the product that is the subject of an offence underthis Act:

(a) is to be confiscated by [an enforcement officer]; and

(b) is forfeited to the [State/Crown] by the order of a court; and

(c) must be destroyed in an environmentally-friendly manner [approved by [xx]/as prescribed].

[91] Court order to vary, suspend or cancel the licence

(1) This section applies to a licensee who is convicted of an offence under this Act.

(2) The court may, by order:

(a) vary the licence, as it deems fit; or

(b) suspend or cancel the licence —

(i) for the first offence, for a period of up to 6 months;

(ii) for the second offence, for a period not less than 6 months and not more than [12] months;

(iii) for the third or subsequent offence, for a period of not less than [12] months but not more than [5] years.

(3) An order underthis section is in addition to any fine orimprisonment imposed by the courtin respect of the offence.

[92] Infringement notices for spot fines

(1) This section applies:

(a) if a person ("defendant") commits an offence under this Act; and

(b) to the imposition of administrative penalties by an enforcement officer pursuant to an infringement notice.

(2) An enforcement officer may issue an infringement notice [in a prescribed/approved form] requiring the defendant to pay the fixed penalty specified in the notice.

(3) When a defendant is served with an infringement notice, the defendant may:

(a) pay the spot fine (in full) before the specified date for payment of the fixed penalty, if the defendant admits the offence by endorsing, in writing, the admission on the notice; or

(b) appear before the court on a date specified in the notice for appearance in court if the defendant denies the offence.

(4) In a proceeding, a certificate signed by an enforcement officer indicating that the spot fine has or has not been paid, unless the contrary is proved, is evidence of the matters stated in the certificate.

[48] Clause to be deleted for PICTs that have proceeds of crime legislation.

(5) No further proceeding is to be instituted against the defendant for the offence for which a spot fine has been fully paid.
(6) The defendant who is convicted in court on an infringement notice:
(a) is not subject to the fixed penalty specified in the notice; but
(b) is subject to the penalty prescribed for that offence.

[93] Service of infringement notices

(1) An infringement notice is to be:
(a) served pursuant to the rules of the court; and
(b) filed before the court specified in the notice.
(2) An infringement notice that is filed under subsection (1)(b) is treated for all purposes as a summons issued pursuant to the [criminal procedure/magistrates' courts legislation].

[94] Directors, etc., liability

(1) This section applies if a body corporate commits an offence.
(2) A director of the body corporate also commits the same offence.
(3) It is a defence if the director proves that the offence was committed without the director's knowledge, connivance or consent.
(4) In this section: "director" includes an officer who manages or supervises the operations of the body corporate.

[95] Obstruction etc. of enforcement officers

A person commits an offence who, without reasonable excuse:
(a) obstructs or hinders an enforcement officer or any other person when carrying out a function, duty or power under this Act; or 138
(b) fails to comply with a requirement or direction of an enforcement officer to comply with this Act.

[96] Penalties

(1) The fixed penalties for infringement notices are set out in Part 1 of the Schedule.
(2) The penalties for a person convicted of an offence are set out in Part 2 of the Schedule.

[97] Misleading information

(1) A person commits an offence who:

(a) gives information or a document that the person knows to be misleading to another person who is carrying out a function, duty or power under this Act [+penalty];

(2) Subsection (1) does not apply if the person, when giving the document:

(a) draws the misleading aspect of the document to the attention of the enforcement officer; and

(b) to the extent to which the person can reasonably do so – gives the relevant officer the information necessary to remedy the misleading aspect of the document.

(3) In this section: "misleading information" means information that is misleading in a material particular or because of the omission of a material particular.

PART 9 – MISCELLANEOUS

[98] Regulations The [xx] may make Regulations to give effect to or for the purposes of this Act, and in particular may make Regulations:

[99] Saving and transition

[Deals with saving and transitional matters]

SCHEDULE

PENALTIES

PART 1 – FIXED PENALTIES[49]

Section	Individual (first offence)	Individual (second or subsequent offence)	Company (first offence)	Company (second or subsequentoffence)

PART 2 – PENALTIES FOR OFFENCES

Section	Individual (first offence)	Individual (second or subsequentoffence	Company (first offence)	Company (second or subsequent offence)

[49] Fixed penalties should be tagged at around 20-25% of fines fixed for that offence in Part 2 of the Schedule.

PART 3 – INFRINGEMENT NOTICE FORM[50]

LIQUOR CONTROL ACT […] INFRINGEMENT NOTICE	
1	**Date of Notice: [date] […month…][20…..]**
2	**Defendant:** • Name (In full): • Residential address: • Other contact details:
3	• Regulation contravened: • Statement of offence: • Details of offence:
4	The fixed penalty is **[$.]**
5	**Admitting the offence** If you admit the offence in 3 above: • You must: **o sign** the admission declaration in 7 below; ▪ immediately when this completed Notice is given to you; or ▪ otherwise, no later than 20 working days from the date in 1 above; and **o pay** the fixed penalty in 4 above (either paid in a lump sum or part payment, before 20 working days above expires) to: ▪ [*nearest …Ministry Office*] ▪ [*add other places for payment*] When you have paid **ALL** the fixed penalty in 4 above, no other action relating to the offence in 2 above will be taken against you. If you fail to pay **ALL** the fixed penalty within 20 working days above, you are treated as having denied the offence and you will be served with the Notice to Attend Court in 9 below.

[50] Can be left to be devised by Regulations.

6	**Denying the offence** If you deny the offence in 2 above you: • must **sign** the Denial Declaration in 8 below: o immediately after the completed Infringement Notice is given to you; or o otherwise, no later than 20 working days from the date in 1 above; and • will be served with the Notice to Attend court in 9 below; • if convicted by the court, will be liable to penalty for the offences as set out in Part 2, of the Schedule (including any costs of the proceedings in court) and not the fixed penalty in 4 above; • may, before that 20 working days expire, admit the offence, sign the admission declaration and **pay the fixed penalty of [$.] in 4 above**.
7	**Admission declaration** I, […**name of defendant**…] of […**address**…] declare that I: • have received this Notice from the person stated in 11 below; • admit committing the offence in 3 above (without any coercion or force from another person), as such will pay the fixed penalty of [$.] in 4 above. …….. **[Signature]**
8	**Denial declaration** I, […**name of defendant**…] of […**address**…] declare that I: • deny committing the offence in 3 above; and • will defend the offence in court. …….. **[Signature]**
9	**Notice to attend court** To: The Defendant (details in 2 above) 1. You are required to attend before [a magistrate/judge163] at [……] on [date] at am/pm to answer charges specified in 3 above. 2. You may appear in person or through a lawyer. 3. If you fail to appear in court, the court will treat that as an admission of the charges and the court may impose the penalty for the offence against you in your absence.

	4. If the court enters judgment in your absence, you have 10 working days to apply to the court to reverse the default judgment and to proceed for trial. Dated the day of 20…. …… Court official designation and stamp/seal
10	**Affidavit of service of notice to attend court** I, ……, ……. (occupation), of swear that: 1. I am authorised to serve any court processes. 2. I served this Infringement Notice, including the signed the Notice to attend Court on the above **Defendant on** … **day of**……**20**…. **At […place…]** 3. The Defendant was served in person. Sworn before me: [Server's signature] at […place….] on […. date ….] …… [Lawyer/JP, etc] - Witness
11	**This Notice is issued by:** • Designation and ID No (if any): • Name: • Phone & other contact: Signature: ……

[163] Judge of the lower courts, such as District Courts in the case of Samoa.

ANNEXURE B – DRINK DRIVING PROVISIONS

[1] Definitions

"admissibility" means admissibility of evidence on a proceeding relating to an offence under this Act.

"alcohol" has the meaning in the [liquor legislation].

"approved analyst" means an analyst approved under section [12 or 13].

"blood alcohol limit" means [50] milligrams of alcohol per [100] millilitres of blood. "blood sample" means a person's blood specimen taken under section [9 or 10] for use only for the purpose of this Act.

"blood test" means a test under section [6] to determine the blood alcohol limit in a person's blood.

"breath alcohol limit" means 250 micrograms of alcohol per 100 ml of breath.

"breath screening test" means a preliminary screening test taken under section [5] to determine the breath alcohol limit in a person's breath.

"certificate" includes a certified copy of the original certificate.

"defence" means a defence to an offence.

"drive" includes attempt to drive.

"driving a motor vehicle" includes attempting to drive or being in charge of, a motor vehicle.

"drug" has the meaning in the [illicit/dangerous drug legislation].

"enforcement officer" means a person appointed as such under section [xx];[51]

"evidential breath test" means a test under section [6] to determine the breath alcohol limit in a person's breath.

"heavy load vehicles" means vehicles greater than a prescribed number [13.9] of tonnes.

"lawyer" means a person admitted as a barrister [and/or] solicitor under the [Legal Practitioners Act].

"medical care" means a medical examination, care or treatment in a hospital or other health care facility of a person injured as a result of a motor vehicle accident.

"medical practitioner" has the meaning in the [Medical and Dental Practitioner Act].[52]

"passive breath testing device" means a device that is placed near the person's mouth to determine whether or not there is any alcohol in the person's breath.

"road" includes other public places.

[51] Check ACT whether enforcement officers are involved in enforcement of the ACT.
[52] Replace with your legislation for registration of doctors.

“test place” means the place at which a person is required to undergo a breath test and to remain in it until the test result is determined.

“young person” means a person aged under [21] years.

[2] Driving under the influence of a drug

A person commits an offence who drives a vehicle under the influence of a drug.

[3] Driving exceeding the breath or blood alcohol limit

A person commits an offence who drives a vehicle while the proportion of alcohol:

(a) in the person’s breath exceeds the breath alcohol limit that is confirmed after a test under section [6]; or

(b) in the person’s blood exceeds the blood alcohol limit that is confirmed under section [9 or 10].

[3A] Zero alcohol level

(1) This section applies to the following persons:

(a) a young person;

(b) a person who holds a [provisional driving licence];

(c) a person aged over [70] years;

(d) a person while driving a [public service vehicle] when transporting the public;

(e) a person who drives heavy load vehicles.

(2) A person commits an offence who drives a vehicle while the proportion of alcohol: (a) in the person’s breath, exceeds [0] micrograms of alcohol per [100] millilitres of breath that is confirmed after a test under section [6]; or

(b) in the person’s blood exceeds [0] milligrams of alcohol per [100] millilitres of blood that is confirmed under section [9] or [10].

[4] Driving disqualification

(1) A person who is convicted of an offence under section [2], [3] or [3A] is automatically disqualified from driving a motor vehicle for [12] months from the date of conviction.

(2) However, the court may:

(a) reverse the [12-month] automatic disqualification in subsection (1) if there are compelling circumstances; and

(b) make another order to reduce or increase the period of disqualification.

(3) The person’s driving licence is suspended during the period of disqualification.

[5] Approved device and instrument

(1) The prescribed breath testing device and breath analysis instrument for the purpose of a breath test are set out in the Schedule.

(2) The prescribed breath analysis instrument set out in the Schedule must produce three automatic printouts to prescribe the alcohol content of a person after a breath analysis test.

(3) Every device and instrument used for breath tests and analysis must be tested, calibrated and certified by the head of the [national equivalent of the National and Trade Measurement Act] before being used for the first time.

[6] Breath screening test

(1) This section applies if [an enforcement officer] has a reason to suspect that:

(a) a person:

(i) is driving a motor vehicle on a road; and

(ii) has alcohol in the person's body; or

(b) a person —

(i) has been driving a motor vehicle on a road while having alcohol in the person's body; and

(ii) still has alcohol in the person's body; or 143

(c) a person —

(i) is or has been driving a motor vehicle on a road; and

(ii) has committed a traffic offence while the vehicle was in motion; or

(d) a person —

(i) is or has been driving a motor vehicle; and

(ii) the motor vehicle was involved in an accident on a road.

(2) An [enforcement officer]:

(a) may —

(i) require a person to undergo a breath screening test, without delay; and

(ii) if necessary, also require that person to undergo a test using a passive breath testing device;

(b) must require the person to remain and wait for the result of the breath test; and

(c) may arrest and detain the person for the purpose of paragraph (b).

(3) A person must not undergo a breath screening test if the person:

(a) was involved in a motor vehicle accident; and

(b) was the driver or the [enforcement officer] has reason to suspect the person was the driver of the vehicle; and

(c) is admitted to a hospital, or other medical facility, for treatment of any life-threating injury resulting from the vehicle accident.

(4) A test under a passive breath testing device does not invalidate a breath screening test.

[7] Evidential breath test or blood test

(1) This section applies if a person:

(a) has undergone a breath screening testthat appears to show the person's breath exceeding the breath alcohol limit; or

(b) fails or refuses to undergo a breath screening test when required under section [5]; or

(c) could not be tested under section [5] because —

(i) a breath screening device is not readily available; or

(ii) for any other reason, a breath screening test cannot then be carried out; and

(iii) there is reason to suspect that the person has consumed alcohol.

(2) An [enforcement officer] may require the person to undergo either or both of the following tests:

(a) an evidential breath test;

(b) a blood test.

(3) For subsection (2), the person must go with the [enforcement officer]:

(a) to the place directed by the [enforcement officer] to carry out the test, without delay; or

(b) instead, to another place to carry out the test, without delay, if it is not possible to carry out the test at the place in paragraph (a); and

(c) must remain at the place until —

(i) the evidential breath test or a blood test is carried out; and

(ii) for the evidential breath test, result of that test is determined. 144

(4) The [enforcement officer]:

(a) may, without a warrant, arrest and detain the person for the purpose of subsection (3); and

(b) must release the person after the test unless the person is arrested or detained for any other offence.

(5) A person must not undergo a test required under this section if the person:

(a) was involved in a motor vehicle accident; and

(b) was the driver or the [enforcement officer] has reason to suspect the person was the driver of the vehicle; and

(c) is admitted to a hospital, or other medical facility, for treatment of any life-threating injury resulting from the vehicle accident.

[8] Further evidential breath test

(1) This section:

(a) applies if a person was required to undergo an evidential breath test under section [6]; and

(b) the evidential breath test fails, for any reason, to produce a result.

(2) An [enforcement officer] may require:

(a) the person to undergo, without delay, a further evidential breath test; or

(b) the person's blood specimen to be taken under section [7](2)(b).

[9] Right to elect blood test

(1) This section applies if the result of a person's evidential breath test:

(a) is over [250] micrograms of alcohol per litre of breath; but

(b) under [50] micrograms of alcohol per 100 millilitres of breath.

(2) The person may, within [10] minutes of being advised under section [7](3)(c)(i), request to undergo a blood test to confirm the proportion of alcohol in the person's blood.

[10] Who must give blood sample at places other than hospital or surgery?

(1) This section applies:

(a) to a person who fails or refuses to undergo an evidential breath test; or

(b) to a person who has undergone an evidential breath test that —

(i) appears to the [enforcement officer] to have exceeded the breath alcohol limit; and (ii) the person has, pursuant to section [7](3)(c)

(i), requested the [enforcement officer] to undergo a blood test to determine their blood alcohol level; or

(c) if an evidential breath testing device is not readily available to carry out the test at the place —

(i) under section [6] (whether or not at the time the requirement was made it was likely that the person could undergo an evidential breath test at that place); or

(ii) to which the person has been taken under arrest; or (iii) to which an evidential breath test cannot, for any other reason, be taken; or

(d) if the [enforcement officer] has arrested a person on reasonable suspicion of having committed an offence against any of sections [3 to 9] and either —

(i) a medical practitioner has examined the person and has reason to believe that the person may be under the influence of alcohol or drug, or both; or 145

(ii) the person has refused to be examined by a medical practitioner for the purpose of subparagraph (i).

(2) A person must, when required to do so by the [enforcement officer], without delay allow a medical practitioner to take the person's blood specimen.
(3) The person is required to give a blood specimen:
(a) at the place where the person has been taken; or
(b) at another place accompanied by the [enforcement officer], if it is not practicable or possible to take the blood sample at the place under paragraph (a).
(4) If a blood specimen taken under this section is insufficient to be divided into two parts under section [12] or [13]:
(a) the person from whom the specimen was taken must permit a medical practitioner or medical officer to take a further blood specimen immediately after being requested to do so by the medical practitioner or medical officer; and
(b) a further blood specimen so taken is to be treated as part of the original blood specimen taken from the person.
(5) An [enforcement officer] may arrest a person without warrant if the person:
(a) fails or refuses to accompany an [enforcement officer] to a place when required to do so under this section; or
(b) having accompanied an [enforcement officer] to a place under this section, fails or refuses to remain at that place until the person's blood specimen has been taken under this section.

[11] Blood specimen for person under medical care

(1) A person who is under medical care must allow the person's blood specimen to be taken by:
(a) the medical practitioner who is in immediate charge of the person's medical care; or (b) another medical practitioner.
(2) The medical practitioner who is in immediate charge of the person's medical care: (a) may authorise another medical practitioner to take the specimen; and
(b) must take the person's blood specimen or authorise another medical practitioner to take the person's blood specimen, when requested by [an enforcement officer]; and
(c) may take a further blood specimen to be part of the original blood specimen in order for the person's blood specimen to be sufficient for the purpose of section [12] or [13]. (3) The person's blood specimen may be taken under subsection (2) even if the person has not given or is not capable of giving, consent.
(4) Despite subsection (2)(b), a person's blood specimen may be taken only if the medical practitioner:

(a) has reason to suspect that the person is in medical care for injuries caused by an accident involving a vehicle;
(b) has examined the person and is satisfied that the taking of a blood specimen would not be prejudicial to the person's proper medical care; and
(c) explains to the person (unless the person is unconscious) that the blood specimen is being or was taken as evidence.
(5) A person who takes a blood sample from a person or requires it to be taken is not liable for doing so despite the fact that the person did not consent or was not capable of giving consent to the taking of the blood specimen.
(6) Subsection (5) does not apply to liability for negligence resulting from the taking, or requiring, of blood specimen.

[12] Taking specimen from an unconscious person

(1) This section applies if the person under medical care is unconscious.
(2) The person's blood specimen must be taken by:
(a) the medical practitioner who is in immediate charge of the examination, care, or treatment of the person; or
(b) another medical practitioner.
(3) The medical practitioner who took the specimen must, as soon as possible, notify the person in writing and any immediate family member that the specimen was taken and of its purpose as evidence.

[13] Procedure for dealing with blood specimens

(1) A blood specimen is to be divided into two parts, each of which must be placed in a separate bottle and then the bottles properly and securely sealed.
(2) One or more preservative substances and anti-coagulant substances may be added to a blood specimen by placing them in the bottle, whether before or after the specimen is taken and placed in the bottle.
(3) For a blood specimen taken under section [9], [an enforcement officer] must, within [5] working days after the date on which the specimen was taken:
(a) deliver or cause to be delivered (whether by courier or otherwise), or
(b) post by registered post or cause to be posted by registered post, - both parts of the blood specimen to an analyst (approved by the [Commissioner of Police]) for the analysis of one of those parts and the custody of the other.

(4) For a blood specimen taken under section [10],the medical practitioner by whom the specimen was taken must:

(a) within [5] working days after the date on which the specimen was taken —

(i) deliver or cause to be delivered (whether by courier or otherwise) or

(ii) post or cause to be posted by registered post, - both parts of the blood specimen to an approved analyst for the analysis of one of those parts and the custody of the other; and

(b) give written notice of it to the [Commissioner] —

(i) identifying the approved analyst to whom the parts of the blood specimen were (or are being) delivered or posted; and

(ii) naming the person from whom the blood specimen was taken.

(5) An approved analyst may dispose of the blood specimen in his or her possession after [12] months from the date it was received unless the proceedings relating to it is still pending in court.

[14] Private analyst

(1) This section applies if the person from whom a blood specimen was taken:

(a) wishes to have the specimen analysed by a private analyst; and

(b) applies to the [Commissioner] to approve the specimen to be sent to a private analyst for analysis.

(2) The [Commissioner] may approve or refuse the application.

(3) If the application is approved, the [Commissioner] (or another [enforcement officer] authorised by the [Commissioner]) must send a copy of the application to the approved analyst who has the specimen.

(4) The approved analyst must send by registered post, personal delivery, or delivery by courier one part of that blood specimen to the private analyst specified in the application. (5) The person (or the person's lawyer) may:

(a) apply in writing to the [Commissioner], not later than [28] consecutive days after — (i) the date on which the summons for the offence for which the blood specimen was taken is served on the defendant; or

(ii) if the defendant[53] is arrested for that offence, the date of arrest of the defendant; or

(iii) in any other case (other than subparagraph (i) or (ii)), the date on which the defendant is first charged for that offence; and

[53] Check term used (suspect/offender) in your jurisdiction.

(b) state the full name and address and the occupation of the person and the date that the offence was alleged to have been committed; and

(c) state the name and address of the private analyst to whom the part of the blood specimen is to be sent.

[15] Certificates of blood alcohol in proceedings

(1) This section applies to proceedings for an offence of driving under the influence of a drug, or driving while exceeding the applicable blood alcohol limit.

(2) Except as provided in section [18] a certificate to which this subsection applies is sufficient evidence, in the absence of proof to the contrary, of:

(a) the matter stated in the certificate; and

(b) the authority and qualifications of the person who made the certificate; and

(c) for a certificate in subsection (5), the person who carried out the analysis.

(3) Subsection (2) applies to a certificate certifying that:

(a) a specimen of venous blood was taken pursuant to normal medical procedures from a person named in the certificate; and

(b) the specimen was divided into two parts, including the taking of a further specimen; and

(c) the specimen or each part of the specimen was placed and sealed in a separate bottle; and

(d) each separate bottle was received in a sealed blood specimen collecting kit; and

(e) each of the separate bottles was given to [an enforcement officer] named in the certificate.

(4) Subsection (2) applies to a certificate certifying that:

(a) the person was in medical care; and

(b) the practitioner was in immediate charge of that person and took or authorised the taking of a person's blood specimen under section [10 or 11];

(c) at the time the blood specimen was taken from the person, the practitioner had reason to suspect that the person was in medical care as a result of an accident involving a vehicle; and

(d) before taking the blood specimen or causing the blood specimen to be taken from the person, the practitioner examined the person and was satisfied that the taking of the blood specimen would not be prejudicial to the person's proper care or treatment; and

(e) the practitioner either —

(i) told the person that the blood specimen was being or had been taken under section [10 or 11] for evidential purposes; or

(ii) if the person was unconscious when the specimen was taken, notified the person in writing as soon as practicable that the blood specimen was taken under section [10 or 11] for evidential purposes.

(5) Subsection (2) applies to a certificate certifying that:

(a) all the matters in subsection (2)(a) to (d); and

(b) the date, manner and form in which the specimen was sent to the approved analyst; and

(c) that the [Commissioner of Police] was notified in writing of the approved analyst who was given the specimen.

(6) Subsection (2) applies to a certificate certifying:

(a) that a blood specimen in a sealed bottle was delivered on a date, and in a manner and form to be received by, or on behalf of, an approved analyst for analysis;

(b) the proportion of alcohol or of a drug in the specimen after analysing the specimen; and

(c) that a deterioration or congealing was not found as would prevent a proper analysis. (7) Subsection (2) applies to a certificate certifying that, following an application under section [12] or [13], a part of a blood specimen was sent in the manner and form described to the address of the private analyst given in the application.

(8) It is not necessary for the maker of a certificate to specify the entitlement to give the certificate if the certificate indicates that the person belongs to the class of persons required to make a certificate.

[16] Certificates of compliance for evidential breath testing devices

(1) The [Commissioner of Police or a senior police officer authorised by the Commissioner] must issue a certificate of compliance of any device for evidential breath testing before it is used.

(2) When required, a police officer must produce to the court a certified copy of the certificate of compliance and state that it is a true copy of the original certificate.

(3) Subject to subsection (4), a certificate of compliance:

(a) is evidence of the matters stated in the certificate; and

(b) cannot be challenged, called into question or put in issue before the court about the matters in the certificate including the excess breath alcohol recorded by the device.

(4) If there is no contrary proof, the signature on a certificate of compliance is evidence of the authority of the person who signed the certificate unless contrary proof is given. (5) The [Minister] may approve for each kind of evidential breath testing device the matters that are required to be stated in a certificate of compliance.

(6) Without limiting subsection (5):

(a) for a device approved after this section commences, the approval under subsection (5) is to be given in conjunction with the notice approving that kind of device;
(b) an approval under subsection (5) must —
(i) specify the maximum period of service for the relevant kind of device; and
(ii) require a certificate of compliance to specify the date on which period in subparagraph (i) began or begins or the certificate of compliance in subparagraph (ii) was issued;
(iii) require a certificate of compliance to include a statement to the effect that the device is being maintained within the manufacturer's specifications.

[17] Presumptions relating to blood specimens

(1) In proceedings for an offence under this Act, it is presumed, in the absence of proof to the contrary, that if:
(a) a certificate in section [14] states the defendant having the same name, address, and occupation as the person from whom the specimen of blood was taken, the specimen was taken from the defendant;
(b) a certificate is signed by an approved analyst, the analyst had the authority to sign it; and
(c) the bottle in which a blood specimen (or part of it) was placed was received by a medical practitioner in a sealed blood specimen collecting kit, the bottle contained a substance (whether or not a combination or mixture of two or more substances) and that substance was a preservative and anti-coagulant.
(2) The prosecutor must, on a request of the person (or the person's lawyer) whose blood specimen has been taken under section [9], [10], or [11], give the person a copy of the certificate referred to in subsection (1) that relates to that person's blood specimen.

[18] Presumptions in relation to alcohol tests

(1) This section applies to a proceeding for an offence under this Act in respect of which: (a) the defendant underwent an evidential breath test; or
(b) a blood specimen was taken from the defendant under section [9], [10], or [11],
(2) For a proceeding to which subsection (1) applies, it is presumed that:
(a) the proportion of alcohol in the defendant's breath at the time of the alleged offence was the same as the proportion of alcohol in the defendant's breath as indicated by the test; or
(b) the proportion of alcohol in the defendant's blood at the time of the alleged offence was the same as the proportion of alcohol in the blood specimen taken from the defendant.
(3) Except as provided in subsection (4), the result of a positive evidential breath test is not admissible in evidence in proceedings for an offence against any of sections [3 to 9], if:

(a) the person who underwent the test is not advised by [an enforcement officer], without delay after the result of the test is ascertained, that the test was positive and that, if the person does not request a blood test within [10] minutes, for a positive test that indicates that the proportion of alcohol in the person's breath exceeds the breath alcohol limit, the test could of itself be evidence to lead to that person's conviction for an offence against this Act; or

(b) the person who underwent the test —

(i) advises [an enforcement officer], within [10] minutes of being advised of the matters specified in paragraph (a),that the person wishes to undergo a blood test; and

(ii) complies with section [9](2).

(4) Subsection (3)(a) does not apply if the person who underwent the test fails or refuses to remain at the place where the person underwent the test until the person can be advised of the result of the test.

(5) The result of a positive evidential breath test is not rendered inadmissible under subsection (3) if:

(a) the test was carried out by means of a conclusive evidential breath testing device; and

(b) the test indicated that the proportion of alcohol in the breath of the person who underwent the test exceeded [50] micrograms of alcohol per 100 millilitres of breath.

(6) If it is proved in proceedings for an offence against section [19] that the defendant failed or refused to comply with section [21] without reasonable cause, that failure or refusal may be treated as:

(a) supporting any evidence given on behalf of the prosecution; or 150

(b) rebutting any evidence given on behalf of the defendant, - concerning the defendant's condition at the time of the alleged offence.

[19] Circumstances in which certificates not admissible in proceedings

(1) A certificate referred to under section [15(3),(4) or (5)] is not admissible in proceedings if the court orders that the person who signed it shall appear as a witness, on application by the defendant made no laterthan [10] working days from the date ofthe hearing.

(2) A certificate in section [15] on the proportion of alcohol or a drug in a blood specimen is not admissible if:

(a) an application was been made under section [14] for a part of the blood specimen to be sent to a private analyst; and

(b) that part of the specimen has not been sent to the private analyst in compliance with the application.

(3) Subsection (2) does not apply to a specimen disposed of under section [12(6)] before the date of application.

(4) This subsection applies to:

(a) a certificate under section [15(6)] by an approved analyst on the proportion of alcohol, a drug, or both, in a blood specimen; or

(b) a certificate by an approved analyst sending one part of a blood specimen to a private analyst.

(5) A certificate specified in subsection (4) is not admissible if the court, on application by the defendant made not less than [10] working days before the date of hearing, orders that the person appear at a witness at the hearing:

(a) for subsection (4)(a) —

(i) the person who analysed the blood specimens; or

(ii) the approved analyst who signed the certificate; or

(b) for subsection (4)(b) —

(i) the person who posted or delivered the part of the specimen; or

(ii) the person who gave the part of the specimen to the courier; or

(iii) the approved analyst who signed the certificate.

(6) The court may not make an order under subsection (5) unless the application made by the defendant under that subsection is accompanied by an affidavit, sworn by the private analyst who is specified in the defendant's application under section [13], to the effect that:

(a) since the date given as the date on which an application was made under section [13] to send part of the blood sample relating to the defendant to a private analyst, the analyst has not received that specimen; or

(b) the defendant's blood sample received by the private analyst —

(i) was not suitable for analysis; or

(ii) was suitable for analysis but, for specified reasons, that analysis was not carried out; or

(iii) was suitable for analysis and that analysis was carried out but, for specified reasons, the results ofthe analysis are not available; or

(c) the defendant's blood sample received by the private analyst has been analysed and found not to exceed the blood alcohol limit; or 151

(d) the defendant's blood sample received by the private analyst has been analysed and found to contain [20 milligrams or more of alcohol per 100 millilitres of blood more or less than the proportion of alcohol per 100 millilitres of blood specified in the certificate referred to in section [14].

(7) The admissibility of a certificate relating to a blood sample signed by an approved analyst is not affected by the subsequent disposal ofthe blood specimen under section [12(5)].

[20] Failure or refusal to remain at specified place or to accompany [enforcement officer]

(1) A person commits an offence who:

(a) fails or refuses to remain at the place where the person underwent a breath screening test under section [5] until after the result of the test is ascertained; or

(b) fails or refuses to accompany without delay [an enforcement officer] to a place when required to do so under section [6]; or

(c) having accompanied [an enforcement officer] to a place under a requirement under section [6] or [9] —

(i) fails or refuses to remain at that test place until the person is required either to undergo an evidential breath test or a blood test under this Act; or

(ii) fails or refuses to accompany [an enforcement officer] to another place under either of those sections; or

(d) having undergone an evidential breath test under section [6], fails or refuses to remain at the test place.

(2) A person convicted of an offence under subsection (1) is liable to [penalty].

(3) In addition to a penalty imposed under subsection (2), the court may disqualify the person from holding or obtaining a driver licence for up to [12 months].

[21] Failure or refusal to permit blood specimen to be taken

(1) A person commits an offence if the person:

(a) fails or refuses to permit a blood specimen to be taken after having been required to do so under section [9] by [an enforcement officer]; or

(b) fails or refuses to permit a blood specimen to be taken without delay after having been requested to do so under section [9] by a medical practitioner or medical officer; or (c) is a person from whom a medical practitioner or medical officer may take a blood specimen under section [10 or 11] and refuses or fails to permit such a person to take a blood specimen.

(2) A person convicted of an offence under subsection (1) is liable to [penalty].

(3) In addition to a penalty imposed under subsection (2), the court may disqualify the person from holding or obtaining a driver licence for at least 12 months.

[22] Drivers and other road users to comply with directions of [enforcement officers], etc.

(1) A person commits an offence who:

(a) fails to comply with a requirement in section [5, 6, 7, 9, 10 or 11] relating to the administration of breath screening tests, evidential breath tests, or blood tests); or

(b) fails to comply with a requirement, direction, or request by [an enforcement officer] under section [5, 6, 7, 9, 10 or 11]; or

(c) fails to comply with a lawful requirement or request made by a medical practitioner under section [9, 10 or 11] relating to the administration of a blood test.

(2) A person convicted of an offence under subsection (1) is liable to [penalty].

[23] Defences

(1) It is a defence under section [20] for failing or refusing to supply a blood specimen if the court is satisfied, on the evidence of a medical practitioner, that the taking of a blood specimen from the defendant would have been prejudicial to the defendant's health.

(2) It is not a defence if any of the sections [5 to 15, and 17] have not been strictly complied with, provided they have been applied with reasonable diligence.

(3) This subsection applies to a proceeding for an offence under section [19](1) arising out of circumstances in which:

(a) [an enforcement officer] exercised powers under section [5, 6 or 9]; and (b) a person was required to undergo a breath screening test or an evidential breath test or a blood test.

(4) It is not a defence under subsection (3) that:

(a) the breath screening test or evidential breath test indicated that the proportion of alcohol in the person's breath did not exceed the breath alcohol limit; or

(b) the results of a blood test indicate that the proportion of alcohol in the person's blood did not exceed the blood alcohol limit.

(5) It is no defence to proceedings for an offence against section [20] (which relates to failing or refusing to supply a blood specimen) that:

(a) there was or may have been an error in the result of the breath screening test or evidential breath test; or

(b) the occurrence or likely occurrence of any such error did not entitle or empower a person to request or require an evidential breath or a blood test.

(6) It is not a defence for an offence relating to the proportion of alcohol in a person's breath that:

(a) there was or may have been an error in the result of the breath screening test or evidential breath test; or

(b) the occurrence or likely occurrence of the error did not entitle or empower a person to request or require an evidential breath test.

[24] Arrest of persons for alcohol or drug-related offences, or assault on [enforcement officers]

(1) An [enforcement officer] may, without a warrant, arrest a person:

(a) whom the officer has reason to suspect —

(i) has committed an offence under section [3, 19, 20 or 21]; or

(ii) has assaulted any other [enforcement officer] who was carrying out their duties under this Act; or

(b) is committing an offence under section [3, 19, 20 or 21] in the presence of [the enforcement officer]; or (c) who assaulted [the enforcement officer] while carrying out their duties under this Act.

(2) This section is in addition to any other powers of arrest under this or any other enactment.

SCHEDULE

Part 1 – Approved breath testing devices

The following are the approved breath testing devices for the purpose of a breath test: [List the devices]

Part 2 – Approved breath analysis instruments

The following are the approved breath analysis instruments producing three automatic printouts:

[List the instruments]

ANNEXURE C – Food (Marketing of Unhealthy Food and Sugar-Sweetened Beverages to Children) Regulations

FOOD [… ACT…]

FOOD (MARKETING OF UNHEALTHY FOOD AND SUGAR-SWEETENED BEVERAGES TO CHILDREN) REGULATIONS [20…]

Table of contents

FOOD [… ACT…]

FOOD (MARKETING OF UNHEALTHY FOOD AND SUGAR-SWEETENED BEVERAGES TO CHILDREN) REGULATIONS [20…]

IN exercise of the powers conferred on me by section [xx] of the [Food … Act 20…], I make these Regulations –

PART 1 – PRELIMINARY

[1] Citation and commencement

(1) These Regulations may be cited as the Food (Marketing of Unhealthy Food and Sugar-sweetened Beverages to Children) Regulations [20…].

(2) These Regulations commence on [insert date].

[2] Definitions

In these Regulations:

"advertisement" —

(a) means —

(i) a public presentation of a designated product or service; and

(ii) the public presentation is intended to bring the designated product or service to the attention of children through any means of media channel; and

(b) includes marketing of a designated product or service;

"brand" —

(a) means —

(i) the brand for a designated product; or

(ii) the brand for a range of designated products; and

(b) includes —

(i) the brand symbol, device, design or the name of the manufacturer or distributor of a designated product;

(ii) the name of a range of designated products, including any word, design or image relating to the range;

"character" includes any cartoon or film character.

"child" means a person aged [18][54] years or under.

"designated product" means any unhealthy food that is high in free salt, free sugar, unsaturated fat or trans-fatty acid or sugar-sweetened beverages, designated under Regulation [xx];

"marketing" —[55]

(a) means any form of commercial communication of message that is designed to, or has the effect of, increasing the recognition, appeal or consumption of a designated product or service; and

(b) includes anything that acts to market a designated product or service;

"media channel" includes any broadcast or cable television, radio, print, billboards, the internet or personal contact.

"nutritional content" includes the high level or presence of saturated fat, trans-fatty acids, free or added sugar or salt.

"place" includes an area, facility, premises, building, vehicle or vessel.

"premium" means a promotional item that can be received for a small fee when redeeming proof of purchase which comes with or on the retail product.

"sugar-sweetened beverage" or **"SSB"** means any sugar-sweetened beverage or product declared as a designated product under Regulation [xx].

"vehicle" has the meaning in the [traffic legislation].

[54] Each PICT to decide the age limit.

[55] Definition recommended in World Health Organization, 2012. A framework for implementing the set of recommendations on the marketing of foods and non-alcoholic beverages to children. Available at: https://apps.who.int/iris/handle/10665/80148

"vessel" has the meaning in the [shipping legislation].

[3] Purpose of Regulations

The purpose of these Regulations is:

(a) to ensure that children are protected against the effect of marketing of designated products in order for them to grow and develop in an environment that promotes or encourages healthy dietary choices or maintenance of healthy weight; and

(b) to regulate the marketing of designated products; and

(c) to protect children from the health risks of unhealthy diets relating to designated products, including educating children and their families on the importance of heathy diets; and

(d) to provide programmes and awareness about the health risks arising from consuming designated products.

PART 2 – MARKETING OF DESIGNATED PRODUCTS

[4] Designated products[56]

(1) The [xx] may declare any food product or class or any sugar-sweetened beverage (SSB) or class, as a designated product:

(a) if the nutritional content of the product or beverage makes the consumption of that food or beverage detrimental to the health of children; and

(b) the product or beverage is only suitable for occasional consumption.

(2) Parts 1 and 2 of Schedule 1 list food products and SSBs that are taken to be designated products.[57]

(3) The [xx] may:

(a) publish criteria for declaring designated products, taking into account any or all of the following —

(i) the nutritional content of the product or beverage;

(ii) the presence of any food additive in the product or beverage;

(iii) any production technique used;

(iv) any other matters that the [xx]considers appropriate; or

(b) adopt criteria developed by any national or international body.

[5] Advertising designated products

(1) A person must not:

[56] Adapted from the Cook Islands Food Regulations (Part 7)

[57] PCITs to identify unhealthy food and SSBs in their respective jurisdictions and complete the list. Listing on specific items will facilitate enforcement. The power to designate other products can be exercised when new products are introduced into the market.

(a) if an advertisement of a designated product is likely to affect the health or education of children, when considering factors in subregulation (2), as to the importance of a healthy and balanced diet —

(i) publish, or arrange for any other person to publish, the advertisement;

(ii) arrange or undertake the advertisement; or

(b) publish or arrange for the publication of an advertisement for a designated product or its brand name to children;

(c) undertake or arrange for the advertisement of a designated product or its brand name to children.

(2) The advertisement factors to be considered under subregulation (1)(a) include any or all of the following:

(a) the nature of the product to be designated, including the level of any nutritional content of the product and likely health effect when consumed by children;

(b) the theme, content, presentation or design of the advertisement;

(c) the age of a person participating in the advertisement;

(d) any image, graphic, language, sound, music, object, animal, personality, character, activity, game or sports in the advertisement.

(3) An advertisement is taken to be targeting children if any of the following applies:

(a) it is likely to appeal to children;

(b) it is organised or published at any time, place, situation or in a medium where the percentage of children in the audience, or as likely recipients of the advertisement, is likely to exceed [30%].

(4) A person commits an offence who contravenes subregulation (1).

[6] Appearance of photos, etc., of children in advertising

(1) A person must not arrange for, or permit or authorise the photograph or image of a child to appear or be used in the advertisement of any designated product, or in association with the brand of a designated product.

(2) A person commits an offence who contravenes subregulation (1).

[7] Use of well-known persons or characters

(1) A person must not arrange for, or permit, or authorise the use of any person or character well known or likely to appeal to children for the purpose of advertising a designated product or its brand.

(2) A person commits an offence who contravenes subregulation (1).

[8] Use of games, internet, etc

(1) A person must not arrange for, or permit, or authorise the use of any game or any internet site or other electronic or communication medium intended to appeal to children forthe purpose of advertising a designated product or its brand.

(2) A person commits an offence who contravenes subregulation (1).

[9] Broadcast restrictions

(1) A person must not broadcast any advertisementfor a designated product between [6 am and 9 pm[58]].

(2) A person commits an offence who contravenes subregulation (1).

[10] Advertising in schools, etc.

(1) A person must not advertise a designated product or its brand at a school or within the vicinity of [200] metres of the school.

(2) A person must not sell, supply or distribute a designated product at a school.

(3) A person commits an offence who contravenes subregulation (1) or (2).

(4) In this Regulation:

"school" includes a place or facility where children are likely to gather, such as a health facility, child care or day care facility, wellness clinic, playground.

[11] Use of brand

(1) A person must not:

(a) use the brand of a designated product —

(i) on any article or thing intended for sale or supply to, or use by, children, other than on the package of a designated product; or

(ii) to advertise any article or thing that is not a designated product, any service, activity or event or a scholarship, fellowship or any other educational benefit; or

(b) use a designated product or its brand in association with an activity for children.

(2) A person commits an offence who contravenes subregulation (1).

[12] Premiums

(1) A person must not:

(a) provide a designated product as a gift or sample to a child or a school; or

[58] Cook Islands rule.

(b) supply or offer a premium to market a designated product to a child; or

(c) pack a designated product, or cause or permit or authorise the packaging of a designated product, in a manner which is directed to a child.

(2) A person commits an offence who contravenes subregulation (1).

PART 3 – ADMINISTRATION

[13] Functions

The functions of [CEO/PS Health] are:

(a) to administer these Regulations; and

(b) to develop, formulate and settle any policy on the marketing of unhealthy food and SSBs to children; and

(c) to undertake programmes for awareness and education on matters relating to these Regulations; and

(d) to review these Regulations every [2] years; and

(e) to carry out other functions to give effect to, or for the purposes of, these Regulations.

PART 4 – MONITORING AND ENFORCEMENT

[14] Enforcement officers[59]

(1) The [Minister/CEO/PS] may appoint suitably qualified or experienced persons as enforcement officers.

(2) A person must not be appointed as an enforcement officer if the person:

(a) has any direct or indirect financial interest in a business relating to a designated product; or

(b) in the last [2] years, was engaged or employed in a business relating to a designated product.

(3) The appointment of a person disqualified under subregulation (2) is void.

(4) The [Minister/CEO/PS] may issue an identification card to enforcement officers to be shown when carrying outtheir powers underthese Regulations.

(5) The following public officers are deemed to be enforcement officers:[60]

(a) police officers;

(b) …etc.

[15] Powers of enforcement officers

[59] Delete if the ACT provides for the appointment of enforcement officers/enforcement officers, etc.
[60] PICTs may decide to deem certain public officers as enforcement officers.

(1) An enforcement officer may:

(a) during business hours, enter and inspect a place where any designated product is imported, manufactured, sold, stocked, exhibited for sale or for advertisement, and all relevant records;

(b) require a person within the place to assist in the inspection, including answering any questions by the enforcement officer;

(2) The enforcement officer must first show their identification card to the owner or person-in-charge of the place before entering the place.

(3) After each inspection, the enforcement officer must:

(a) prepare an inspection report (including any breach of these Regulations) and submit the report to the [Minister]; and

(b) seek further instructions on the necessary action to be taken for the contravention.

[16] Power to issue desist orders

(1) This Regulation applies if an enforcement officer has reason to believe that a person: (a) has contravened, or is contravening, these Regulations; or

(b) is distributing, selling or supplying any product that does not comply with a requirement of these Regulations.

(2) An enforcement officer may issue a person with a notice to show cause stating:

(a) the facts constituting the allegation under subsection (1); and

(b) a period of at least 10 working days within which to show good cause, in writing, why a cease and desist order ("desist order") should not be made.

(3) An enforcement officer:

(a) must consider any written representation received under subregulation (2)(b); and (b) may issue a desist order if the officer is satisfied that the allegation under subregulation (1) has been proven.

(4) The person issued with a notice to show cause may provide other documents or sworn statements of other persons to support the allegation in the notice.

(5) An enforcement officer must issue a desist order if:

(a) no written representation is received under subregulation (2)(b); and

(b) the officer is satisfied that the person has been served with the notice to show cause. (6) An enforcement officer must serve the desist order on the person:

(a) personally; or

(b) by sending it through registered post or email or other electronic address provided by the person.

(7) The person who is issued with a desist order must comply with the order.

[17] Power to prosecute

(1) An enforcement officer may investigate and institute proceedings in the [magistrates' courts] for offences underthese Regulations.

(2) The prosecution power in subregulation (1) does not affect the prosecution power of the [Director of Public Prosecutions/Attorney General under [section/article xx of the Constitution.][61]

[18] Warrants for place of residence

(1) This section applies if the place to be entered or inspected is a place of residence. (2) An enforcement officer may apply to [a magistrate] for a warrant to enter and inspect the place, and if necessary, to seize designated product from the place.

(3) The warrant may authorise other matters required to give effect to the purpose of entry and inspection.

[19] Consumer complaints

(1) A person may complain in writing to an enforcement officer about any designated product.

(2) The [Minister/CEO/PS/DG] may hear and decide the complaint, including giving the right to the complainant and the respondent to be heard.

(3) The [Minister/CEO/PS/DG] may:

(a) dismiss the complaint; or

(b) require the respondent to remedy the matter complained of.

(4) The enforcement officer must give a copy of the decision to the complainant and the respondent.

(5) In this Regulation:

"enforcement officer" includes the [CEO/PS/Secretary/DG].

[20] Product recall

(1) This section applies if a designated product:

(a) does not comply with a requirement of these Regulations, such as any labelling or information on the designated product; or

(b) is manufactured, imported, distributed or sold contrary to these Regulations or the Codex;

[61] Relevant to PICTs with the constitutional prosecution powers of the Director of Public Prosecutions/Attorney General.

(c) appears to the Minister to cause or may cause injury or death to a person or for any reason is not safe to be used or consumed.

(2) The [Minister] may, by order, recall the designated product with costs borne by the manufacturer, wholesaler or retailer.

(3) The order is also treated as the authority:

(a) to enter and inspect the place where the designated product is kept or is suspected or believed to be kept; and

(b) to seize and remove the designated product or any other matter specified in the order.

(4) The [Minister] may approve the disposal of any recalled designated product or seized matter.

[21] Obstruction etc. of enforcement officers

A person commits an offence who, without reasonable excuse:

(a) obstructs or hinders an enforcement officer when carrying out a function, power or duty under these Regulations; or

(b) fails to comply with a requirement or direction of an enforcement officer.

[22] Infringement notices for spot fines

(1) This section applies if a person ("defendant") commits an offence under these Regulations for which an infringement notice is required to be issued.

(2) An enforcement officer may issue an infringement notice [in a prescribed/approved form] requiring the defendant to pay the fixed penalty on a date specified in the notice. (3) When a defendant is served with an infringement notice, the defendant may:

(a) pay the spot fine (in full) before the specified date for payment of fixed penalty, if the defendant admits the offence by endorsing, in writing, the admission on the notice; or (b) appear before the court on a date specified in the notice for appearance in court if the defendant denies the offence.

(4) In a proceeding, a certificate signed by an enforcement officer indicating that the spot fine has or has not been paid, unless the contrary is proved, is evidence of the matters stated in the certificate.

(5) No further proceeding is to be instituted against the defendant for the offence for which a spot fine has been fully paid.

(6) A defendant who is convicted in a court for an offence specified in the infringement notice:

(a) is not subject to the fixed penalty specified in the notice; but

(b) is subject to the penalty prescribed for that offence.

[23] Service of infringement notices

(1) An infringement notice is to be:

(a) served pursuant to the rules of the court; and

(b) filed before the court specified in the notice.

(2) An infringement notice that is filed under subregulation (1)(b) is treated for all purposes as summons issued pursuant to the [criminal procedure/magistrates' courts legislation].

[24] Directors, etc., liability

(1) This section applies if a body corporate commits an offence.

(2) A director of the body corporate also commits the same offence.

(3) It is a defence if the director proves that the offence was committed without the director's knowledge, connivance or consent.

(4) In this section: "director" includes the secretary of the body corporate, or an officer or employee who manages or supervises the operations of the body corporate.

[25] Penalties

(1) A person served with an infringement notice is liable to pay the fixed penalties listed in Part 1 of the Schedule 2.

(2) A person convicted of an offence under these Regulations is liable to the maximum penalties in listed in Part 2 of Schedule 2.

PART 5 – MISCELLANEOUS

[26] Immunity from personal liability

(1) A person is not personally liable for carrying out in good faith a function, duty or power under these Regulations.

(2) Subregulation (1) does not affect any liability that the State would, but for that subsection, have for an act or omission.

[27] Repeal/consequential amendments

[Repeal or amend existing regulations]

SCHEDULE 1

(Regulation xx)

DESIGNATED PRODUCTS

PART 1 – UNHEALTHY FOOD		
PART 2 – SUGAR-SWEETENED BEVERAGES		

SCHEDULE 2

(Regulation xx)

PENALTIES

PART 1 – Fixed penalties

Regulation	Individual (first offence)	Individual (second or subsequent offence)	Company (first offence)	Company (second or subsequent offence)

PART 2 – PENALTIES FOR OFFENCES

Regulation	Individual (first offence)	Individual (second or subsequent offence	Company (first offence)	Company (second or subsequent offence)

PART 3 – Infringement Notice Form

FOOD ACT […] FOOD (MARKETING OF UNHEALTHY FOODS AND SUGAR SWEETHENED BEVERAGES TO CHILDREN) REGULATIONS 20… INFRINGEMENT NOTICE	
1	**Date of Notice: [date] […month…][20…..]**
2	**Defendant:** • Name (In full): • Residential address: • Other contact details:
3	• Regulation contravened: • Statement of offence: • Details of offence:
4	**The fixed penalty is [$.]**
5	**Admitting the offence** If you admit the offence in 3 above: • You must: o sign the admission declaration in 7 below; ▪ immediately when this completed Notice is given to you; or ▪ otherwise, no later than 20 working days from the date in 1 above; and o pay the fixed penalty in 4 above (either paid in a lump sum or part payment, before 20 working days above expires) to: ▪ [nearest …Ministry Office] ▪ [add other places for payment] When you have paid ALL the fixed penalty in 4 above, no other action relating to the offence in 2 above will be taken against you. If you fail to pay ALL the fixed penalty within 20 working days above, you are treated as having denied the offence and you will be served with the Notice to Attend Court in 9 below.
6	**Denying the offence** If you deny the offence in 2 above you: • must sign the Denial Declaration in 8 below: o immediately after the completed Infringement Notice is given to you; or o otherwise, no later than 20 working days from the date in 1 above; and • will be served with the Notice to Attend court in 9 below; • if convicted by the court, will be liable to penalty for the offences as set out in Part 2, of the Schedule (including any costs of the proceedings in court) and not the fixed penalty in 4 above; • may, before that 20 working days expire, admit the offence, sign the admission declaration and pay the fixed penalty of [$.] in 4 above.

7	**Admission declaration** I, […name of defendant…] of […address…] declare that I: • have received this Notice from the person stated in 11 below; • admit committing the offence in 3 above (without any coercion or force from another person), as such will pay the fixed penalty of [$.] in 4 above. …….. [Signature]
8	**Denial declaration** I, […name of defendant…] of […address…] declare that I: • deny committing the offence in 3 above; and • will defend the offence in court. …….. [Signature]
9	**Notice to attend court** To: The Defendant (details in 2 above) 1. You are required to attend before [a magistrate/judge201] at [……] on [date] at ..... am/pm to answer charges specified in 3 above. 2. You may appear in person or through a lawyer. 3. If you fail to appear in court, the court will treat that as an admission of the charges and the court may impose the penalty for the offence against you in your absence. 4. If the court enters judgment in your absence, you have 10 working days to apply to the court to reverse the default judgment and to proceed for trial. Dated the day of 20…. …… Court official designation and stamp/seal
10	**Affidavit of service of notice to attend court** I, ……, ……. (*occupation*), of swear that: 1. I am authorised to serve any court processes. 2. I served this Infringement Notice, including the signed the Notice to attend Court on the above Defendant on … day of……20…. At […*place*…] 3. The Defendant was served in person. Sworn before me: ..... [Server's signature] at […*place*….] on […. *date* ….] …… … [*Lawyer/JP, etc*] - Witness

11	**This Notice is issued by:** • *Designation and ID No (if any):* • *Name*: • *Phone & other contact:* *Signature*: ……

[201] Judge of the lower courts, such as District Courts in the case of Samoa.

ANNXEURE D – FOOD (SALT, SUGAR AND TRANS-FAT) REGULATIONS

FOOD [… ACT…]

FOOD (SALT, SUGAR AND TRANS-FAT) REGULATIONS [20…]

Table of contents

FOOD (SALT, SUGAR AND TRANS-FAT) REGULATIONS [20…]

IN exercise of the powers conferred on me by section [xx] of the [Food … Act 20…], I make these Regulations –

PART 1 – PRELIMINARY

[1] Citation and commencement

(1) These Regulations may be cited as the Food (Salt, Sugar and Trans-fat) Regulations [20…].

(2) These Regulations commence on [insert date].

[2] Definitions

In these Regulations: "**claim**" —

(a) means a health claim that states, suggests or implies that a relationship exists between any food category or food or one of its constituents and health; and

(b) includes a health claim likely to have the same meaning for consumers;

"**designated product**" means foods or beverages high in fat, salt or sugar according to the stated criteria.

"**iodised salt**" means salt used for food to which iodide has been added in the form of cuprous iodide or potassium iodide standard under the Codex standard or otherwise standard prescribed under the Act.

"**place**" includes an area, facility, premises, building, vehicle or vessel.

"**restaurant**" means a place where food is sold or supplied to be consumed at the place or elsewhere. "**salt**" means added or free salt but does not include salt as a natural constituent of food. "**standard**" —

(a) means a Codex standard for salt, sugar or trans-fat; and

(b) includes any standard under any Regulation under the Act [or other Act[62]] on salt, sugar or trans-fat;

"**sugar**" means added or free sugar but does not include sugar as a natural constituent of the food. "**trans-fat**" —

(a) means industrially produced trans-fatty acid, including —

(i) partially hydrogenated oil, vegetable oil or fish oil converted from a liquid state into a solid state through the addition of hydrogen; or

(ii) oils and fats that have been hydrogenated, but not to complete or near complete saturation, and with an iodine value greater than 4;[63] but

(b) does not include naturally occurring content of trans-fatty acids in animal fats or products; "**vehicle**" has the meaning in the [traffic legislation].

"**vessel**" has the meaning in the [shipping legislation].

[3] Purpose of Regulations

The purpose of these Regulations is:

(a) to regulate the safe level of salt and sugar in food preparation and processing in order to protect the health of persons;

(b) to prohibit the use of trans-fat in processing or manufacturing of food.

[4] Relationship with other regulations

(1) These Regulations are to be read as one with, or in addition to, any other regulations dealing with salt, sugar or trans-fat.

[62] Some PICTS cover products standards under other legislation, such as Cook Islands.
[63] Definition (paragraph (b) in the United States Food and Drug Administration.

(2) If there is any inconsistency, these Regulations prevail.

PART 2 – SALT

[5] Standards on salt[64]

(1) A person must not sell or supply salt for processing of food or for direct consumption unless the salt meets the standards and guidelines under Codex Alimentarius.

(2) In addition to general requirements on labelling, the following provisions apply -

(a) salt labelled as “iodised”, “fortified” or “enriched” must identify the ingredients added for fortification purposes and specify the concentration in which it is present in the final product; and

(b) reduced sodium mixture is to declare the sodium and potassium content, expressed per [100g] (this does not constitute a nutrition claim).

(3) A person commits an offence who contravenes subregulation (1) or (2).

[6] Packaging and storage

(1) A person who manufactures, distributes or sells salt must ensure that the salt is properly packaged and stored in order to maintain its quality.

(2) A person commits an offence who contravenes subregulation (1).

[7] Health claims[65]

(1) A person must not make a claim that a food product is low in sodium or salt unless the food product contains no more than [0.12g] of sodium, or the equivalent value for salt, per [100g or per 100 ml] (for waters, other than natural mineral waters, the maximum value is [2mg of sodium per 100ml]).

(2) A person must not make a claim that a food product (excluding natural mineral waters and other waters) is very low in sodium or salt unless the food product contains no more than 0.04g of sodium, or the equivalent value for salt, per 100g or per 100ml.

(3) A person must not make a claim that a food product is sodium free or salt free unless the food product contains no more than 0.005g of sodium, or the equivalent value for salt, per 100g.

(4) A person commits an offence who contravenes subregulation (1), (2) or (3).

(5) In this section:

[64] Adapted from the Fiji Food Regulations – Salt Standards.
[65] Adapted from the EU Food Nutrients Standards – REGULATION (EC) No 1924/2006

"**person**" means a person who manufactures, processes, imports, exports, distributes or sells the food product.

[8] Mandatory salt limit in processed food products

(1) The [Minister/CEO/PS] may declare the maximum limit of salt used in processed food.

(2) This Regulation does not prevent any voluntary agreement to reduce the contents of salt in the processed food.

(3) The processed food products listed in Part 1 of Schedule 1 are taken to be declared under subregulation (1).

(4) The [Minister/CEO/PS] may fix a period in which to comply with this Regulation.

(5) A person commits an offence who sells or supplies any processed food product that exceeds the maximum limit of salt.

[9] Monitoring of salt content in processed food products

(1) The [Minister/CEO] may monitor the salt content in processed food products by:

(a) undertaking a baseline survey of salt levels in food products; or

(b) requiring a person who manufactures or distributes food products to provide a report that analyses the salt level of the products.

(2) The data on the baseline survey must be published in an official publication or on the Ministry's website.

(3) The monitoring may be undertaken annually, or at such times as the Minister determines, or when new food products are sold or supplied.

[10] Reformulation to reduce salt level

(1) The [Minister/CEO] may undertake consultations with the food industry and other persons on the reformulation of food products that are high in salt.

(2) The reformulation process must include:

(a) consultation with food industry representatives and other relevant stakeholders on how to reduce salt levels in the food products;

(b) an action plan, prepared in consultation with industry and other relevant stakeholders, containing time-limited targets for achieving reductions in salt levels in specified categories of food products, including interim targets where appropriate;

(c) an action plan detailing any other measures to reduce sugar levels;

(d) regular follow-up meetings or consultations with the food industry on the reformulation process, including progress towards achieving the salt reduction targets.

[11] Duty of owners of restaurants

(1) The [Minister] may, by Notice in the Gazette, declare a restaurant to which this Regulation applies.

(2) The following restaurants are taken to be declared under subregulation (1):

(a) any restaurant that is licensed to sell liquor under the [Liquor legislation];

(b) any international chain restaurant;

(3) The owner of a restaurant must:

(a) place a notice, about the health effect of excess intake of salt on health of persons, at a place in the restaurant that is conspicuous to customers; or

(b) only provide free salt on the serving table if requested by the customer.

(4) The owner of a restaurant may offer to a customer any food without added salt.

(5) The [CEO/PS Health] may approve the form of notice and wording (including diagrams).

(6) A person commits an offence who contravenes subregulation (3).

PART 3 – SUGAR

[12] Sugar standards

(1) A person must not sell or supply sugar for the processing of food or for direct consumption unless the sugar meets the standards and guidelines under Codex Alimentarius.

(2) A person commits an offence who contravenes subregulation (1).

[13] Monitoring of sugar content of food

(1) The [Minister/CEO] may monitor the sugar content of food products by:

(a) undertaking a baseline survey of sugar levels in food products; or

(b) requiring a person who manufactures or distributes food products to provide a report that analyses the sugar level of the products.

(2) The data on the baseline survey must be published in an official publication or on the Ministry's website.

(3) The monitoring may be undertaken annually, or at such times as the Minister determines, or when new food products are sold or supplied.

[14] Mandatory sugar limit in processed food

(1) The [Minister/CEO/PS] may declare the maximum limit of sugar used in processed food products.

(2) The processed food products listed in Part 2 of Schedule 1 are taken to be declared under subregulation (1).

(3) The [Minister/CEO/PS] may fix a period in which to comply with this Regulation.

(4) A person commits an offence who sells or supplies any processed food product that exceeds the maximum limit of sugar.

[15] Reformulation of food products to reduce sugar level

(1) The [Minister/CEO] may undertake consultations with the food industry and other persons on the reformulation of food products that are high in sugar.

(2) The reformulation process must include:

(a) consultation with food industry representatives and other relevant stakeholders on how to reduce sugar levels in the food products;

(b) an action plan, prepared in consultation with industry and other relevant stakeholders, containing time-limited targets for achieving reductions in sugar levels in specified categories of food products, including interim targets where appropriate.

(c) an action plan detailing any other measures to reduce sugar levels;

(d) regular follow-up meetings or consultations with the food industry on the reformulation process, including progress towards achieving the sugar reduction targets.

[16] Health claims and Codex Alimentarius[66]

(1) This Regulation applies to a person who manufactures, processes, imports, exports, distributes or sells a food product that contains free sugar.

(2) A person must not make a claim that a food product is low in sugar unless the food product contains no more than [5g of sugars per 100g for solids or 2.5g of sugars per 100ml for liquids].[67]

(3) A person must not make a claim that a food product is sugar-free unless the food product contains no more than [0.5g of sugars per 100g or 100ml].[68]

(4) A person must not make a claim that sugars have not been added to a food product unless the food product does not contain any added monosaccharides or disaccharides or any other caloric food used for its sweetening properties except non-caloric sweetener.

(5) If sugars are naturally present in the food product, the label must state words to the effect that the food product contains naturally occurring sugars.

(6) A person commits an offence who contravenes subregulation (2), (3), (4) or (5).

[66] Adapted from the EU Food Nutrients Standards – REGULATION (EC) No 1924/2006
[67] PICTs to decide the appropriate amount.
[68] PICTs to decide the appropriate amount.

PART 4 – TRANS-FAT

[17] Restrictions

(1) This Regulation applies to:

(a) a person who —

(i) manufactures or produces food;

(ii) retails food;

(b) any outlet for sale or supply of food, such as, an institution, catering establishment, restaurants or bakeries.

(2) After [6 months][69] from commencement of these Regulations, a person must not sell:

(a) any fat, vegetable oil or margarine, if it contains more than [2%] trans-fat by 100g or 100 ml of fat; or

(b) any other food, including processed non-alcoholic beverages, if it contains more than [5%] of trans-fatty acids by 100g or 100ml of fat.

(3) A person commits an offence who contravenes subregulation (2).

(4) This Regulation expires from 31 December 20.][70]

[18] Prohibition on the use of trans-fat[71]

(1) This Regulation applies to:

(a) a person who —

(i) manufactures or produces food; or

(ii) retails food;

(b) any outlet for sale or supply of food, such as, an institution, catering establishment, restaurants or bakeries.

(2) A person must not:

(a) use any trans-fat when —

(i) manufacturing any food product; or

(ii) preparing, cooking or supplying any food to be sold in any outlet for sale or supply of food, such as, an institution, catering establishment, restaurants or bakeries; or

(b) sell or supply a food product that contains trans-fat; or

(c) sell or supply any trans-fat.

(3) A person commits an offence who contravenes subregulation (2).

[(4) This Regulation commences on 1 January 20.]

[69] PICTs to decide the appropriate amount.
[70] PICTs are required to decide the appropriate period for transition from limitation of trans fat to the total prohibition. The period needs to be synchronized with the next Regulation on prohibition.
[71] This does not prevent a PICT from allowing restrictions on the use of trans fat.

[19] Mandatory trans-fat limit in processed food products

(1) The [Minister/CEO/PS] may declare the maximum limit of trans-fat used in processed food.

(2) The processed food products listed in Part 3 of Schedule 1 are taken to be declared under subregulation (1).

(3) The [Minister/CEO/PS] may fix a period in which to comply with this Regulation.

(4) A person commits an offence who sells or supplies any processed food product that exceeds the maximum limit of trans-fat.

[20] Monitoring of trans-fat content of food

(1) The [Minister/CEO] may monitor the trans-fat content of food products by:

(a) undertaking a baseline survey of trans-fat levels in food products; or

(b) requiring a person who manufactures or distributes food products to provide a report that analyses the trans-fat level of the products.

(2) The data on the baseline survey must be published in an official publication or on the Ministry's website.

(3) The monitoring may be undertaken annually, or at such times as the Minister determines, or when new food products are sold or supplied.

[21] Reformulation of food products to reduce trans-fat level

(1) The [Minister/CEO] may undertake consultations with the food industry and other persons on the reformulation of their food products that are high in trans-fat.

(2) The reformulation process must include:

(a) consultation with food industry representatives and other relevant stakeholders on how to reduce trans-fat levels in the food products;

(b) an action plan, prepared in consultation with industry and other relevant stakeholders, containing time-limited targets for achieving reductions in trans-fat levels in specified categories of food products, including interim targets where appropriate;

(c) an action plan detailing any other measures to reduce trans-fat levels;

(d) regular follow-up meetings or consultations with the food industry on the reformulation process, including progress towards achieving the trans-fat reduction targets.

(e)

[22] Health claims[72]

(1) This Regulation applies to a person who manufactures, processes, imports, exports, distributes or sells a food product that contains trans-fat.

(2) A person must not make a claim that a food product is low in fat unless the food product contains no more than [3g[73] of fat per 100g for solids or 1.5g of fat per 100ml for liquids (1.8g of fat per 100ml for semi-skimmed milk)].

(3) A person must not make a claim that a food product is fat-free unless the product:

(a) contains not more than [0.5g of fat per 100g or 100ml] of trans-fat; or

(b) contains […%] fat-free.

(4) A person must not make a claim that a food product is low in saturated fat unless:

(a) the sum of saturated fatty acids [and trans-fatty acids] in the food product does not exceed [1.5g per 100g for solids or 0.75g/100 ml] for liquids; or

(b) in either case, the sum of saturated fatty acids [and trans-fatty acids] does not provide more than [10%] of energy.

(5) A person must not make a claim that a food product does not contain saturated fat unless the sum of saturated fat [and trans-fatty acids] does not exceed [0.1g of saturated fat per 100g or 100 ml].

(6) A person commits an offence who contravenes subregulation (2), (3), (4) or (5).

PART 5 – ADMINISTRATION

[23] National policies for salt, sugar and trans-fat

(1) The [Minister] must prepare one or more national policies for salt (including elimination of iodine deficiency), sugar and trans-fat.

(2) The [Minister] may appoint a committee to prepare the policies under subregulation (1).

(3) The members of a committee are to include suitably qualified or experienced persons to undertake research.

(4) The [Minister] must approve the terms of reference of a committee, including the matters and issues to be covered and the time within which the policy is to be completed.

(5) A policy must:

(a) include —

(i) reduction measures for salt and sugar and elimination of trans-fat;

(ii) national targets for intake of salt and sugar;

(iii) specific activities and implementation programmes;

[72] Adapted from the EU Food Nutrients Standards – Regulation (EC) No 1924/2006
[73] PICTs to decide the appropriate amount in this Regulation.

(b) include initiatives through community settings, such as, schools, workplaces and hospitals; and

(c) be operative for a period of not more than [5] years; and

(d) after it is approved by [Cabinet/Minister], be tabled as soon as practicable in [Parliament] by the [Minister]; and

(e) be reviewed within [12 months] before expiry of the 5 year term in paragraph (c).

[24] Functions

The functions of [CEO/PS/DH] on these Regulations are:

(a) to administer these Regulations; and

(b) to monitor and implement any programme or recommendation in a national strategy;

(c) to review these Regulations every [2] years; and

(d) to carry out any programme for public awareness and education on the use, consumption, risks and any other related matters about salt, sugar or trans-fat;

(e) to carry out other functions to give effect to, or for the purposes of, these Regulations.

PART 6 – MONITORING AND ENFORCEMENT[74]

[25] Enforcement officers[75]

(1) The [Minister/CEO/PS] may appoint suitably qualified or experienced persons as enforcement officers.

(2) A person must not be appointed as an enforcement officer if the person:

(a) has any direct or indirect financial interest in a business relating to a designated product; or

(b) in the last [2] years, was engaged or employed in a business relating to a designated product.

(3) The appointment of a person disqualified under subregulation (2) is void.

(4) The [Minister/CEO/PS] must issue identification cards to enforcement officers.

(5) The following public officers are deemed to be enforcement officers:[76]

(a) police officers;

(b) … (etc.).

[26] Powers of enforcement officers

(1) An enforcement officer may:

[74] Check that the enforcement provisions in these Regulations are not repeated in the parent Act.
[75] Delete if the Act provides for the appointment of enforcement officers/enforcement officers etc.
[76] PICTs may decide to deem certain public officers as enforcement officers.

(a) during business hours, enter and inspect a place where any designated product is imported, manufactured, sold, stocked, exhibited for sale or for advertisement, and all relevant records;

(b) require a person within the place to assist in the inspection, including answering any questions asked by the enforcement officer.

(2) The enforcement officer must first show the officer's identification card to the owner or person-in- charge of the place before entering the place.

(3) After each inspection, the enforcement officer must:

(a) prepare an inspection report (including any breach of these Regulations) and submit the report to the [Minister]; and

(b) seek further instructions on the necessary action to be taken for the contravention.

[27] Power to issue desist orders

(1) This Regulation applies if an enforcement officer has reason to believe that a person

(a) has contravened or is contravening these Regulations; or

(b) is distributing, selling or supplying any product that does not comply with a requirement of these Regulations.

(2) An enforcement officer may issue a person with a notice to show cause stating:

(a) the facts constituting the allegation under subsection (1); and

(b) a period of at least 10 working days within which to show good cause, in writing, why a cease and desist order (**"desist order"**) should not be made.

(3) An enforcement officer:

(a) must consider any written representation received under subregulation (2)(b); and

(b) may issue a desist order if the officer is satisfied that the allegation under subregulation (1) has been proven.

(4) The person issued with a notice to show cause may provide other documents or sworn statements of other persons to support the allegation in the notice.

(5) An enforcement officer must issue a desist order if:

(a) no written representation is received under subregulation (2)(b); and

(b) the officer is satisfied that the person has been served with the notice to show cause.

(6) An enforcement officer must serve the desist order on the person:

(a) personally; or

(b) by sending it through registered post or email or other electronic address provided by the person.

(7) The person who is issued with a desist order must comply with the order.

[28] Power to prosecute

(1) An enforcement officer may investigate and institute proceedings in the [magistrates' courts] for offences under these Regulations.

[(2) The prosecution power in subregulation (1) does not affect the prosecution power of the [Director of Public Prosecutions/Attorney General under [section/article xx of the Constitution.][77]

[29] Warrants for places of residence

(1) This section applies if the place to be entered or inspected is a place of residence.

(2) An enforcement officer may apply to [a magistrate/District Court judge] for a warrant to enter and inspect the place, and if necessary to seize designated product from the place.

(3) The warrant may authorise other matters required to give effect to the purpose of entry and inspection.

[30] Consumer complaints

(1) A person may complain in writing to an enforcement officer about any designated product.

(2) The [Minister/CEO/PS/DG] may hear and decide the complaint, including giving the right to the complainant and the respondent to be heard.

(3) The [Minister/CEO/PS/DG] may:

(a) dismiss the complaint; or

(b) require the respondent to remedy the matter complained of.

(4) The enforcement officer must give a copy of the decision to the complainant and the respondent.

(5) In this Regulation:

"enforcement officer" includes the [CEO/PS/Secretary/DG].

[31] Product recall

(1) This section applies if a designated product:

(a) does not comply with a requirement these Regulations, such as labelling or other information on the designated product; or

(b) is manufactured, imported, distributed or sold contrary to these Regulations or the Codex.

[77] Relevant to PICTs with the constitutional prosecution powers of the Director of Public Prosecutions/Attorney General

(c) appears to the Minister to cause or may cause injury or death to a person or for any reason is not safe to be used or consumed.

(2) The [Minister] may, by order, recall the designated product with the costs borne by the manufacturer, wholesaler or retailer.

(3) The order is also treated as the authority:

(a) to enter and inspect the place where the designated product is kept or is suspected or believed to be kept; and

(b) to seize and remove the designated product specified in the order.

(4) The [Minister] may approve the disposal of any recalled designated product.

[32] Offence of misleading marketing

A person commits an offence who markets, advertises or promotes any food product in a manner that misleads consumers about:

(a) the high content of free salt in the food product; or

(b) using a word, such as “anti-oxidant” in the label of the food that is high in free salt that leads a consumer to think that the food product is healthy; or

(c) the high content of free sugar in the food product; or

(d) using a word in the label of the food product that is high in free sugar that leads a consumer to think that the food product is healthy; or

(e) the high content of fat in the food product; or

(f) using a word, such as “antioxidant”, in the label of the food product that is high in fat that leads a consumer to think that the food product is healthy.

[33] Obstruction etc. of enforcement officers

A person commits an offence who, without reasonable excuse:

(a) obstructs or hinders an enforcement officer when carrying out a function, power or duty under these Regulations; or

(b) fails to comply with a requirement or direction of an enforcement officer.

[34] Offence of making false, etc., claims

A person commits an offence who makes a claim that:

(a) is false or misleading; or

(b) gives rise to doubt about the safety or the nutritional adequacy of any other food; or

(c)encourages or condones excess consumption of any food; or

(d) states, suggests or implies that a balanced and varied diet cannot provide appropriate quantities of nutrients in general; or

(e) refers to changes in bodily functions which could give rise to or exploit fear in the consumer, either textually or through any pictorial, graphic or symbolic representation.

[35] Infringement notices for spot fines

(1) This section applies if a person ("defendant") commits an offence under these Regulations for which an infringement notice is required to be issued.

(2) An enforcement officer may issue an infringement notice [in a prescribed/approved form] requiring the defendant to pay the fixed penalty on the date specified in the notice.

(3) When a defendant is served with an infringement notice, the defendant may:

(a) pay the spot fine (in full) before the specified date for payment of fixed penalty, if the defendant admits the offence by endorsing, in writing, the admission on the notice; or

(b) appear before the court on a date specified in the notice for appearance in court if the defendant denies the offence.

(4) In a proceeding, a certificate signed by an enforcement officer indicating that the spot fine has or has not been paid, unless the contrary is proved, is evidence of the matters stated in the certificate.

(5) No further proceeding is to be instituted against the defendant for an offence for which a spot fine has been fully paid.

(6) The defendant who is convicted in court pursuant to an infringement notice:

(a) is not subject to the fixed penalty specified in the notice; but

(b) is subject to the penalty prescribed for that offence.

[36] Service of infringement notices

(1) An infringement notice is to be:

(a) served pursuant to the rules of the court; and

(b) filed before the court specified in the notice.

(2) An infringement notice that is filed under subregulation (1)(b) is treated for all purposes as summons issued pursuant to the [criminal procedure/magistrates'/District courts legislation] to institute the proceedings for the offence.

[37] Directors, etc., liability

(1) This section applies if a body corporate commits an offence.

(2) A director of the body corporate also commits the same offence.

(3) It is a defence if the director proves that the offence was committed without the director's knowledge, connivance or consent.

(4) In this section:

"director" includes the secretary of the body corporate, or an officer or employee who manages or supervises the operations of the body corporate.

[38] Penalties

(1) A person served with an infringement notice is liable to pay the fixed penalties for that offence listed in Part 1 of Schedule 2.

(2) A person convicted of an offence under these Regulations is liable to the penalties in listed in Part 2 of Schedule 2.

PART 7 – MISCELLANEOUS

[39] Immunity from personal liability

(1) A person is not personally liable for carrying out, in good faith, a function, duty or power under these Regulations.

(2) Subregulation (1) does not affect any liability that the State would, but for that subregulation, have for an act or omission.

[40] Repeal/consequential amendments

[Repeal or amend existing regulations]

SCHEDULE 1 – MAXIMUM LEVEL OF SALT, SUGAR OR TRANS-FAT IN PROCESSED FOOD PRODUCTS

Regulation [xx]

PART 1 – SALT

Food[78]	Maximum salt level (Effective from 20...)[79]	Maximum salt level Effective from [20...][80]	Maximum salt level Effective from [20...]
Bread, croissants			
Cereals and salted cookies			
Margarines and butter			
Salty snacks			
Chips, such as potato chips			
Processed food (including processed or cured meats and sausages)			
Gravy and soup mixes and dressings			
Instant noodles			
Stock cubes			
Foods prepared in restaurants			
Dairy and cheese products			
Pizza and pastas			

PART 2 – SUGAR

Food	Maximum sugar level	

PART 3 – TRANS-FAT[81]

Food	Maximum trans-fat level	

[78] List of food items used by South Africa which PICTs can use as the basis for listing those targeted food items.
[79] PICTs to decide the method (weight, per serving, etc.) of maximum salt content for each food or a class.
[80] PICTs can phase-in the salt level over a period to reach target maximum level.
[81] Only for PICTs that do not have total ban on trans-fat.

SCHEDULE 2 – PENALTIES

Regulation [xx]

PART 1 – FIXED PENALTIES

1. Regulation	2. Individual (first offence)	3. Individual (second or subsequent offence)	4. Company (first offence)	5. Company (second or subsequent offence)

PART 2 – PENALTIES FOR OFFENCES

1. Regulation	2. Individual (first offence)	3. Individual (second or subsequent offence	4. Company (first offence)	5. Company (second or subsequent offence)

PART 3 – INFRINGEMENT NOTICE FORM

FOOD ACT […] **FOOD (SALT, SUGAR AND TRANS-FAT) REGULATIONS 20… INFRINGEMENT NOTICE**	
1	**Date of Notice: [date] […month…][20…..]**
2	**Defendant:** • Name (In full):

	• Residential address: • Other contact details:
3	• Regulation contravened: • Statement of offence: • Details of offence:
4	The fixed penalty is **[$.]**
5	**Admitting the offence** If you admit the offence in 3 above: • You must: o **sign** the admission declaration in 7 below; ▪ immediately when this completed Notice is given to you; or ▪ otherwise, no later than 20 working days from the date in 1 above; and o **pay** the fixed penalty in 4 above (either paid in a lump sum or part payment, before 20 working days above expires) to: ▪ [*nearest …Ministry Office*] ▪ [*add other places for payment*] When you have paid **ALL** the fixed penalty in 4 above, no other action relating to the offence in 2 above will be taken against you. If you fail to pay **ALL** the fixed penalty within 20 working days above, you are treated as having denied the offence and you will be served with the Notice to Attend Court in 9 below.
6	**Denying the offence** If you deny the offence in 2 above you: • must sign the Denial Declaration in 8 below: o immediately after the completed Infringement Notice is given to you; or o otherwise, no later than 20 working days from the date in 1 above; and • will be served with the Notice to Attend court in 9 below; • if convicted by the court, will be liable to penalty for the offences as set out in Part 2, of the Schedule (including any costs of the proceedings in court) and not the fixed penalty in 4 above; • may, before that 20 working days expire, admit the offence, sign the admission declaration and pay the fixed penalty of [$.] in 4 above.

7	**Admission declaration** I, […name of defendant…] of […address…] declare that I: • have received this Notice from the person stated in 11 below; • admit committing the offence in 3 above (without any coercion or force from another person), as such will pay the fixed penalty of [$. .....] in 4 above. … [Signature]
8	**Denial declaration** I, […name of defendant…] of […address…] declare that I: • deny committing the offence in 3 above; and • will defend the offence in court. … [Signature]
9	**Notice to attend court** To: The Defendant (details in 2 above) 1. You are required to attend before [a magistrate/judge222] at [……] on [date] at..... am/pm to answer charges specified in 3 above. 2. You may appear in person or through a lawyer. 3. If you fail to appear in court, the court will treat that as an admission of the charges and the court may impose the penalty for the offence against you in your absence. 4. If the court enters judgment in your absence, you have 10 working days to apply to the court to reverse the default judgment and to proceed for trial. Dated the day of 20…. …… Court official designation and stamp/seal

10	**Affidavit of service of notice to attend court** I, ……, ……. (occupation), of swear that: 1. I am authorised to serve any court processes. 2. I served this Infringement Notice, including the signed the Notice to attend Court on the above Defendant on … day of……20…. At […place…] 3. The Defendant was served in person. Sworn before me: [Server's signature] at […place….] on […. date ….] …… [Lawyer/JP, etc] - Witness
11	**This Notice is issued by:** • Designation and ID No (if any): • Name: • Phone & other contact: Signature: ……

[222] Judge of the lower courts, such as District Courts in the case of Samoa.

ANNEXURE E – FOOD (BREASTFEEDING PROMOTION AND PROTECTION) REGULATIONS

FOOD […ACT 20…]

FOOD (BREASTFEEDING PROMOTION AND PROTECTION) REGULATIONS [20…]

Table of contents

IN exercise of the powers conferred upon me by section [xx] of the Food […Act 20…], I make these Regulations –

PART 1 – PRELIMINARY

[1] Citation and commencement

(1) These Regulations may be cited as the Food (Breastfeeding Promotion and Protection) Regulations [20…].

(2) These Regulations commence on [insert date].

[2] Definitions

In these Regulations:

"**advertise**" —

(a) meanstopromotethesaleoruseofabreastmilksubstitutethroughanymeansofcommunication or representation; and

(b) includes to promote the sale or use of a breastmilk substitute through —

(i) a written publication, television, radio, film or any other electronic transmission such as the internet, social media, video, telephone or mobile application; or the display of a sign, billboard or notice; or

(ii) the exhibition of a picture or model;

"**brand name**" —

(a) means the name, trademark, or mark of a breastmilk substitute; and

(b) includes —

(i) any word, mark or design associated with a breastmilk substitute or with its manufacturer or distributor; or

(ii) the logo of the product or the name of the manufacturer or distributor of a breastmilk substitute;

"**breastmilk substitute**" —

(a) means a product that, partially or totally, replaces breastmilk, whether or not suitable for that purpose; and

(b) includes —

(i) an infant formula, a young child formula or a follow-on formula; or

(ii) a ready-to-use therapeutic food or a complementary food product; or

(iii) any other product marketed or represented as suitable for feeding infants aged up to 6 months; and

(iv) any equipment (such as a feeding bottle or a teat or a pacifier) for containing or delivering breastmilk substitutes for infants or young children;

(v) any product designated under Regulation [xx];

"**breastfeeding**" means the process by which the mother expels or expresses milk from her breast after childbirth to feed the infant or young child for their healthy growth and development.

"**breastmilk**" means milk for breastfeeding produced by the breast of a mother after childbirth.

"**bottle feeding**" means feeding liquid or semi-solid food from a bottle with a nipple.

"**caregiver**" means [a person (other than a mother) who cares for the infant or young child or the mother].

"**Code**"—

(a) means the International Code of Marketing of Breastmilk Substitutes adopted by the World Health Assembly of the World Health Organization in 1981; and

(b) includes any related World Health Assembly Resolution made after the Code; "**Codex**"—

(a) means the relevant Codex Alimentarius International Food Standard for breastmilk substitutes for infants or young children; and

(b) includes —

(i) any other standards recommended by the Codex Alimentarius Commission for any breastmilk substitute for infants or young children; and

(ii) any other standard on breastmilk substitutes for infants or young children, prescribed by Regulations under the Act;

"**complementary food**" means a breastmilk substitute suitable or represented as suitable as an addition to breastmilk, infant formula or follow-on formula for infants (aged 6 to [12months)[82] and young children.

"**complementary food product**" means a breastmilk substitute processed for commercial purposes.

"**container**"—

(a) means a form of packaging of a breastmilk substitute for the sale of the product as a retail unit; and

(b) includes a wrapper;

"**cross-promote**" means to promote another product, such as to use a similar brand name, packaging design, label, text, image, colour scheme, symbol or slogan.

"**designated product**" means a product declared as such under Regulation [xx].

"**distributor**" means a person who engages in the business of marketing a breastmilk substitute, whether by wholesale or retail.

"**exempted information**" means any information exempted under Regulation [xx](1).

"**feeding bottle**" means an appliance with an artificial teat, which is used to feed infants or young children.

"**follow-on formula**"—

(a) means the milk or milk-like product of animal or vegetable origin —

(i) formulated industrially under the standard relating to the follow-on formulas; and

(ii) marketed or represented as suitable for the feeding of infants (aged 6 to [12] months) or young children; and

(b) includes —

(i) a follow-on formula for special medical purposes or dietary requirement; or

(ii) a ready-to-use therapeutic food that is a follow-on milk product for acutely malnourished infants or young children;

"**gift**" includes —

[82] PICTs to determine upper age limit.

(a) a benefit, contribution or sponsorship (financial or otherwise and of whatever value); or

(b) a grant for fellowship or research; or

(c) funding for a meeting, seminar, continuing education course or conference or other similar matter;

"**health care facility**" —

(a) means a facility (whether public or private) that, directly or indirectly, provides a health care service or health care education or training; and

(b) includes a facility (such as a day-care centre or a nursery) for the care of infants or young children;

"**health**" in the context of health claim, means a state of complete physical, mental and social wellbeing, other than merely the absence of disease or infirmity.

"**health claim**" —

(a) means a representation that states, suggests, or implies that a relationship exists between —

(i) a breastmilk substitute or its constituent; and

(ii) the health, growth or development of the human body or the physiological role of a nutrient in the growth, development or normal function of the human body; and

(b) includes —

(i) a nutrient function claim that describes the physiological role of the nutrient in the growth or development or normal function of the human body; or

(ii) any other function claim about a specific beneficial effect of consuming any breastmilk substitute or its constituent that relates to a positive contribution to health or an improvement of a function or to any modification or preservation of health; and

(iii) a reduction of disease risk claim on consuming a breastmilk substitute or its constituent, in the context of the total diet or a reduction of the risk of developing a disease or a health-related condition;

"**health worker**" means a person who is engaged in any capacity (such as professional, non-professional or administration or clinical support) to provide a health or related service in a health care facility or any other place or area, whether public or private.

"**infant**" means a child aged under 12 months.

"**infant formula**" —

(a) means a milk or milk-like product of animal or vegetable origin —

(i) formulated industrially under the standard relating to infant formulas; and

(ii) intended to satisfy, by itself, the nutritional requirements of infants from birth or during the first 6 months of life; and

(b) includes —

(i) a product that continues to meet part of an infant's nutritional requirements after the first 6 months of birth;

(ii) a formula for a special medical purpose or dietary requirement; or

(iii) a ready-to-use therapeutic food that is a milk product for acutely malnourished children; or

(iv) follow-on formula or infant formula for special dietary use for infants aged 12 months or under;

"**infant formula for special dietary use**" means an infant formula that is specifically formulated to meet the dietary needs of:

(a) a premature or low birth weight infant; or

(b) an infant who has a metabolic, immunological, renal, hepatic or mal-absorptive condition;

"**informational or educational material**" means:

(a) any information (whether in written, audio or visual form) that refers to a breastmilk substitute; or

(b) an educational material or message, such as —

(i) any written or audio-visual material intended for the general public; or

(ii) any flyer, brochure, book, newspaper article, radio broadcast, or any information from the internet or social media that purports to give guidance on the appropriate use of breastmilk substitutes;

"**label**" —

(a) means a descriptive matter, such as a tag, mark or pictorial, appearing in any form (whether written, printed, stencilled, marked, embossed or attached) on the container of a breastmilk substitute; and

(b) includes —

(i) for [regulation x(2) or (3), or x], a packaging or an insert;

(ii) a matter (whether written, printed or in graphic form) that —

(a) appears on the label; or

(b) accompanies the breastmilk substitute; or

(c) is displayed near the breastmilk substitute; or

(d) promotes the sale or disposal of the breastmilk substitute;

"logo" means a matter (such as an emblem, picture or symbol) by means of which a company or a breastmilk substitute is identified.

"manufacturer" —

(a) means a person who engages in the business of manufacturing a breastmilk substitute; and

(b) includes a person who engages in that business through an agent, or a person controlled by or under an agreement;

"market" —

(a) means to promote, distribute, sell, or advertise a breastmilk substitute; and

(b) includes to provide public relations or product information for a breastmilk substitute;

"mother" —

(a) means the mother of an infant or young child; and

(b) includes a pregnant woman;

"nutrition claim" —

(a) means a representation which states, suggests or implies that a breastmilk substitute has a particular nutritional property, such as the energy value, the content of a protein, fat or carbohydrate, the content of a vitamin or mineral or any other nutritional food property; but

(b) does not include —

(i) a substance in the list of ingredients; or

(ii) a nutrient as a mandatory part of nutrition labelling; or

(iii) an amount or quality of a certain nutrient or ingredient on the label, if required by the Act;

"pacifier" means an artificial teat for infants or young children to suck. "packaging" means […].

"place" includes any area, facility, premises, building, vehicle or vessel.

"promote" means to use a method of directly or indirectly encouraging a person or a health facility to purchase or use a breastmilk substitute whether or not there is reference to a brand name, including —

(a) to cross-promote; or

(b) to sell or promote through a sale device such as, special display, discount coupon, premium, rebate, special sale, loss-leader, tie-in sale, prize or gift; or

(c) to give a sample; or

(d) to donate or distribute any information about feeding of infants or young children or to perform an educational function about feeding of infants or young children, except an exempted information; or

(e) to use a health claim or a nutrition claim on the label of a breastmilk substitute or in any information about feeding of infants or young children, except any exempted information;

"public place" includes any road, street, building or place to which the public have or may have access.

“ready-to-use therapeutic food” means a breastmilk substitute specifically designed to treat severe acute malnutrition in infants aged 6 to [12] months and young children, such as energy-dense food, vitamin-enriched food or mineral-enriched food.

“sample” means a single or small amount, provided without cost, of a breastmilk substitute.

“sell” —

(a) means to sell by any means or method, such as by wholesale or retail; and

(b) includes —

(i) to barter, exchange, offer or attempt to sell, or receive for sale, or have in possession for sale, or expose for sale, or send or deliver for sale, or cause or permit to be sold, offered, or exposed for sale; or

(ii) to supply whether or not for commercial gain (such as donations, gifts) or to offer to supply or distribute or attempt or expose to supply or to cause or permit to supply;

“sponsorship” means an assistance, whether financial, in-kind or free.

“standard” means the Codex standard or standard prescribed under the Act [or any other law].

“trademark” or “mark” has the meaning in the [Trademarks Act].

“vehicle” has the meaning in the [traffic legislation]. “vessel” has the meaning in the [shipping legislation].

“workplace” [has the meaning in the [Employment Relations/Labour Act]]. “young child” means a child aged between 12 and [36] months.

“young child formula” means an industrially formulated milk or milk-like product of animal or vegetable origin that is marketed or represented as suitable for feeding young children.

[3] Purpose of Regulations

The purpose of these Regulations is:

(a) to encourage, promote, protect and support exclusive breastfeeding of infants aged up to 6 months, followed by providing a safe and appropriate complementary food, with continued breastfeeding for up to [2] years of age or beyond, as the ideal nutrition for growing and developing infants and young children; and

(b) to protect the rights of adequate nourishment of infants and young children and their mothers in order to attain and maintain their health; and

(c) to encourage, promote, protect and support breastfeeding, as vital to primary health care for the purpose of promoting healthy growth and development of infants and young children; and

(d) to give effect to the child's right to attain the highest standard of health under the United Nations Convention on the Rights of the Child 1989; and

(e) to regulate the sale, advertisement, promotion and labelling of breastmilk substitutes; and
(f) to ensure the proper use of breastmilk substitutes, when necessary, on the basis of adequate information and through appropriate marketing and distribution; and
(g) to implement the recommendations in the Code, including the global goals and targets to increase the rate of exclusive breastfeeding in the infant's first 6 months after birth.[83]

[4] Right to breastfeed

(1) A mother has the right to breastfeed her baby at a public place or workplace or in a public land, sea or air transport.
(2) A person commits an offence who prohibits, or interferes with, or prevents a mother from exercising her right under subregulation (1).
(3) In this Regulation:
"mother" includes a mother who breastfeeds the baby of another woman.

PART 2 – BREASTMILK SUBSTITUTES

[5] Definitions

In this Part:
"**event"** includes a telephone counselling line, campaign, programmes or similar event; "material" includes:
(a) any equipment or service; or
(b) any other material, such as, a pen, calendar, poster, note pad, growth chart or toy.

[6] Infant formula and follow-on formula

(1) A person who sells an infant formula or a follow-on formula must ensure that the formula:
(a) is safe and suitable for the intended use; and
(b) conforms to the standard relating to infant formulas or follow-on formulas.
(2) Any ready-to-use therapeutic milk product for acutely malnourished children is to be administered under medical supervision.
(3) A person commits an offence who contravenes subregulation (1).

[83] Add any other relevant purposes if required by your country.

[7] Infant formula for special dietary use

(1) A person who sells an infant formula for special dietary use must ensure that the formula:

(a) is safe and suitable; and

(b) conforms to the standard for infant formula or for the follow-on formula; and

(c) meets any other nutritional requirement, -

to support the growth, development and dietary management of the infants for whom they are intended.

(2) The breastmilk is the primary reference to determining the composition of infant formula for special dietary use.

(3) A person commits an offence who contravenes subregulation (1).

[8] Standards for breastmilk substitutes

(1) A person must not sell a breastmilk substitute unless it complies with the standards and guidelines under Codex Alimentarius.

(2) A person who manufactures or distributes a breastmilk substitute for sale must:

(a) monitor his or her marketing practices in order to comply with the marketing of breastmilk substitutes; and

(b) prepare and give an annual written report on the marketing practices to the [CEO/PS/DG for Health].

(3) A person commits an offence who contravenes subregulation (1) or fails to give a report under subregulation (2).

[9] Sale of breastmilk substitutes

(1) A person must not sell a product for feeding of infants or young children unless the product is a breastmilk substitute.

(2) A person commits an offence who contravenes subregulation (1).

[10] Advertisement and promotion

(1) Subject to subregulation (2), a person must not:

(a) in any form, manner or means, advertise or promote a breastmilk substitute, including incentive programme, fellowship, study tour, research grant, professional conference, product sample, sponsorship of health and scientific meeting, donation of equipment or any other service, such as supporting infrastructure; or

(b) donate a breastmilk substitute to a health worker or a health care facility; or

(c) waive payment (through any means) or provide at lower than any published wholesale price, and if no wholesale price, lower than 80% of the retail price, of a breastmilk substitute to a health worker or a health care facility; or
(d) provide a health care facility or health care worker with any material; or
(e) offer or give a gift to a health worker (including any association of health workers) engaged in maternal health and the health of infants and young children;
(f) sponsor an event about reproductive health, pregnancy, childbirth, feeding of infants or young children or related areas or matters; or
(g) directly or indirectly, establish any relationship with parents or caregivers through any means, such as a baby club, social media group, child care class, or contest; or
(h) include the volume of sales of breastmilk substitutes —
(i) to calculate any remuneration or bonus for employees; or
(ii) to set quotas for the sale of a breastmilk substitute.

(2) A person may advertise or promote a complementary food product if:
(a) the advertisement or promotion is carried out in a place other than a health care facility; and
(b) the material used to advertise or promote a complementary food product includes a statement in characters[84] on —
(i) the importance of exclusive breastfeeding for the first 6 months of life and of continued breastfeeding for up to 2 years or beyond; and
(ii) the recommended age of introduction of 6 months and over and a statement that early introduction of a complementary food product negatively affects breastfeeding.
(3) Despite subregulation (2), a person must not advertise or promote a complementary food product through any means under [Regulation x (2)].
(4) A person who contravenes subregulation (1) commits an offence [+ penalty].

[11] Declaration of other breastmilk substitutes

The Minister may, by Notice [in the Gazette], declare a product as a breastmilk substitute.

PART 3 – LABELLING OF BREASTMILK SUBSTITUTES

[12] General labelling requirements for breastmilk substitutes

[84] […insert particulars relating to character size, placement, appearance, etc. For example, "no less than one-third the size of the characters in the product name, and in no case less than 2mm in height"]

(1) The [manufacturer or distributor] of a breastmilk substitute must ensure that its label:

(a) provides the necessary information about the appropriate use of the product; and

(b) provides warning about the risk of intrinsic contamination of powdered formula with micro- organisms;

(c) does not include information to discourage breastfeeding; and

(d) states all the following —

(i) the ingredients used;

(ii) the composition or analysis of the product;

(iii) the storage conditions required;

(iv) the batch number and the date before which the product is to be consumed, taking into account the climatic and storage conditions of the country concerned.

(2) The [manufacturer or distributor] of a breastmilk substitute must ensure that the container or the label does not have:

(a) a picture of an infant; or

(b) any other picture or text which may idealise the use of infant formula; or

(c) the term “humanised” or “maternalised” or similar term.

(3) The container or label may have graphics for:

(a) easy identification of the breastmilk substitute as a breastmilk substitute; and

(b) illustrating methods of preparation or cleaning.

(4) Subject to subregulations (2) and (3), an insert with additional information about a breastmilk substitute and its proper use may be included in the package or retail unit.

(5) This Regulation applies if a label gives any instruction to modify a product into infant formula.

[13] Labelling of breastmilk substitutes that may be modified for infant feeding

(1) A breastmilk substitute marketed for infant feeding, which does not meet the requirements of an infant formula, but which can be modified to do so, must carry on the label a warning that the unmodified product should not be the sole source of nourishment of an infant.

(2) The label of sweetened condensed milk must not contain any instructions on how to modify it for the purpose of infant formula.

[14] Labelling requirements for infant formula, follow-on formula and young child formula

(1) A labelling requirement in this Regulation is in addition to those required under Regulation [xx - general] and the Act.

(2) A person must not sell any infant formula or follow-on formula unless its label:

(a) contains the following (with necessary modifications in plain language) — **"IMPORTANT NOTICE"** (in bold and capital letters)

"Breastmilk is the best food for your baby. Breastmilk is important for your baby to grow healthy and to develop. It protects your baby against sickness, such as diarrhea" in characters;[85]

(b) contains the following (with necessary modifications in plain language) — **"WARNING"** (in bold and capital letters)

"If you decide to use this product to add to or replace giving your baby breastmilk, first ask a doctor for advice. It is **VERY IMPORTANT** that you carefully follow the instructions to prepare this product exactly. Carefully following the how to prepare instruction is very important for your baby's health. Your baby may refuse to feed from the breast if you use a feeding bottle. Using a cup to feed your baby with this product is better and cleaner and more hygienic." in characters;[86]

(c) has preparation instructions for infant formula in powdered form stating that —

(i) powdered formula is not sterile and may be contaminated with pathogenic micro-organisms during the manufacturing process or may become contaminated during preparation; and

(ii) it is necessary for the formula to be prepared one feed at a time using water first boiled and then cooled to not less than 70 °C; and

(iii) any unused milk must be discarded immediately after each feed;

(d) includes a feeding chart in the preparation instructions; and

(e) specifies the source of the protein; and

(f) for follow-on formula, states in characters that it is not be used for infants aged under 6 months or as the sole source of nutrition of infants over six months.[87]

(3) A person must not sell:

(a) an infant formula or follow-on formula if its label uses a term —

(i) to compare the infant formula or follow-on formula with or that the formula is similar to breastmilk, such as, maternalised or humanised; or

(ii) that may tend to discourage breastfeeding; or

(b) a formula for young children if the label states that the formula is to be used —

[85] Insert particulars relating to character size, placement, appearance, etc. For example, "no less than one-third the size of the characters in the product name, and in no case less than 2mm in height

[86] Insert particulars relating to character size, placement, appearance, etc.

[87] […insert particulars relating to character size, placement, appearance, etc. …]

(i) to feed infants; or

(ii) as the sole source of nutrition for young children.

(4) A person commits an offence who contravenes subregulation (2) or (3).

Alternative draft for Regulation 14

[[14A] Labels for infant formula

(1) The manufacturer or distributor of infant formula or follow-on formula must ensure that the container of the formula has a clear, conspicuous, and easily readable and understandable message printed on it, or on a label which cannot readily become separated from it, in an appropriate language.

(2) The message under subregulation (1) must include all the following:

(a) the words “Important Notice” or their equivalent;

(b) a statement of the superiority of breastfeeding;

(c) a statement that the product should be used only on the advice of a health worker as to the need for its use and the proper method of use;

(d) instructions for appropriate preparation, and a warning against the health hazards of inappropriate preparation.

(3) A manufacturer or distributor commits an offence who contravenes subregulation (1).]

[15] Labelling requirements for ready-to-feed therapeutic food or complementary food products

(1) A labelling requirement in this Regulation is in addition to those required under Regulation [xx – general] and the Act.

(2) A person must not sell a ready-to-feed a therapeutic food or a complementary food product **(“product”**) if its label contains any of the following:

(a) a representation that suggests the suitability of the product for infants aged under 6 months including, any reference to a development milestone clearly reached before 6 months of birth or the use of pictures of infants appearing to be younger than 6 months of birth;

(b) a representation that idealises the product or is likely to undermine or discourage breastfeeding or to create a belief that the product is equivalent or superior to breastmilk;

(c) a representation that undermines or discourages appropriate complementary feeding or that may suggest that the product is inherently superior to home-prepared complementary food products;

(d) a recommendation to feed the product in a bottle or to promote the use of bottle feeding;

(e) an endorsement, or anything that may be conveyed or construed as an endorsement by a health professional, an association of health professional or other body; and

(f) an element that allows for cross-promotion of any other breastmilk substitute.

(3) A person must not sell a ready-to-feed therapeutic food or a complementary food product unless the label contains the following information:

(a) a statement in characters […][88] on —

(i) the importance of exclusive breastfeeding for the first 6 months and of continued breastfeeding up to [2] years or beyond; and

(ii) the recommended age of introduction of 6 months or over and a statement that the early introduction of complementary food products negatively affects breastfeeding; and

(b) any instruction for preparation, storage, handling and use; and

(c) a feeding chart showing the appropriate ration or serving size consistent with any guiding principle issued by the World Health Organization.

(4) A person commits an offence who contravenes subregulation (2) or (3).

[16] Labelling of skimmed or condensed milk and low-fat and standard milk

(1) A person must not sell:

(a) any milk skimmed or condensed milk in powder or liquid form, unless its label contains words (including characters) to the effect that the product is not to be used for feed infants aged under specified months.

(b) low-fat milk, standard milk or other alternative milk products (in powder or liquid form), unless its label contains words (including characters) to the effect that that the product is not to be used to feed infants under specified months.

(2) A person commits an offence who contravenes subregulation (1).

[17] Labelling of feeding bottles, teats and pacifiers

(1) A labelling requirement in this Regulation is in addition to those required under Regulation [xx – general] and the Act.

(2) A person must not sell:

(a) a feeding bottle or teat unless its package or label indicates in a clear, conspicuous and easily readable manner, in [… language], the following particulars —

[88] […insert particulars relating to character size, placement, appearance, etc. For example, "no less than one-third the size of the characters in the product name, and in no case less than 2mm in height"…]

(i) the following statement —

"**IMPORTANT NOTICE**" (in capital letters and bold):

"Breastfeeding is best. Breastmilk is the ideal food for your baby to grow healthy and develop.

It protects your baby from sickness, such as against diarrhoea" in characters[…];[89]and

(ii) the following statement —

"**WARNING**: The health of your baby is important. Carefully follow the instructions on how to clean and sterilise this product. Your baby may no longer want to feed from the breast if you use a feeding bottle" in characters […];184 and

(iii) the instructions for cleaning and sterilisation in words and graphics; and

(iv) a statement explaining that feeding with a cup is more hygienic than bottle feeding; and

(v) a warning that young children should not be left to self-feed for long periods of time because extended contact with sweetened liquids, including infant formula, may cause severe tooth decay; and

(vi) the name and national address of the manufacturer or the distributor;

(b) a pacifier unless its label has the words —

"WARNING: If your baby uses a pacifier it can interfere with breastfeeding" in characters [no less than one-third the size of the characters in the product name, and in no case less than 1.5mm in height"…][90]

(3) A person commits an offence who contravenes subregulation (2).

PART 4 – INFORMATIONAL AND EDUCATIONAL MATERIALS

[18] Definitions

In this Part:

"contaminated" means contaminated:

(a) during the manufacturing process with a pathogenic micro-organism; or

(b) when it is prepared;

"health risk" includes a health risk related to using feeding bottles or improper preparation or use of a breastmilk substitute;

"image" includes a picture, graphic, text or similar matter.

[89] […insert particulars relating to character size, placement, appearance, etc. …]

[90] May include vernacular language of a PICT.

[19] Information on infant feeding

(1) This Regulation applies to a manufacturer, distributor, retailer or any other person who is required to provide any information about feeding of infants or young children.

(2) A person must ensure that the information:

(a) be written in the […] language;186 and

(b) be correct and current; and

(c) clearly and conspicuously explain all of the following matters —

(i) the benefits and superiority of breastfeeding;

(ii) the value of exclusive breastfeeding for 6 months followed by sustained breastfeeding for at least [2] years;

(iii) how to initiate and maintain exclusive and sustained breastfeeding;

(iv) why it is difficult to reverse a decision not to breastfeed;

(v) the importance of introducing complementary food product from the age of 6 months;

(vi) how and why any introduction of breastmilk substitute, the use of feeding bottle or the early introduction of complementary food product negatively affects breastfeeding;

(vii) that complementary food product can easily be prepared at home using local ingredients.

(3) A person must ensure that the information does not:

(a) use an image that —

(i) encourages use of a breastmilk substitute; or

(ii) discourages breastfeeding or using of breastmilk; or

(b) give an impression or create a belief that a breastmilk substitute is equivalent to, comparable with or superior to breastmilk or breastfeeding;

(c) contain a brand name.

(4) This Regulation does not apply to exempt information or information that is already made public.

(5) A person commits an offence who contravenes subregulation (2) or (3).

[20] Information on breastmilk substitutes

(1) This Regulation applies:

(a) to a manufacturer, distributor, retailer or any other person who is required to provide any information about breastmilk substitutes; and

(b) if Regulation [xx – infant feeding] includes any information about breastmilk substitutes.

(2) A person must ensure that the information includes all of the following matters:

(a) instruction on how to properly prepare, store or use breastmilk substitutes or to clean and sterilise a feeding utensil;

(b) instruction on how to feed an infant with a cup;

(c) the health risks of breastmilk substitutes;

(d) the approximate cost of feeding an infant or a young child with the recommended amount of breastmilk substitutes;

(e) that it is not a necessary practice to provide a follow-on formula or young child formula;

(f) an instruction that —

(i) a powdered formula is not sterile and may be contaminated; and

(ii) it is necessary for powdered formula to be prepared one feed at a time using water first boiled and then cooled to not less than 70°C; and

(iii) any unused milk is to be discarded immediately after each feed.

(3) The information must not include a health claim or nutrition claim unless the information is exempt information.

(4) A person commits an offence who contravenes subregulation (2) or (3).

[21] Exempted information

(1) The manufacturer or distributor of a breastmilk substitute may give a professional health worker any of the following exempted information about the breastmilk substitute:

(a) any scientific or factual information or matter about the technical aspect or method to use the breastmilk substitute; or

(b) any reference information or matter provided for a study that is published or peer-reviewed to support a representation or claim that states or suggests that a relationship exists between the breastmilk substitute or its constituent and the health, growth or development of human body; or

(c) information provided under [Regulation x or x].

(2) A manufacturer or distributor commits an offence who makes or gives any information (other than exempted information) in contravention of these Regulations.

PART 5 – HEALTH FACILITIES AND HEALTH WORKERS

[22] Heads of health care facilities

(1) The head of a health care facility must:

(a) take measures to encourage, promote, protect and support breastfeeding; and

(b) inform or advise any other health workers about their duties under these Regulations; and

(c) ensure that the health care facility is not used to market, promote or sponsor a breastmilk substitute; and

(d) ensure that a health worker who is employed or engaged by the facility does not market, promote or sponsor a breastmilk substitute; and

(e) ensure that a person (whether paid or not) who is engaged by a manufacturer or distributor does not —

(i) provide a professional service or any other health service about a breastmilk substitute; or

(ii) have any, direct or indirect, contact with a parent or caregiver; and

(f)) ensure that any other health worker is familiar with any information under [Regulations x to x]

(2) The head of a health care facility commits an offence who contravenes a provision of subsection (1).

(3) It is a defence for an offence under subregulation (2) to prove that the head of the facility:

(a) took all reasonable steps to prevent the commission of the offence; or

(b) could not have known about the conduct that constitutes the offence.

[23] Promotion at health care facilities

(1) A person must not promote a breastmilk substitute at a health care facility.

(2) This Regulation does not apply to:

(a) a donation of any informational or educational equipment or material by a manufacturer or distributor approved, upon written request, by the [Minister/CEO/PS/DG]; or

(b) exempted information.

(3) Any equipment or material under subregulation (2):

(a) may bear the donating company's name or logo and be distributed only through the health care system; but

(b) must not refer to a breastmilk substitute.

(4) A person commits an offence who contravenes subregulation (1).

(5) In this Regulation: "promote" includes:

(a) to display a breastmilk substitute; or

(b) to use any placard or poster showing a breastmilk substitute; or

(c) to distribute a material provided by a manufacturer or distributor.

[24] Demonstrations at health facilities

(1) A health facility must not be used by a person, such as a professional service representative or mothercraft nurse who is provided, paid or engaged by a manufacturer or distributor of a breastmilk substitutes.

(2) A person must not demonstrate feeding with infant formula to a mother or the mother's family member unless the person is a health worker or, if necessary, a community worker.

(3) An explanation on the demonstration must include a clear and simple demonstration on any hazard of improper use.

[25] Donations to institutions or organisations

(1) An institution or organisation may be donated (including sold at low-price) any breastmilk substitute to be used or distributed to infants who have to be fed or to use the breastmilk substitute.

(2) Any donation or low-price sale must not be used as a sale inducement.

(3) If the donation is to be distributed outside of the institution or organisation, the institution or organisation must ensure that the donation continues as long as the infants concerned need them.

(4) The donated product may bear the name or logo of the manufacturer or distributor except that it must not refer to the breastmilk substitute.

[26] Duties of health workers

(1) A health worker must:

(a) encourage, promote, protect or support breastfeeding; and

(b) know and understand these Regulations, in particular the nature of duties of health workers; and

(c) know and understand any information under Regulations [xx to xx]; and

(d) discourage or eliminate any practice that obstructs the starting and continuing breastfeeding, such as a pre-lacteal feed; and

(e) give the [head of the health facility] a written report about —

(i) any sample, gift or other benefit received by or offered to the health worker; or

(ii) a breach of these Regulations.

(2) The [head of the health facility] must, as soon as possible, send the written report to the [xx].

[27] Health workers not to accept gifts, etc.

(1) A health worker engaged in maternal health or health of infants or young children must not:

(a) directly or indirectly, accept a gift, contribution, sponsorship or benefit (whether financial or otherwise) of whatever value; or

(b) give or, directly or indirectly, accept a sample; or

(c) demonstrate the use of infant formula other than to mothers or caregivers who have decided to use infant formula.

(2) Subregulation (2)(c) does not apply to a demonstration by a health worker to mothers or members of the family in very special cases of clinical need, and in such cases, the health worker must give:

(a) a clear explanation about a risk in using infant formula; and

(b) any other information required by Regulations [xx to xx].

(3) A person commits an offence who, for anything specified in subregulation (1):

(a) gives it to a health worker; or

(b) being a health worker, accepts or receives it from the person.

[28] Manufacturers and distributors

(1) A person who manufactures or distributes any breastmilk substitute must not provide a health worker with a sample of the product or with a gift.

(2) A person commits an offence who contravenes subregulation (1).

[29] Defence

It is a defence for an offence against the head of a health care facility or a health worker that he or she:

(a) demonstrates that all reasonable steps were to comply with the conduct constitutes the offence; or

(b) could not have known about the conduct that constitutes the offence.

PART 6 – ADMINISTRATION AND ENFORCEMENT

Division 1 – Administration

[30] Definitions

In this Part:

"by any means" includes any form or manner of communication or technology, including the internet, social media, telephone or other similar matter;

"**head of health care facility**" means the person who:

(a) is the executive or administrative head of a health care facility; or

(b) manages the day-to-day operation of the facility; or

(c) is designated, in writing, by [xx] as head of the facility for the purpose of these Regulations.

[31] Duties of [CEO/PS Health]

The duties of the [CEO/PS Health] are:

(a) to administer and implement these Regulations; and

(b) to develop, formulate and settle policies for approval by Cabinet; and

(c) to coordinate the administration and implementation of these Regulations with any other Ministry or government body or person; and

(d) to ensure that there are measures to encourage and protect breastfeeding and that appropriate information and advice are given to health workers about their duties under the Act and these Regulations;

(e) to ensure that these Regulations are enforced; and

(f)) to carry out other duties to give effect to or for the purposes of these Regulations or the Code.

[32] Committees

(1) The [Minister] may appoint a committee of [3 to 5] members to advise the [Minister] on matters relating to the administration and implementation of these Regulations.

(2) A committee may comprise members appointed from government Ministries or agencies, regional or international bodies or organisations, and civil society and non-governmental organisations.

(3) At least [2] members must be women.

(4) A person is not eligible to be appointed to a committee if the person has a financial or other interest (including as an employee) in a company that manufactures, imports, distributes, supplies or sells breastmilk substitutes.

(5) The [Minister] may approve the terms of reference of a committee.

(6) A terms of reference may include the following functions:

(a) to advise on national policy for the encouragement, promotion, protection and supporting of breastfeeding and on the Code; and

(b) to advise on designing a strategy for —

(i) developing communication and public education programmes to encourage, protect, promote, and support breastfeeding; or

(ii) informational and educational materials on the feeding of infants and young children; or

(iii) continuing education for health workers on lactation management and the requirements of these Regulations; or

(iv) curricula for students in the health professions that include lactation management; and

(c) to review breach or other matters relating to these Regulations; and

(d) to scrutinise any material or an appropriate action to implement these Regulations.

Division 2 – Enforcement and monitoring

[33] Enforcement officers

(1) The [Minister/CEO/PS] may appoint suitably qualified and experienced persons as enforcement officers.

(2) The following persons must not be appointed as enforcement officers:

(a) a person who has any direct or indirect financial interest in a business relating to a breastmilk substitute; or

(b) a person who is or was in the last [2] years, engaged or employed in a business relating to a breastmilk substitute.

(3) The appointment of a person disqualified under subregulation (2) is void.

(4) The following public officers are deemed to be enforcement officers:189

(a) police officers;

(b) …etc.

(5) The [Minister/CEO/PS] may issue identification card to enforcement officers to be shown when carrying out their powers under these Regulations.

[34] Powers of enforcement officers

(1) An enforcement officer may:

(a) during business hours, enter and inspect a place where any breastmilk substitute is imported, manufactured, sold, stocked, exhibited for sale, advertised, or otherwise promoted, and all relevant records;

(b) require a person within the place to assist in the inspection, including answering any question by the enforcement officer.

(2) The enforcement officer must first show the officer's identification card to the owner or person-in- charge of the place before entering the place.

(3) After each inspection, the enforcement officer must:

(a) prepare an inspection report (including any breach of these Regulations) and submit the report to the [Minister]; and

(b) seek further instructions on the necessary action to be taken for the contravention.

[35] Power to issue cease and desist orders

(1) This Regulation applies if an enforcement officer has reason to believe that a person:

(a) has contravened or is contravening these Regulations; or

(b) is distributing, selling or supplying any product that does not comply with a requirement of these Regulations.

(2) An enforcement officer may issue a person with a notice to show cause stating:

(a) the facts constituting the allegation under subsection (1); and

(b) a period of at least 10 working days within which to show good cause, in writing, why a cease and desist order ("desist order") should not be made.

(3) An enforcement officer:

(a) must consider any written representation received under subregulation (2)(b); and

(b) may issue a desist order if the officer is satisfied that the allegation under subregulation (1) has been proven.

(4) The person issued with a notice to show cause may provide other document or sworn statements of other persons to support the allegation in the notice.

(5) An enforcement officer must issue a desist order if:

(a) no written representation is received under subregulation (2)(b); and

(b) the officer is satisfied that the person has been served with the notice to show cause.

(6) An enforcement officer must serve the desist order on the person:

(a) personally; or

(b) by sending it through registered post or email or other electronic address provided by the person.

(7) The person who is issued with a desist order must comply with the order.

[36] Warrants for place of residence

(1) This section applies if the place to be entered is a place of residence.

(2) An enforcement officer may apply to [a magistrate/District Court judge] for a warrant to enter and inspect the place, and if necessary to seize items from the place.

(3) The warrant may authorise other matters required to give effect to the purpose of entry and inspection.

[37] Power to prosecute

(1) An enforcement officer may investigate and institute proceedings in the [magistrates'/District courts] for offences under these Regulations.

[(2) The power to prosecute in subregulation (1) does not affect the prosecution power of the [Director of Public Prosecutions/Attorney General under [section/article xx of the Constitution.]

[38] Consumer complaints

(1) A person may complain in writing to an enforcement officer about any breastmilk substitute.

(2) The [Minister/CEO/PS/DG] may hear and decide the complaint, including giving the right to the complainant and the respondent to be heard.

(3) The [Minister/CEO/PS/DG] may:

(a) dismiss the complaint; or

(b) require the respondent to remedy the matter complained of.

(4) The enforcement officer must give a copy of the decision to the complainant and the respondent.

(5) In this Regulation:

"enforcement officer" includes the [CEO/PS/Secretary/DG].

[39] Product recall

(1) This section applies if a breastmilk substitute:

(a) does not comply with a requirement these Regulations, such as labelling or information on it; or

(b) is manufactured, distributed or sold contrary to these Regulations or the standard in the Codex;

(c) appears to the Minister to cause or may cause injury or death to a person or for any reason is not safe to be used or consumed.

(2) The [Minister] may, by order, recall the breastmilk substitute, with the costs borne by the manufacturer, distributor or retailer of the breastmilk substitute.

(3) The order is also treated as the authority:

(a) to enter and inspect the place where the breastmilk substitute is kept or believed to be kept; and

(b) to seize and remove the breastmilk substitute specified in the order.

(4) The [Minister] may approve the means and methods to dispose of any recalled breastmilk substitute.

[40] Obstruction etc. of enforcement officers

A person commits an offence who, without reasonable excuse:

(a) obstructs or hinders an enforcement officer who is carrying out a function, power or duty under these Regulations; or

(b) fails to comply with a requirement or direction of an enforcement officer.

[41] Infringement notices for spot fines

(1) This section applies if a person ("defendant") has contravened a provision of these Regulations for which an infringement notice is issued.

(2) An enforcement officer may issue an infringement notice, (in the form in Part 3 of the Schedule] requiring the defendant to pay the fixed penalty specified in the notice.

(3) When a defendant is served with an infringement notice, the defendant may:

(a) pay the spot fine (in full) before the specified date for payment of fixed penalty, if the defendant admits the offence by endorsing, in writing, the admission on the notice; or

(b) appear before the court on a date specified in the notice for appearance in court if the defendant denies the offence.

(4) In a proceeding, a certificate signed by an enforcement officer indicating that the spot fine has or has not been paid, unless the contrary is proved, is evidence of the matters stated in the certificate.

(5) No further proceeding is to be instituted against the defendant for the offence for which the spot fine has been duly paid in accordance with subregulation (3).

(6) The defendant who is convicted in court pursuant to an infringement notice:

(a) is not subject to the fixed penalty specified in the notice; but

(b) is subject to the penalty prescribed for that offence.

[42] Service of infringement notices

(1) An infringement notice is to be:

(a) served pursuant to the rules of the court; and

(b) filed before the court specified in the notice.

(2) An infringement notice that is filed under subsection (1)(b) is treated for all purposes as summons issued pursuant to the [criminal procedure/magistrates'/District courts legislation].

[43] Director's, etc., liability

(1) This section applies if a body corporate commits an offence.

(2) A director of the body corporate also commits the same offence.

(3) It is a defence if the director proves that the offence was committed without the director's knowledge, connivance or consent.

(4) In this section:

"director" includes the secretary of the body corporate, or an officer or employee who manages or supervises the operations of the body corporate.

[44] Penalties

(1) A person served with an infringement notice is liable to pay the fixed penalties listed in Part 1 of the Schedule.

(2) A person convicted of an offence under these Regulations is liable to the penalties in listed Part 2 of the Schedule.

PART 7 – MISCELLANEOUS

[45] Immunity from personal liability

(1) A person is not personally liable for carrying out in good faith a function, duty or power under these Regulations.

(2) Subregulation (1) does not affect any liability that the [State/Crown/Republic] would, but for that subsection, have for an act or omission.

[46] Repeal/consequential amendments

[Repeal or amend existing regulations]

SCHEDULE

(regulation xx)

PENALTIES AND INFRINGEMENT NOTICE FORM

PART 1 – FIXED PENALTIES[191]

1. Regulation	2. Individual (first offence)	3. Individual (second or subsequent offence)	4. Company (first offence)	5. Company (second or subsequent offence)

PART 2 – PENALTIES FOR OFFENCES

1. Regulation	2. Individual (first offence)	3. Individual (second or subsequentoffence	4. Company (first offence)	5. Company (second or subsequentoffence)

PART 3 – INFRINGEMENT NOTICE FORM

FOOD ACT […] FOOD (BREASTFEEDING PROMOTION AND PROTECTION) REGULATIONS 20…INFRINGEMENT NOTICE	
1	Date of Notice: [date] […month…][20…..]
2	**Defendant**: • Name (In full): • Residential address: • Other contact details:
3	• Regulation contravened: • Statement of offence: • Details of offence:
4	**The fixed penalty is [$.]**
5	**Admitting the offence** If you admit the offence in 3 above: • You must: o sign the admission declaration in 7 below; ▪ immediately when this completed Notice is given to you; or ▪ otherwise, no later than 20 working days from the date in 1 above; and o pay the fixed penalty in 4 above (either paid in a lump sum or part payment, before 20 working days above expires) to:

	▪ [nearest …Ministry Office] ▪ [add other places for payment] When you have paid ALL the fixed penalty in 4 above, no other action relating to the offence in 2 above will be taken against you. If you fail to pay ALL the fixed penalty within 20 working days above, you are treated as having denied the offence and you will be served with the Notice to Attend Court in 9 below.
6	**Denying the offence** If you deny the offence in 2 above you: • must sign the Denial Declaration in 8 below: o immediately after the completed Infringement Notice is given to you; or o otherwise, no later than 20 working days from the date in 1 above; and • will be served with the Notice to Attend court in 9 below; • if convicted by the court, will be liable to penalty for the offences as set out in Part 2, of the Schedule (including any costs of the proceedings in court) and not the fixed penalty in 4 above; • may, before that 20 working days expire, admit the offence, sign the admission declaration and pay the fixed penalty of [$.] in 4 above.
7	**Admission declaration** I, […name of defendant…] of […address…] declare that I: • have received this Notice from the person stated in 11 below; • admit committing the offence in 3 above (without any coercion or force from another person), as such will pay the fixed penalty of [$.] in 4 above. …….. [Signature]
8	**Denial declaration** I, […name of defendant…] of […address…] declare that I: • deny committing the offence in 3 above; and • will defend the offence in court. …….. [Signature]
9	**Notice to attend court** To: The Defendant (details in 2 above) 1. You are required to attend before [a magistrate/judge192] at [……] on [date] at ..... am/pm to answer charges specified in 3 above. 2. You may appear in person or through a lawyer. 3. If you fail to appear in court, the court will treat that as an admission of the charges and the court may impose the penalty for the offence against you in your absence. 4. If the court enters judgment in your absence, you have 10 working days to apply to the court to reverse the default judgment and to proceed for trial. Dated the day of 20…. …… Court official designation and stamp/seal

10	**Affidavit of service of notice to attend court** I, ……, ……. (*occupation*), of swear that: 1. I am authorised to serve any court processes. 2. I served this Infringement Notice, including the signed the Notice to attend Court on the above Defendant on … day of……20…. At […*place*…] 3. The Defendant was served in person. Sworn before me: ..... [Server's signature] at […*place*….] on […. *date* ….] …… … [*Lawyer/JP, etc*] - Witness
11	**This Notice is issued by:** • *Designation and ID No (if any):* • *Name*: • *Phone & other contact:* *Signature*: ……

X. BIBLIOGRAPHY

A. LEGISLATION

- *Consumer Protection Act* (Cap 247) (Tonga)
- *Consumer Protection (Product Safety and Labelling Standards) Regulations* (Tonga)
- *Consumption Tax Act 2003* (Tonga)
- *Customs Tariff Schedule* (effective 5 July 2016) (Tonga)
- *Excise Tax Act 2007* (Tonga)
- *Excise Tax (Amendment) Order 2018* (Tonga)
- *Excise Tax (Amendment) (No. 2) Order 2018* (Tonga)
- *Excise Tax (Amendment) Order 2020* (Tonga)
- *Excise Tax (Amendment) (No. 2) Order 2020* (Tonga)
- *Food Act* (Cap 17) (Tonga)
- *Food Regulation 2024* (Tonga)
- *Illicit Drugs Control Act* (Cap 149) (Tonga)
- *Illicit Drugs Control (Amendment) Act 2020* (Tonga)
- *Illicit Drugs Control (Amendment) Act 2021* (Tonga)
- *Intoxicating Liquor Act* (Cap 131) (Tonga)
- *Intoxicating Substances Act 2021* (Tonga)
- *Manufacture of Intoxicating Liquor (Licence Fees) Regulation* (Tonga)
- *Manufacturing Liquor Act* (Cap 132) (Tonga)
- *Price Control and Wages Act* (Cap 127) (Tonga)
- *Public Health (Bakeries and Bread Vendors) Regulations* (Tonga)
- *Public Health (Meat) Regulations* (Tonga)
- *Public Health (Restaurants and Food Stores) Regulations* (Tonga)
- *Public Health Act* (Cap 13) (Tonga)
- *Therapeutic Goods Act 2020* (Tonga)
- *Therapeutic Goods (Amendment) Act 2021* (Tonga)
- *Therapeutic Goods Regulation 2011* (Tonga)
- *Traffic (Alcohol Breath Tests) Notice 2023* (Tonga)

- *Traffic (Amendment) Act 2021* (Tonga)
- *Traffic Act* (Cap 16) (Tonga)

B. CASE LAWS

- *Fifita v Mafi* [1999] TOSC 7
- *Ikahihifo v R* [2021] TOCA 21
- *Kivalu v R* [2024] TOSC 82
- *Mafi v Police* [1995] TOLawRp 34
- *R v Afu* [2021] TOSC 84
- *R v Ali* [2020] TOSC 94
- *R v Halatokoua* [2024] TOSC 62
- *R v Palu* [2024] TOSC 52
- *R v Talia'uli* [2007] TOLawRp 41
- *R v Vakalahi* [2022] TOSC 12
- *R v Vete* [2024] TOSC 90
- *Rex v 'Inia* [2016] TOSC 7
- *Rex v Manu* [2014] TOSC 11
- *Sullivan v Police* [2023] TOSC 42
- *Tuputupu v Rex* [2014] TOCA 8

C. OTHER MATERIALS

- Attorney General's Office*, Legislative Drafting Manual, authorised by Cabinet to come into force on 1 April 2019 (Attorney General's Office, 2019).*
- Government of Fiji*, Code of Marketing Control for Foods for Infants and Young Children* (Government of Fiji 2010)
- Pacific Islands Forum Secretariat, *Pacific Legislative Framework for Non-Communicable Diseases,* 2021
- *Tonga National Strategy for the Prevention and Control of NCDs 2021-2025* (Tonga)

- University of Hawai‘i at Mānoa, *Pacific Food Guide* (University of Hawai‘i at Mānoa, College of Tropical Agriculture and Human Resources) https://manoa.hawaii.edu/ctahr/pacificfoodguide/ accessed 9 November 2024
- World Health Organization, *International Code of Marketing of Breast-Milk Substitutes* (WHO 1981) https://www.who.int/publications/i/item/9241541601 accessed 9 December 2024