

Act No. 30, 1902.

PUBLIC HEALTH

An Act to consolidate the Acts relating to Public Health and the prevention of the spread of disease. [16th August, 1902.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Public Health Act, 1902," and is divided into Parts and Divisions, as follows :—

PART I.—PRELIMINARY—*ss.* 1-5.

PART II.—THE BOARD OF HEALTH AND LOCAL AUTHORITIES—

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DIVISION 2.—*Local authorities—ss.* 17-27.

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DIVISION 1.—*Proclamation and notification of infectious diseases—ss.* 28-30.

DIVISION 2.—*Notification of small-pox and leprosy—ss.* 31, 32.

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Short title and
division.

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DIVISION 6.—*Saving clauses*—ss. 109, 110.

2. (1) The Acts mentioned in the Schedule to this Act are, to the extent therein expressed, hereby repealed. Repeal.
Schedule.

(2) All persons appointed under the Acts hereby repealed and holding office at the time of the passing of this Act shall be deemed to have been appointed hereunder. Officers under Acts
hereby repealed.

(3) All proclamations, orders, rules, regulations, or by-laws made, or notices or notifications given or published under the authority of any Act hereby repealed and being in force at the time of the passing of this Act shall be deemed to have been made, given, or published under the authority of this Act. Proclamations, &c.,
under Acts hereby
repealed.

3. In this Act, and in any regulations and by-laws made thereunder, unless the context or subject-matter otherwise indicates or requires,— Interpretation.
60 Vic. No. 38, ss.
70, 91.

“Board” means the Board of Health;

“court” in enactments relating to penalties means the magistrate or justices by whom the penalty may be imposed;

“food” includes every article other than drugs or water used for food or drink by man, and every article intended to enter into or be used in the preparation of human food, and all flavouring matters, condiments, and confectionery;

“house” includes a school, also a factory, and any other building in which persons are employed;

“house,” “dwelling-house,” or “building,” respectively include the curtilage of a house, dwelling-house, or building;

“justice” means justice of the peace;

“municipality” means a borough or municipal district, and includes the city of Sydney;

“occupier”

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“occupier” includes a person having the charge, management, or control of a building or of the part of the building in which the patient is, or to which the enactment relates, and, in the case of a house, the whole of which is let out in separate tenements, or in the case of a lodging-house, the whole of which is let out to lodgers, the person receiving the rent payable by the tenants or lodgers, either on his own account or as the agent of another person, and in the case of a vessel means the master or other person in charge thereof;

“owner” means the person for the time being receiving the rent of the premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such premises were let at a rent;

“premises” includes messuages, buildings, lands, and hereditaments;

“prescribed” means prescribed by this Act or by regulations or by-laws made under the authority of this Act;

“President” means President of the Board of Health, and during the absence of the President includes any member appointed by the board to act as President during such absence.

Application of Act.
60 Vic. No. 38, ss. 1, 2.
54 Vic. No. 20, s. 2.

4. (1) Except as hereinafter provided this Act shall apply to every place in New South Wales.

(2) This Act shall apply to every ship, vessel, boat, tent, van, shed, or other structure which is, has been, or may be occupied by man, in like manner as nearly as may be as if it were a house, but shall not apply to any ship, vessel, or boat belonging to His Majesty the King or to any foreign Government.

District may include water.
60 Vic. No. 38, s. 2.

5. Any river, harbour, or other water shall be deemed for the purposes of this Act to be within such district as may be fixed by the Governor by proclamation in the Gazette:

Provided that the Governor may in the manner aforesaid revoke or vary any proclamation made under this section.

PART II.

THE BOARD OF HEALTH AND LOCAL AUTHORITIES.

DIVISION 1.—*The Board of Health.*

Incorporation of Board.
57 Vic. No. 21, s. 20.

6. The Board of Health shall continue and be a body corporate under that name, and shall have perpetual succession and a common seal.

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7. (1) The Board shall consist of not less than seven nor more than ten members, inclusive of the President, four of whom at least shall be legally qualified medical practitioners. Constitution of Board.
60 Vic. No. 38, s. 3.

(2) The Governor may appoint such members and may remove any member and appoint any other member in place of a member so removed, or in place of any member dying or resigning or becoming incapable to act. Appointment of members.

8. Four members of the Board shall constitute a quorum. Quorum.
Ibid.

9. All Courts, Judges, justices, and persons acting judicially shall take judicial notice of the common seal of the Board when affixed to any document, and shall presume that it was duly affixed. Seal of Board.
57 Vic. No. 21, s. 20.

10. The Board may exercise any right of entry conferred on a local authority by this Act or by the Dairies Supervision Act, 1901, and may also exercise any of the powers and perform any of the duties which a local authority may exercise or perform under this Act. Powers of Board.
60 Vic. No. 38, s. 4.

11. The Board shall at all times have access to all reports, books, plans, accounts, maps, documents, machinery, materials, and all other things whatsoever belonging to or in the custody of any local authority, or of any contractor with a local authority, and used in the execution of the provisions of this Act, or in any way in relation thereto. Powers of Board.
Ibid. s. 5.

12. The Board may make regulations as to its own proceedings under this Act, and regulating the performance by its officers of their duties and the carrying out of the powers vested in the Board by this Act, or by any regulations made by the Governor under this Act. Regulations.
Ibid. s. 6.

13. The Board may cause to be made such inquiries as it thinks fit in relation to any matters concerning the public health, or in relation to any matters with respect to which its sanction, approval, or consent is required by this Act, and for that purpose any person authorised in writing by the President or by the Board may at any reasonable time enter any premises. Inquiries.
Ibid. s. 7.

14. (1) The Board, whenever it deems it necessary in the interest of the public health or the health of any persons, and on giving the notice prescribed, may enter by its members, officers, or servants any premises vested in or under the control of the Metropolitan Board of Water Supply and Sewerage, or the Hunter District Water Supply and Sewerage Board, or the council of any municipality, or any other person or corporation, for the purposes of water supply or sewerage, and inspect the same and any works thereon or therein constructed or used for the said purposes, and any other works belonging to the Water Supply and Sewerage Board, council, person, or corporation to whom notice has been given as aforesaid, or connected therewith and constructed or used for the said purposes. Power to inspect water and sewerage works.
Ibid. s. 8.

(2) Any Water Supply and Sewerage Board, council, person, or corporation as aforesaid, on receiving notice as aforesaid, shall Officers and servants to assist the Board.

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shall instruct their officers and servants to aid and assist the Board in making and causing to be made the said inspection, and shall permit the members of the Board, or its officers or servants, to inspect any apparatus and things used in connection with any works of water supply or sewerage of the said Water Supply and Sewerage Board, council, person, or corporation, and any records, books, or plans relating to the said works, or to any works connected therewith.

Board may report on water and sewerage.

(3) The Board may at any time make a report to the Secretary for Public Works whenever, in its opinion, any danger to public health, or to the health of any persons, could be removed or diminished by the exercise by any Water Supply and Sewerage Board, or by the council of any municipality, or by any other person or corporation, of their powers under any Act dealing with water supply and sewerage, recommending what steps should be taken by the Water Supply and Sewerage Board, or by the council, person, or corporation for that purpose. And the Secretary for Public Works shall thereupon proceed as he may think fit.

Board to carry out powers of section 33 of Quarantine Act 1897.

45 Vic. No. 25, s. 4.

15. The Board shall be the authority to carry out, subject to any orders and directions of the Governor, and subject to any general regulation which may be made by the Governor, the powers of isolation and all other powers conferred by the thirty-third section of the Quarantine Act, 1897.

Board may define medical districts.
Ibid.

16. Subject to the approval of the Governor, the Board may define by notification in the Gazette any district in New South Wales now or hereafter to be placed under the charge of a Government medical officer, and may in like manner amend, alter, or extend the boundaries of such district.

DIVISION 2.—*Local authorities.*

Local authorities.
60 Vic. No. 38, s. 9.

17. (1) Subject to the provisions herein contained, this Act shall be administered by the following local authorities—

- (a) within the boundaries of any municipality now or hereafter to be constituted, the council of that municipality;
- (b) within a police district (exclusive of land within the city of Sydney or any municipality as aforesaid) such member of the police force as may be appointed by the Board by notification in the Gazette.

Districts.

(2) The area within which a municipal council or member of the police force has authority as aforesaid constitutes a district for the purposes and within the meaning of this Act.

Powers of local authorities.

(3) The local authorities are hereby authorised and directed to carry out the provisions of this Act within the respective districts aforesaid.

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18. (1) The Governor may appoint a legally qualified medical practitioner to be medical officer of health for a district or group of districts, at such salary as may be determined by the Governor and provided for out of funds voted by Parliament for the purpose.

Medical officers.
CO Vic. No. 38, s. 10.

(2) The President shall have all the powers of a medical officer of health, and may exercise the same when, in his opinion, necessary in any such municipality or police district, or in any sanitary area under section seventy-one.

President to have powers of a medical officer.

19. A medical officer of health shall in addition to the powers conferred on him by or under this Act have all the powers conferred by this Act or by any regulations thereunder on a sanitary inspector appointed by the local authority.

Powers of medical officer.
Ibid. s. 11.

20. (1) Every medical officer of health shall, when required by his local authority, and may at such other times as he thinks proper, report to the said authority on the sanitary condition of their district, with special reference to the provisions of and regulations made under this Act, and any by-laws or regulations of the said authority relating to the public health.

Reports by medical officer.
Ibid. s. 12.

(2) The local authority shall, at such times as may be prescribed, forward to the Board copies of all such reports.

Copies of reports.

21. (1) A medical officer of health may at any reasonable times inspect the register books of deaths within his district.

Power to inspect register books of death,

(2) The Registrar-General and every district registrar and assistant district registrar under any Act regulating the registration of deaths shall make or cause to be made at the request of the medical officer of health of the district such extracts from or copies of the said register books as such officer may require.

and to have extracts made.
Ibid. s. 13.

(3) Every such registrar shall, upon registering any death, enter in his register book particulars of the cause of death and the name of the person certifying to such cause, and whether such person is a legally qualified medical practitioner or not.

Duties of registrars.

22. For the purpose of carrying into effect the provisions of this Act, a local authority or a medical officer of health of the local authority, may enter and examine any premises situate within the district administered by the said authority between the hours of eight o'clock of the forenoon and eight o'clock of the afternoon, or at all hours during which business is in progress, or is usually carried on in the premises.

Power to enter premises.
Ibid. s. 14.

23. Every local authority shall quarterly, or at any time, at the request of the Board, report in writing to the Board as to matters relating to the public health and the administration of this Act within their district.

Reports by local authorities.
Ibid. s. 15.

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Failure of local authority to exercise powers.
60 Vic. No. 38, s. 16.

24. (1) Where any power, except a power to make regulations or by-laws, conferred by any statute, regulation or by-law, on any local authority for the preservation of the public health has in the opinion of the Board not been duly exercised by the local authority, and the failure to exercise the power is in the opinion of the Board likely to endanger the public health, the Board may, by notice in writing, signed by its President or secretary, require the local authority to exercise the power within the time mentioned in the notice.

Powers of Board.

(2) If the said requirement is disobeyed or is not complied with, the Board may exercise the power, and, where the local authority is a municipal council, may recover from it the expenses thereby incurred.

Neglect by local authority to make regulations.
Ibid. s. 17.

25. If any local authority having the power conferred on it by any statute of making regulations or by-laws for the preservation of the public health neglects, for three months after notice from the Board signed by the President or secretary has been given to the local authority, to make such regulations or by-laws as aforesaid, the Governor, on the recommendation of the Board, may exercise such power.

Unsuitable regulations or by-laws.
Ibid. s. 18.

26. If any local authority has made regulations or by-laws for the preservation of the public health, and in the opinion of the Board such regulations or by-laws are unsuitable or improper for the purpose aforesaid, the Governor, on the recommendation of the Board, may exercise any power conferred on the local authority of amending, altering, or repealing the said regulations or by-laws.

Appeals from orders and decisions of local authorities.
Ibid. s. 19.

27. (1) When any person deems himself aggrieved by any order of a local authority, or by any decision of a local authority in any case in which the authority is empowered to recover in a summary manner any expenses incurred, and in which a mode of appeal is not expressly provided by this Act, he may appeal against any such order or decision to a police or stipendiary magistrate or any two justices sitting as a court of petty sessions within the district administered by the local authority.

Statement to be delivered.

(2) Every such appellant shall state in writing to such Court the grounds of his complaint, and shall deliver a copy thereof to the local authority within the time prescribed, and upon such delivery any proceedings commenced for the recovery of such expenses by the local authority shall be stayed.

Powers of Court.

(3) The said Court may make such order in the matter as it may deem equitable, and the order so made shall be binding and conclusive on all parties; and the Court may by its order direct the local authority to pay to the person so proceeded against such sum as it may consider a just compensation for the loss, damage, or grievance sustained by him.

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PART III.

INFECTIOUS DISEASES.

DIVISION 1.—*Proclamation and notification of infectious diseases.*

28. The Governor may by proclamation in the Gazette declare Powers of Governor. that any disease therein named is an infectious disease; and he may 69 Vic. No. 38, s. 21. in like manner revoke or vary any such declaration.

29. (1) Where an inmate of any house is suffering from an Notification of infectious diseases. infectious disease the following provisions shall have effect, that is to Ibid. s. 21. say:—

(a) The head of the family to which such inmate (in this Act referred to as the patient) belongs, and in his default the nearest relative of the patient present in the house or being in attendance on the patient, and in default of such relative every person in charge of or in attendance on the patient, and in default of any such person the occupier of the house shall, as soon as he becomes aware that the patient is suffering from an infectious disease, give notice in writing thereof to the local authority of the district.

(b) Every medical practitioner attending on or called in to visit the patient shall forthwith, on becoming aware that the patient is suffering from an infectious disease, send to the local authority of the district a certificate stating the name of the patient, the situation of the house, and infectious disease from which, in the opinion of such medical practitioner, the patient is suffering, and such other particulars as may be prescribed.

(2) Any person required by this section to give a notice or Penalty on failure to give notice. certificate who fails to give the same, shall be liable to a penalty not exceeding five pounds:

Provided that if a person is not required to give notice in Proviso. the first instance, but only in default of some other person, he shall not be liable to any penalty if he satisfies the court that he had reasonable cause to suppose that the notice had been duly given.

(3) The Board shall gratuitously supply forms of certificate Board to supply forms of certificate. to any local authority applying for the same for distribution among legally qualified medical practitioners, and shall pay to every legally qualified medical practitioner for each certificate duly sent by him in accordance with this Act a fee of three shillings and sixpence.

30. The Registrar-General and every district registrar and Registrars to notify deaths from infectious diseases. assistant district registrar under any Act regulating the registration of Ibid. s. 22. deaths, shall immediately after registering any death apparently caused by an infectious disease forward a notification of such death to the secretary to the Board, giving the name and residence of the deceased, age, cause of death, and the name of the person certifying to the cause of death, and such other particulars as may be prescribed.

DIVISION

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Notification of
small-pox.
45 Vic. No. 23, s. 2.

31. (1) On the appearance of any case of small-pox, or eruptive fever which may reasonably be supposed to be small-pox, in any house or premises, the householder or occupier of such house or premises, and also the medical practitioner attending the case, shall immediately report in writing such case—

- (a) if the case occur within the City of Sydney, to the officer in charge of the nearest police station or lock-up, or to the officer in charge of the Central Police Station, or to the Health Officer of the port of Sydney, or to any member of the Government Medical Staff, or to the secretary of the Board ;
- (b) if the case occur beyond the City of Sydney, to the nearest magistrate, officer of police, clerk of petty sessions, or to the Government medical officer of the district within which the case has occurred.

Penalty.

(2) Any person who fails to make any such immediate report as he is required to make by this section, shall be liable to a penalty of not less than ten pounds or more than fifty pounds, recoverable in a summary way before a police or stipendiary magistrate, upon information laid by the Board, or by any officer appointed by the Board for that purpose.

Notification of
leprosy.
54 Vic. No. 20, ss.
3, 7.

32. (1) On the appearance of any case of leprosy in any house or premises the householder or occupier of such house or premises, and also the medical practitioner attending the case, shall immediately report in writing such case—

- (a) if the case occur within the Metropolitan Police District, to the secretary of the Board ;
- (b) if the case occur beyond the Metropolitan Police District, to the officer in charge of the police station nearest to such house or premises.

Penalty.

(2) Any person who fails to make any such immediate report as he is required to make by this section, shall be liable to a penalty of not less than ten pounds or more than fifty pounds, recoverable in a summary way before a police or stipendiary magistrate or any two justices.

DIVISION 3.—*Prevention of the spread of infectious diseases.*

Application of next
four sections.
Ibid. s. 23.

33. The four next following sections shall apply only to municipalities and to sanitary areas proclaimed under subsection (2) of section seventy-one.

Local authority may give
owner of property notice
to disinfect same.
Ibid. s. 24.

34. (1) Where a legally qualified medical practitioner reports to the local authority, or the said authority is of opinion that the cleansing and

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and disinfecting of any drains or of any house or part thereof, and of any articles therein likely to retain infection, or the destruction of such articles would tend to prevent or check the spread of any infectious disease, the local authority, or, where the said authority is a municipal council, the mayor, may serve a notice on the occupier, or where the land, house, or part thereof is unoccupied, on the owner of such land, house, or part thereof, that the drains, or the house, or part thereof, and any such articles therein will be cleansed and disinfected or (as regards the articles) destroyed by the local authority, unless he informs the local authority within twenty-four hours from the receipt of the notice that he will cleanse and disinfect the drains or the house or part thereof, and any such articles, or destroy such articles to the satisfaction of a legally qualified medical practitioner as certified by him in writing to the local authority, within a time fixed in the notice.

(2) If—

- (a) within twenty-four hours from the receipt of the notice, the person on whom the notice is served does not inform the local authority as aforesaid; or
- (b) having so informed the local authority, he fails to have the drains, house, or part thereof, and any such articles disinfected or such articles destroyed as aforesaid within the time fixed in the notice; or

Powers of local authority on default of action by owner.

(c) the occupier or owner without such notice gives his consent; the drains or the house or part thereof and articles shall be cleansed and disinfected, or such articles destroyed by the officers of the local authority, under the superintendence of a legally qualified medical practitioner, and the local authority may recover from the owner or occupier of the house or part thereof the cost of the cleansing and disinfecting aforesaid. And failure to do the things specified in subdivision (b) within the time mentioned shall be deemed to be a breach of the provisions of this Act. If from poverty or other reason the person responsible is unable to carry out the requirements of the local authority, the latter may, with his consent, carry out the necessary work at their own expense.

35. The local authority shall provide, free of charge, temporary shelter or house accommodation with any necessary attendants for the members of any family in which any infectious disease has appeared who have been compelled to leave their dwellings, for the purpose of enabling such dwellings to be disinfected by the local authority.

Local authority to provide temporary accommodation.
60 Vic. No. 33,
s. 24 (III).

36. When the local authority has disinfected any drains, house, part of a house, or article under the provisions of section thirty-four, it shall compensate the owner of such drains, or the occupier or owner of such house, or part of a house, or the owner of such article, for any damage thereby caused to such drains, house, part of a house, or article, and when the authority destroys any article under the said section it shall compensate the owner thereof.

Compensation.
Ibid. s. 24 (IV).

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Disinfection or
destruction of bed-
ding.
60 Vic. No. 38, s. 25.

37. (1) The local authority or the medical officer of health of the local authority, or a Government medical officer, may, by notice in writing, require the owner of any bedding, clothing, or other articles which have been exposed to the infection of any infectious disease, to cause the same to be forthwith delivered over to any person named in the notice for removal for the purpose of destruction or disinfection; and any person who fails to comply with such a requirement shall be liable to a penalty not exceeding ten pounds.

The bedding, clothing, and articles, if so disinfected by, or by direction of, the local authority, shall be brought back and delivered to the owner free of charge, and if any of them suffer any damage, the local authority shall compensate the owner for the same; and the said authority shall also compensate the owner for any articles destroyed.

Places and apparatus
to be provided.

(2) For the purpose of carrying out the provisions of this section, a local authority or any local authorities by agreement among themselves shall provide a proper place (whether within any of the districts administered by the local authorities, or outside those districts), with all necessary apparatus and attendance, for the disinfection or destruction of bedding, clothing, and other articles; but shall before expending any money for the purposes aforesaid obtain the approval in writing of the Board as to the suitability of the said apparatus, and of the site of the place proposed to be provided as aforesaid.

Provision as to
typhoid fever.

(3) Whenever typhoid fever exists, the local authority may, and when required by order of the Board shall, provide a separate service for the removal and destruction by fire of the excreta of persons suffering from such fever.

Duties of person
ceasing to occupy
infected house.
Ibid. s. 26.

38. (1) Where a person ceases to occupy any house or part of a house in which any person has, within six weeks previously, during his occupancy, been suffering from any infectious disease, and either—

(a) fails to have such house or part of a house and all articles therein liable to retain infection disinfected to the satisfaction of a legally qualified medical practitioner, as testified by a certificate signed by him, or such articles destroyed; or

(b) fails to give to the owner or occupier of such house or part of a house notice of the previous existence of such disease, he shall be liable to a penalty not exceeding five pounds.

Penalty for making
false answer as to
infection of house.

(2) And if, on being questioned by the owner or occupier or by any person negotiating for the hire of such house or part of a house, as to the fact of there having within six weeks previously during his occupancy been therein any person suffering from any infectious disease, he knowingly makes a false answer to such question, he shall be liable to a penalty not exceeding ten pounds.

(3)

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(3) The local authority shall cause their officers to serve notice of the provisions of this section on the occupier of any house or part of a house in which they are aware that there is a person suffering from an infectious disease.

Local authority to give notice of this section.

39. Any person letting for hire, or showing for the purpose of letting for hire, any house or part of a house in which or in part of which within his knowledge there has been within the previous six weeks a person suffering from an infectious disease (whether the said house or part of a house has or has not been disinfected) who fails to state that fact to the person negotiating for the hire of the house or part of a house, or being shown over the house or part of a house for the above purpose, shall be liable to a penalty not exceeding twenty pounds.

Penalty for failing to disclose infection of house.
60 Vic. No. 38, s. 27.

40. Any person who knowingly or negligently sends to school a child, who within the previous two months has been suffering from an infectious disease, or who has been resident in any house in which such disease has existed within the space of six weeks, without furnishing the head teacher of the school with a certificate from a legally qualified medical practitioner that such child is free from disease and infection, and causing the clothes of such child to be disinfected to the satisfaction of a legally qualified medical practitioner, shall be liable to a penalty not exceeding ten pounds.

Penalty for sending infected child to school.
Ibid. s. 28.

41. If in the opinion of the Board it is desirable for the purpose of preserving the public health that any school or college should be closed, it shall be lawful for the Board so to notify in the Gazette, and by notice served on the proprietor or trustees of the school or college.

Board may close schools.
Ibid. s. 29.

On the publication of the notice in the Gazette, the Minister of the Crown having control of any public school or college therein mentioned, and the proprietor or trustees of any other school or college mentioned as aforesaid, shall cause the said school or college to be closed and to be kept closed until the Board notifies in the Gazette that the school or college may be opened without prejudice to the public health.

42. Any person who—

- (a) while suffering from any infectious disease exposes himself without proper precautions against spreading the said disease in any street or public place, shop, inn, theatre, church, chapel, or place of public resort, or any public conveyance, or any vehicle, or vessel hired or plying for hire, or enters any public conveyance, vehicle, or vessel aforesaid, without previously notifying to the owner, conductor, driver, or master, or, in the case of conveyance by railway, the station-master, that he is so suffering, and obtaining his consent to ride or be carried in the said conveyance, vehicle, or vessel; or

Penalty on exposure of infected persons or things.
Ibid. s. 30.

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(b) being in charge of any person so suffering so exposes such sufferer ; or

(c) gives, lends, sells, transmits, removes, or exposes without previous disinfection any bedding, clothing, rags, or other things which have been exposed to infection from any such disease,

shall be liable to a penalty not exceeding five pounds, unless such person satisfies the Court that he was ignorant of the existence of such disease :

Provided that no proceedings under this section shall be taken against persons transmitting or removing with proper precautions any bedding, clothing, rags, or other things for the purpose of having the same disinfected or destroyed.

Disinfection of
public conveyances.
60 Vic. No. 38, s. 31.

43. (1) Every owner, driver, or master of a public conveyance, vehicle, or vessel, or in the case of conveyance by railway, the station-master, shall immediately cause such conveyance, vehicle, or vessel, after it has to his knowledge conveyed any person suffering from an infectious disease, to be disinfected to the satisfaction of the local authority ; and if he fails to do so he shall be liable to a penalty not exceeding five pounds.

Compensation.

(2) Every such owner, driver, master, or station-master conveying, or allowing to be conveyed, any person so suffering shall be entitled to be paid by the said person a sum sufficient to cover any loss or expense which may be incurred or paid in carrying into effect the provisions of this section.

Penalty for using
public conveyance to
convey infected body.
Ibid.

44. (1) Any person who hires or uses a public conveyance, other than a hearse, for conveying the body of a person who has died from any infectious disease without previously notifying to the owner or driver of the conveyance that such person died from infectious disease, shall be liable to a fine not exceeding five pounds, and if the offence continues to a further fine not exceeding forty shillings for every day during which the offence continues.

Penalty on owner or
driver.

(2) Any owner or driver of any such conveyance who does not, immediately after the conveyance has to his knowledge been used for conveying such body, provide for the disinfection of such conveyance shall be liable to the like penalties as in the preceding subsection.

Burial of infected
dead bodies.
Ibid. s. 32.

45. (1) No person shall, without the sanction in writing of the local authority, retain unburied elsewhere than in a public mortuary, for more than thirty-six hours, the body of any person who has died of any infectious disease within a district administered by a municipal council, or for more than forty-eight hours the body of any person who has died of any infectious disease within any other district.

Duties of occupier or
owner of house.

(2) It shall be the duty of the occupier of the building or place where the body is, and if there be no occupier it shall be the duty of the owner, to carry out the provisions of this section, and on failure to do so such occupier or owner shall be liable to a penalty not exceeding fifty pounds.

46.

Public Health.

46. If any person dies from any infectious disease in any hospital or place of temporary accommodation for the sick, and any legally qualified medical practitioner certifies that in his opinion it is desirable, in order to prevent the risk of communicating any infectious disease, or of spreading infection, that the body should not be removed from such hospital or place, except for the purpose of being forthwith buried or cremated, no person shall remove such body from such hospital or place except for one of the last-mentioned purposes; and when the body is taken out of such hospital for that purpose it shall forthwith be carried or taken direct to some cemetery or place of burial or crematory, and shall be forthwith there buried or cremated; and any person wilfully offending against this section shall be liable to a penalty not exceeding ten pounds:

Bodies of persons
dying in hospitals.
60 Vic. No. 38, s. 33.

Provided that nothing in this section shall prevent the removal of any dead body from any hospital or temporary place of accommodation for the sick to any mortuary, and such mortuary shall, for the purposes of this section, be deemed part of such hospital or place as aforesaid.

Proviso.

DIVISION 4.—Custody and treatment of lepers.

47. The Governor may, by proclamation published in the Gazette, direct that any suitable place be set apart as a lazaret for the reception and medical treatment of lepers, and may make regulations for the safe custody of lepers therein.

Lazarets.
54 Vic. No. 20,
s. 4 (1).

48. (1) The Board shall, upon report being made under section thirty-two, or by any legally qualified medical practitioner, that any person is suffering from leprosy, cause investigation to be made by two or more legally qualified medical practitioners, and, upon being satisfied that such person is suffering from that disease, may order that such person be removed to and detained in such lazaret until released by order of the Board, or be isolated in such place and in such manner as the Board directs; and any person so ordered who wilfully refuses or neglects forthwith to obey any such order or any directions given by the Board, or escapes or attempts to escape from such lazaret or place of isolation, may, with such necessary force as the case may require, be removed or brought to any lazaret or other suitable place.

Powers of Board in
cases of leprosy.
Ibid. s. 4 (ii), (iii),
(iv), (v).

(2) Every such order shall be in writing, signed by the President or secretary, or any two members of the Board, and may be addressed to a member of the police force or other person as the Board may consider expedient; and any order so signed shall be a sufficient warrant to any member of the police force or other such person for arresting the person named or described therein, and for removing him or bringing him to any lazaret or other place, and for taking all such steps and doing all such things as may be requisite to enforce the said order.

Form of order.

(3)

Public Health.

Penalty.

(3) Any person who wilfully disobeys or obstructs the execution of any such order, or who trespasses on any such lazaret or other place, or communicates or improperly interferes with any person detained therein, shall be liable to a penalty of not less than ten nor more than twenty pounds.

(4) Every person who, prior to the passing of this Act, was detained as a leper in the Coast Hospital, at Little Bay, shall be deemed to have been lawfully detained, and to be a leper detained within the meaning and for the purposes of this section.

Interpretation.
54 Vic. No. 20, s. 5.

(5) In this section the expression "legally qualified medical practitioner" means a legally qualified medical practitioner within the meaning of the Medical Practitioners Act, 1898, or any Act amending or consolidating the same.

Order to be evidence.
Ibid. s. 7.

49. Any such order purporting to be signed as aforesaid shall in all proceedings be admissible without further proof as evidence that such order has been duly made in pursuance of this Division of this Act.

Penalties.
Ibid. s. 6.

50. Any person, not being a leper, who—

- (a) wilfully disobeys or acts in violation of any such regulation made for the purpose of carrying this Division of this Act into effect; or
- (b) resists or wilfully obstructs any person in the lawful exercise of any power conferred under this Division of this Act; or
- (c) without lawful excuse, neglects or disobeys any requirement made under this Division of this Act, or neglects or refuses to obey any order or direction of the Board so made within the time limited in that behalf by such order or direction,

shall for every such offence be liable to a penalty not exceeding twenty pounds.

PART IV.

CREMATORIES.

Crematories may be established and maintained.
69 Vic. No. 38, s. 34.

51. A local authority, or the trustees of any burial ground or cemetery, may erect and maintain crematories for the burning of the dead :

Provided that the erection and maintenance of the crematories, and all matters in connection with the burning of the dead, shall be subject to such regulations as the Governor may make in that behalf.

Public Health.

PART V.

COMMON LODGING-HOUSES.

52. A local authority may make by-laws—

- (a) providing for the registration and licensing of common lodging-houses; and
- (b) fixing the number of lodgers who may be received into a common lodging-house, and for recording the names of the lodgers, and for the separation of the sexes; and
- (c) prescribing the air space to be provided for each lodger, and the affixing of notices as to the number of lodgers to be accommodated in each room; and
- (d) for enforcing cleanliness, drainage, and ventilation in such houses; and
- (e) for giving notices and taking precautions in the case of any infectious disease; and
- (f) for providing separate privy accommodation for the sexes; and
- (g) generally for the orderly conduct and for providing for the sanitary condition of such lodging-houses.

Local authorities
may make by-laws.
60 Vic. No. 38, s. 35.

PART VI.

BUILDING AREAS AND BUILDINGS.

53. This Part shall apply only to districts administered by municipal councils.

Application of this part.
Ibid., s. 36.

54. When the Board, after causing due inquiry to be made, is of opinion that it would be prejudicial to health that any land should in its then condition be built upon, the Board may so report to the Minister, describing the land to which the report refers, and specifying the reasons which influence the Board in coming to the opinion aforesaid, and the measures which are necessary to be taken in order to render the land fit to be built on.

Board may report to
Minister that land is
unsuitable for
building.
Ibid., s. 37.

55. (1) On receipt of such report, the Minister after causing such inquiries and notifications as he may think fit to be made and given, by one notice in the Gazette, and by notices in three consecutive issues of some newspaper circulating in the district in which the land is situate, or by notice served on the owner of the land, may declare that the land shall not be built upon until the measures referred to in the notice and more particularly specified in a document deposited in the office of the local authority and open to the inspection of any person have been taken or the notice is revoked by the Minister.

Powers of Minister.
Ibid.

Public Health.

Penalty.

(2) If any person in contravention of the notice aforesaid builds upon the land, he shall be liable to a penalty not exceeding five pounds for every day that building operations are carried on in contravention of the notice.

Authority to enter land.
67 Vic. No. 38, s. 37 (11).

56. For the purpose of the respective inquiries aforesaid, any person authorised by the Minister or the Board in that behalf, may enter any land and dig holes therein and remove the soil thereof.

Duties of local authorities in respect of dwelling-houses.
60 Vic. No. 38, s. 38.

57. (1) It shall be the duty of every local authority to cause to be made, from time to time, inspection of their district, with a view to ascertain whether any dwelling-house therein is in a state so injurious to health as to be unfit for human habitation; and if on the representation of their medical officer of health, or on information given, any dwelling-house appears to them to be in such a state, to take proceedings against the owner or occupier for closing the house under the provisions of this Act.

Powers of local authorities for purposes of inspection.

(2) For the purpose of such inspection the local authority may open any ground and remove any flooring, and take such measures as may be deemed necessary to ascertain the construction and condition of the dwelling-house, and all pipes, drains, and fittings in connection therewith.

Notice before proceedings.
Ibid.

58. Before taking such proceedings, the local authority shall serve on the owner or occupier a notice requiring him to render the dwelling-house fit for human habitation, and specifying what works are necessary to be done for that purpose :

Provided that where the state of the house is caused by the want or defective construction of any structural convenience, or the insanitary construction of the house or of any part thereof, or where there is no occupier of the house, the notice shall be served on the owner.

Procedure.
Ibid.

59. (1) If within fifteen days after service of such notice, no arrangements for satisfying the requirements of the local authority have been agreed to, proceedings shall be commenced by a complaint to a justice by the local authority, or by any person authorised by the local authority in that behalf, and the justice shall thereupon issue a summons requiring the owner or occupier to appear before a police or stipendiary magistrate or any two justices in petty sessions, who shall proceed to inquire into the complaint.

Powers of justices on hearing.

(2) If the house is in the opinion of the magistrate or justices unfit for human habitation, they may prohibit the using thereof for that purpose until it is rendered fit for that purpose, and on being satisfied that it has been rendered fit for that purpose, they or any other magistrate or justices aforesaid may determine the previous order by another declaring the house habitable, and, from the date of the making of the last-mentioned order, the house may be let or inhabited.

(3)

Public Health.

(3) Any such proceedings may be taken for the purpose of causing the dwelling-house to be closed, whether the same is occupied or not; and upon such proceedings the magistrate or justices may impose a penalty not exceeding twenty pounds, and make a closing order.

60. (1) Where a closing order has been made in respect of a dwelling-house, the local authority shall serve a notice of the order on every occupying tenant of the house; and within such period as is specified in the notice, not being less than seven days after the service of the notice, the order shall be obeyed by him, and he and his family shall cease to inhabit the house, and in default he shall be liable to a penalty not exceeding twenty shillings a day during his disobedience to the order.

Effect of closing order upon tenancy of house.

60 Vic. No. 38, s. 38.

(2) The local authority may make to every such tenant such reasonable allowance on account of his expenses in removing as may have been authorised by the magistrate or justices making the closing order, which authority the magistrate or justices are hereby authorised to give, and the amount of the said allowance shall be a civil debt due from the owner of the house to the local authority, and may be recovered in any Court of competent jurisdiction.

Compensation to tenants.

61. (1) Where a closing order has been made in respect of any dwelling-house, and has not been determined by a subsequent order, then the local authority, if of opinion that the house has not been rendered fit for human habitation, and that the necessary steps are not being taken to render it so fit, and that the continuance of the house or any part thereof is dangerous to the health of the public or of the inhabitants of the neighbouring dwelling-houses, shall pass a resolution that it is expedient to order the demolition of the house or the said part thereof.

Resolution for demolition of closed dwelling-house.

Ibid. s. 39.

(2) The local authority shall cause notice of such resolution to be served on the owner of the house, and such notice shall specify the time and place appointed by the local authority for the further consideration of the resolution, not being less than one month after the service of the notice, and any owner of the house shall be at liberty to attend and state his objections to the demolition.

Notice to owner of house.

(3) If, upon consideration of the resolution and objections, the local authority decide that it is expedient so to do, then, unless an owner undertakes to execute forthwith the works necessary to render the house fit for human habitation, the local authority shall order the demolition of the house or the said part thereof.

Power to order demolition.

(4) If an owner undertakes as aforesaid to execute the said works, the local authority may order the execution of the works within such reasonable time as is specified in the order, and if the works are not completed within the time or any extended time allowed by the local authority or the magistrate or justices aforesaid, the local authority shall order the demolition of the house or the said part thereof.

Where owner undertakes to repair

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Owner to execute
demolition.
60 Vic. No. 38, s. 40.

62. (1) Where an order for the demolition of a house or any part thereof has been made, the owner thereof shall, within three months after service of the order, proceed to take down and remove the house or the part thereof, and if the owner fails therein, the local authority shall proceed at his risk and expense to take down and remove the same and shall sell the materials, and after deducting the expenses incident to such taking down and removal and sale, pay over the balance (if any) to the owner. If such proceeds do not cover the expense the amount of the deficiency may be recovered by the local authority from the owner in any Court of competent jurisdiction.

Rebuilding.

(2) Where a house or part thereof has been so taken down and removed, no house or other building or erection which will be dangerous or injurious to health shall be erected on all or any part of the site of such house or part thereof; and if any house, building, or erection is erected contrary to the provisions of this section, the local authority may at any time order the owner thereof to abate the same, and in the event of non-compliance with the order may, at the expense of the owner, abate or alter the same.

Appeal from order of
local authority.
Ibid. s. 41.

63. (1) Any person aggrieved by an order of a local authority under this Part of the Act may appeal against the same, and the provisions of the Justices Act, 1902, relating to appeals to Quarter Sessions from summary convictions shall apply with the necessary modifications as if the order of the local authority were a summary conviction under the said Act.

Provisoes.

(2) Provided that—

- (a) the notice of appeal mentioned in the said Act shall be sent to the local authority, who shall at once send the same to the Clerk of the Peace; and
- (b) the Court of Quarter Sessions shall, at the request of either party state the facts specially for the determination of the Supreme Court, in which case the proceedings may be removed into that Court.

PART VII.
NUISANCES.

Nuisances liable to
be summarily dealt
with.
Ibid. s. 42.

64. For the purposes of this Act—

- (a) any premises, including those owned by the Government or by public bodies, in such a state as to be a nuisance or injurious or dangerous to health;
 - (b) any pool, ditch, gutter, watercourse, cistern, water-closet, earth-closet, privy, urinal, cesspool, cesspit, drain, dungpit, or ashpit, so foul or in such a state as to be a nuisance or injurious or dangerous to health;
 - (c) any accumulation or deposit which is a nuisance or injurious or dangerous to health;
- (d)

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- (d) any factory, workshop, or workplace which is not under the operation of any general Act for the regulation of factories; and
- (i) is not kept in a cleanly state and free from effluvia arising from any drain, privy, water-closet, earth-closet, urinal, or other nuisance; or
 - (ii) is not ventilated in such a manner as to render harmless, so far as practicable, any gases, vapours, dust, or other impurities generated in the course of the work carried on therein, that are a nuisance or injurious or dangerous to health,

shall be nuisances liable to be dealt with summarily under this Act :

Provided that any accumulation or deposit necessary for the effectual carrying on of any business or manufacture shall not be liable to be dealt with summarily under this Act, if it is proved to the satisfaction of the magistrate or justices hereinafter referred to that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business or manufacture, and that the best available means have been taken for preventing injury thereby to the public health.

65. (1) On the receipt of any information respecting the existence of a nuisance liable to be dealt with summarily under this Act, the local authority shall, if satisfied of the existence of the nuisance, serve a notice on the person by whose act, default, or sufferance the nuisance arises or continues, or if such persons cannot be found, on the occupier or owner of the premises on which the nuisance arises, requiring him to abate the same within the time specified in the notice, and to execute such works and do such things as may be necessary for that purpose, and if the local authority think it desirable (but not otherwise) specifying any works to be executed.

(2) The local authority may also, by the same or another notice served on such occupier, owner, or person, require him to do what is necessary for preventing the recurrence of the nuisance, and if they think it desirable, specify any works to be executed for that purpose, and may serve that notice, notwithstanding that the nuisance may for the time have been abated, if the local authority consider that it is likely to recur on the same premises :

Provided that—

- (a) where the nuisance arises from any want or defect of a structural character, or where the premises are unoccupied, the notice shall be served on the owner;
- (b) where the person causing the nuisance cannot be found, and it is clear that the nuisance does not arise or continue by the act, default, or sufferance of the occupier or owner of the premises, the local authority may themselves abate the same, and may do what is necessary to prevent the recurrence thereof.

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Proceedings on
default of compliance
with notice.
60 Vic. No. 38, s. 44.

66. (1) If either—

(a) the person on whom a notice to abate a nuisance has been served as aforesaid makes default in complying with any of the requisitions thereof within the time specified; or

(b) the nuisance, although abated since the service of the notice, is, in the opinion of the local authority, likely to recur on the same premises;

the local authority shall make complaint to a justice, and such justice shall thereupon issue a summons requiring the person on whom the notice was served to appear before a police or stipendiary magistrate, or any two justices in petty sessions.

Order.

(2) The said magistrate or justices may, if satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises, by order require the said person to comply with all or any of the requisitions of the notice, or otherwise to abate the nuisance within a time specified in the order, and may, if thought desirable, specify the works to be executed by the said person for the purpose of abating or preventing the recurrence of the nuisance.

Penalties on non-compliance with order.

(3) (a) If a person fails to comply with an order of a magistrate or justice made as aforesaid, with respect to the abatement of a nuisance, he shall, unless he satisfies the Court that he has used all due diligence to carry out such order, be liable to a penalty not exceeding twenty shillings a day during his default.

(b) If a person knowingly and wilfully acts contrary to an order prohibiting the recurrence of a nuisance, he shall be liable to a penalty not exceeding forty shillings a day during such contrary action.

(c) The local authority may enter the premises to which an order made under this Part relates, and abate or remove the nuisance, and do whatever may be necessary in execution of such order.

Where person in default, or owner or occupier cannot be found.

Ibid. s. 45.

67. Whenever it appears to the magistrate or justices that the person by whose act, default, or sufferance a nuisance liable to be dealt with summarily under this Act arises, or the owner or occupier of the premises is not known or cannot be found, then the order may be addressed to, and if so addressed shall be executed by, the local authority.

Power to sell things removed in abating nuisance.

Ibid. s. 46.

68. Any matter or thing removed by the local authority in abating or doing what is necessary to prevent the recurrence of a nuisance liable to be dealt with summarily under this Act may be sold or disposed of without sale, and the money arising from the sale may be retained by the local authority and applied in payment of the expenses incurred by them in reference to such nuisance, and the surplus (if any) shall be paid on demand to the owner of such matter or thing.

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69. (1) Any person aggrieved by the order of a magistrate or justices under this Part prohibiting the recurrence of a nuisance or requiring the execution of structural works may appeal against the same, and the provisions of the Justices Act, 1902, relating to appeals to Quarter Sessions from summary convictions shall apply with the necessary modifications as if the order aforesaid were a summary conviction under the said Act. Appeals. 60 Vic. No. 38, s. 47.

(2) Where a person appeals as aforesaid, no liability to a penalty shall arise, nor shall any proceedings be taken or work be done under the order of the magistrate or justices until after the determination of such appeal, unless the prosecution of such appeal ceases. Stay of proceedings.

70. In the case of premises owned by the Government or any public body, the officer having the chief control of such premises shall be liable for any breach of the provisions of this Part as if he were the actual owner or occupier of such premises; but if such person proves that the breach was one for which he should not be held responsible he shall be entitled to recover any penalty imposed and costs from the Government or the public body. Liability of officer having control of public premises. Ibid. s. 42.

71. (1) The Governor may, by proclamation in the Gazette, declare the whole or any portion of a municipality to be a sanitary area, and revoke and vary any proclamation made as aforesaid. It shall thereupon be the duty of the council of the municipality to make by-laws prohibiting under suitable penalties the construction or use of cesspits and the burial of night-soil within the said area, and for the regulation of the deposit of house refuse, rubbish, and garbage, and for the destruction thereof, providing for the filling up of disused cesspits, and for the disposal of night-soil. Proclamation of sanitary areas within municipalities. Ibid. s. 48.

(2) By like proclamations the Governor may constitute sanitary areas in populous localities situate outside any municipality, and may define the boundaries of the same, and may revoke and vary any proclamation made as aforesaid. The Board may thereupon make regulations for the purposes mentioned in subsection (1) to have effect within the areas so constituted. And outside municipalities.

PART VIII.

POLLUTED WATER SUPPLY.

72. (1) Where a Government medical officer, or an officer of health or two legally qualified medical practitioners certify to a local authority that any well, dam, tank, stream, or other source of water supply for drinking or domestic purposes is so polluted or unwholesome Power to prohibit use of polluted water. Ibid. s. 49.

as

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as to be unfit for those purposes, the local authority may, with the consent of the Board, by notification in the Gazette and in two consecutive issues of some newspaper circulating in the place where the well, dam, tank, stream, or source of water supply is situate, direct that within a time therein mentioned the well, dam, tank, or other similar source of water supply shall be closed by the owner of the same, and that the water in or flowing from the well, dam, tank, stream, or other source of water supply shall not be used for drinking or domestic purposes until the local authority has given notice in the Gazette revoking the direction aforesaid.

Power of entry to obtain sample.

(2) The Board or the local authority may at any time between the hours of ten o'clock in the forenoon and six o'clock in the afternoon enter upon any premises within the district of such authority for the purpose of obtaining a sample of any water.

Penalty.

(3) Any person who fails to comply with any direction notified as aforesaid, or who uses or causes to be used for any of the purposes aforesaid any water in or flowing from such well, dam, tank, stream, or other source of water supply as aforesaid while such direction remains in force shall be liable to a penalty not exceeding five pounds for each day during which the direction is not complied with, or the well, dam, tank, stream, or other source of water supply, is so used as aforesaid.

Powers where infectious disease exists.

60 Vic. No. 38, s. 49.

73. Where any case of infectious disease exists in a district, and the Board or the President has reason to suspect that the said disease has been caused by or might be spread by water contained in any well, dam, tank, or other similar source of water supply, the Board or the President may cause the said well, dam, tank, or source of water supply to be temporarily closed, and for that purpose may at any time enter upon any premises and take such steps as may be thought necessary.

Penalty for polluting drinking water.
Ibid. s. 50.

74. Any person who pollutes by causing or knowingly permitting any solid or liquid matter to fall or flow or to be carried into any stream or water used for or in connection with the supply of water for drinking or domestic purposes shall be liable to a penalty not exceeding five pounds for every day that he causes or permits the said matter to fall or flow or to be carried into the said stream or water in contravention of this section.

Regulations.
Ibid.

75. The Board may make regulations—

- (a) prescribing the degree to which water used in carrying on any trade or manufacture and allowed to flow or percolate into any stream or water used for the purposes aforesaid may be fouled, and providing that the purification of such water as aforesaid shall be effected to the satisfaction of the local authority; and

(b)

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- (b) prescribing and regulating the construction of channels by which the water used as aforesaid may be discharged so as to flow or percolate into the stream or water used for the purposes aforesaid.

PART IX.

UNWHOLESOME OR ADULTERATED FOOD AND DRUGS.

76. In this Part, unless the context or subject-matter otherwise indicates or requires,— Interpretation.
60 Vic No. 38, s. 70.

“analyst” means the Government analyst and includes any person appointed an analyst by the Board for the purposes of this Act;

“drug” includes medicines for internal and external use.

77. The Governor on the recommendation of the Board may, by notice in the Gazette fix limits of strength and purity for articles of general consumption. Standards.
Ibid. s. 53.

78. No person shall, except as hereinafter provided, sell, or offer, or expose for sale, or deliver any adulterated article, or article of food unfit for human consumption, either in the streets, or in any store, market, shop, stall, or vessel as defined by the Navigation Act 1901, or other place of business, or on a round from house to house, under a penalty for a first offence of not less than two pounds or more than ten pounds, for a second offence twenty pounds, for a third or subsequent offence fifty pounds. Sale or exposition of
adulterated articles.
Ibid. s. 51.

And if the certificate of the Government analyst states that the adulterated article has been so adulterated as to be injurious to health, the Court may impose five times the amount of the maximum penalty laid down for a first, second, or third offence, and in addition to the penalty a term of imprisonment, with or without hard labour, for any period not exceeding six months.

79. (1) Any of the following officers that is to say:—

- (a) any officer of the Board; or
- (b) any officer of a municipal council duly authorised in writing by the mayor; or
- (c) any inspector of weights and measures; or
- (d) any superintendent, inspector, sub-inspector, or serjeant of police; or
- (e) any constable specially authorised by the Inspector-General of Police, or by any superintendent of police,

may at any place of sale or elsewhere, or during transit towards a place of sale,

- (f) on payment or tender to any person dealing in any food or drug or having it for sale, or his agent or servant, of the value

Power to obtain
samples.
Ibid. 52.

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value thereof, demand and select and take or obtain samples (not being of a quantity greater than is reasonably requisite for the purpose of analysis) of the said food or drug; and

- (g) require the said person or his agent or servant to show and permit the inspection of the vessels in which such food or drug is at the time kept, and to take or draw therefrom in his presence the samples demanded.

Penalty.

(2) Any such person or his agent or servant who, being thereto lawfully required—

- (a) on payment or tender of the value thereof as aforesaid, refuses or wilfully neglects to deliver to any such officer any such sample, or prevents or attempts to prevent the officer from selecting, taking, or obtaining any such sample; or
 (b) wilfully and without just cause refuses or neglects to show to the officer or refuses to permit the inspection by the officer of such vessels as aforesaid, or obstructs him in making the inspection, or refuses or neglects to take or draw as aforesaid the samples demanded,

shall be liable to a penalty not exceeding fifty pounds, and in case of a subsequent offence to a penalty not exceeding one hundred pounds.

Presumption as to sale.

(3) When any officer in pursuance of the provisions of this section takes or obtains a sample of any food or drug, such food or drug shall be deemed to have been sold to such officer by the person dealing in it or having it for sale or his agent or servant within the meaning of this Act, notwithstanding that the quantity so taken or obtained may be less than the quantity which the person dealing in the food or drug or having it for sale is authorised to sell or dispose of at one time.

Manner in which sample may be dealt with.
 60 Vic. No. 38, s. 54.

80. (1) The person purchasing or the officer taking or obtaining any food or drug with the intention of submitting it to analysis shall thereupon notify to the seller or person dealing in the food or drug, or having it for sale, or his agent or servant, his intention to have the same analysed by an analyst, and shall offer to divide the food or drug into three parts, to be then and there separated, and each part to be labelled or marked and sealed or fastened up in such manner as its nature will permit.

(2) Such person or officer shall then, if required to do so, proceed accordingly, and shall deliver one of the said parts to the seller or person aforesaid, or his agent or servant, and shall retain one of the said parts for future comparison, and submit the third part, if he thinks fit, to the analyst.

Duties of analyst.
Ibid. s. 55.

81. If the seller or person dealing in the food or drug, or having it for sale, or his agent or servant do not accept the offer of the purchaser or officer aforesaid to divide the food or drug in his presence, the analyst receiving the same for analysis shall divide it into two parts, and

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and shall seal or fasten up one of those parts, and retain such part for production in the event of proceedings being afterwards taken in the matter.

82. Any analyst analysing any food or drug submitted to him in pursuance of the provisions of this Act may give a certificate of the result of the analysis in the form prescribed; and in any proceedings before any court or justices the production of a certificate, purporting to be signed by the analyst, shall be sufficient evidence of the identity of the food or drug analysed, and of the result of the analysis without proof of the signature of the person appearing to have signed the same. Certificate of analyst to be evidence. 60 Vic. No. 38, s. 56.

83. Where the prosecutor in any case under this Part has caused the food or drug forming the subject of prosecution to be analysed by any competent analyst, the justices may in case of a conviction assess the reasonable expense of and attending such analysis and award the same against the defendant as part of the costs of the prosecution: Costs of analysis. Ibid. s. 57.

Provided that before the making of such analysis the person prosecuted has had reasonable notice of the time and place of the intended production of the food or drug to the analyst for examination with the name of such analyst, and has been allowed to attend on such production.

84. Upon complaint to the Board that any food or drug is being sold contrary to the provisions of this Act, such complaint being accompanied by a sample of the food or drug, and a report by an analyst supporting the complaint, together with an affidavit by the complainant that the sample submitted is in the same state as when purchased, and is the food or drug referred to in the analyst's report, the Board shall have the sample submitted analysed. Analysis of samples. Ibid. s. 57.

(2) If the food or drug is found not in accordance with the provisions of this Act, the Board shall direct a local authority to obtain a sample of such food or drug from a seller of the same, and to have the sample analysed. The local authority shall act as directed by the Board, and if the analysis shows the food or drug not to be in accordance with the provisions of this Act, shall prosecute the seller.

85. (1) Upon complaint on oath to a justice that the complainant suspects and believes that any food unfit for human consumption or any drug unfit for use is being kept for sale at or in some premises or place to be specified in such complaint, and upon reasonable grounds being therein shown for such suspicion and belief, the justice may grant a warrant to any constable to enter and search the said premises or place; and such constable may break open any doors not opened within a reasonable time after demand, and may seize any food or drug which he may then and there find, and any vessel in which the same is at the time kept. Search warrant. Ibid. s. 59.

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Summons.

(2) Any justice may thereupon grant a summons calling upon the owner of the food or drug, or the person in whose possession it has been found, to appear before any police or stipendiary magistrate, or any two justices in petty sessions, to show cause why the food or drug and the vessels aforesaid should not be forfeited and destroyed.

Proceedings upon such summons.

(3) Upon the said owner or person so appearing, or if after being so summoned he fails to appear, the said magistrate or justices may, after inquiry into the matter, and if satisfied by reasonable proof—

- (a) that the food was in such premises or place for the purpose of being sold for human consumption, and was unfit for such consumption ; or
- (b) that the drug was in such premises or place for the purpose of being used or sold, and was unfit for use, or might, if sold to a purchaser and used by him in a proper manner, injuriously affect him ;

adjudge such food or drug, and also every such vessel to be forfeited, and the same shall be destroyed.

In default of such reasonable proof the food or drug and the said vessels shall be forthwith restored to the owner or person in whose possession they were found.

Evidence.

(4) In every such proceeding the presence of food in the premises or place specified in the complaint shall be evidence that such food was in such premises or place for the purpose of being sold for human consumption, and the presence of drugs in any such premises or place shall be evidence that such drugs were there for the purpose of being used or sold.

Regulations as to antiseptics.
60 Vic. No. 38, s. 60.

86. (1) The Governor, on the recommendation of the Board, may by regulation prescribe the conditions under which, and the respective proportions in which, the antiseptics or the antiseptic preparations therein mentioned may be mixed with food ; and any food with which any antiseptic or antiseptic preparation has been mixed in contravention of any regulation made as aforesaid shall be deemed to be unfit for human consumption.

Penalty.

(2) Any person who sells any food with which any antiseptic or antiseptic preparation mentioned in any regulation made under the last preceding subsection has been mixed shall, unless at the time of delivering the food he gives notice to the person receiving the same by a label distinctly and legibly written or printed affixed to the containing vessel or parcel truly specifying the nature of the antiseptic or antiseptic preparation and the proportion in which it is present in the food, be liable for each offence to a penalty not exceeding five pounds, and for any subsequent offence to a penalty not exceeding ten pounds.

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87. (1) Every person who for purposes of sale—

- (a) mixes or causes or permits to be mixed any ingredient or material with any food, or colours any such article, or causes or permits the same to be coloured, so as in any such case to render such article injurious to health; or
- (b) mixes or causes or permits to be mixed any ingredient or material with any drug, or colours any such drug, or causes or permits the same to be coloured, so as to affect injuriously the quality or potency of such drug,

Mixing food or drugs with articles injurious to health.
60 Vic. No. 38, s. 61.

shall for the first offence be liable to a penalty not exceeding fifty pounds, and in case of any subsequent offence shall be guilty of a misdemeanour, and be liable to imprisonment, with or without hard labour, for a term not exceeding six months.

(2) Every person who sells any food or drug mixed with any such ingredient or material, or so coloured as aforesaid, whereby such food or drug has been rendered injurious to health, shall be liable for each offence to the like penalties as are in the first subsection provided in respect of the mixing or colouring of any such food or drug.

Penalty for selling.

88. (1) Every person who—

- (a) for purposes of sale mixes or causes or permits to be mixed any ingredient or material with any food or drug in order thereby fraudulently to increase its weight, bulk, or measure, or to conceal its inferior quality; or
- (b) to the prejudice of the purchaser sells any food or drug mixed with any ingredient or material whereby the weight, bulk, or measure of such food or drug has been increased or its inferior quality concealed,

Mixing or selling food or drugs to increase bulk.
Ibid. s. 62.

shall be liable to a penalty not exceeding twenty pounds, and for any subsequent offence to a penalty not exceeding fifty pounds.

(2) Every person who to the prejudice of the purchaser—

- (a) sells any food or drug which is not of the nature, substance, or quality of the food or drug demanded by such purchaser;
- or

Selling food or drugs not of the nature demanded.

(b) any compounded food or drug which is not composed of ingredients in accordance with the demand of the purchaser, shall be liable to a penalty not exceeding twenty pounds, and for any subsequent offence to a penalty not exceeding fifty pounds.

(3) In any prosecution under this section it shall be no defence to allege that the purchaser having bought only for analysis was not prejudiced by the sale, nor to prove that the food, or the drug, the subject of the prosecution, though defective in nature or in substance or in quality, was not defective in all three respects.

As to defences.
Ibid. s. 64.

89. Any person who sells a food or drug shall deliver the same to the purchaser in its pure state, and in strict accordance with its labelled description, and with the name under which it is sold, unless

Labelled descriptions.
Ibid. s. 63.

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it is sold as a mixture, in which case the added ingredients shall be pure, and the fact of the admixture, with the names of the added ingredients, shall be distinctly and legibly written or printed on a label affixed to the outside of the containing vessel or parcel or to the outside wrapper of the food or drug. A breach of this section shall be deemed an offence under the last preceding section of this Act :

Proviso.

Provided that it shall not be necessary so to affix a label in the case of food generally known to users as a compounded article or a drug not recognised by the British Pharmacopœia mixed with any matter or ingredient not injurious to health, and not intended fraudulently to increase its bulk, weight, or measure, or to conceal its inferior quality.

Fusel oil in
intoxicating liquors.
60 Vic. No. 38, s. 65.

90. Every person who sells and delivers, or causes or permits to be sold and delivered for immediate consumption by the buyer or any other person, any intoxicating liquor containing fusel oil in a proportion injurious to health, shall be liable for the first offence to a penalty not exceeding fifty pounds, and in the case of any subsequent offence shall be guilty of a misdemeanour, and be liable to imprisonment, with or without hard labour, for any term not exceeding six months.

Drugs to comply
with tests specified
in the British
Pharmacopœia.
Ibid. s. 66.

91. Any drug sold under any name included in the British Pharmacopœia which does not comply with the description given of and tests prescribed for such drug in the latest edition, with amendments, of the British Pharmacopœia shall, unless such drug be included in a list of exceptions published in the Gazette, under the authority of the Minister, be deemed to be a drug which is not of the substance of the drug demanded by the purchaser.

Bona fide purchase
no defence.
Ibid. s. 67.

92. (1) In any prosecution under this Act for the sale of any food or drug, it shall be no defence that the defendant purchased the food or drug and sold it in the state in which he received it, and without knowledge that the nature, state, or condition of the food or drug was such as would render him liable to prosecution under this Act, unless he further proves that he had no reasonable means of ascertaining the condition of such food or drug.

Remedies of bona
fide purchaser who
has been convicted.

(2) If the defendant, having purchased the food or drug, proves that he sold it in the state in which he received it from the person from whom he purchased, and without knowledge—

- (a) that the nature, substance, or quality was not that of the food or drug demanded by the purchaser; or
 - (b) that any material or ingredient had been mixed with the food or drug contrary to any provision of this Act; or
 - (c) that the food or drug was unfit for human consumption or use; or
 - (d) that otherwise any provision of this Act with regard to the nature, substance, quality, or labelling of the food or drug had been contravened,
- he

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he may recover, in any Court of competent jurisdiction, from the person from whom he purchased the food or drug, the amount of any penalty in which he may have been convicted in respect of such prosecution, together with the costs thereof, paid or payable by him upon his conviction, and those paid or payable by him in and about his defence thereto; and the Court that inflicts the penalty on him may suspend the operation of the conviction for any period not exceeding three months to enable him to recover, as herein provided, from the person from whom he purchased the food or drug.

93. (1) In any prosecution under this Act for the sale of any food or drug, it shall be no defence that the defendant is only the agent or servant of the owner of, or person dealing in the food or drug or having the same for sale, but the agent or servant and the owner or person aforesaid shall be liable: Agent or servant liable in addition to principal. 60 Vic. No. 38, s. 68.

Provided that a servant shall not be liable if he proves that the offence was committed in a store, shop, stall, or other similar place in which business was, at the time of the committing of the offence, conducted under the personal superintendence of some other person.

(2) If the defendant, being an agent or servant, prove that he sold the food or drug without knowledge— But may recover from principal.

- (a) that the nature, substance, or quality was not that of the food or drug demanded by the purchaser; or
- (b) that any material or ingredient had been mixed with the food or drug contrary to any provision of this Act; or
- (c) that the food or drug was unfit for human consumption or use; or
- (d) that otherwise any provision of this Act with regard to the nature, substance, quality, or labelling of the food or drug had been contravened,

he may, notwithstanding that his employer or master has been convicted and fined, recover in any Court of competent jurisdiction from his employer or master the amount of any penalty in which he may have been convicted in respect of such prosecution, together with the costs thereof paid or payable by him upon his conviction, and those paid or payable by him in and about his defence thereto.

Where an agent or servant has been convicted as aforesaid, the Court may, if it thinks fit, suspend the operation of the conviction for any period not exceeding three months, to enable him to recover from his employer or master the penalty and costs as aforesaid.

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PART X.

MISCELLANEOUS PROVISIONS.

DIVISION 1.—*Expenditure.*

Expenditure by
Board.
60 Vic. No. 38, s. 77.

94. (1) All sums of money expended by the Board in carrying out the provisions of this Act shall be chargeable to the Consolidated Revenue Fund.

By local authorities.

(2) All sums of money expended by a local authority under the authority of, or in pursuance of, the provisions of this Act shall be paid as follows:—

- (a) where the local authority is the Municipal Council of Sydney, out of the city fund;
- (b) where the local authority is the council of any municipality, out of the funds of the municipality;
- (c) where the local authority is a member of the police force, out of the Consolidated Revenue Fund;

By municipalities.

(3) The expenditure incurred by municipalities in carrying out this Act shall be defrayed in the following manner, namely, half out of the city fund or the municipal funds, as the case may be, and half shall be chargeable to the Consolidated Revenue Fund:

Provided that the salaries paid to medical officers of health shall be wholly defrayed from the said Consolidated Revenue Fund.

DIVISION 2.—*Powers of entry and obstruction.*

Delegation of
powers.
Ibid. s. 80.

95. Where the Board or a local authority have by virtue of this Act or any regulations or by-laws thereunder power to examine or enter any premises, they may examine or enter by any members of the Board or local authority, or by any officers or persons authorised by them, either generally or in any particular case.

General rules.
Ibid.

96. (1) Where the Board or a local authority or their officers or any persons acting under the Board or authority have power to examine or enter as aforesaid, the following provisions shall apply, that is to say:—

- (a) The person so claiming the right to enter shall, if required, produce some written document, properly authenticated on the part of the Board or local authority, showing the right of the person producing the same to enter.
- (b) Any person refusing or failing to admit any person who is authorised and claims to enter the premises shall if—
 - (i) the entry is for the purpose of carrying into effect an order of a magistrate or justices, and either is stated in the said document to be for that purpose, or is claimed by an officer of the Board or of a local authority; or

(ii)

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(ii) it is proved that the refusal or failure is with intent to prevent the discovery of some contravention of this Act or any regulation or by-law under this Act; or

(iii) the refusal or failure is declared by the enactment conferring the right of entry to render the person refusing or failing subject to a penalty,

be liable to a penalty not exceeding five pounds.

(2) If a justice is satisfied by information on oath—

Warrants authorising forcible entry.

(a) that there is reasonable ground for such entry, and that there has been a refusal or failure to admit to such premises, and either that reasonable notice of the intention to apply to a justice for a warrant has been given, or that the giving of notice would defeat the object of the entry; or

(b) that there is reasonable cause to believe that there is on the said premises some contravention of this Act, or of any regulation or by-law under this Act, and that an application for admission, or notice of an application for the warrant would defeat the object of the entry,

the justice may by warrant under his hand authorise the Board or the local authority or their officers or other persons, as the case may require, to enter the premises, and if need be by force, with such assistance as they or he may require, and there execute their duties under this Act.

(3) Any person obstructing the execution of any such warrant shall be liable to a penalty not exceeding twenty pounds, or where the offence is a continuing one to a penalty not exceeding two pounds for every day that the offence is continued.

Penalty.

(4) The warrant shall continue in force until the purpose for which the entry is necessary has been satisfied.

Continuance of warrant.

97. Subject to any express provisions of this Act, whosoever hinders or obstructs any person in the discharge of a duty imposed on him by or under any authority conferred by this Act or by any regulations or by-laws made thereunder shall be liable to a penalty not exceeding twenty pounds, or where the offence or breach is a continuing one not exceeding two pounds for every day that the offence or breach is continued.

Obstruction of persons discharging duty.

60 Vic. No. 38, s. 78.

98. (1) Where the occupier of premises prevents the owner thereof from obeying or carrying into effect any provision of this Act, a police or stipendiary magistrate or any two justices in petty sessions, on complaint shall, by order, require such occupier to permit the execution of any works which appear to them necessary for the purpose of obeying or carrying into effect the said provision; and if within twenty-four hours after service on him of the order such occupier fails to comply therewith, he shall be liable to a penalty not exceeding five pounds for every day during the continuance of such non-compliance.

Obstruction of owner by occupier.

Ibid. s. 79.

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Refusal by occupier
to state name of
owner.

(2) If the occupier of any premises, when requested by or on behalf of the local authority to state the name and address of the owner of the premises, refuses or wilfully omits to disclose or wilfully misstates the same, he shall, unless he shows cause to the satisfaction of the Court for his refusal, be liable to a penalty not exceeding five pounds.

DIVISION 3.—*Notices.*

Delegation of power
to serve notice.
60 Vic. No. 33, s. 81.

99. The giving or serving of a notice by the Board or by a local authority or a mayor under the powers conferred by this Act may be effected by the giving or serving of a notice by any person authorised by the Board or local authority in that behalf.

Method of service.
Ibid. s. 82.

100. (1) A notice, or other document, required or authorised to be given or served under this Act may be given or served—

- (a) by delivering the same, or a true copy thereof, to or at the residence of the person to whom it is addressed; or,
- (b) where addressed to the owner or occupier of premises, by delivering the same, or a true copy thereof, to some person on the premises; or, if there is no person on the premises to whom it can be delivered, by fixing the notice, document, or copy on some conspicuous part of the premises; or
- (c) by post by a prepaid registered letter.

Proof of service by
post.

(2) A notice or other document as aforesaid if given or served by post shall be deemed to have been given or served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such notice it shall be sufficient to prove that the notice or other document, or a true copy thereof, was properly addressed and put into the post.

Description of owner
or occupier.
Ibid.

101. Any notice or other document by this Act required to be given to the owner or occupier of any premises or served on him may be addressed by description of the "owner" or "occupier" of the premises (naming them) in respect of which the notice is given or served, without further name or description.

DIVISION 4.—*Regulations.*

Governor may make
regulations.
54 Vic. No. 20, s. 6.
60 Vic. No. 38, s. 83.

102. The Governor may on the recommendation of the Board make regulations for carrying into effect the provisions of this Act; and may in those regulations impose any penalty, not exceeding twenty pounds for any breach of the same, or when the breach is a continuing one, not exceeding two pounds for every day that the breach is continued.

Publication of
regulations made by
Governor.
Ibid. s. 84.

103. (1) Regulations and by-laws made by the Governor under the authority of this Act shall be published in the Gazette, and shall thereupon, if not repugnant to this Act, have the force of law.

(2)

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(2) Regulations and by-laws made by the Board, or by a local authority, or municipal council, pursuant to this Act shall, on being approved by the Governor and published in the Gazette, if not repugnant to this Act, or to any regulations or by-laws of the Governor made under the authority of this Act, have the force of law.

And by Board or local authority.

(3) All regulations and by-laws on being gazetted shall be laid before both Houses of Parliament within fourteen days if Parliament is then sitting, and if not sitting, then within fourteen days after the next meeting of Parliament.

All regulations to be laid before Parliament.

104. Where by this Act power is granted to make regulations or by-laws and no power is granted to impose penalties for the breach thereof, power is hereby granted to impose in those regulations or by-laws a penalty not exceeding twenty pounds for any breach of the same.

Power to impose penalties.
60 Vic. No. 38, s. 85.

105. The production of a copy of the Gazette containing any regulation or by-law purporting to be made under the authority of this Act shall in any proceeding be evidence that the regulation or by-law has been duly made and approved by the Governor, and published as required by this Act, and, in the case of regulations or by-laws authorised to be made on the recommendation of the Board, that such recommendation has been duly made.

Evidence.
Ibid. s. 86.

DIVISION 5.—*General penalty and procedure.*

106. Whosoever contravenes any enactment of this Act for the breach of which no penalty is specifically imposed, shall be liable to a penalty not exceeding twenty pounds, or where the offence or breach is a continuing one, not exceeding two pounds for every day that the offence or breach is continued.

General penalty.
Ibid. s. 73.

107. (1) Penalties imposed by this Act or by any regulations or by-laws made thereunder may be recovered before, and offences against this Act may be heard and determined by a police or stipendiary magistrate or any two justices in petty sessions in a summary manner according to the provisions of the Act or Acts for the time being regulating proceedings before justices.

Recovery of penalties.
54 Vic. No. 20, s. 7.
60 Vic. No. 38, s. 87.

(2) Any person aggrieved by any judgment, conviction, or order given or made under this section may appeal therefrom in the manner provided by the Justices Act, 1902.

Appeal.

108. In any legal proceeding or prosecution under the provisions of this Act instituted by or under the direction of the Board or a local authority, or by a Government medical officer, officer of health, or by any inspector or other officer of the Board, or of a local authority, or by any member of the police force, no proof shall be required—

Proof in certain cases.
Ibid. s. 88.

- (a) of the persons constituting or the extent of the jurisdiction of the Board;
- (b)

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- (b) of any order to prosecute, or of the particular or general appointment of any Government medical officer, medical officer of health, sanitary inspector, officer, analyst, or of any member of the police force;
- (c) of the authority of such officer, inspector, or member of the police force to prosecute;
- (d) of the presence of a quorum of the Board or local authority making any order.

DIVISION 6.—Saving clauses.

Powers of Act to be cumulative.
60 Vic. No. 38, s. 89.

109. All powers, rights, and remedies given by this Act shall be in addition to and not in derogation of any other powers, rights, and remedies conferred by any other Act, regulation, or by-law; and all other powers, rights, and remedies may be exercised and put in force in the same manner and by the same authority as if this Act had not passed.

Officers not to be personally liable.
Ibid. s. 90.

110. Nothing done by the Board, or by any municipal council or local authority or by any member or officer of or person authorised by the Board or by any council or authority aforesaid, bona fide for the purpose of carrying out the provisions of this Act, shall subject the members of the Board, council or authority, or any person aforesaid, personally to any action, liability, claim, or demand whatsoever.

SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
45 Vic. No. 25 ...	Infectious Disease Supervision Act, 1881 ...	The whole.
54 Vic. No. 20 ...	Leprosy Act of 1890	The whole.
57 Vic. No. 21 ...	Noxious Trades and Cattle-slaughtering Act, 1894	Section 20.
60 Vic. No. 38 ...	Public Health Act, 1896... ..	The unrepealed portion, except sections 75 and 76.