

Act No. 31, 1908.

An Act for securing the wholesomeness and purity of food and drugs, and fixing standards for the same ; for preventing the sale or other disposition, or the use of, articles dangerous or injurious to health ; for the prevention of deception and fraud ; to amend the Public Health Act, 1902 ; and for purposes consequent thereon or incidental thereto. [24th December, 1908.]

PURE FOOD.

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 "Pure Food Act, 1908," and shall be construed with the Public Health Act, 1902, hereinafter called the Principal Act, and shall come into force on the first day of July, one thousand nine hundred and nine.

Short title,
construction, and
commencement.

2.

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Division of Act into
Parts.

2. This Act is divided into Parts, as follows :—

PART I.—PRELIMINARY—*ss.* 1-9.

PART II.—PROHIBITED ARTICLES—*ss.* 10-21.

PART III.—INSPECTION AND ANALYSIS—*ss.* 22-35.

PART IV.—OFFENCES AND LEGAL PROCEDURE—*ss.* 36-50.

PART V.—GENERAL AND SUPPLEMENTAL—*ss.* 51-55.

Repeals.

Repeal.

3. Section three, so far as it defines "food," and sections seventy-six to ninety-three inclusive of the Principal Act are repealed.

Definitions.

Interpretation.

Principal Act,
ss. 78 and 79;
Pure Food Act (Vic.), *s.* 3.

Appliance.

Article.

Authorised.

Board.

Council.

Drug.

Food, or article
of food.

Local authority.

Municipality.

Officer.

Package.

4. In this Act, unless the context otherwise requires,—

"Appliance" includes any instrument or contrivance which is held out to any person or to the public as of use for curative purposes.

"Article" includes any substance, compound, or appliance.

"Authorised" means authorised either generally or specially in writing by the board, and when referring to an officer of a local authority means so authorised by such local authority.

"Board" means Board of Health.

"Council" means council of a municipality or shire.

"Drug" includes medicines for internal and external consumption or use by man, and soaps, dusting powders, essences, and unguents used by man; and disinfectants, germicides, antiseptics, and preservatives used for any purpose.

"Food," or "article of food," means article used for food or drink by man, and includes confectionery, and any article that enters into or is used in the composition or preparation of food, and any spices, flavouring substances, essences, and colouring matters so used.

"Local authority" means council of a municipality or of a shire, and with respect to any police district outside a municipality or shire means such member of the police force as may be appointed by the board under the Principal Act to be a local authority.

"Municipality" includes the city of Sydney.

"Officer" includes any medical officer of health, assistant medical officer of health, officer of the board or of a local authority, or any superintendent, inspector, sub-inspector, or sergeant of police, or any constable specially authorised by the Inspector-General, or by any superintendent of police.

"Package" includes anything in or by which goods are cased, covered, enclosed, contained, or packed. "Place"

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- “Place” includes any house, premises, or building. Place.
- “Prescribed” means prescribed by this Act or the regulations. Prescribed.
- “Prohibited article” means article, the manufacture, sale, or use of, or other dealing with which in its then state or condition is prohibited by this Act, or the regulations, either absolutely or conditionally. Prohibited article.
- “Regulation” means regulation made under this Act. Regulation.
- “Retail trades” shall mean trading with the consumers. Retail trades.
- “Selling” “Sale” and “Sold” are to be construed in relation to the definition of the expression “To sell.” Sale.
- “To advertise” means to publish in a newspaper or public print circulating in New South Wales, or to publish by distributing through the post office, or otherwise, hand-bills, circulars, posters, or other written or printed matter. To advertise.
- “To sell,” includes to barter, and also includes to offer or attempt to sell, or receive for sale, or have in possession for sale, or expose for sale, or send forward or deliver for sale, or cause or suffer or allow to be sold, offered, or exposed for sale, but refers only to selling for consumption or use by man. To sell.
- “Writing.” Expressions referring to writing include printing, stencilling, typing, and any mode of representing or reproducing words or figures in a visible form. Writing.

5. For the purposes of this Act an article of food or a drug is adulterated or falsely described— Adulteration or false description.

- (a) when it contains, or is mixed or diluted with, any substance in any quantity or in any proportion which diminishes in any manner its food value or nutritive properties as compared with such article in a pure or normal state and in an undeteriorated or sound condition; or Pure Food Act (Vic.), s. 24.
U.S.A. Pure Foods Act, 1906, s. 7.
- (b) when it contains or is mixed or diluted with any substance of lower commercial value than such article in a pure or normal state, and in an undeteriorated or sound condition; or
- (c) when, either wholly or in part, it does not comply with a standard therefor prescribed by any regulation; or
- (d) when it contains any substance prohibited by the regulations; or
- (e) when it contains any substance concerning which any restrictive regulation has been made in excess of any quantity or proportion permitted by such regulation; or
- (f) when it is mixed, coloured, powdered, coated, or stained in a manner whereby damage or inferiority may be concealed; or
- (g) when it consists wholly or in part of a filthy, decomposed, or putrid animal or vegetable substance, or of any portion of an animal unfit for food, whether manufactured or not; or
- (h) when it is the product of a diseased animal, or of one which has died otherwise than by slaughter; or

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- (i) when it is damaged, deteriorated, or perished; or
- (j) when any valuable constituent of the article has been wholly or in part abstracted; or
- (k) when it is in any package, and the contents of the package as originally put up have been removed in whole or in part and other contents have been placed in such package, or if it fails to bear on the package, or on a label attached thereto, a statement of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substances contained therein, or any other substance specified by the regulations as necessary to be so stated; or
- (l) when it is in package form, and the contents are stated in terms of weight or measure, and they are not correctly stated on the outside of such package as provided by this Act;
- (m) when it is in package form and the package, or any label attached thereto, bears a statement, design, or device regarding such article of food or drug, or the ingredients or substance contained therein, which is false or misleading in any particular:

Provided that in a prosecution or other proceeding under this Act for selling an article of food or a drug to which paragraph (a) or paragraph (b) applies, such article or drug shall not be deemed to be adulterated or falsely described if it is sold as a mixture in accordance with the provisions of this Act:

Provided further that nothing in this Act shall be construed as requiring proprietors or manufacturers of proprietary foods or drugs which contain no unwholesome added ingredient to disclose their trade formulæ, except in so far as the provisions of this Act may require to secure freedom from adulteration or false description.

Advisory committee.

Advisory committee.
Pure Food Act
(Vic.), s. 40.

6. (1) The Governor shall appoint, for the purposes of this Act, an advisory committee. Such committee may be so appointed from the following persons:—

- the president of the Board of Health, who shall preside;
- the professor of chemistry in the University of Sydney;
- a bacteriologist;
- a legally qualified medical practitioner;
- the medical officer of health, metropolitan combined sanitary districts;
- the senior analyst in the Department of Public Health;
- a representative of the Pharmacy Board;

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a representative of the Chamber of Commerce ;
 a representative of the Chamber of Manufactures ; and
 persons not less than one nor more than three in number conversant
 with trade requirements.

(2) The persons so appointed shall act for no longer period than
 two years from the date of their appointment, but may be reappointed.

(3) Any member of the committee may be removed by the
 Governor on the recommendation of the board.

7. (1) At all meetings of the committee the chairman shall have
 a vote, and in the event of an equality of votes a second or casting vote.

*Procedure at
 meetings of
 committee.*

(2) Any five members of the committee shall constitute a
 quorum.

*Pure Food Act
 (Vic), s. 40.*

(3) The Governor may make regulations relating to the
 meetings of the committee.

8. The members of the committee, other than those employed
 in the public service shall be paid attendance fees of such amount
 as may be prescribed by regulations, but such fees shall not exceed
 two guineas per member per sitting.

*Fees of members.
 Ibid.*

Administration of Act.

9. The administration and the enforcing of the provisions of
 this Act shall primarily be the duty of the Board of Health, but may,
 by the direction of the Governor, be left in any case to the local
 authority, who shall, however, be subject to the provisions of section
 twenty-four of the Public Health Act, 1902.

*Administration of .
 Act.*

PART II.

PROHIBITED ARTICLES.

Sale of food and drugs.

10. No person shall sell any article of food or any drug which
 is adulterated or falsely described, or which is packed or enclosed for
 sale in any manner contrary to any provision of this Act.

*Adulterated food.
 Ibid., s. 35.*

11. (1) No person shall for purposes of sale—

(a) mix, or cause or permit to be mixed, any ingredient or
 material with any article of food, or colour any such article,

*Mixing food or drugs
 so as to be injurious
 to health.*

or cause or permit the same to be coloured, so as in any such
 case to render such article dangerous or injurious to health; or

Principal Act, s. 57.

(b) mix, or cause or permit to be mixed, any ingredient or
 material with any drug, or colour any such drug, or cause
 or permit the same to be coloured, so as to affect injuriously
 the quality or potency of such drug.

(2) No person shall sell any food or drug mixed with any
 such ingredient or material, or so coloured as aforesaid, whereby such
 food or drug is rendered dangerous or injurious to health, or whereby
 its quality or potency is injuriously affected.

*Selling food or drugs
 so as to be injurious
 to health.*

12.

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Mixing or selling
food to increase
bulk.

Principal Act, s 88.

12. (1) No person shall—

- (a) for purposes of sale, mix, or cause or permit 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) sell any food or drug mixed with any ingredient or material whereby the weight, bulk, or measure of such food or drug has been fraudulently increased, or its inferior quality concealed.

(2) No person shall—

- (a) sell any food or drug which is not of the nature, substance, or quality of the food or drug demanded by the purchaser; or
- (b) sell any compounded food or drug which is not composed of ingredients in accordance with the demand of the purchaser.

Selling food or drugs
not of the nature
demanded.

As to defences.

(3) In any prosecution under this section it shall be no defence 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.

Drugs to comply
with tests specified
in the British
Pharmacopœia.
Ibid., s. 91.

(4) For the purposes of this section, 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.

Sale of mixture.
See *Ibid.*, s. 89.

13. (1) Where any person sells a food or drug which is a mixture, the ingredients shall be pure and in an undeteriorated and sound condition, and such person shall deliver the mixture to the purchaser in a package, on or attached to which shall be a statement or label, legibly and uniformly written, stating that the food or drug is a mixture, and the names of the ingredients, and when the mixture is a food, the proportions of ingredients when so prescribed :

Provided that it shall not be necessary so to attach a statement or label in the case of—

- (a) an article of food or a drug 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; or
- (b) a drug supplied by prescription or order signed by a legally qualified medical practitioner for any person then under his care and treatment; or
- (c) a mixture exempted from this section by the regulations, which exemption may be applied to classes of articles; or
- (d) a mixture supplied by a registered pharmacist for immediate consumption on his premises.

(2)

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(2) No person shall sell any food or drug which is a mixture in respect of which the provisions of this section have been contravened, or have not been complied with.

Food in packages.

14. (1) Except in the case of a package of food which has been exempted from any or all of the provisions of this section by the regulations, there shall be legibly and durably written on or attached to every package of food packed or enclosed for sale a statement or label indicating the trade name or description, the net weight or the number, true measure or volume of the contents thereof, and the name and address of the vendor or the maker thereof, or of the agent therefor or the owner of rights of manufacture: Provided that where such vendor, maker, agent, or owner is a company registered under the Companies Act, 1899, or is a firm having its name registered under the Registration of Firms Act, 1902, the address of such company or firm may be omitted. No person shall, after the expiration of six months from the commencement of this Act, sell in a package any food unless such a statement or label is written on or attached to such package as required by this section.

Packages to be labelled with description, weight, &c., of contents.
Pure Food Act (Vic.), s. 15.

(2) In the case of any liquors paying excise or customs duty, the measures set forth in any Act dealing with such liquors shall be held to satisfy the requirements of this section in regard to measure.

Liquors.

(3) Weights and measures closely approximating those indicated on the statement or label will be allowed, but the degree of approximation may be fixed by the regulations, either generally or with respect to particular articles of food.

Approximate weights and measures.

15. Where any food or drug in connection with which there is a contravention of any of the provisions of this Act is sold in a closed package to any officer, any person who appears from any statement or label thereon, or attached thereto, to have imported, manufactured, or prepared such food or drug, or to have enclosed it in such package, shall, unless he proves to the contrary, be deemed to have so imported, manufactured, prepared, or enclosed such food or drug, and (unless the contravention is shown to be due to the default of the person on whose premises the package is found, or to deterioration or other causes beyond the control of the person named on the package or label) shall be guilty of an offence against this Act.

Liability of person named on package.
Ibid., s. 16.

Advertised articles.

16. (1) The board may, and on the recommendation of the advisory committee shall, cause to be examined any food, drug, or appliance which is advertised, for the purpose of ascertaining its composition and properties, and shall compare the results of the examination

Examination and report upon food, drugs, and appliances advertised.

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examination with any advertisement which relates to the food, drug, or appliance, and with the price at which it is sold, and shall prepare and forward to the Minister a report upon the whole matter, which may include any comment which the board thinks desirable in the public interest.

(2) The board may thereupon, with the approval of the Minister, cause the report to be published in the Gazette, and in any newspaper or public print which circulates within New South Wales, and to be distributed among the public in any other way, and no action shall lie in respect of such publication.

(3) Any proprietor or manager of a newspaper or public print may republish therein any such report which has been published by the board as aforesaid, and no action shall lie against such proprietor or manager in respect of the republication.

Prohibition of sale of injurious drugs or appliances.

17. (1) The Governor, on the recommendation of the board, or of a District Court judge on appeal, may, by notification in the Gazette, and in any newspaper circulating in New South Wales, prohibit, after the date therein mentioned, the advertising or sale of any food or drug or appliance which, in the opinion of the board or of the said judge, is injurious to life or health, or which by reason of its inactivity or inefficiency is useless for the advertised purposes of cure.

Advertisement.

(2) No person shall advertise or sell any food or drug or appliance in contravention of any notification as aforesaid, and no proprietor or manager of a newspaper or other public print shall publish any advertisement prohibited under this section, and no person shall print any such advertisement.

Saving.

(3) Provided that the prohibition shall not apply to the advertisement in bona fide trade journals and price lists of drugs by or on behalf of manufacturers to the retail trades only, nor to the sale of drugs supplied by prescription or order signed by a legally qualified medical practitioner, and by him given to any person then under his care and treatment as such practitioner, or to any other person on his behalf.

Disinfectants and preservatives.

Prohibition of sale of disinfectants and preservatives.

18. (1) The Governor, on the recommendation of the Board, or of a District Court judge on appeal, by notification in the Gazette, may prohibit the sale of any substance or compound as a disinfectant, germicide, antiseptic, or preservative.

(2) No person shall sell any substance or compound so prohibited.

Labelling of disinfectant.

19. (1) The board, by notification in the Gazette, may require concerning any substance or compound sold or intended to be sold as

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a disinfectant, germicide, antiseptic, or preservative, that such information or directions as it deems fit shall be set out on a statement or label written on or attached to any package containing the same.

(2) No person shall sell any such substance or compound unless such information or directions are set out as aforesaid.

Appeal.

20. Any person deeming himself aggrieved by any report or recommendation of the board under section sixteen or section seventeen or section eighteen may appeal therefrom to a District Court judge, who may hear and determine such appeal, and may vary the report or recommendation or rescind the same and make a fresh report or recommendation. No such report shall be published or prohibition made pending such appeal. Such hearing may be in private.

The Governor may make regulations prescribing in what cases and to whom notice shall be given of any such report or recommendation of the board, and regulating appeals under this section.

Milk.

21. (1) No person shall sell for the food of man the milk of a cow in his milking herd which is suffering from any disease. Sale of milk of infected cow.

(2) The fact that a diseased cow is in the milking-herd of a person who sells milk shall be prima facie evidence that the milk of such cow has been sold for the food of man. Evidence of sale of milk.

(3) The Governor, on recommendation of the board, may declare from time to time what are diseases in cattle for the purposes of this section.

PART III.

INSPECTION AND ANALYSIS.

Inspection and removal of food, drugs, or articles.

22. (1) Any officer may enter and inspect any place which he has reasonable ground for believing is kept or used for the sale, storage, delivery, conveyance, manufacture, or preparation for sale of any article used, or which he has reasonable grounds for believing is intended to be used, as a food or drug; or which he has reasonable grounds for believing is a prohibited article; and may inspect any such article: Provided that where such officer is an officer of the board Entry and inspection of place and animals or articles therein. Health Act (Vic.), 18. 0, s. 52. Pure Food Act (Vic.), ss. 4, 5.

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board or of a local authority, or is a member of the police force, he must have the authority in writing of the board or of the local authority, or of the Inspector-General of Police, as the case may be. Such authority may be general, or may be limited to a specified place.

Time for entering
and inspection.

(2) When any such article is usually sold, delivered, conveyed, manufactured, or prepared for sale during the night, such entry and inspection may be made at any reasonable time in the day or night; otherwise, such entry and inspection shall only be made at a reasonable time in the day.

Inspection of articles
conveyed through
streets.
Pure Food Act
(Vic.), ss. 4, 5.

(3) Any officer may inspect any article used, or which he has reasonable ground for believing is intended to be used, as a food or drug, or which he has reasonable grounds for believing is a prohibited article, and which is being conveyed through any public street or road, or conveyed by water in any vessel or boat, or by railway, for the purposes of trade, sale, or delivery.

(4) Where the officer is an officer of a local authority, his powers under this section may be exercised within the area of the local authority, and on any part of a road, river, stream, or watercourse, the centre or middle line of which forms a common boundary between such area and any adjoining area.

Examination,
seizure, and
destruction of
articles.
Ibid.

(5) Any officer may—

- (a) examine and open any such article or any package enclosing the same in any such place, or conveyed as aforesaid;
- (b) remove for examination or analysis portions or samples of any such article;
- (c) weigh, count, measure, gauge, or mark such article or package, and fasten, secure, or seal the same, or any door or opening affording access to the same;
- (d) seize any such article which is, or appears to him to be, dangerous or injurious to health or unwholesome, or unfit for use, or to be a prohibited article, and any package or vessel enclosing or containing the same.

Summons.
See Principal Act,
s. 85.

(6) Any justice may thereupon grant a summons calling upon the owner of the article, 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 article and the package or vessel aforesaid should not be forfeited and destroyed.

Proceedings upon
such summons.

(7) 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 article is used or is intended to be sold or used as food, and was unfit for human consumption; or
- (b) that the article is used or is intended to be sold or used as a drug, and was unfit for use, or might, if sold to a purchaser and used by him in a proper manner, injuriously affect him; or
- (c)

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(c) that the article is a prohibited article ;
 adjudge such article, and also every such package or vessel to be
 forfeited, and the same shall be destroyed.

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

(8) In every such proceeding the presence of food in any Evidence.
 place shall be evidence that such food was intended to be sold or used
 for human consumption ; and the presence of drugs in any place shall
 be evidence that such drugs were intended to be sold or used.

(9) This section shall, without restricting its general Application of
 section.
 Pure Food Act,
 (Vic.), ss. 4, 5.
 application, extend and apply to articles packed, bottled, or tinned, or
 sold or offered for sale, or made up or included in or prepared or
 cooked for any meal to be consumed on the premises at any shop,
 factory, eating-house, licensed house, or any place or premises or
 elsewhere.

Purchase of samples for analysis.

23. (1) On payment or tender to any person selling or manu- Power to demand,
 select, and take
 samples.
 Ibid. s. 13.
 See Principal Act,
 s. 79.
 facturing or preparing for sale any food or drug, or to his agent or
 servant, or to any person in charge of the food or drug, of the current
 market value thereof or at the rate of payment prescribed, any officer
 may demand and select and take or obtain samples of the said food
 or drug as required by him for the purposes of this Act.

(2) Any such officer may require the said person or his
 agent or servant to show and permit the inspection of any package or
 vessel in which such food or drug is at the time kept, and may take or
 draw, or may require the said person to take or draw, therefrom the
 samples demanded :

Provided that where any food or drug is kept for retail sale in
 a closed package, no person shall be required by any officer to sell
 less than the whole of such package.

(3) If any rates have been fixed by regulation for the
 payment for samples of any food or drug it shall not be necessary for
 any officer to tender any higher price for such sample.

(4) Any person may, on payment of the prescribed fee
 together with the cost of the sample, require any officer to purchase
 a sample of any food or drug and submit the same for analysis.

Procedure on taking sample.

24. (1) The person purchasing or the officer taking or obtaining Manner in which
 sample may be dealt
 with.
 Principal Act, s. 80.
 any food or drug with the intention of submitting it to analysis shall
 thereupon notify such intention to any person then present, being the
 owner or his agent or servant or other person in charge of such food
 or drug.

(2)

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Division of sample.

(2) The said person or officer shall divide any such 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, and shall then deliver one of the said parts to the owner, agent, servant, or person aforesaid, and shall retain one of the said parts for future comparison, and submit the third part to an analyst.

Where quantity in package is insufficient for analysis.

(3) Provided that when any food or drug is contained in a bottle, tin, or other package in such quantity that its division into three parts, as hereinbefore provided, would furnish parts insufficient for accurate analysis, additional bottles, tins, or packages which purport to contain a similar food or drug under the same brand or label, may be taken or obtained, and the contents of two or more bottles, tins, or packages may be mixed together and the mixture divided and submitted for analysis as hereinbefore provided.

Forwarding of sample by post.

25. Where the person purchasing or the officer takes or obtains a sample of any food or drug in a locality which is situated outside a radius of fifteen miles from the General Post Office, at Sydney, such sample may be forwarded to an analyst through the post office, as a registered article, or may be forwarded under seal in any other convenient way, in which case the certificate of the analyst that, on receipt by him, the seal was unbroken shall be sufficient evidence of identity. Any charge for postage or carriage shall be deemed one of the expenses of the analysis.

Analysis by direction of councils.

Councils to submit samples for analysis. Pure Food Act (Vic.), s. 17.

26. The board may require any council to submit for analysis during each year not less than three samples or portions of articles of food or drugs for each thousand persons of the population of its area. The articles to be so submitted for analysis may from time to time be specified by the board on the recommendation of the advisory committee.

Appointment of analysts.

Appointment of analysts.

27. The Governor may appoint persons to be analysts, and may make regulations concerning their qualifications, and shall prepare a list of analysts and annually revise such list.

Analysts of local authorities.

28. A council may by itself, or in combination with one or more other councils, subject to the approval of the Governor, appoint an analyst to analyse samples taken within its area, or their areas, and may remunerate him from the funds of the councils, either by salary or by fees.

The

*Pure Food.**The analysis.*

29. Any analyst analysing any food, drug, or article submitted to him in pursuance of this Act may give a certificate in the form prescribed of the result of the analysis.

Certificate of analyst to be evidence.

Principal Act, s. 82.

In any legal proceedings under this Act the production of a certificate, purporting to be signed by an analyst, shall be prima facie evidence of the identity of the food, drug, or article analysed, and of the result of the analysis, without proof of the signature of the person appearing to have signed the same.

30. Where any method of analysis has been prescribed for the analysis of any food, drug, or article, any analyst, either for the prosecution or defence in any proceedings under this Act, must in his certificate of analysis declare that he has followed the prescribed method in his analysis. But evidence shall be admissible on the part of the defence of analysis made by other than the prescribed method, and to show that the prescribed method is not correct.

Certificate of analysis.

Pure Food Act (Vic.), s. 19.

31. For the purpose of determining the degree of strength of any spirits, such apparatus shall be used and such method observed as may be prescribed.

Mode of determining strength of liquors.

Ibid.

32. Any analyst who offends against any of the provisions of this Act, or of the regulations respecting any method of analysis prescribed, may, if the board is satisfied that the offence has been wilfully committed, be disqualified by the board for appointment as an analyst for such period as the board thinks fit.

Disqualification of analyst for non-compliance.

Ibid.

33. (1) Where the prosecutor, in any case under this Act, has caused the food, drug, or article forming the subject of prosecution to be analysed by an analyst, the court 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.

Principal Act, s. 83.

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.

(2) The court may also, in case of any conviction under this Act, assess and award against the defendant as part of the costs of the prosecution the expenses incurred by the prosecutor in travelling to and attending the trial, including the proportionate part of his salary while so engaged.

34. A copy of the result of any analysis of any food, drug, or article taken or obtained by the person purchasing or an officer shall, on demand, be supplied by the board, or the local authority which has caused the analysis to be made to the person from whom the food, drug, or article was taken or obtained, and to the manufacturer or his agent in New South Wales on payment of a fee, to be fixed by the board or such authority, not exceeding ten shillings and sixpence.

Copy of result of analysis.

Pure Food Act (Vic.), s. 19.

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Analysis not to be referred to for trade purposes.

35. No person shall, for trade purposes or advertisement, use any analysis made for the purposes of this Act.

Any person who contravenes this section shall be liable to a penalty not exceeding ten pounds.

PART IV.

OFFENCES AND LEGAL PROCEDURE.

Penalties.

Penalty for offence against this Act.
Pure Food Act
(Vic.), s. 36.

36. (1) If any person contravenes or does not comply with or is guilty of an offence against any provision of this Act, and no other penalty is by this Act expressly provided in that behalf, he shall be liable on conviction for the first offence to a penalty not exceeding twenty pounds, and for a second offence to a penalty not exceeding fifty pounds, and for any subsequent offence to a penalty not exceeding one hundred pounds.

Imprisonment in certain cases.

(2) Where a person is found guilty of an offence under this Act, and if the certificate of the Government analyst states that the adulterated article has been so adulterated as to be injurious to health, or if the offence, in the opinion of the court, was committed wilfully or by the culpable negligence of the person accused, that person shall be liable, in addition to or in lieu of such penalty (if the court is of opinion that a penalty will not meet the circumstances of the case), to imprisonment, with or without hard labour, for a period not exceeding six months.

Interference with official marks or seals.
Ibid., s. 10.

37. If any person, who is not authorised so to do, removes, erases, alters, breaks, or opens any mark, seal, or fastening placed by any officer upon any food, drug, article, or package, or upon any door or opening affording access to the same, he shall be liable to a penalty not exceeding twenty pounds.

Obstruction of officer in discharge of his duties.
Ibid., s. 14.

- 38.** Any person who—
- (a) assaults, intimidates, obstructs, or attempts to obstruct in any manner any officer or authorised person in the exercise of his powers or in the discharge of his duties under this Act; or
 - (b) refuses to allow to be taken any sample demanded in accordance with this Act or the regulations; or
 - (c) gives, procures, offers, or promises any bribe recompense or reward to influence any officer or person as aforesaid in the exercise of his powers or in the discharge of his duties as aforesaid; or

(d)

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(d) retakes or attempts to retake any food, drug, or article seized or sold under this Act, or resists or attempts to prevent such seizure, shall be liable to a penalty not exceeding twenty pounds.

Forfeiture.

39. (1) In the case of any conviction under this Act, any food, drug, or article to which the conviction relates may, by order of the court, become and be forfeited to His Majesty. Such forfeiture may extend to the whole of the article, and to the whole of any similar article, and to all packages or vessels containing any similar article belonging to the defendant, or found on the defendant's premises, or in his possession at the time of the committing of the offence.

Forfeiture of articles of food or appliance. Pure Food Act (Vic.), s. 38.

(2) All articles forfeited under this Act shall be disposed of as the board may direct.

Legal procedure.

40. Penalties and forfeitures imposed by or under this Act or the regulations may be recovered and enforced in a summary way by a stipendiary or police magistrate or any two justices in petty sessions.

Recovery of penalties.

41. When any food, drug, or article has been taken or obtained for analysis, no prosecution under this Act in respect thereof shall be instituted after the expiration of fifty days from the time when it was so taken or obtained.

Limit of time for prosecutions. *Ibid.*, s. 21.

42. In any prosecution concerning any food, drug, or article, the summons shall not be made returnable in less time than ten days from the day on which it was served.

Return day of summons.

43. In every prosecution concerning any food, drug, or article, there shall be served with the summons a copy of any analyst's certificate that may have been obtained on behalf of the prosecution.

Copy of analyst's certificate. *Ibid.*, s. 22.

44. Where any sample of any article of food or drug for sale procured by any officer has been proved by analysis to have been adulterated or falsely described, and an officer has in pursuance of this Act seized, marked, fastened or secured such article in any place, proof of the possession by any person in such place of such article shall be deemed prima facie evidence that the same is in his possession for sale in contravention of this Act.

Possession prima facie evidence of contravention of Act. *Ibid.*, s. 9.

45. No witness on behalf of any prosecution under this Act shall be compelled to disclose the fact that he received any information, or the nature of such information, or the name of any person who gave such information. No officer appearing as a witness shall be compelled to produce any reports made or received by him confidentially in his official capacity or containing confidential information.

Source of information or reports. *Ibid.*, s. 10.

46. The onus of proof that any food or drug has not been sold for consumption or use by man shall be on the defendant.

Onus of proof. *Ibid.*, s. 37.

Guarantee.

*Pure Food.**Guarantee.*

Guarantee a defence
to prosecution.

47. (1) Where after the first day of December, one thousand nine hundred and nine, any person is prosecuted under this Act for the sale of any food, drug, or article which is adulterated or falsely described, or is mixed, coloured, composed or constituted in contravention of any provision of this Act, he shall be entitled to be discharged from such prosecution upon proving—

- (1) that he has received from the person from whom he purchased such food, drug, or article, or his duly authorised agent, a guarantee in writing that the same is not adulterated, falsely described, or mixed, coloured, composed, or constituted as aforesaid; and
- (2) that he had no reason to believe that the same was adulterated or falsely described; and
- (3) that he sold it in the same state as when he purchased it,

subject to the following conditions:—

- (a) The person giving the guarantee must be resident in New South Wales, or, if a company, must have a registered office in New South Wales.
- (b) The guarantee must state the name and the address of the place of business of guarantor, and the name under which he trades.
- (c) A guarantee may be general or specific.
- (d) A general guarantee shall apply to the sale of the description of goods or classes of goods named therein, and a copy of the same shall be filed in the Treasury. A serial number shall be allotted to each such guarantee, which number shall be placed by the guarantor on each package of such goods sold by him, with the words "Guaranteed under the Pure Food Act, 1908," with the name of the guarantor inserted as prescribed. Such guarantee shall not apply to any package of goods unless such number and words are placed thereon.
- (e) A specific guarantee shall apply to the sale of specific goods, and shall refer to a bill of sale, invoice, bill of lading, or other document describing the goods and the weight, measure, and number of the same, but shall not be available as a defence unless the defendant has, within seven days after service of the summons, sent to the purchaser a copy of such guarantee with a written notice stating that he intends to rely on the same as a defence, and specifying the name and address of the place of business of the person giving the guarantee, and has also sent a like notice of his intention to the person giving the guarantee; (f)

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- (f) The person by whom any guarantee is alleged to have been given under this section shall be entitled to give or tender evidence at the hearing, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.
- (g) The form of guarantee under this section may be prescribed by the regulations.

(2) Any person who gives any such guarantee which is false shall, in addition to any penalty for the sale of any food, drug, or article in contravention of this Act, be guilty of an offence against this Act, unless he proves that when he gave the guarantee he had reason to believe that the statements or descriptions contained therein were true. Penalty on guarantor.

(3) Proceedings under the last preceding subsection against the person who has given the guarantee may be taken before a court having jurisdiction in the place where the food, drug, or article was sold, as before a court having jurisdiction in the place where the guarantee was given. Proceedings for such penalty.

Prosecution of agent or servant.

48. In any prosecution under this Act for the sale of any food, drug, or article, it shall be no defence that the defendant is only the agent or servant of the owner of, or person dealing in the food, drug, or article, 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. Principal Act, s. 93.

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 the owner of the business or some manager or other person representing such owner.

49. (1) If the defendant, being an agent or servant, proves that he sold the food, drug, or article without knowledge that any provision of this Act with regard to the nature, substance, quality, description, labelling, constituents, or mode of manufacture of the food, drug, or article, or any package in which it was contained, had been contravened or had not been complied with, he may, whether his principal or employer has or has not been convicted and fined, recover in any court of competent jurisdiction from his principal or employer the amount of any penalty in which he himself has 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 to the prosecution. Agent or servant may recover from principal. See Principal Act.

(2) Where an agent or servant has been convicted as aforesaid, the convicting justices may, if they think fit, suspend the operation of the conviction for any period not exceeding three months, to enable him to recover from his principal or employer the penalty and costs as aforesaid.

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Prosecution of
employee for selling
adulterated article.

50. When a defendant prosecuted for the sale of any food, drug, or article which is adulterated or falsely described, or which is mixed, coloured, composed or constituted in contravention of any provision of this Act, is the servant of a person who purchased such food, drug, or article under a guarantee in accordance with section forty-four, he shall be entitled to be discharged from such prosecution on proving that he had no reason to believe that the food, drug, or article was adulterated or falsely described, or was sold in a state different from that in which it was purchased by the person employing him, or was other than that demanded by the prosecutor.

PART V.

GENERAL AND SUPPLEMENTAL.

Miscellaneous.

Power to require
information to be
made available.
Pure Food Act
(Vic.), s. 11.

51. (1) If, in the opinion of the president of the board, there is reasonable ground for suspecting that any person is in possession, for the purposes of sale, or for manufacturing or preparing for sale, of any food, drug, or article, in contravention of this Act, he may require such person to produce for his inspection, or to produce to any officer authorised by him in that behalf, any books of the nature of store records, or which deal with the reception, possession, or delivery of any food, drug, or article.

(2) The said president may make, or cause to be made, copies of or extracts from any such books, and such copies or extracts, certified as such by any specially authorised officer, shall be deemed to be true and correct copies or extracts.

(3) Any person refusing to comply with any requirement of the president under this section shall be liable to a penalty not exceeding ten pounds.

(4) Any officer who does not maintain, and aid in maintaining, the secrecy of all matters which come to his knowledge in the performance of his official duties under this section, or who communicates any such matter to any person, except for the purpose of carrying into effect the provisions of this Act, shall be liable, on conviction, to a penalty not exceeding fifty pounds.

Suggestive names for
articles of food.
Ibid., s. 34.

52. No article of food sold under any fancy, suggestive, proprietary, or registered name, and which is a substitute, or is intended to be, or may be used as a substitute, either wholly or in part, for any article of food, shall by reason only of being so sold under such name be exempt from the provisions of this Act.

Publication of names
of offenders.
See *ibid.*, s. 39.

53. (1) Where any person or any of his servants or agents has been convicted of an offence against the provisions of this Act relating

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relating to the sale of any food, drug, or article, and such person or any of his servants or agents is subsequently convicted of any such offence, a notification of the name of such person may be published by the board in the Gazette, within twenty-one days after such last conviction, together with the address of his place of business, the trade or company name under which he trades, and a description of the nature of the offence, the decision of the court, and the penalty imposed, and any forfeiture incurred.

(2) When the food, drug, or article was supplied to the said person by some other person, and was sold by the first mentioned person in the state in which he received it, then the name of the supplier, and the address of his place of business, and the nature of the trade carried on by him, may, after notice to such supplier, also be included in the notification.

(3) Such notification may, if the board so direct, be republished in any newspaper circulating in New South Wales, and no action for such republication shall lie against the proprietor, publisher, or printer of such newspaper.

(4) During the pendency of any appeal against a conviction for any offence, a notification as aforesaid in respect of such offence shall not be published by the board, but may be so published within twenty-one days after a final order has been made on appeal affirming the conviction or dismissing the appeal.

Regulations.

54. (1) The board, on the recommendation of the advisory committee, shall make regulations which may vary in their application according to time and place or the destination of the article referred to in the regulation—

Regulations made
on recommendation
of advisory
committee.
Pure Food Act
(Vic.), s. 41.

- prescribing standards for the composition, strength, purity or quality of any food or drug, or for the nature or proportion of any substance which may be mixed with or used in the preparation or preservation thereof, or prohibiting the addition of any substance to any article of food ;
- prohibiting in the manufacture, preparation, storing, preservation, packing, or in the delivering of any article of food for sale, the use of appliances containing any substance that may be specified and any substance in or exceeding any proportion that may be specified, and prohibiting the sale of such appliances ;
- prohibiting such modes of manufacture and of preparation or preservation of articles of food as may be specified ;
- prescribing the method of analysing any food, drug, or article submitted for analysis under this Act ;
- exempting any package or food or drug from any provision of this Act relating to marking or labelling ;

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- prohibiting the use of substances or methods that may be specified in the catching, feeding, or drugging of animals shortly prior to death, such animals being intended for sale for the food of man;
- requiring the destruction or denaturation of articles of food that have become deteriorated or impoverished in such degree as may be specified, and of such articles of food as may be specified;
- requiring statements or labels that may be specified to be written on or attached to articles of food, or to packages containing such articles, and prohibiting the use in such statements or labels of words that may be specified;
- fixing rates for payment for samples of food or drugs taken or obtained under this Act, and for payment of analysts;
- prescribing penalties not exceeding twenty pounds or a continuing penalty not exceeding two pounds per diem for a contravention of any regulation; and
- generally for carrying out the provisions of this Act, and for securing the wholesomeness, cleanliness, freedom from contamination, and adulteration of any food, drug, or article, and for securing the cleanliness of receptacles, places, and vehicles used for the manufacture, preparation, storage, packing, carriage, or delivery of any food, drug, or article.

(2) In this section the word "specified" means specified in any regulation.

Approval and
gazetting of
regulations.

55. (1) Regulations of the board made in pursuance of this Act, on being approved by the Governor and published in the Gazette, shall, if not disallowed as hereinafter provided, and if not repugnant to this Act or to any regulations made by the Governor under the Principal Act, have the force of law.

(2) All such regulations 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. But if either House of the Parliament passes a resolution, of which notice has been given, at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation, such regulation shall thereupon cease to have effect.