

PURE FOOD (AMENDMENT) ACT, 1979, No. 179

New South Wales



ANNO VICESIMO OCTAVO

ELIZABETHÆ II REGINÆ

Act No. 179, 1979.

An Act to amend the Pure Food Act, 1908, for the purposes of constituting the Pure Food Advisory Committee and of making further provision with respect to the sampling and analysis of food, and for certain other purposes. [Assented to, 14th December, 1979.]

Pure Food (Amendment).

BE it enacted by the Queen'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 :—

Short title. **1.** This Act may be cited as the "Pure Food (Amendment) Act, 1979".

**Commence-
ment.** **2.** (1) Except as provided by subsections (2) and (3), this Act shall commence on the date of assent to this Act.

(2) Sections 4 and 5 shall, in their application to a provision of Schedules 1–6, respectively commence on the day on which that provision commences.

(3) The several provisions of Schedules 1–6 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Schedules. **3.** This Act contains the following Schedules :—

SCHEDULE 1.—AMENDMENTS TO PART I OF THE PURE FOOD ACT, 1908.

SCHEDULE 2.—AMENDMENTS TO PART II OF THE PURE FOOD ACT, 1908.

SCHEDULE 3.—AMENDMENTS TO PART III OF THE PURE FOOD ACT, 1908.

SCHEDULE 4.—AMENDMENTS TO PART IV OF THE PURE FOOD ACT, 1908.

Pure Food (Amendment).

SCHEDULE 5.—AMENDMENTS TO PART V OF THE PURE
FOOD ACT, 1908.

SCHEDULE 6.—SAVINGS AND TRANSITIONAL PROVISIONS.

4. The Pure Food Act, 1908, is amended in the manner set forth in Schedules 1–5. Amendment
of Act No.
31, 1908.

5. Schedule 6 has effect. Savings and
transitional
provisions.

SCHEDULE 1.

Sec. 4.

AMENDMENTS TO PART I OF THE PURE FOOD ACT, 1908.

(1) (a) Section 1—

Omit “1908,”, insert instead “1908”.

(b) Section 1—

Omit “, hereinafter called the Principal Act”.

(2) (a) Section 2—

From the matter relating to Part I, omit “9”, insert instead “9A”.

(b) Section 2—

From the matter relating to Part IV, omit “50”, insert instead “48”.

Pure Food (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO PART I OF THE PURE FOOD ACT, 1908—
continued.

(3) Sections 4, 4A—

Omit section 4, insert instead :—

Interpre-
tation.

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“advertisement”, in relation to any food or appliance, means—

(a) any words, whether written or spoken; or

(b) any pictorial representation or design,

used or apparently used to promote the sale of the food or appliance;

“advisory committee” or “committee” means the Pure Food Advisory Committee established under section 6;

“analysis”, in relation to any food, includes any examination or test, of any kind whatever, of the food for the purpose of determining whether or not it is adulterated or falsely described;

“analyst” means a person for the time being appointed to be an analyst under section 27 or 28;

“appliance” means the whole or any part of any utensil, machinery, instrument, apparatus or article which is used, or designed, suitable or intended for use, in or in connection with the sale of food or the manufacture, preparation, preservation, packing, storage, handling, decorating, serving, conveyance, delivery or consumption of any food;

Pure Food (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO PART I OF THE PURE FOOD ACT, 1908—
continued.

“Commission” means the Health Commission of New South Wales;

“consumers” means persons—

- (a) to whom food is sold in the course of a business carried on by the person who sold the food; and
- (b) who do not receive or seek to receive the food in connection with any business carried on by them relating to the sale of food;

“council” has the meaning ascribed to that expression by section 4 of the Local Government Act, 1919;

“food” or “article of food” means a substance or compound commonly used, or represented as being for use, as food or drink for human consumption or use or as an ingredient (whether or not after processing or further processing) of food or drink for human consumption or use, and includes—

- (a) confectionery;
- (b) any spice, flavouring substance, essence, colouring matter or any other ingredient whatever that enters into, or is used in, the composition or preparation of food or drink; and

Pure Food (Amendment).

SCHEDULE 1—*continued.***AMENDMENTS TO PART I OF THE PURE FOOD ACT, 1908—
*continued.***

- (c) any substance or compound for the time being proclaimed under subsection (3) to be food;

“inspector” means a person appointed under section 9A to be an inspector for the purposes of this Act;

“local authority” means—

- (a) in relation to a city, municipality or shire, the council; and
- (b) in relation to an area forming or forming part of a police district, the member of the police force for the time being appointed by the Commission under the Principal Act to be a local authority;

“package” includes anything in or by which goods for carriage or sale may be cased, covered, enclosed, contained or packed and, in the case of goods carried or sold or intended for carriage or sale in more than one package, includes every such package;

“place” includes any house, apartment, stall, building or premises;

“Principal Act” means the Public Health Act, 1902;

Pure Food (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO PART I OF THE PURE FOOD ACT, 1908—
continued.

“publish” means—

- (a) insert in any newspaper, journal, magazine or other periodical publication printed or published in New South Wales;
- (b) send to any person by post or by any other means of delivering letters;
- (c) deliver to any person or leave on any premises;
- (d) cause to be broadcast by radio transmission;
- (e) cause to be televised by television transmission;
- (f) exhibit by means of posters, film or videotape; or
- (g) bring to the notice of the public in New South Wales by any other means whatever;

“regulations” means regulations made under this Act;

“retail trade” means trade with consumers;

“sell” includes—

- (a) barter, offer or attempt to sell, receive for sale, have in possession for sale, expose for sale, send, forward or deliver for sale, or cause or permit to be sold or offered for sale;
- (b) sell for resale; and

Pure Food (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO PART I OF THE PURE FOOD ACT, 1908—
continued.

- (c) supply pursuant to a contract, together with accommodation, service or entertainment, in consideration of an inclusive charge for the article supplied and the accommodation, service or entertainment;

“vehicle” means any means of transport, whether self-propelled or not, which is used or is capable of being used for the carriage or storage, or in connection with the sale, of food, and includes any aircraft, ship or vessel or air cushion vehicle which is used or is capable of being so used;

“vermin” includes rodents, reptiles and insects of all descriptions;

“writing” includes printing, stencilling and typing and also includes any means of representing or reproducing words or figures in a visible form.

(2) In this Act, a reference to—

- (a) an officer of the Commission is a reference to an officer or employee appointed and employed as referred to in section 14 of the Health Commission Act, 1972; and
- (b) a servant of the Commission is a reference to a servant appointed and employed under section 14A of the Health Commission Act, 1972.

(3) The Governor may, by order published in the Gazette, proclaim any substance or compound used, or represented as being for use, for human consumption or use to be food.

Pure Food (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO PART I OF THE PURE FOOD ACT, 1908—
continued.

(4) For the purposes of this Act and the regulations—

- (a) any food, or any food included in, or supplied with, a meal—
 - (i) for which payment is made or required to be made; and
 - (ii) which is supplied for consumption in any shop, factory, canteen, hotel, boarding-house, restaurant, eating house or licensed premises, or at any stall, or in any vehicle,shall be deemed to have been sold;
- (b) any food, or any food included in, or supplied with, a meal which is supplied by an employer to an employee, in accordance with a term of the employee's contract of service, for consumption by the employee at his place of work shall be deemed to have been sold;
- (c) a person shall be deemed to sell food if he sells for human consumption or use any substance or compound of which the food is a constituent;
- (d) any substance or compound commonly used as food, or as an ingredient of food, which is found in any place or vehicle used for or in connection with the sale of food or the manufacture, preparation, preservation, packing, storage, handling, decorating, serving, conveyance or delivery of food for sale shall be presumed, unless in any proceedings the contrary is proved, to be sold as food;

Pure Food (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO PART I OF THE PURE FOOD ACT, 1908—
continued.

- (e) any food kept for further processing for human consumption or use shall be deemed to be for human consumption or use; and
- (f) an advertisement published by a person on behalf of another person shall be treated as being an advertisement published by that other person only.

Food or
appliances
offered as
prizes, etc.

4A. This Act and the regulations shall apply—

- (a) in relation to any food or appliance offered as a prize or reward, whether in connection with entertainment or for the purpose of advertisement or in furtherance of trade or business or otherwise, as if the food or appliance were, or had been, exposed for sale by each person offering the prize or reward;
- (b) in relation to any food or appliance given away for the purpose of advertisement or in furtherance of trade or business, as if the food or appliance were, or had been, sold by the person giving away the food or appliance; and
- (c) in relation to any food or appliance which is exposed or deposited in any premises for the purpose of being so offered as a prize or reward or given away, as if the food or appliance were, or had been, exposed for sale by the occupier of the premises.

Pure Food (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO PART I OF THE PURE FOOD ACT, 1908—
continued.

(4) (a) Section 5 (ia)—

After section 5 (i), insert :—

(ia) when it is unfit for human consumption or use; or

(b) Section 5 (l)—

After “Act;”, insert “or”.

(5) Section 6—

Omit the section, insert instead :—

6. (1) There shall be established a committee, to be known as the Pure Food Advisory Committee, consisting of 13 members appointed by the Minister.

Pure Food
Advisory
Com-
mittee.

(2) Of the members of the committee—

(a) one shall be a member or an officer of the Commission;

(b) two shall be food technologists;

(c) one shall be an analyst who is an officer of the Commission;

(d) one shall be a nutritionist;

(e) one shall be a microbiologist;

(f) one shall be a medical practitioner;

(g) three shall be persons who, in the opinion of the Minister, are conversant with the interests of the public as consumers of food; and

(h) the remainder shall be persons who, in the opinion of the Minister, are concerned in or conversant with the food trade.

Pure Food (Amendment).

SCHEDULE 1—*continued.***AMENDMENTS TO PART I OF THE PURE FOOD ACT, 1908—
*continued.***

(3) The members referred to in subsection (2) (a), (b), (c), (d), (e) and (f) shall be appointed on the nomination of the Commission.

(4) The member referred to in subsection (2) (a) shall be the chairman of the committee, but in his absence, and in the absence of the person (if any) appointed under subsection (10), from a meeting of the committee, the members present shall elect one of their number to be chairman of the committee.

(5) Subject to subsections (6)–(9), a member of the committee shall hold office for such period not exceeding 2 years as may be specified in the instrument of his appointment.

(6) On the expiration of any period of appointment or re-appointment, a member of the committee may be re-appointed for such further period not exceeding 2 years as may be specified in the instrument of his re-appointment.

(7) A member of the committee may at any time resign his membership by notice in writing addressed to the Minister.

(8) The Minister may at any time remove from office a member of the committee by notice in writing addressed and delivered to that member.

(9) If a member (being a member referred to in subsection (2) (a) or (c)) ceases to be a member or an officer of the Commission he shall cease to be a member of the committee.

Pure Food (Amendment).

SCHEDULE 1—*continued.*

**AMENDMENTS TO PART I OF THE PURE FOOD ACT, 1908—
*continued.***

(10) If the member referred to in subsection (2) (a) is unable to carry out his duties as chairman of the committee for any period, the Minister may appoint another member or officer of the Commission to act in his place during that period, and that member or officer of the Commission, during that period, shall be deemed to be a member of the committee and shall perform the duties and may exercise the powers of chairman of the committee.

(11) The committee shall have the following functions :—

- (a) submitting to the Commission recommendations for more effectively securing the wholesomeness and purity of food;
- (b) reporting to the Commission on such matters relating to food or to the operation of this Act and the regulations as the Commission may from time to time refer to the committee;
- (c) making recommendations with respect to the making of regulations under section 54; and
- (d) such other functions relating to food as may be prescribed.

(6) (a) Section 7 (2)—

Omit “five”, insert instead “6”.

(b) Section 7 (3), (4), (5)—

Omit section 7 (3), insert instead :—

Pure Food (Amendment).

SCHEDULE 1—*continued.*
**AMENDMENTS TO PART I OF THE PURE FOOD ACT, 1908—
*continued.***

(3) At any meeting of the committee the decision of a majority of its members present and voting shall be the decision of the committee.

(4) The committee may co-opt any person who in its opinion has expertise with respect to any matter being considered by it, and a person co-opted shall, when attending a meeting of the committee, be deemed to be a member of the committee and have a right to participate in the proceedings of the committee but shall not have a right to vote on any matter arising in those proceedings.

(5) Subject to this section, the committee may regulate the procedure at its meetings in such manner as it thinks fit.

(7) Section 8—

Omit the section, insert instead :—

Remunera-
tion of
members of
advisory
committee.

8. Each member of the committee, unless he is a member, officer or servant of the Commission or an officer of the Public Service, is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him.

(8) Sections 9, 9A—

Omit section 9, insert instead :—

Adminis-
tration
of Act.

9. (1) Subject to subsection (2), the Commission shall have the responsibility of administering and enforcing this Act and the regulations.

Pure Food (Amendment).

SCHEDULE 1—*continued.*

**AMENDMENTS TO PART I OF THE PURE FOOD ACT, 1908—
*continued.***

(2) The Governor may, by order published in the Gazette, direct that the local authority of any city, municipality, shire or police district specified in the order shall have the responsibility of administering and enforcing this Act and the regulations, or such provisions of this Act or the regulations as may be specified in the order, within the city, municipality, shire or district, as the case may be, and every such order shall, subject to section 24 of the Principal Act, have effect according to its tenor.

9A. (1) The Commission may appoint any member, officer or servant of the Commission, or any other person whom it considers to be suitably qualified for the purpose, to be an inspector for the purposes of this Act. Appoint-
ment and
powers,
etc., of
inspectors.

(2) A council, other than a council in respect of which an order under subsection (9) is in force, may appoint any health inspector appointed under section 93A or 94 of the Local Government Act, 1919, and employed by that council to be an inspector for the purposes of this Act.

(3) The Commissioner of Police or any superintendent of police may appoint any member of the police force to be an inspector for the purposes of this Act.

(4) A certificate of authority shall be issued to an inspector—

- (a) if appointed under subsection (1), by the Commission;
- (b) if appointed under subsection (2), by the council by which the appointment was made; or

Pure Food (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO PART I OF THE PURE FOOD ACT, 1908—
continued.

(c) if appointed under subsection (3), by the Commissioner of Police or, as the case may be, the superintendent of police who made the appointment.

(5) A certificate of authority may authorise the inspector to whom it is issued to exercise and perform the powers, authorities, duties and functions conferred or imposed on inspectors by this Act and the regulations—

- (a) in relation to all places and in relation to all vehicles or in relation to such places or vehicles or classes of places or vehicles as may be specified in the certificate;
- (b) at all times or at such times as may be specified in the certificate; and
- (c) in respect of all food, appliances, packages and labelling and advertising material or in respect of food, appliances, packages or labelling or advertising material of such classes or descriptions as may be specified in the certificate.

(6) An inspector shall not exercise or perform any power, authority, duty or function conferred or imposed on inspectors by or under this Act except in accordance with the certificate of authority issued to him under subsection (4).

(7) Where an inspector exercises or performs or seeks to exercise or perform any power, authority, duty or function conferred or imposed on inspectors by or under

Pure Food (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO PART I OF THE PURE FOOD ACT, 1908—
continued.

this Act in relation to any place or vehicle, he shall, if requested to do so by any person in or apparently in charge of that place or vehicle, produce the certificate of authority issued to him under subsection (4).

(8) Where an inspector is employed by a council, he may not exercise or perform any power, authority, duty or function conferred or imposed on inspectors by or under this Act otherwise than within the area of that council or on any part of a road, river, stream or water-course, the centre or middle line of which forms a common boundary between that area and an adjoining area of another council or a police district.

(9) The Minister may, by order published in the Gazette, declare that the power conferred by subsection (2) may not be exercised by any council specified in the order.

(10) An order under subsection (9) takes effect on the date on which it is published in the Gazette or on a later date specified in the order.

(11) Upon an order under subsection (9) taking effect with respect to a council, any health inspector appointed by the council to be an inspector for the purposes of this Act shall cease to be such an inspector.

Pure Food (Amendment).

Sec. 4.

SCHEDULE 2.

AMENDMENTS TO PART II OF THE PURE FOOD ACT, 1908.

(1) (a) Section 10—

After “described,” insert “which contains any matter foreign to the nature of the food”.

(b) Section 10—

After “Act”, insert “or the regulations”.

(2) (a) Section 10A—

Omit “or article”.

(b) Section 10A—

After “described,” insert “which contains any matter foreign to the nature of the food”.

(c) Section 10A—

After “Act”, insert “or the regulations”.

(3) Sections 14, 15—

Omit the sections, insert instead :—

14. (1) Subject to this section, no person shall sell a package containing any food unless there is legibly and durably written on the package, or on a label securely attached to the package, a statement specifying—

- (a) the description of the food or, where a description is prescribed in respect of that food, that description;
- (b) the name and sole or principal business address of—
 - (i) the vendor, packer or manufacturer of the food;
 - (ii) the owner of the right to manufacture the food; or

Packages
of food to
be labelled
with
description
of contents,
etc.

Pure Food (Amendment).

SCHEDULE 2—*continued.*

**AMENDMENTS TO PART II OF THE PURE FOOD ACT, 1908—
*continued.***

(iii) the agent of that vendor, packer, manufacturer or owner; and

(c) such other particulars (if any) as may be required by the regulations.

(2) Where any vendor, packer, manufacturer, owner or agent referred to in subsection (1) (b)—

(a) is a company incorporated under the Companies Act, 1961, or is a foreign company registered under that Act or is a recognised company within the meaning of that Act which has a place of business, or which is carrying on business, within New South Wales; or

(b) is a firm having its business name registered under the Business Names Act, 1962,

the address of the company or firm may be omitted from the statement.

(3) The regulations may provide that subsection (1), or such of the provisions of that subsection as are specified in the regulations, shall not apply in respect of packages containing food of a class or description so specified and where the regulations so provide, that subsection, or such of the provisions of that subsection as are so specified, shall not apply in respect of those packages.

(4) Subsection (1) shall, subject to regulations under subsection (3), have effect in respect of a package containing food for sale notwithstanding that the package may be marked with a brand approved under section 29p of the Weights and Measures Act, 1915.

*Pure Food (Amendment).*SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PURE FOOD ACT, 1908—
continued.

Liability
of person
named on
package.

15. Where any offence against this Act or the regulations is committed in respect of any food contained in a package, any person who appears from any statement on the package, or on a label attached to the package, to have imported, manufactured or prepared the food, or to have enclosed it in the package shall, unless he proves the contrary, be presumed to have imported, manufactured, prepared or enclosed the food, and shall be guilty of that offence unless he proves that—

- (a) the offence was due to the default of some other person; or
- (b) the commission of the offence was due to causes beyond his control.

(4) (a) Section 16 (1)—

Omit “which is advertised”, insert instead “in respect of which an advertisement has been published”.

(b) Section 16 (1)—

Omit “any advertisement which relates to the food or appliance”, insert instead “the advertisement”.

(c) Section 16 (2), (3)—

Omit “or public print” wherever occurring, insert instead “, journal, magazine or other periodical publication”.

(5) Section 17 (2), (3)—

Omit section 17 (2), insert instead :—

Pure Food (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PURE FOOD ACT, 1908—
continued.

(2) While a notification referred to in subsection (1) remains in force, no person shall—

(a) sell; or

(b) publish any advertisement in respect of,

any food or appliance to which the notification applies.

(3) A notification under subsection (1) may be varied or revoked at any time by a subsequent notification under that subsection.

(6) (a) Section 17A—

Omit “advertises any statement”, insert instead “publishes any advertisement”.

(b) Section 17A—

Omit “subsection (1) of section 16”, insert instead “section 16 (1)”.

(c) Section 17A—

Omit “subsection (1) of section 17”, insert instead “section 17 (1)”.

(7) (a) Section 21 (1)—

Omit “for the food of man”, insert instead “as food”.

Pure Food (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PURE FOOD ACT, 1908—
continued.

(b) Section 21 (2)—

Omit the subsection, insert instead :—

(2) If, in any proceedings against a person for a contravention of subsection (1), it is proved that the milking herd of that person contained a diseased cow and that he sold milk or any product of milk taken from that herd, it shall be presumed, unless the contrary is proved, that that milk or that product included milk, or, as the case may be, a product of milk, taken from that cow.

(c) Section 21 (3)—

After “may”, insert “, by notice published in the Gazette,”.

(d) Section 21 (3)—

After “section”, insert “, and any such notice may be varied or revoked by a subsequent notice under this subsection”.

Pure Food (Amendment).

SCHEDULE 3.

Sec. 4.

AMENDMENTS TO PART III OF THE PURE FOOD ACT, 1908.

- (1) Sections 22–27 and short headings before sections 22, 23, 24, 26 and 27—

Omit the sections and short headings, insert instead :—

Entry and Inspection.

22. (1) An inspector may do all or any of the following :—

Powers of entry, inspection and seizure.

- (a) enter and inspect any place in which or vehicle in or from which he reasonably believes any food or appliance is sold or any food is manufactured, prepared, preserved, packed, stored, handled, decorated, served, conveyed or delivered for sale;
- (b) examine any food for sale, any appliance or any food manufactured, prepared, preserved, packed, stored, handled, decorated, served, conveyed or delivered for sale, open and examine any appliance, or any package that he reasonably believes contains any such food, and examine any labelling or advertising material which appears to him to be intended for use in connection with the sale of any such food or any appliance or to have been so used;
- (c) subject to sections 23 and 24, demand, select and obtain for analysis by an analyst or for examination samples of any food which appears to him to be intended for sale or to have been sold;
- (d) examine any records kept in a place or vehicle entered pursuant to paragraph (a) that relate to any food for sale, any appliance or the manufacture, preparation, preservation, packing,

Pure Food (Amendment).

SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PURE FOOD ACT, 1908—
continued.

storage, handling, decorating, serving, conveyance or delivery of food for sale and make copies of those records or of any part of those records;

- (e) seize and detain, or take possession of, any food, appliance, package or labelling or advertising material in respect of which he reasonably believes an offence against this Act or the regulations is being or has been committed; and
- (f) place any food, appliance, package or material referred to in paragraph (e) in a container and, where any food, appliance, package or material referred to in that paragraph was seized in a place or vehicle, place that food, appliance, package or material in a room, compartment or cabinet in that place or vehicle, and mark, fasten and seal that container or, as the case may be, the door or opening providing access to that room, compartment or cabinet.

(2) For the purpose of and in connection with an inspection of any place or vehicle entered pursuant to subsection (1) (a), an inspector may request any person engaged or employed in that place or vehicle to produce to him for examination such records relating to any food for sale, any appliance or the manufacture, preparation, preservation, packing, storage, handling, decorating, serving, conveyance or delivery of food for sale as are in the custody or under the control of that person, and, if that person fails forthwith to comply with the request when it is within his power to do so, he is guilty of an offence and is liable on conviction to a penalty not exceeding \$500.

Pure Food (Amendment).

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PURE FOOD ACT, 1908—
continued.

(3) If, on the sworn information in writing of an inspector, a stipendiary magistrate or 2 justices of the peace—

(a) is or are satisfied that there is reasonable ground for entry into any place or vehicle referred to in subsection (1) (a); and

(b) is or are also satisfied either—

(i) that admission to the place or vehicle has been refused, or a refusal is reasonably expected, and that notice of the intention to apply for a warrant to enter the place or vehicle has been given to the occupier or person in charge of the place or vehicle; or

(ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the place or vehicle is unoccupied or the occupier or person in charge is temporarily absent therefrom,

the magistrate or, as the case may be, the justices may issue a warrant authorising that inspector, or another inspector specified in the warrant, to enter the place or vehicle.

(4) An inspector authorised by warrant issued under subsection (3) to enter a place or vehicle may execute that warrant at any time within 1 month after the date of its issue and, for the purpose of effecting that execution, may use such force as is reasonably necessary.

Pure Food (Amendment).

SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PURE FOOD ACT, 1908—
continued.

(5) Nothing in this section shall be construed as authorising an inspector who is not authorised by warrant issued under subsection (3) to use force in the exercise of the power conferred by subsection (1) (a), but a person who, after being requested to do so by such an inspector and, where appropriate, on the production by that inspector of his certificate of authority, refuses or fails to allow that inspector to exercise that power shall, for the purpose of section 38 (a), be regarded as having obstructed that inspector in the exercise of that power.

(6) An inspector entering any place or vehicle by virtue of subsection (1), or of a warrant issued under subsection (3), may take with him such other persons as may be necessary, and on leaving any unoccupied place or vehicle which he has entered by virtue of such a warrant shall, as far as practicable, leave it as effectively secured against trespassers as he found it.

(7) Any food, appliance, package or material seized under subsection (1) (e) may, at the option of the inspector who made the seizure or of any inspector acting in his place, be detained in the place or vehicle where it was found or be removed to another place and detained there.

(8) If before any food, appliance, package or material seized under subsection (1) (e) is forfeited to the Crown by virtue of subsection (9)—

- (a) the Commission—where the seizure was made by an inspector appointed by the Commission;
- (b) the council concerned—where the seizure was made by an inspector appointed by that council;
or

Pure Food (Amendment).

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PURE FOOD ACT, 1908—
continued.

- (c) the Commissioner of Police—where the seizure was made by an inspector appointed by the Commissioner of Police or a superintendent of police,

becomes satisfied that there has been no contravention or failure to comply with any of the provisions of this Act or of the regulations in respect of the food, appliance, package or material, the Commission, the council concerned or the Commissioner of Police, as the case may be, shall forthwith cause the food, appliance, package or material to be delivered to the person from whom it was seized or to such other person as appears to the Commission, the council concerned or the Commissioner of Police to be entitled to it.

(9) Where—

- (a) any food, appliance, package or material seized under subsection (1) (e) has not been disposed of as referred to in subsection (8) and no application for disallowance of the seizure has been made within the period allowed by section 22A (1); or
- (b) if any such application has been made within that period, the application has been refused or has been withdrawn before a decision in respect of the application has been made,

the food, appliance, package or material shall be forfeited to the Crown and may be destroyed or disposed of as the Commission may, generally or in a particular case, direct.

Pure Food (Amendment).

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PURE FOOD ACT, 1908—
continued.

(10) If, after any food, appliance, package or material seized under subsection (1) (e) is forfeited to the Crown by virtue of subsection (9) because no application for disallowance of the seizure was made within the period allowed by section 22A (1), the Commission becomes satisfied that no contravention of or failure to comply with this Act or the regulations has been committed in respect of the food, appliance, package or material and the food, appliance, package or material has not been destroyed or disposed of in a manner that would prevent its being dealt with in accordance with this subsection, the Commission shall forthwith cause the food, appliance, package or material to be delivered to the person from whom it was seized or to such other person as appears to the Commission to be entitled to it, and on being so delivered such proprietary and other interests in the food, appliance, package or material as existed immediately before the forfeiture shall obtain.

(11) Notwithstanding anything in this section to the contrary, where an inspector who has seized any food under subsection (1) (e) is satisfied on reasonable grounds that it consists wholly or partly of a filthy, decomposed or putrid animal or vegetable substance, he may cause the food to be destroyed forthwith.

Disallow-
 ance of
 seizure.

22A. (1) Any person claiming to be entitled to any food, appliance, package or material seized under section 22 (1) (e) may, within 10 days after the date on which the seizure took place, make an application to the District Court for an order disallowing the seizure of the food, appliance, package or material.

Pure Food (Amendment).

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PURE FOOD ACT, 1908—
continued.

(2) An application made under subsection (1) shall not be heard unless the applicant has previously served a copy of the application—

- (a) where the seizure was made by an inspector appointed by the Commission—on the Commission;
- (b) where the seizure was made by an inspector appointed by a council—on the council by which the appointment was made; or
- (c) where the seizure was made by an inspector appointed by the Commissioner of Police or a superintendent of police—on the Commissioner of Police.

(3) The Commission, the council concerned or the Commissioner of Police, as the case may be, shall be entitled to appear as respondent at the hearing of an application made under subsection (1).

(4) The Court shall, on the hearing of an application made under subsection (1), make an order disallowing the seizure—

- (a) if it is proved by or on behalf of the applicant that he would, but for the seizure, be entitled to the food, appliance, package or material and if it is not proved by or on behalf of the respondent beyond all reasonable doubt that an offence was being or had been, at the time of the seizure, committed in relation to the food, appliance, package or material; or

Pure Food (Amendment).

SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PURE FOOD ACT, 1908—
continued.

- (b) if, in the opinion of the Court, there are exceptional circumstances justifying the making of an order disallowing the seizure,

but otherwise the Court shall refuse the application.

(5) Where on the hearing of an application made under subsection (1) it appears to the Court that the food, appliance, package or material that is the subject of the application is required to be produced in evidence in any pending proceedings in connection with an offence against this Act or the regulations, the Court may, either on the application of the respondent or on its own motion, adjourn the hearing until the conclusion of those proceedings.

(6) Where the Court makes an order under subsection (4) disallowing the seizure of any food, appliance, package or material, it shall also make one or both of the following orders :—

- (a) an order directing the respondent to cause the food, appliance, package or material to be delivered to the applicant or to such other person as appears to the Court to be entitled to it;
- (b) where the food, appliance, package or material cannot for any reason be so delivered or has in consequence of the seizure depreciated in value, an order directing the Commission, the council concerned or the Commissioner of Police, as the case may be, to pay to the applicant such amount by way of compensation as the Court considers to be just and reasonable.

Pure Food (Amendment).

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PURE FOOD ACT, 1908—
continued.

(7) The award of costs with respect to the hearing of an application made under this section shall be in the discretion of the Court.

(8) Where the Court makes an order for the payment of any amount as compensation under subsection (6) (b) or awards any amount as costs under subsection (7), that order shall be enforceable as a judgment of the Court.

Obtaining of Samples for Analysis or Examination.

23. (1) In obtaining a sample of food under section 22 (1) (c), an inspector shall— Obtaining
of samples.

- (a) subject to subsection (4), pay, or tender payment of, an amount equal to the current market value of the sample to the person from whom the sample is obtained; and
- (b) before or as soon as practicable after obtaining the sample, inform the owner of the food comprised in the sample or, if he is not present or available, the person having charge of that food of his intention to have the sample analysed by an analyst or, as the case may be, examined.

(2) An inspector may, for the purpose of enabling him to exercise the power conferred by section 22 (1) (c), require the owner or person having charge of the food to show and permit the inspection of any package containing the food and to take from the package the sample demanded.

Pure Food (Amendment).

SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PURE FOOD ACT, 1908—
continued.

(3) An inspector, in obtaining a sample of food under section 22 (1) (c) which is in an unopened package (not being a package containing 2 or more other packages containing food), is not, without the concurrence of the owner or person having charge of the food, entitled to obtain less than the whole of the contents of the package.

(4) If any amount has been fixed by regulation as the amount to be paid or tendered as payment for any sample of food, it shall not be necessary for an inspector to pay, or tender payment of, any higher amount for such a sample.

(5) Where an inspector obtains a sample of food from an automatic dispensing or vending machine and no person in the place or vehicle in which the machine is situated admits to being the owner or in charge of the machine, the inspector may, if he has properly paid for the sample, obtain the whole sample without following the procedure prescribed in subsection (1), and, if the sample is obtained for analysis by an analyst, he shall mark, fasten and seal the sample in such manner as its nature will permit and retain it for analysis by an analyst.

(6) The obtaining of a sample of food by an inspector under section 22 (1) (c) shall, in any proceedings for an offence of selling food in contravention of this Act or the regulations, be deemed to be a sale of the food.

Pure Food (Amendment).

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PURE FOOD ACT, 1908—
continued.

24. (1) Except as otherwise provided in this section and section 23 (5), when an inspector has obtained a sample for analysis in accordance with section 23, he shall—

Procedure
on obtain-
ing
sample for
analysis.

- (a) divide the sample into 3 parts and mark, fasten and seal each part in such manner as its nature will permit;
- (b) leave one part with the owner of the food from which, or the person from whom, the sample was obtained, or with any person apparently employed by that owner or person;
- (c) retain one of the remaining parts for analysis; and
- (d) retain the other remaining part for future comparison.

(2) When a sample of food which an inspector intends to obtain for analysis by an analyst is contained in a package in such quantity that its division into 3 parts as provided in subsection (1) would, in his opinion, provide parts insufficient for analysis, he may, in addition to obtaining that package—

- (a) obtain one or more further packages containing food which appears to be of the same description and to have been packed by or under the control or authority of the same person or group of persons as that contained in that package; and
- (b) mix together the contents of all of the packages, and on so doing, he shall deal with the mixture as a sample in the manner prescribed by subsection (1).

*Pure Food (Amendment).*SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PURE FOOD ACT, 1908—
continued.

(3) Where an inspector wishes to obtain for analysis by an analyst a sample consisting of a particular article of food but is of the opinion that the division of that article into parts—

- (a) is not reasonably practicable; or
- (b) might impair or affect the quality or composition, or impede the analysis, of the food,

he may, subject to section 23, obtain a sample consisting of 3 or more of those articles of food, and thereupon subsection (1) with respect to the division of samples into parts shall be deemed to be complied with if the inspector divides those articles into lots and deals with each lot as if it were a part in the manner provided by that subsection, and references in this Act to a part of a sample shall be construed accordingly.

Submission
of samples,
etc., for
analysis.

25. (1) An inspector who has retained a sample or part of a sample in accordance with section 23 (5) or section 24 shall, unless he no longer considers that the sample or part ought to be analysed, submit it as soon as practicable to an analyst for analysis.

(2) The certificate of an analyst that, on receipt by him of a sample or part of a sample submitted to him by an inspector or any other person, the seal securing the sample or part was unbroken shall be admissible in any proceedings under this Act or the regulations and shall be evidence—

- (a) that the sample or part was the same sample or, as the case may be, part of the same sample as the sample obtained by the inspector; and

Pure Food (Amendment).

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PURE FOOD ACT, 1908—
continued.

- (b) that the sample or part had not been tampered with before it was received by the analyst.

25A. Where any person—

- (a) has requested an inspector in writing to obtain a sample of any food from a specified place or vehicle for the purpose of having it analysed by an analyst; and

Duty of inspector to obtain sample for analysis on request.

- (b) has paid the prescribed fee (if any) for obtaining the sample,

it shall be the duty of the inspector to obtain, or to arrange for another inspector to obtain, a sample of that food.

27. (1) The Commission may from time to time appoint any person (including an officer or servant of the Commission) who holds a qualification prescribed for the purpose of this section to be an analyst for the purposes of this Act.

Appoint-ment of analysts.

(2) The Commission shall prepare and maintain a list of persons holding office as analysts and, not less than once each year, revise that list and publish the revised list in such manner as it thinks fit.

(2) Section 28—

Omit “Governor, appoint an analyst to analyse”, insert instead “Commission, appoint a person as an analyst for the purpose of analysing and supervising the analysis of”.

Pure Food (Amendment).

SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PURE FOOD ACT, 1908—
continued.

(3) Sections 29–34—

Omit the sections, insert instead :—

Analysis
and certifi-
cates of
analysis.

29. (1) An analyst to whom a sample or part of a sample is submitted for analysis under section 25 may carry out an analysis of that sample or part.

(2) Where an analyst carries out an analysis under subsection (1) and a method of carrying out the analysis is prescribed, the analyst shall carry out the analysis in accordance with that method.

(3) An analysis referred to in subsection (1) may be carried out by a person acting under the supervision of an analyst and in that event the analysis shall be deemed to have been carried out by the analyst.

(4) On the completion of an analysis referred to in subsection (1), the analyst shall give to the inspector or person who submitted the sample or part for analysis, or to any inspector or person who appears to the analyst to be acting in place of that inspector or, as the case may be, on behalf of that person, a certificate in or to the effect of the prescribed form of the result of the analysis.

Certificate
of analysis
to be
evidence.

30. (1) Subject to section 43, a document purporting to be a certificate given under section 29 of the result of an analysis, or of a document supplied under section 34 as being a copy of such a certificate, shall, unless the analyst who carried out, or supervised the carrying out of, the analysis is called as a witness, be admissible in any proceedings under this Act or the regulations and shall be evidence of the facts stated therein.

Pure Food (Amendment).

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PURE FOOD ACT, 1908—
continued.

(2) Where a method of analysis is prescribed in respect of any food, a certificate given under section 29 of the result of an analysis or, as the case may be, a copy of that certificate shall not be admissible in any proceedings referred to in subsection (1) unless the certificate contains a declaration that that method has been followed in the analysis.

31. (1) Where proceedings are taken under this Act or the regulations in respect of any part of a sample retained under section 24 (1) (c), the court before which the proceedings are taken may, and, subject to subsection (2), at the request of either party to the proceedings shall, direct that the part of the sample retained for future comparison pursuant to section 24 (1) (d) be submitted to an analyst for analysis.

Production
of sample
in proceed-
ings.

(2) The court shall not give a direction under subsection (1) unless the part of the sample left pursuant to section 24 (1) (b) has been analysed and the result of that analysis shows that the food comprised in that part or sample complied with or, as the case may be, did not contravene the provision of this Act or the regulations to which the proceedings relate.

(3) The analyst to whom a part of a sample is submitted pursuant to a direction given under subsection (1) shall carry out an analysis of that part and transmit to the court a certificate of the result of the analysis.

(4) The costs of carrying out an analysis under subsection (3) shall be paid by such of the parties to the proceedings as the court may order.

*Pure Food (Amendment).*SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PURE FOOD ACT, 1908—
continued.

(5) If, in a case where an appeal is made, no action has been taken under subsection (1), that subsection shall apply in relation to the court by which the appeal is heard.

(6) Any certificate transmitted under this section shall be admissible in evidence in the proceedings and shall be evidence of the facts stated therein unless any party to the proceedings requires the person by whom it purports to have been given to be called as a witness in the proceedings.

Disqualifica-
tion of
analyst for
contraven-
tion of
or failure
to comply
with Act,
etc.

32. (1) Where any analyst is alleged to have contravened or failed to comply with any provision of this Act or of the regulations which is applicable to analysts, the Commission may, if satisfied after inquiry into the matter and after giving him an opportunity to be heard that he contravened or, as the case may be, failed to comply with that provision and that the contravention or failure to comply was committed wilfully or negligently, disqualify him from being, and from holding appointment as, an analyst either permanently or for such period as it may determine.

(2) Where the Commission has disqualified an analyst in accordance with subsection (1), it shall notify him in writing that he is disqualified from being, and from holding appointment as an analyst either permanently or, as the case may be, for the period determined under that subsection, and while he is so disqualified he shall be deemed not to be an analyst for the purposes of this Act.

Pure Food (Amendment).

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PURE FOOD ACT, 1908—
continued.

(3) Every notification under subsection (2) shall specify the reasons for the disqualification.

33. Where any person is found guilty of an offence against this Act or the regulations, the court may order him to pay as part of the costs of the prosecution all reasonable fees and other expenses (not exceeding when the amount of any such fees or expenses is prescribed that prescribed amount) incurred by the prosecutor with respect to the analysis of any food involved in the commission of the offence. Costs of analysis.

34. (1) Where any sample or part of a sample submitted by an inspector for analysis has been analysed in accordance with section 29, the inspector shall, on being requested to do so by the owner of the food from which, or the person from whom, the sample or part was obtained or the manufacturer of the food comprised in the sample or part or his agent in New South Wales, and on being paid the prescribed fee, supply to that owner, person, manufacturer or agent a copy of the analyst's certificate of the result of the analysis or, if there is no such certificate, a copy of any report made by the analyst in respect of the sample or part. Copies of results of analyses.

(2) Except as provided in subsection (1), no person shall be entitled to be supplied with a copy of an analyst's certificate or report of the result of an analysis of any sample or part of a sample submitted to an analyst for analysis in accordance with section 25.

Pure Food (Amendment).

SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PURE FOOD ACT, 1908—
continued.

(4) Section 35—

Omit “Any person who contravenes this section shall be liable to a penalty not exceeding one hundred dollars.”, insert instead :—

(2) Any person who contravenes subsection (1) is guilty of an offence and is liable on conviction to a penalty not exceeding \$100.

Sec. 4.

SCHEDULE 4.

AMENDMENTS TO PART IV OF THE PURE FOOD ACT, 1908.

(1) Sections 36, 37—

Omit the sections, insert instead :—

Offences
against
this Act.

36. (1) Any person who contravenes section 10, 10A, 11 (1), 11 (2), 12 (1), 12 (2), 13 (2), 13 (3), 14 (1), 17 (2), 18 (2), 19 (2), 21 (1), 21 (2A) or 47 (9) or fails to comply with section 17A is guilty of an offence and is liable on conviction to a penalty not exceeding \$2,000 or to imprisonment for a term not exceeding 6 months, or both.

(2) Where in any proceedings against a person holding a license under the Liquor Act, 1912, for an offence against this Act, the court is of the opinion that the offence has been proved, it may, if it thinks fit having

Pure Food (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF THE PURE FOOD ACT, 1908—
continued.

regard to the character of the offence and the circumstances in which the offence was committed and notwithstanding anything in the Liquor Act, 1912, direct that the conviction for the offence not be recorded against that person, or in relation to any licensed premises of which that person is the licensee, for any purpose of that Act, and the conviction shall accordingly not be recorded.

37. (1) Where an inspector has, in the exercise of his powers under section 22 (1) (f), marked, fastened or sealed any container containing any food, appliance, package or labelling or advertising material, or any door or opening providing access to any room, compartment or cabinet containing any such food, appliance, package or material, any person who, without the permission of that inspector or of the Commission, in the case of an inspector appointed by the Commission, the council concerned, in the case of an inspector appointed by that council, or the Commissioner of Police, in the case of an inspector appointed by the Commissioner of Police or a superintendent of police—

Inter-
ference
with official
marks,
fastenings
and
seals.

- (a) removes, erases, alters, breaks or opens the mark, fastening or seal; or
- (b) removes the food, appliance, package or material from that container, room, compartment or cabinet,

is guilty of an offence and is liable on conviction to a penalty not exceeding \$500.

(2) If an offence against subsection (1) has been committed, then whether or not any person has been charged with or convicted of that offence, the occupier

Pure Food (Amendment).

SCHEDULE 4—*continued.*AMENDMENTS TO PART IV OF THE PURE FOOD ACT, 1908—
continued.

of the place or, as the case may be, the person in charge of the vehicle where the offence was committed is, unless he proves that he took all reasonable steps to prevent the commission of the offence, guilty of an offence and is liable on conviction to a penalty not exceeding \$500.

(2) (a) Section 38—

Omit “officer” wherever occurring, insert instead “inspector”.

(b) Section 38 (b)—

Omit “to allow to be taken”, insert instead “to supply or to allow to be obtained”.

(c) Section 38 (d)—

Omit “any food or article seized or sold under this Act”, insert instead “any food, appliance, package or labelling or advertising material seized under section 22 (1) (e)”.

(d) Section 38—

Omit “shall be liable”, insert instead “is guilty of an offence and is liable on conviction”.

(e) Section 38—

Omit “five hundred dollars”, insert instead “\$500”.

Pure Food (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF THE PURE FOOD ACT, 1908—
continued.

(3) Sections 39–44 and the short heading before section 40—

Omit the sections and short heading, insert instead :—

39. (1) Subject to subsection (4), a court may, on finding a person guilty of an offence against this Act or the regulations, order that—

- (a) any food, appliance, package or labelling or advertising material to which the finding relates; and
- (b) any similar food, appliance, package or material found in any place owned or occupied by, or in any vehicle owned by or in the charge of, that person or in his possession at the time of the commission of the offence,

shall be forfeited to the Crown.

(2) Where an order is made under subsection (1) in respect of any thing referred to in that subsection and that thing has not previously been removed by an inspector under this Act, any inspector may, under the authority of the order, enter any place or vehicle in which the thing is being kept and remove it for disposal in accordance with subsection (3).

(3) Every thing forfeited pursuant to an order made under subsection (1) shall become the property of the Crown and may be destroyed or disposed of as the Commission may, generally or in a particular case, direct.

*Pure Food (Amendment).*SCHEDULE 4—*continued.*AMENDMENTS TO PART IV OF THE PURE FOOD ACT, 1908—
continued.

(4) A court shall not make an order under subsection (1) in respect of any thing referred to in that subsection which has been seized under section 22 (1) (e).

Power to prohibit carrying on business of selling food in certain cases.

39A. (1) Where any person carrying on a business of selling food has been convicted of an offence against this Act or the regulations, the court, on that conviction, or that court or any other court of petty sessions at any later time, may, on the application of an officer of the Commission specifically authorised by the Minister for the purpose, make an order prohibiting that person from engaging in the sale of food, or in the sale of food of such class or description as may be specified in the order, for such period as the court may determine and specify in the order.

(2) An authority to make an application referred to in subsection (1), purporting to have been signed by the Minister, shall be evidence of that authority, and it shall not be necessary to adduce proof of the Minister's signature.

(3) Any person who contravenes an order made under subsection (1) is guilty of an offence and is liable on conviction to a penalty not exceeding \$1,000.

(4) Any person against whom an order has been made under subsection (1) may appeal against that order under and in accordance with Part V of the Justices Act, 1902, and that Part, so far as applicable and with any necessary modifications, shall apply in respect of the appeal as if it were an appeal from a determination or order of a justice or justices.

Pure Food (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF THE PURE FOOD ACT, 1908—
continued.

Legal proceedings.

40. Proceedings for an offence against this Act or the regulations shall be disposed of summarily before a court of petty sessions constituted by a stipendiary magistrate sitting alone or 2 justices sitting in petty sessions. Prosecu-
tions.

41. Where a sample of food has been obtained under this Act for the purpose of analysis, no prosecution for an offence against this Act or the regulations in respect of that food shall, except as provided in section 47 (7), be commenced after the expiration of 50 days from the date on which the sample was obtained. Time limit
for certain
prosecu-
tions.

43. (1) Where an information is laid against a person for an offence against this Act or the regulations concerning any food of which a sample or part of a sample has been submitted for analysis to an analyst in accordance with section 25, a certificate of the result of the analysis given under section 29 shall not be admissible in evidence at the hearing of the information unless a copy of that certificate has been served on that person at least 7 days before the commencement of that hearing. Service of
copy of
analyst's
certificate.

(2) The service of a copy of an analyst's certificate referred to in subsection (1) may be proved by oath or affidavit of the person who served the copy.

44. Where an inspector has made a copy of any record or part of a record pursuant to this Act and has certified the copy to be a true and correct copy of that record or part of a record, that copy shall be admissible in evidence in any proceedings under this Act or the regulations as Evidence
of copies,
etc., of
records.

Pure Food (Amendment).

 SCHEDULE 4—*continued.*

 AMENDMENTS TO PART IV OF THE PURE FOOD ACT, 1908—
continued.

evidence of the matters contained in the copy and, until the contrary is proved, be deemed to be a true and correct copy.

(4) (a) Section 45—

Omit “officer”, insert instead “inspector”.

(b) Section 45—

Omit “official capacity”, insert instead “capacity as an inspector”.

(5) Sections 46–48—

Omit sections 46–50 and the short headings before sections 47 and 48, insert instead :—

Onus of proof in offences relating to sale of food.

46. In any prosecution for an offence of selling food in contravention of this Act or the regulations, the onus of proving that the food was not sold for human consumption or use shall be on the defendant.

Copies of certain informations, etc., to be forwarded to Commission.

46A. Where an information is laid by a servant of a council or a member of the police force against a person for an offence against this Act or the regulations, it shall be the duty of the council concerned or the Commissioner of Police, as the case may be, to forward to the Commission, as soon as practicable after the prosecution is dealt with—

(a) a copy of the information; and

(b) particulars of the result of the prosecution.

Pure Food (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF THE PURE FOOD ACT, 1908—
continued.

47. (1) In any prosecution for an offence of selling food in contravention of this Act or the regulations or an offence, under subsection (6), of giving a warranty that is false in respect of food sold by the defendant, it shall, subject to subsection (2), be a sufficient defence for the defendant to prove—

Warranties
and
guarantees.

- (a) that he purchased the food in reliance on a written warranty, given by or on behalf of the person from whom the purchase was made, to the effect that the food could be sold or, as the case may be, could be sold under the name or description under which, or for the purpose for which, he sold it without contravening any of the provisions of this Act or the regulations;
- (b) in the case of an offence of selling food in contravention of this Act or the regulations, that, if the food had conformed to the warranty, the sale of the food by the defendant would not have constituted the offence charged against him;
- (c) that he had no reason to believe or suspect that the food sold by him did not conform to the warranty; and
- (d) that, at the time of the sale to which the alleged offence relates, the food was in the same state as when he purchased it.

(2) A warranty referred to in subsection (1) may be relied on only if—

- (a) it was given by or on behalf of—
 - (i) a person resident in New South Wales;

Pure Food (Amendment).

SCHEDULE 4—*continued.*AMENDMENTS TO PART IV OF THE PURE FOOD ACT, 1908—
continued.

- (ii) a corporation having a registered office or a place of business in New South Wales; or
 - (iii) a firm having a place of business in New South Wales;
- (b) it states the name and sole or principal business address in New South Wales of that person, corporation or firm and, where that person, corporation or firm trades under a name different from that name, that trading name; and
- (c) the defendant has, within 7 days after the service of the summons for the offence—
- (i) delivered to the prosecutor a copy of the warranty and a written notice indicating that he intends to rely on the warranty and specifying the name, the trading name (if any) and the sole or principal business address in New South Wales of the person who, or the corporation or firm which, gave the warranty; and
 - (ii) delivered or sent by post a similar notice to that person, corporation or firm.

(3) Where the defendant is an employee or agent of the person who purchased the food under a warranty, he shall be entitled to rely on the provisions of this section in the same way as his employer or principal would have been entitled if he had been the defendant.

Pure Food (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF THE PURE FOOD ACT, 1908—
continued.

(4) The person by whom a warranty is alleged to have been given shall have the right to appear and give evidence in any prosecution referred to in subsection (1), and the court may, if it thinks fit, adjourn the hearing of the prosecution to enable him to exercise that right.

(5) For the purposes of subsection (1), a name or description entered in an invoice or a delivery note shall be deemed to be a written warranty that the food to which the entry relates can be sold under that name or description by any person without contravening any of the provisions of this Act or the regulations.

(6) Where any person has, in respect of food sold by him, given to the purchaser of that food a warranty which is or might be pleaded as a defence under subsection (1) and that warranty is false, that person is guilty of an offence and is liable on conviction to a penalty not exceeding \$2,000 or imprisonment for a term not exceeding 6 months, or both.

(7) Where a warranty given to a person is or might be pleaded as a defence by that person under subsection (1) in a prosecution for an offence relating to the sale of any food, proceedings may, at any time within 12 months after that sale, be commenced for an offence against subsection (6) relating to the giving of that warranty or for an offence of selling that food to that person in contravention of this Act or the regulations.

Pure Food (Amendment).

SCHEDULE 4—*continued.*AMENDMENTS TO PART IV OF THE PURE FOOD ACT, 1908—
continued.

(8) A prosecution for an offence against subsection (6) may be taken before a court having jurisdiction in the place where the food referred to in that subsection was sold or before a court having jurisdiction in the place in which the warranty so referred to was given.

(9) A person shall not—

- (a) place on any package of goods sold by him;
- (b) attach to any such package any label which includes; or
- (c) publish with respect to any goods any advertisement which includes,

the words “guaranteed under the Pure Food Act, 1908”, or words having the same or a similar effect, or words or an expression signifying, suggesting or implying that the goods are guaranteed or warranted under this Act or the regulations.

Liability
of
principals,
employers,
employees
and
agents.

48. (1) Where any offence is committed against this Act or the regulations by an agent or employee of another person, that other person shall, without prejudice to the liability of that agent or employee, be guilty of that offence in the same manner as if he had personally committed that offence.

(2) Except as provided in this section, in any prosecution for an offence against this Act or the regulations, it shall be no defence that the defendant was, at the time of the commission of the offence, only an agent or employee of another person.

Pure Food (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF THE PURE FOOD ACT, 1908—
continued.

(3) In any prosecution for an offence against this Act or the regulations, the defendant shall have a good defence to the prosecution if he establishes that, at the time of the commission of the act or default constituting the offence—

(a) he was an employee—

(i) of the owner or occupier of the place or, as the case may be, the owner or person in charge of the vehicle in relation to which the offence was committed; or

(ii) of the proprietor of any business relating to food conducted in relation to that place or vehicle; and

(b) he was under the personal supervision of that owner, occupier, person in charge or proprietor or of any manager or other person representing that owner, occupier, person in charge or proprietor.

(4) Except with the leave of the court, the defence referred to in subsection (3) may be relied on only if the defendant has, within 7 days after the service of the summons for the offence, delivered to the prosecutor a notice in writing—

(a) to the effect that he intends to rely on that defence; and

(b) containing the name and address of the person referred to in paragraph (a) of that subsection by whom he was employed at the time of the commission of the act or default constituting the offence.

Pure Food (Amendment).

SCHEDULE 4—*continued.*AMENDMENTS TO PART IV OF THE PURE FOOD ACT, 1908—
continued.

(5) The court shall not refuse leave under subsection (4) if it appears to it that the defendant was not informed of the provisions of that subsection at the time of the service on him of the summons for the offence.

(6) In any prosecution for an offence against this Act or the regulations, the defendant shall have a good defence to the prosecution if he establishes that—

- (a) he committed the act or default constituting the offence in the course of acting as an agent or employee of another person and without knowledge of one or more of the facts constituting the offence; and
- (b) that other person is—
 - (i) a resident of, or has a place of business in, New South Wales;
 - (ii) a corporation having a registered office or place of business in New South Wales; or
 - (iii) a firm having a place of business in New South Wales.

(7) Where an offence against this Act or the regulations has been committed by a body corporate and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director or other person concerned in the management of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of the offence and shall be liable to a penalty not exceeding that prescribed for the offence.

Pure Food (Amendment).

SCHEDULE 5.

Sec. 4.

AMENDMENTS TO PART V OF THE PURE FOOD ACT, 1908.

(1) Section 51—

Omit the section, insert instead :—

51. (1) Where an inspector or any other person has, in connection with the administration or execution of this Act or the regulations, obtained information relating to manufacturing or commercial secrets or working processes, that inspector or person shall not, except as provided in subsection (2), disclose that information.

Inspectors,
etc., not
to disclose
information
relating to
manufactur-
ing processes
and trade
secrets.

Penalty : \$500.

(2) Subsection (1) does not operate to prevent the disclosure of information where that disclosure is—

- (a) made in connection with the administration or execution of this Act or the regulations;
- (b) made with the prior permission of the Minister;
- (c) ordered by a court, or by any other body or person authorised by law to examine witnesses, in the course of, and for the purpose of, the hearing or determination by that court, body or person of any matter or thing; or
- (d) made with the consent of a person who has a proprietary interest in the information.

(3) The Minister may grant the permission referred to in subsection (2) (b) only if he is satisfied that to do so would be in the public interest.

Pure Food (Amendment).

SCHEDULE 5—*continued.*AMENDMENTS TO PART V OF THE PURE FOOD ACT,
1908—*continued.*

(2) (a) Section 51A (1), definitions of “food store” and “food vehicle”—

Omit the definitions, insert instead :—

“food store” means a place or part of a place in which food is sold or manufactured, prepared, preserved, packed, stored, handled, decorated or served for sale;

“food vehicle” means a vehicle in or from which food is sold or in which food is conveyed or delivered for sale;

(b) Section 51A (2), (3), (4), (5), (6), (7) (b)—

Omit “officer” wherever occurring, insert instead “inspector”.

(c) Section 51A (2), (5), (6)—

Omit “twenty-four” wherever occurring, insert instead “24”.

(d) Section 51A (3) (a), (b), (c)—

Omit the paragraphs, insert instead :—

(a) food shall not be sold or manufactured, prepared, preserved, packed, stored, handled, decorated or served for sale in the food store;

(b) food shall not be sold in or from the food vehicle or conveyed or delivered for sale in the food vehicle; or

Pure Food (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART V OF THE PURE FOOD ACT,
1908—*continued.*

- (c) the appliance shall not be used in or in connection with the sale of food or the manufacture, preparation, preservation, packing, storage, handling, decorating, serving, conveyance or delivery of food for sale,
- (e) Section 51A (5)—
Omit “for the district in which the food store is situated or in which is situated the place at which he requested the food vehicle or appliance to be inspected”.
- (f) Section 51A (7) (c), (d), (e)—
Omit the paragraphs, insert instead :—
- (c) sells food in the food store or manufactures, prepares, preserves, packs, stores, handles, decorates or serves, in the food store, food for sale;
- (d) sells food in or from the food vehicle or conveys or delivers, in the food vehicle, food for sale; or
- (e) uses the appliance in or in connection with the sale of food or the manufacture, preparation, preservation, packing, storage, handling, decorating, serving, conveyance or delivery of food for sale,
- (g) Section 51A (7)—
Omit “shall be guilty of an offence against this Act and”, insert instead “is guilty of an offence and is”.
- (h) Section 51A (7)—
Omit “two thousand dollars”, insert instead “\$2,000”.

Pure Food (Amendment).

SCHEDULE 5—*continued.*AMENDMENTS TO PART V OF THE PURE FOOD ACT,
1908—*continued.*

(i) Section 51A (7)—

Omit “six months, or to both such penalty and imprisonment”, insert instead “6 months, or both”.

(3) (a) Section 53 (1)—

After “this Act”, insert “or the regulations”.

(b) Section 53—

Omit “or article” wherever occurring.

(c) Section 53—

Omit “twenty-one” wherever occurring, insert instead “21”.

(4) Sections 54, 55—

Omit the sections, insert instead :—

Power of
Commission
to make
regulations.

54. (1) The Commission may, on the recommendation of the advisory committee but subject to the approval of the Governor, make regulations, not inconsistent with this Act or any regulations made under the Principal Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- (a) prescribing standards for the composition, strength, purity or quality of food or of food of a specified class or description, or for the nature or proportion of any substance which may be mixed with or used in the preparation or preservation of food or of food of a specified class or description;

Pure Food (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART V OF THE PURE FOOD ACT,
1908—*continued.*

- (b) prohibiting the addition of any specified substance to food or to food of a specified class or description;
- (c) prohibiting the use of any appliance in the sale of food or food of a specified class or description or the manufacture, preparation, preservation, packing, storage, handling, decorating, serving, conveyance, delivery or consumption of food or of food of a specified class or description, where that appliance contains—
 - (i) any specified substance; or
 - (ii) any specified substance in or in excess of a specified proportion,and prohibiting the sale or gift of any such appliance;
- (d) prohibiting the use in the manufacture, packing, storage or decorating of any appliance of—
 - (i) any specified substance; or
 - (ii) any specified substance in or in excess of a specified proportion,and prohibiting the sale or gift of any appliance in respect of which the specified substance has been so used or so used in or in excess of the specified proportion;
- (e) prohibiting any specified method or means of manufacturing, preparing, preserving, packing, storage, handling, decorating, serving, conveying or delivering food or food of a specified class or description;
- (f) fixing the amount to be paid, or tendered for payment, for a sample of any food obtained under this Act;

Pure Food (Amendment).

SCHEDULE 5—*continued.*AMENDMENTS TO PART V OF THE PURE FOOD ACT,
1908—*continued.*

- (g) prescribing methods of analysing food or food of any specified class or description;
- (h) prescribing qualifications for the appointment of persons as analysts under this Act;
- (i) exempting any food, or any package containing food, of a specified class or description from any provision of this Act, or of the regulations, relating to the marking or labelling of food or packages of food;
- (j) prohibiting the use of any specified substance or method in the catching, feeding or drugging before death of any animal intended for sale as food or any animal of a specified class or description which is intended for sale as food;
- (k) prohibiting with respect to food the publication of any advertisement which is false or misleading as to a material particular or which is likely to mislead members of the public or any section of the public;
- (l) requiring and providing for the destruction or denaturation of—
 - (i) food that has deteriorated or become impoverished in such degree as is specified; or
 - (ii) food of a specified class or description;
- (m) requiring statements or labels containing specified words, or words having the same or a similar effect, to be written on or attached to food, or food of a specified class or description, or any package containing food, or prohibiting the use of specified words, or words having the same or

Pure Food (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART V OF THE PURE FOOD ACT,
1908—*continued.*

a similar effect, in any such statements or labels written on or attached to food or packages of food;

- (n) requiring statements or labels containing specified words, or words having the same or a similar effect, to be written on or affixed to automatic dispensing or vending machines used in connection with the sale of food or the sale of food of a specified class or description or prohibiting the use of specified words, or words having the same or a similar effect, in any statements or labels written on or affixed to those machines;
- (o) requiring advertisements relating to food, or to food of a specified class or description, to contain specified words, or words having the same or a similar effect, or prohibiting the use of specified words, or words having the same or a similar effect, in those advertisements;
- (p) securing the wholesomeness, cleanliness and freedom from contamination and adulteration of food or of food of a specified class or description;
- (q) securing the cleanliness of appliances, places and vehicles used for or in connection with the sale of food or food of a specified class or description or the manufacture, preparation, preservation, packing, storage, handling, decorating, serving, conveyance or delivery of food for sale or of food of a specified class or description for sale;
- (r) prescribing requirements to be observed as to the situation and construction of any place or vehicle used in or in connection with the sale of food

Pure Food (Amendment).

SCHEDULE 5—*continued.*AMENDMENTS TO PART V OF THE PURE FOOD ACT,
1908—*continued.*

or food of a specified class or description or the manufacture, preparation, preservation, packing, storage, handling, decorating, serving, conveyance or delivery of food for sale or of food of a specified class or description for sale, and as to the sanitation of that place or vehicle and the provision of satisfactory facilities for protecting that food from contamination;

- (s) prohibiting the placing in food for sale, or in packages containing any such food, of any toy, coin or other small article which might, if swallowed by or placed in the mouth of any person, reasonably be expected to harm or injure him; and
- (t) requiring the keeping of records with respect to the distribution or sale, except by way of retail trade, of food and appliances.

(2) A reference in subsection (1) to prohibiting any thing or prohibiting the doing of any thing includes a reference to regulating that thing or regulating the doing of that thing.

(3) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

Pure Food (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART V OF THE PURE FOOD ACT,
1908—*continued.*

(4) The regulations may make it an offence to contravene or fail to comply with any of the regulations and may impose—

- (a) in respect of any such offence relating to the keeping of places, vehicles, food or appliances clean or free from vermin, a penalty not exceeding \$2,000 or imprisonment for a term not exceeding 6 months, or both, and, in the case of a continuing offence, a further penalty not exceeding \$50 for each day during which the offence continues; or
- (b) in respect of any such offence relating to any other matter, a penalty not exceeding \$500 and, in the case of a continuing offence, a further penalty not exceeding \$10 for each day during which the offence continues.

(5) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969.

(6) In this section, “specified” means specified in the regulations.

55. (1) In this section—

“prescribed publication” means—

- (a) an edition of the British Pharmaceutical Codex (whether published before or after the commencement of Schedule 5 (4) to the Pure Food (Amendment) Act, 1979) that is specified in the regulations;

Adoption
of standards
by reference.

Pure Food (Amendment).

SCHEDULE 5—*continued.*AMENDMENTS TO PART V OF THE PURE FOOD ACT,
1908—*continued.*

- (b) an edition of the British Pharmacopoeia (whether published before or after that commencement) that is so specified;
- (c) an edition of any publication of the British Standards Institution specifying standards with respect to food (whether published before or after that commencement) that is so specified;
- (d) an edition of the Food Chemicals Codex (whether published before or after that commencement) that is so specified; or
- (e) an edition of some other publication (whether published before or after that commencement) that is so specified,

together with any additions or amendments to any such edition (whether published before or after that commencement) that are so specified;

“the British Pharmaceutical Codex” means the book of that name published by the direction of the Council of the Pharmaceutical Society of Great Britain;

“the British Pharmacopoeia” means the book of that name published before the commencement of Part VII of the Medicines Act 1968 of the Parliament of the United Kingdom under the direction of the General Medical Council of the United Kingdom or published after that commencement in accordance with the provisions of that Part;

Pure Food (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART V OF THE PURE FOOD ACT,
1908—*continued.*

“the Food Chemicals Codex” means the book of that name of which the copyright belongs to the National Academy of Sciences of the United States of America.

(2) The regulations may, in making provision for or with respect to the determination of any standards, adopt by reference the whole or any part of any monograph or other material contained in a prescribed publication or any such monograph or material as modified pursuant to subsection (3).

(3) The regulations may provide for the modification of any monograph or other material adopted under subsection (2).

SCHEDULE 6.

Sec. 5.

SAVINGS AND TRANSITIONAL PROVISIONS.

1. Every—

- (a) medical officer of health, assistant medical officer of health or officer of the Health Commission of New South Wales, or other person authorised in writing by that Commission, who, immediately before the commencement of Schedule 1 (3), is acting as an officer for the purposes of the Pure Food Act, 1908;
- (b) officer of a local authority who, immediately before the commencement of Schedule 1 (3), is acting as an officer for the purposes of the Pure Food Act, 1908; and

Appoint-
ment of
inspectors.

Pure Food (Amendment).

SCHEDULE 6—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

- (c) member of the police force who, immediately before the commencement of Schedule 1 (3), is, by virtue of an authority granted by the Commissioner of Police or a superintendent of police, acting as an officer for the purposes of the Pure Food Act, 1908,

shall be deemed to be appointed as an inspector under section 9A (1), (2) or (3), as the case may be, of that Act, as in force immediately after that commencement.

**Proclama-
tions.**

2. Every proclamation made under section 4 (1) of the Pure Food Act, 1908, as in force immediately before the commencement of Schedule 1 (3), declaring any substance or article to be food or an article of food shall, if in force immediately before that commencement, be deemed to be an order made under section 4 (3) of that Act, as in force after that commencement.

Samples.

3. Any sample of food taken or obtained in accordance with sections 23 and 24 of the Pure Food Act, 1908, as in force immediately before the commencement of Schedule 3 (1), may be dealt with as if it had been obtained in accordance with those sections, as in force after that commencement.

**Employ-
ment of
analysts.**

4. (1) Every person, appointed as an analyst under section 27 of the Pure Food Act, 1908, as in force immediately before the commencement of Schedule 3 (1), and holding appointment as such immediately before that commencement, shall be deemed to be appointed under section 27 (1) of that Act, as in force after that commencement.

(2) Every person, appointed as an analyst under section 28 of the Pure Food Act, 1908, as in force immediately before the commencement of Schedule 3 (2), and holding appointment as such immediately before that commencement, shall be deemed to be appointed under that section, as in force after that commencement.

**Certificates
of
analysis.**

5. All certificates of analysis given under section 29 of the Pure Food Act, 1908, as in force immediately before the commencement of Schedule 3 (3), shall be deemed to have been given under that section, as in force after that commencement.

Pure Food (Amendment).

SCHEDULE 6—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

6. Any order made under section 39A of the Pure Food Act, 1908, as in force immediately before the commencement of Schedule 4 (3), shall, if in force immediately before that commencement, be deemed to be an order made under that section, as in force after that commencement. Orders under section 39A of the Pure Food Act, 1908.
7. Any guarantee to which section 47 of the Pure Food Act, 1908, applied immediately before the commencement of Schedule 4 (5) shall, to the extent that it could have effect as a warranty to which that section applies after that commencement, be deemed to be a warranty to which that section, as in force after that commencement, applies. Guarantees.
8. All regulations in force under the Pure Food Act, 1908, as in force immediately before the commencement of Schedule 5 (4) shall, to the extent that they could be made under that Act, as in force immediately after that commencement, be deemed to be regulations made under that Act, as in force after that commencement. Regulations.
-