

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1920.

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## A BILL

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 repeal the Pure Food Act, 1908; to amend the Public Health Act, 1902, and certain other Acts; and for purposes consequent thereon or incidental thereto.

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**B**E 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 and Drugs Act, 1920," and shall, with any necessary modifications, be construed with the Public Health Act, 1902, as amended by the Public Health (Amendment) Act, 1915. The Public Health Act, 1902, as so amended, is hereinafter called the Principal Act.

Short title and construction.

**2.** This Act shall come into operation on the first day of one thousand nine hundred and

Commencement of Act.

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

Division of Act into Parts.

PART I.—PRELIMINARY—ss. 1-10.

*Repeals—ss. 4-5.*

*Definitions—s. 6.*

*Advisory committee—ss. 7-9.*

*Administration of Act—s. 10.*

PART II.—PROHIBITED DEALINGS WITH FOOD AND DRUGS—ss. 11-25.

*Selling adulterated or falsely described food and drugs—ss. 11-12.*

*Unlawfully mixing or colouring food and drugs—ss. 13-16.*

*Selling food or drugs in packages not properly labelled or described—ss. 17-18.*

*Publishing false statements as to composition, &c., of food or drugs—ss. 19-21.*

*Selling disinfectants and preservatives—ss. 22-23.*

*Selling milk from a diseased cow—s. 24.*

*Appeal—s. 25.*

PART

PART III.—INSPECTION AND ANALYSIS—ss. 26–40.

*Inspection and seizure of food, drugs, or articles—*  
s. 26.

*Obtaining samples for and method of analysis—*  
ss. 27–31.

*Submission by councils of samples for analysis—*  
s. 32.

*Appointment and certificates of analysts—ss.*  
33–39.

*Costs of analysis—s. 40.*

PART IV.—OFFENCES AND LEGAL PROCEDURE—  
ss. 41–53.

*Penalties—ss. 41–43.*

*Forfeitures—s. 44.*

*Legal procedure—ss. 45–53.*

PART V.—GENERAL AND SUPPLEMENTAL — ss.  
54–61.

*Miscellaneous—ss. 54–57.*

*Regulations—ss. 58–61.*

*Repeals.*

4. (1) The Pure Food Act, 1908, is hereby repealed, <sup>Repeal and savings.</sup> except as to things done or commenced and offences committed before the passing of this Act, which shall be continued and dealt with, and in respect of which every right and liability shall remain, as if this Act had not been passed.

(2) All persons appointed under the said Act, and holding office at the time of the passing of this Act, shall be deemed to have been appointed under this Act.

(3) All rules, regulations, orders, directions, appointments, and notices made or given under the authority of the said Act, and in force at the time of the passing of this Act, shall be deemed to have been made or given under the authority of this Act.

5. Section three, so far as it defines "food," and <sup>Repeal.</sup> sections seventy-six to ninety-three inclusive of the Principal Act are repealed. *Definitions.*

*Definitions.*

6. In this Act, unless the context otherwise requires,— <sup>Interpreta-</sup>  
“Appliance” includes the whole or any part of any <sup>tion.</sup>  
utensil, machinery, instrument, apparatus, or  
article used or intended for use in or for the  
making, manufacturing, keeping, preserving,  
preparing, handling, serving, or supplying of  
any food or drug, or which in the course of  
such use may come into contact with any food  
or drug; the term also includes any instrument  
or contrivance which is held out to any person  
or to the public as of use for curative purposes,  
or in relieving human suffering, or in over-  
coming or alleviating any physical defect.
- “Article” includes any substance, compound, or  
appliance.
- “Authorised” means authorised either generally or  
specially in writing by the <sup>board.</sup>
- “Board” means Board of Health.\*
- “Drug”—without limiting the ordinary meaning  
of the term—means any article used for or in  
the composition or preparation of medicine for  
internal or external consumption or use by  
man, and includes disinfectants, germicides,  
antiseptics, preservatives, deodorants, anæ-  
sthetics, tobacco, narcotics, soaps, cosmetics,  
dusting powders, essences, unguents, and all  
other toilet articles.
- “Food,” or “article of food,” means article used  
for food or drink by man, and includes fruit and  
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 municipal council of  
Sydney, council of a municipality or of a  
shire, and Metropolitan Meat Industry Board,  
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  
<sup>board</sup> under the Principal Act to be a local  
authority. “Officer”

\* In New South Wales board means Board of Health. In other States the  
central administrative authority to be given a definition.

- “Officer” includes medical officer of health, acting medical officer of health, assistant medical officer of health, officer of the board or of a local authority, or member of the police force 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” includes any house, building, ship, barge, boat, vehicle, car, station, wharf, shed, land, street, or premises.
- “Premises” includes all buildings, structures, and lands within the curtilage thereof; also any vehicle used in connection with any business carried on at the premises.
- “Prescribed” means prescribed by this Act or the regulations.
- “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.
- “Regulation” means regulation made under this Act.
- “Retail sale” means a sale direct to the consumer.
- “To sell” (with its derivatives) includes barter, and also includes offering or attempting to sell, or receiving for sale, or having in possession for sale, or exposing for sale, or sending, forwarding, or delivering for sale, or causing or suffering, or permitting, or allowing to be sold, or offered or exposed for sale; but unless the context otherwise indicates, the term refers only to sale for consumption or use by man, or for purposes of analysis, or other examination in pursuance of this Act.
- “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.
- “Writing.”

“Writing.” Expressions referring to writing include printing, stencilling, typing, and any mode of representing or reproducing words or figures in a visible form :

Provided that the Governor may by proclamation in the Gazette declare that any other substance used by man which is specified in such proclamation shall be deemed a food or a drug for the purposes of this Act.

*Advisory committee.*

**7.** (1) The Governor shall appoint, for the purposes of this Act, an advisory committee, whose duty it shall be to advise the board upon questions relating to the subject-matter and the administration of this Act. Advisory committee. cf. Pure Food Act, 1905 (Vic.), s. 40.

(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.

**8.** (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. Ibid.

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

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

**9.** 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.*

**10.** (1) Notwithstanding anything contained in any other Act the power to administer and enforce the provisions of this Act is hereby vested in the board, but the board may, either generally or in a particular case, delegate such power to a local authority. Administration of Act vested in board, but board may delegate power to local authority.

(2)

(2) Where by any other Act a power to deal with any matter coming within the scope of this Act has been conferred upon a local authority, such power shall in every case be exercised by such local authority within its area under the control and subject to the direction of the <sup>board.</sup> Control by board of local authority.

(3) Regulations or by-laws made under any other Act by or upon the recommendation of a local authority in pursuance or in aid of such power shall be submitted to the <sup>board</sup> for its approval, and the <sup>board</sup> may revoke or vary any regulation or by-law so made: Regulations made by local authority to be subject to approval of board.

Provided that any such regulations or by-laws in force at the date of the coming into operation of this Act shall continue in force until they are revoked or varied as aforesaid. Proviso.

(4) Where any power delegated to a local authority under this Act or conferred upon it by any other Act has in the opinion of the <sup>board</sup> not been duly exercised by such local authority within its area, and the failure to exercise the power is in the opinion of the <sup>board</sup> likely to endanger the public health, the <sup>board</sup> may, by notice in writing, signed by its <sup>president or secretary,</sup> require the local authority to exercise the power within the time mentioned in the notice. Failure of local authority to exercise its powers.

(5) If the said requirement is disobeyed or is not complied with, the <sup>board</sup> may exercise the power, and, where the local authority is the municipal council of Sydney or a municipal or shire council, or the Metropolitan Meat Industry Board, may recover from it the expenses thereby incurred. Powers of board where local authority fails to exercise its power.

## PART II.

### PROHIBITED DEALINGS WITH FOOD AND DRUGS.

#### *Selling adulterated or falsely described food and drugs.*

**11.** 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. cf. Pure Food Act, 1905

**12.** (Vic.), s. 35.

**12.** For the purposes of this Act an article of food or a drug is adulterated or falsely described—

Adulteration or false description.

cf. Pure Food Act, 1905 (Vic.), s. 24.

U.S.A. Pure Foods Act, 1906, s. 7.

- (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
- (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
- (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



alpha or beta eucaïne, 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, or its physiological, curative, or therapeutic effect, 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 poisonous added ingredient to disclose their trade formulæ, except in so far as the provisions of this Act may require in order to secure freedom from adulteration or false description.

*Unlawfully mixing or colouring food and drugs.*

**13.** (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, 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

Mixing or colouring food or drugs so as to be injurious to health.  
Principal Act, s. 87.

(b)

- (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 mixed or coloured as to be injurious to health.

**14.** (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

Mixing or selling food to increase bulk.

Principal Act, s. 88.

- (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

Selling food or drugs not of the nature demanded.

- (b) sell any compounded food or drug which is not composed of ingredients in accordance with the demand of the purchaser.

(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.

As to defences.

(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.

Drugs to comply with tests specified in the British Pharmacopœia.

*Ibid.* s. 91.

**15.**

**15.** (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 shall comply with prescribed standards, 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 :

Sale of mixture.  
cf. *Ibid.* s. 89.

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 Pharmacopoeia 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) 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.

**16.** No person shall have in his custody or possession, or under his control, for the purpose of storage, preparation, treatment, or other dealing with, by himself, or by any other person, any article of food or drug for human consumption or use by man, which is adulterated, falsely described, or packed contrary to the provisions of this Act.

Having in possession any food or drug which is adulterated, &c.

*Selling*

*Selling food or drugs in packages not properly labelled or described.*

**17.** (1) Except in the case of a package of food or drug 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 or drug 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 Acts, 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 or drug 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.  
cf. Pure Food Act, 1905 (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 or drug:

Approximate weights and measures.

Provided that this section shall not take effect until the first day of July, one thousand nine hundred and twenty.

Proviso.

**18.** 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

Liability of person named on package.  
cf. Pure Food Act, 1905 (Vic.), s. 16.

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.

*Publishing false statements as to composition, &c., of food or drugs.*

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

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

(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.

**20.** (1) Every person who publishes, or causes to be published, any statement to promote the sale of any food, drug, or appliance for the prevention, alleviation, or cure of any human ailment or physical defect, and which is false in any material particular relating to the ingredients, composition, structure, nature, or operation of that food, drug, or appliance, or relating to the effects which have followed, or may follow the use thereof, shall be guilty of an offence against this Act.

Publication of false statements as to ingredients, &c., of food, &c.

(2)

(2) A statement shall be deemed to be published within the meaning of this section if it is advertised or is publicly exhibited in view of persons in any public place.

(3) If any such statement be published in breach of this section in a newspaper printed in New South Wales, the printer, publisher, and proprietor of that newspaper shall severally be guilty of an offence against this Act :

Provided that no prosecution shall be instituted against such printer, publisher, or proprietor for the publication of any such statement, unless within twelve months immediately preceding the day of the publication thereof a warning has been delivered to such printer, publisher, or proprietor, as the case may be, under the hand of the Director-General of Public Health, that such statement, or some other statement substantially to the same effect, is false, and that the publication thereof is an offence against this Act.

**21.** (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 is useless for the advertised purposes. Prohibition of sale of injurious drugs or appliances.

(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. Advertisement.

(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. Saving.

*Selling*

*Selling disinfectants and preservatives.*

**22.** (1) The Governor, on the recommendation of the <sup>board</sup> 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. <sup>Prohibition of sale of disinfectants and preservatives.</sup>

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

**23.** (1) The <sup>board</sup> by notification in the Gazette, may require concerning any substance or compound sold or intended to be sold as 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. <sup>Labelling of disinfectant.</sup>

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

*Selling milk from a diseased cow.*

**24.** (1) No person shall sell, for the food of man, milk, or any product thereof, from a cow in his milking herd which is suffering from any disease. <sup>Selling milk from a diseased cow.</sup>

(2) The fact that a diseased cow is in the milking herd of a person who sells milk or any product thereof shall be prima facie evidence that the milk, or any product thereof, from such cow has been sold for the food of man.

(3) A person who sells milk shall not have in his milking herd or on his dairy premises, as defined in the *Dairies Supervision Act, 1901*, any diseased beast.

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

*Appeal.*

**25.** Any person deeming himself aggrieved by any report or recommendation of the <sup>board</sup> under section nineteen or section twenty-one or section twenty-two may appeal therefrom to a District Court judge, who may hear <sup>Appeal.</sup>

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.

### PART III.

#### INSPECTION AND ANALYSIS.

##### *Inspection and seizure of food, drugs, or articles.*

**26.** (1) Any officer may, with the authority in writing of the board, 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. Such authority may be general, or may be limited to a specified place.

Entry and inspection of place and animals or articles therein.

(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.

Time for entering and inspection.

(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.

Inspection of articles conveyed through streets.

(4)



(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.

Powers of officer of a local authority.

(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 ;
- (e) destroy any article which is at the time of seizure decayed or putrid ;
- (f) in the case of any consignment of tinned or packed food, if it appears on examination that the contents of ten per centum of the tins or packages are unsound, the whole consignment shall be deemed unsound and may be seized and dealt with as hereby provided.

Examination, seizure, and destruction of articles.

If the officer is satisfied that the animal or article of food or drug is unfit for human consumption, and should forthwith be destroyed in order to prevent disease or offensiveness, he may, with the authority in writing of a justice, cause it to be destroyed accordingly.

All expenses incurred by the officer in the examination, seizure, or destruction of any animal or food under this section shall, if such animal or food was diseased or unsound, or unwholesome or unfit for human consumption, be paid by the owner to the officer, and in default of payment may be recovered in a summary way before any two justices.

(6)

(6) For the purposes of this section—

- (a) it shall, until the contrary is proved, be presumed that the animal or food was intended to be sold or prepared for sale for human consumption ; and
- (b) the packing cases, tins, wrappers, coverings, and all other packing material may be dealt with in the same manner as the food contained therein ; and
- (c) the word “owner” shall include consignor, consignee, indenter, importer, agent, broker, manufacturer’s or seller’s agent, or the person in possession of the animal or food.

(7) Any officer authorised, either generally or for any limited period, or for any particular case, may—

- (a) inspect, and for that purpose, where deemed necessary, open up, take apart, and test any article used in the manufacture, preparation, storing, preservation, packing, delivering, or serving of any food, drug, or article ;
- (b) seize any such article which is, or appears to him to be, injurious or unwholesome, or unfit for use, or to be a prohibited article, and any package or vessel enclosing or containing the same.

(8) 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.

Summons.  
cf. Principal  
Act, s. 85.

(9) 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—

Proceedings  
upon such  
summons.

- (a) that the article is used or is intended to be sold or used as food, and was unfit for human consumption ; or

(b)

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

(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.

(10) In every such proceeding the presence of food in any 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.

(11) This section shall, without restricting its general 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.

*Obtaining samples for, and method of, analysis.*

**27.** (1) On payment or tender to any person selling or manufacturing 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)

(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.

(1) 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.

**28.** (1) The person purchasing or the officer taking or obtaining any food or drug with the intention of submitting it to analysis shall thereupon notify 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.

Manner in which sample may be dealt with.  
cf. Principal Act, s. 80.

(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.

Division of sample.

(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.

Where quantity in package is insufficient for analysis.

(4) Provided also that this section shall not apply to milk in transit or awaiting transit.

Proviso.

**29.** Any officer may take samples of milk in transit or awaiting transit without payment or tender of payment for the same, and for that purpose may open any package containing milk.

Sampling milk in transit or awaiting transit.

He shall divide the milk so taken into two parts, and shall place each such part in a bottle, which he shall fasten up and seal and label or mark.

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He shall retain one such part for future comparison, and submit the other part to an analyst.

**30.** 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.

Forwarding of sample by post.

**31.** Any officer specially authorised by the board for the purposes of this subsection, may at any reasonable time enter any premises where spirituous liquors are sold or exhibited, stored, or prepared for sale, and without purchasing any quantity test by means of a hydrometer, the alcoholic strength of such liquor.

board Testing alcoholic strength of liquor.

*Submission by councils of samples for analysis.*

**32.** 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.

Councils may be required to submit samples for analysis.

*Appointment and certificates of analysts.*

**33.** The Governor may appoint persons to be analysts, and may make regulations concerning their qualifications, and may prepare a list of analysts and revise such list from time to time.

Appointment of analysts.

**34.** 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. cf. Principal Act, s. 82.

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The production by the prosecutor of a certificate of analysis purporting to be under the hand of an analyst shall be sufficient evidence of the facts stated therein, unless the defendant requires that the analyst shall be called as a witness, in which case he shall give notice thereof to the prosecutor not less than three clear days before the return day.

In like manner the production by the defendant of a certificate of analysis purporting to be under the hand of an analyst shall be sufficient evidence of the facts stated therein, unless the prosecutor requires that the analyst be called as a witness. A copy of such last-mentioned certificate shall be sent to the prosecutor at least three clear days before the return day, and if it is not so sent the court may adjourn the hearing on such terms as it thinks proper.

**35.** 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.  
cf. Pure Food Act, 1905 (Vic.), s. 19.

**36.** 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.*

**37.** 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.*

**38.** 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 to the person from whom the food, drug, or article was taken or obtained, and to the manufacturer or his agent on payment of a fee, to be fixed by the board not exceeding ten shillings and sixpence.

Copy of result of analysis.  
cf. Pure Food Act, 1905 (Vic.), s. 19.

**39.**

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

Analysis not to be referred to for trade purposes.

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

*Cost of analysis.*

**40.** (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.

Cost of analysis. cf. Principal Act, s. 83.

(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.

PART IV.

OFFENCES AND LEGAL PROCEDURE.

*Penalties.*

**41.** (1) If any person contravenes or does not comply with or is guilty of an offence against any provision of this Act or regulations made thereunder, 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.

Penalty for offence against this Act.

(2) If any 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,

Imprisonment in certain cases.

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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.

**42.** 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.

Interference with official marks or seals.

**43.** 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) retakes or attempts to retake any food, drug, or article seized or sold under this Act, or resists or attempts to prevent such seizure,

Obstruction of officer in discharge of his duties.

shall be liable to a penalty not exceeding twenty pounds.

*Forfeitures.*

**44.** (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. (2)

Forfeiture of articles of food or appliance.  
cf. Pure Food Act, 1905 (Vic.), s. 38.



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

*Legal procedure.*

**45.** 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.

**46.** 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. cf. *Ibid.* s. 21.

**47.** In any prosecution concerning any food, drug, or article taken or obtained for analysis, 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. cf. *Ibid.* s. 21.

**48.** 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. cf. *Ibid.* s. 22.

**49.** 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.

**50.** 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.

**51.** 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. cf. *Ibid.* s. 37.

**52.** 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.

**53.** (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.  
cf. *Ibid.* s. 93.

(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.

PART V.

GENERAL AND SUPPLEMENTAL.

*Miscellaneous.*

**54.** (1) If, in the opinion of the <sup>board or local authority</sup> ~~Power to~~ <sup>require</sup> ~~information~~ <sup>to be made</sup> ~~available.~~ <sup>cf. Pure Food Act, 1905 (Vic.), s. 11.</sup> ~~administering this Act~~ there is reasonable ground for suspecting that any person is in possession, for the purpose of sale or for manufacturing or preparing for sale, of any food, drug, or article, in contravention of this Act, it may require such person to produce for its inspection, or to produce to any officer authorised by it 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 <sup>board or local authority</sup> 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 made 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.

**55.** No article of food or drug 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 or drug, shall by reason only of being so sold under such name be exempt from the provisions of this Act or regulations made thereunder. <sup>Suggestive names for articles of food. cf. *Ibid.* s. 34.</sup>

**56.** (1) Where any person or any of his servants or agents has been convicted of an offence against the provisions of this Act relating to the sale of any food, <sup>Publication of names of offenders. cf. *Ibid.* s. 39.</sup> drug,

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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.

57. Nothing done bona fide by the board or local authority or by any officer or person authorised by the board or local authority for the purpose of carrying out the provisions of this Act or of any regulation made thereunder shall subject the board, local authority, officer or person aforesaid, to any personal action, liability, claim or demand whatsoever.

No personal liability. cf. Principal Act, s. 110.

Regulations.

58. (1) The board, on the recommendation of the advisory committee and with the approval of the Governor, may make regulations which may vary in their application according to time and place or the destination of the article referred to in the regulation— prescribing standards for the composition, strength, purity or quality of any food or drug, or for the nature

Regulations made on recommendation of advisory committee. cf. Pure Food Act, 1905, (Vic.), s. 41.

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- 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 or drug ;
- prohibiting in the manufacture, preparation, storing, preservation, packing, or in the delivering of any article of food or drug 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 or storage of articles of food or drug as may be specified ;
- prescribing the method of analysing any food, drug, or article submitted for analysis under this Act ;
- prescribing the methods of storing, grading, marking, packing, and exposing for retail sale of fruit and vegetables ;
- exempting any package or food or drug from any provision of this Act relating to marking or labelling ;
- 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 or of drugs that have become deteriorated or impoverished in such degree as may be specified, and of such articles of food or drugs as may be specified ;
- requiring the destruction and disposal of unsound food, and the destruction of cases and packing material which may have contained or surrounded the said food ;
- requiring

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requiring statements or labels that may be specified to be written on or attached to articles of food or drugs, 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.

**59.** (1) The Governor, on the recommendation of the <sup>board,</sup> may by proclamation apply this section and the regulations made thereunder to the classes of businesses mentioned in such proclamation carried on in connection with the manufacture, preparation, or storage for sale of food or drugs in <sup>New South Wales</sup> or in any part thereof specified in such proclamation.

Application of section to proclaimed classes of business.

The <sup>board</sup> may thereupon, with the approval of the Governor, make regulations—

- (a) providing for the registration of premises used in connection with any such business and of the persons carrying on such business thereon, and for the renewal of such registration ;
- (b) prescribing the conditions on which such registration may be granted or renewed ;
- (c) providing for the suspension or cancellation of such registration or any renewal thereof ;
- (d) prescribing the fees for such registration or renewal ; and

(e)

- (e) prohibiting the use of any such premises for any such business, or the carrying on by any person of any such business thereon, unless such premises and person are registered under the regulations.

**60.** Any regulation made in pursuance of this Act may impose any penalty not exceeding *fifty* pounds for each breach of the same. Penalties imposed by regulations.

**61.** (1) Regulations 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, have the force of law. Allowance of regulations.

(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 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.

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