

266

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1930.

A BILL

To regulate in certain respects the sale of foods for stock and poultry; and for purposes connected therewith.

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

1. (1) This Act may be cited as the "Stock Foods Act, 1930." Short title and commencement.

(2) This Act shall come into operation on a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2.

269

2. In this Act, unless the context or subject-matter otherwise indicates or requires,—

Interpretation.

“By-products” includes husks, bran, pollard, oat clippings, wheat screenings, corncobs, brewers’ grains, and materials produced from any kind of grain or seed in any process of treatment or manufacture, where the production of such material is not the primary object of such process, and any other material declared by the regulations to be a by-product.

cf. Vict. Act, No. 2,732, 1915, s. 3. Qld. Act, 10 Geo. V, No. 8 (1919), s. 2.

“Chaff” means hay or straw cut into short lengths. *Ibid.*

“Foreign ingredient” means salt, sand, shellgrit, charcoal and any other substance declared by the regulations to be a foreign ingredient, and includes any plant or part of a plant or the seed of any plant declared by the regulations to be a noxious plant.

Vict. Act, No. 2,732, 1915, s. 3.

“Hay” means any fodder plant cut before complete ripeness and dried, and from which the grain or seed has not been removed.

“Hay chaff” means chaff consisting only of hay.

“Lick” means any medicinal agent or mixture of medicinal agents with or without food material which is intended to be supplied to stock in powder or block form for the purpose of preventing or curing disease, maintaining health or improving condition, productive capacity, or capacity for work, but does not include any drug prescribed by a veterinary surgeon or any medicament or material supplied by a veterinary surgeon for an animal or bird under his professional charge, nor any drug which is intended to be administered in the form of a drench.

“Mixed chaff” means a mixture of hay chaff and straw chaff in any proportion.

“Manufactured stock food” includes—

(a) any food for stock prepared wholly or partly from any grain, nut, legume, oil, juice, or meat ;

(b)

- (b) compressed fodder other than hay ; and
- (c) any condimental patented or proprietary stock foods claimed to possess nutritive properties.

“ Package ” means anything in or by which stock food is covered, contained or packed, and when stock food is sold without any container or exterior packing includes any block, cake, or slab of stock food.

“ Prescribed ” means prescribed by this Act or the regulations.

“ Regulation ” means regulation made under this Act.

“ Sale ” includes offer, agreement, or attempt to sell, and exposing, sending, forwarding, delivering, or having in possession for sale ; and “ sell ” has a corresponding interpretation.

“ Stock ” means any horses, cattle, sheep, pigs, dogs, domestic fowls, turkeys, ducks, geese, pigeons, or birds in captivity.

“ Stock food ” includes hay, straw, chaff, grain, seeds, any manufactured stock food, by-product, or any substance declared by the regulations to be a stock food.

“ Straw ” means any dried fodder plant, from which the grain or seed has been removed in any way.

“ Straw chaff ” means chaff made from straw.

“ Vendor ” means any person who sells stock food, and includes the agent of a vendor.

3. (1) A contract of sale of chaff shall, unless written notice to the contrary effect is given by the vendor to the buyer, be presumed to be a contract for the sale of hay chaff.

Contract for sale of chaff to be deemed a contract for the sale of hay chaff, unless otherwise stated.

(2) Any person who under any contract of sale of chaff delivers chaff which is not hay chaff shall, unless he has given written notice to the buyer that the chaff is not hay chaff, be liable on summary conviction to a penalty not exceeding *twenty* pounds, and for any subsequent offence of the same nature to a penalty of not less than *ten* nor more than *fifty* pounds.

4.

4. (1) The vendor of—

- (a) any manufactured stock food ; or
- (b) any stock food consisting wholly or partly of by-products ; or
- (c) any lick

Invoice to
be given by
vendor.

shall not later than forty-eight hours after the delivery of the stock food or lick or of any part thereof, and whether payment thereof has or has not been made, deliver to the purchaser an invoice which shall contain the following particulars:—

- (i) in the case of a stock food, the materials of which it consists and the proportion of each by-product and foreign ingredient contained therein ; or
- (ii) in the case of a lick, the name and proportion of each material of which it consists.

(2) It shall not be necessary to deliver such an invoice if the particulars prescribed in subsection one of this section are legibly written on the package containing the stock food or lick, or on a label attached to the package.

(3) The statement in any invoice or on any package or label of the particulars referred to in subsection one of this section shall, notwithstanding any agreement or stipulation to the contrary, constitute a warranty by the vendor—

- (a) in the case of a stock food, that it consists solely of the materials stated and that the proportion of any by-product or foreign ingredient does not exceed the proportion stated ;
- (b) in the case of a lick, that it consists solely of the materials specified in the proportion stated.

5. Any person who—

- (a) sells hay in a bale having thereon battens of weight or size exceeding that prescribed ;
- (b) fails to comply with the provisions of section four of this Act ;
- (c) improperly tampers with any sample or part of a sample taken under this Act ;

Offences.

(d)

- (d) sells any stock food or lick—
 - (i) which contains a larger proportion or amount of any foreign ingredient than is prescribed;
 - (ii) which is falsely described on the package containing it or in any label attached thereto or in any statement or advertisement relating to the stock food or lick and made or published by the vendor;
 - (iii) which is below the prescribed standard;
 - (iv) which contains any foreign ingredient prohibited by the regulations;
 - (v) which on the package containing it or in the label attached thereto or in any statement or advertisement relating thereto made or published by the vendor is claimed to have nutritive or medicinal properties which it does not possess

shall be liable on summary conviction for a first offence to a penalty not exceeding *twenty* pounds, and for a second offence of the same nature to a penalty of not less than *ten* or more than *fifty* pounds.

6. (1) The Governor may appoint inspectors for the purposes of this Act.

Appointment of inspectors and analysts

(2) The Minister may by notification published in the *Gazette* authorise the persons named in the notification to be analysts for the purposes of this Act.

(3) The Minister may by writing under his hand authorise any officer of the Public Service or member of the police force to exercise, either generally or in any particular case or class of cases or for any specified place, all or any of the powers, authorities, duties and functions conferred or imposed on an inspector by this Act.

Any person so authorised shall, within the scope of his authority, be deemed to be an inspector for the purposes of this Act.

7. (1) Any inspector may enter and inspect any place which he has reasonable ground for believing is kept or used for the sale, storage, delivery, conveyance, manufacture or preparation for sale of any article used,

Entry and inspection of place and articles therein.

or

or which he has reasonable grounds for believing is intended to be used as a stock food or lick, and may inspect any such article.

(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) An inspector may inspect any article used or which he has reasonable ground for believing it is intended to be used as a stock food or lick, 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) An inspector may—

- (a) examine and open any such article or any package in any such place, or conveyed as aforesaid ; Examination, seizure, and destruction of articles.
- (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 unfit for use as a stock food or lick, and any package enclosing or containing the same.

(5) 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 aforesaid should not be forfeited and destroyed. Summons.

(6) 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 that the article Proceedings upon such summons.

article is used or is intended to be sold or used as a stock food or lick, and was unfit for such use, 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.

(7) In every such proceeding the presence of any stock food or lick in any place shall be evidence that such stock food or lick was intended to be sold or used as a stock food or lick. Evidence.

8. (1) On payment or tender to any person selling or manufacturing or preparing for sale any stock food or lick, or to his agent or servant, or to any person in charge of the stock food or lick, of the current market value thereof or at the rate of payment prescribed, an inspector may demand and select and take or obtain samples of the said stock food or lick as required by him for the purposes of this Act. Power to demand, select, and take samples.

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

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

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

9. (1) The person purchasing or the inspector taking or obtaining any stock food or lick 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 stock food or lick. Manner in which sample may be dealt with.

(2)

275

Stock Foods.

(2) The said person or inspector shall divide any such stock food or lick 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.

10. Where a person purchases or an inspector takes or obtains a sample of any stock food or lick 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. Forwarding of sample by post.

Any charge for postage or carriage shall be deemed one of the expenses of the analysis.

11. (1) Any analyst analysing any stock food, lick, 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.

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

12. Where any method of analysis has been prescribed for the analysis of any stock food, lick, 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.

13.

13. (1) Where the prosecutor, in any case under this Act, has caused the stock food, lick, or article forming the subject of prosecution to be analysed by an analyst, the court may, in the case of a conviction, assess the reasonable expense of and attending such analysis, and award the same against the defendant as part of the costs of the prosecution :

Costs of analysis.

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

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

14. A copy of the result of any analysis of any stock food, lick, or article taken or obtained by the person purchasing or an inspector shall, on demand, be supplied by the Minister to the person from whom the stock food, lick or article was taken or obtained, and to the manufacturer or his agent in New South Wales on payment of a fee, to be fixed by the regulations, not exceeding ten shillings and sixpence.

Copy of result of analysis.

15. 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.

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

Penalty for offence against this Act.

17.

17. 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 stock food, lick, 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.

18. Any person who—

- (a) assaults, intimidates, obstructs, or attempts to obstruct in any manner any inspector in the exercise of his powers or in the discharge of his duties under this Act or the regulations; 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 inspector in the exercise of his powers or in the discharge of his duties as aforesaid; or
 - (d) retakes or attempts to retake any stock food, lick, or article seized or sold under this Act, or resists or attempts to prevent such seizure,
- shall be liable to a penalty not exceeding *twenty* pounds.

Obstruction of officer in discharge of his duties.

19. Any person who, on being required by an inspector to state the name and address of the person from whom he purchased any stock food or lick, or to produce for inspection any invoice, label, or statement in his possession relating to the stock food or lick, or any package in his possession which has contained any stock food or lick, refuses to give such information or produce the invoice, label, statement, or package or who wilfully furnishes any false or misleading information relating to a stock food or lick, shall be liable upon summary conviction to a penalty not exceeding *twenty* pounds.

Power to demand information. cf. Vict. Act, No. 2,732, 1915, s. 16.

20. (1) In the case of any conviction under this Act, any stock food, lick, 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

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

any

278

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

21. 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.

22. Where an offence against any of the provisions of this Act or of the regulations is committed by a corporation, the directors and every officer concerned in the management of the corporation shall be liable to the punishment provided by this Act for the offence unless the person charged proves that the offence was committed without his knowledge or connivance and without any negligence on his part. Offence by corporation.

23. (1) 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. Pure Food Act (Vic.), s. 22.

(2) When a copy of such certificate has been served upon a defendant who is charged with the commission of an offence against the provisions of this Act, it shall not be competent for the defendant upon the hearing of the charge to dispute the accuracy of any statement contained in the certificate, unless within seven clear days after service upon him of the copy of the certificate he has notified the Under Secretary of the Department of Agriculture by letter forwarded by registered post that the accuracy of the certificate will be disputed at the hearing of the charge.

(3) Service of the copy of a certificate may be proved in the same manner as service of the summons.

24. Where any sample of any article of stock food or lick for sale procured by any inspector has been proved by analysis to have been falsely described, and an inspector 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 Possession prima facie evidence of contravention of Act.

such article shall be deemed prima facie evidence that the same is in his possession for sale in contravention of this Act.

25. 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 inspector 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.

26. Nothing contained in this Act shall interfere with any right or remedy by civil process which any person might have had if this Act had not been passed. Saving.

27. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or authorised to be prescribed or which are necessary or convenient to be prescribed for giving effect to this Act, and in particular and without limiting the generality of the foregoing power, the Governor may— Regulations.

- (a) prescribe what are foreign ingredients in any specified stock food;
- (b) prescribe the proportion or amount of any specified foreign ingredient which may be contained in any kind of stock food;
- (c) prescribe the weight or size of battens which may be used on bales of hay;
- (d) prescribe standard qualities for stock foods or licks specified in the regulations;
- (e) prescribe forms for the purposes of this Act;
- (f) prescribe the manner in which the particulars relating to a stock food or lick referred to in section four of this Act shall be written on the package containing it or on a label attached to the package and the manner in which a label containing the particulars shall be attached to a package;
- (g) prescribe the powers and duties of inspectors and analysts under this Act.

(2) The regulations may impose a penalty not exceeding *fifty* pounds for any breach thereof.

(3) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication, or from a later date specified in the regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof, if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution, of which notice has been given at any time within fifteen sitting days after the regulations have been laid before that House, disallowing any regulation or part thereof, the regulation or part shall thereupon cease to have effect.
