

PUBLIC HEALTH AMENDMENT ACT 1984

No. 100 of 1984

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PUBLIC HEALTH ACT (NO. 2)
1976



PUBLIC HEALTH AMENDMENT ACT 1984

No. 100 of 1984

AN ACT to amend the Public Health Act 1962.

[Royal Assent 12 December 1984]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Public Health Amendment Act* Short title. 1984.

2—(1) This section and sections 1, 3, 15, and 17 shall commence Commencement. on the day on which this Act receives the royal assent.

(2) Sections 4, 5, 6, 7, 8, 9, 11, and 16 shall commence on the day on which the *Local Government Amendment (Health Surveyors) Act* 1984 commences.

(3) Sections 10, 12, 13, 14, 18, 19, and Schedule 1 shall commence on such day as may be fixed by proclamation.

(4) Section 20 and Schedule 2 shall commence on such day as may be fixed by proclamation.

Principal Act.

3—In this Act, the *Public Health Act 1962** is referred to as the Principal Act.

Amendment of section 6 of Principal Act (Delegation of powers).

4—(1) Section 6 (5) of the Principal Act is amended by omitting “inspector” and substituting “surveyor”.

(2) Section 6 (5A) of the Principal Act is amended by omitting “inspector”, wherever occurring, and substituting “surveyor”.

(3) Section 6 (5B) of the Principal Act is amended by omitting “inspector”, wherever occurring, and substituting “surveyor”.

Amendment of section 9 of Principal Act (Powers of officers).

5—Section 9 (1) of the Principal Act is amended by omitting “inspectors” and substituting “surveyors”.

Amendment of section 10 of Principal Act (Health officer to have powers of municipal health surveyors).

6—Section 10 of the Principal Act is amended by omitting “inspector” and substituting “surveyor”.

Amendment of section 22 of Principal Act (Power to enter on lands and do works).

7—Section 22 of the Principal Act is amended by omitting “inspector” and substituting “surveyor”.

Amendment of section 32 of Principal Act (Penalty for selling infected things or letting house where infected person is lodging).

8—Section 32 (1) (b) of the Principal Act is amended by omitting “inspector” and substituting “surveyor”.

Amendment of section 58 of Principal Act (Temporary erections).

9—Section 58 (b) (iv) of the Principal Act is amended by omitting “inspector” and substituting “surveyor”.

Amendment of section 62 of Principal Act (Interpretation).

10—Section 62 of the Principal Act is amended as follows:—

(a) by inserting “(1)” before “In”;

(b) by omitting the definition of “advertise” and substituting the following definition:—

“advertisement” means—

(a) any words, whether written or spoken;

* No. 75 of 1962. Subsequently amended by No. 55 of 1965, No. 35 of 1966, Nos. 86 and 87 of 1968, No. 37 of 1970, Nos. 35, 54, and 75 of 1973, No. 72 of 1974, Nos. 16 and 21 of 1976, No. 46 of 1977, No. 63 of 1978, No. 9 of 1982, and No. 46 of 1983.

- (b) a pictorial representation or design; or
 - (c) any other representation by any means whatever,
used, or apparently used, to promote directly or indirectly the sale or disposal of any food; and “ to advertise ” has a corresponding meaning;
- (c) by omitting the definitions of “ animal ”, “ appliance ”, and “ article ” and substituting the following definitions:—
- “ animal ” includes any bird, fish, crustacean, mollusc, and reptile;
 - “ appliance ” means the whole or any part of any utensil, machinery, instrument, apparatus, or other thing used, or capable of being used, in or for the preparing, packing, storing, handling, conveying, serving, selling, or supplying of any food, and includes any utensil, machinery, instrument, apparatus, and other thing used, or capable of being used, in the cleaning of any other appliance;
 - “ article ” means—
 - (a) food;
 - (b) an appliance;
 - (c) a package;
 - (d) material used in packing food;
 - (e) the whole or any part of anything used for or in connection with the sale or conveying for sale of any food; or
 - (f) any labelling or advertising material used or capable of being used in connection with the sale of any food;
- (d) by omitting the definition of “ food ” or “ article of food ” and substituting the following definition:—
- “ food ” or “ article of food ” means a substance or matter ordinarily consumed or intended to be consumed by man and includes—
 - (a) any drink;
 - (b) chewing gum;

(c) any ingredient, food additive, or other substance that enters into, or is capable of entering into, or is used in, the composition or preparation of food; and

(d) any other substance for the time being declared by order under subsection (2) to be food,

but does not include a therapeutic substance within the meaning of the *Therapeutic Goods and Cosmetics Act 1976*;

(e) by omitting the definition of “ package ” and substituting the following definition:—

“ package ” means anything in or by which any food for sale is wholly or partly cased, covered, enclosed, contained, or packed; and “ to pack ” has a corresponding meaning;

(f) by inserting the following definition after the definition of “ prohibited article ”:—

“ publish ” means—

(a) to insert in a newspaper or other publication;

(b) to send to a person by post or otherwise;

(c) to deliver to a person or leave on premises in the occupation of any person;

(d) to disseminate by broadcast, telecast, or a projected image, whether moving or still; or

(e) to bring to the notice of the public in any other manner;

(g) by omitting “ for human consumption or use ” from the definition of “ sell ” and substituting “ for consumption or use by man ”;

(h) by omitting “ and (9) ” from the definition of “ this Part ” and substituting “, (9), (9A), (9B), (9BA), (9BB), and (11) ”;

(i) by adding the following subsections as subsections (2), (3), and (4) of that section:—

(2) The Governor may, by order, declare to be food a substance consumed by man or represented as being for consumption by man.

(3) This Part applies—

(a) in relation to any food offered as a prize or reward, whether in connection with an entertainment or for the purpose of advertisement or in furtherance of a trade or business or otherwise, as if the food were, or had been, exposed for sale by each person offering the prize or reward;

(b) in relation to any food given away for the purpose of advertisement, or in furtherance of a trade or business, as if the food were, or had been, sold by the person giving away the food; and

(c) in relation to any food which is exposed or deposited in any premises or place for the purposes of being so offered as a prize or reward or given away, as if the food were, or had been, exposed for sale by the occupier of the premises or place.

(4) Where in section 142 there is a reference to an expression that is defined in this section, that reference shall be read as a reference to that expression as so defined.

11—Section 66 of the Principal Act is amended by omitting “health inspector” and substituting “health surveyor”.

Amendment of section 66 of Principal Act (Health officers, &c., to have powers of inspectors).

12—Section 69 of the Principal Act is repealed and the following section is substituted:—

Substitution of section 69 of Principal Act.

69—(1) Subject to subsections (3) and (4), a person shall not sell a package of food unless the package bears, or has attached to it, a label setting out in such manner as is prescribed the following particulars:—

Labelling of packages.

(a) where there is a standard prescribed for the food and—

- (i) a name has been prescribed to be used in relation to that food, the prescribed name; or
 - (ii) an appropriate designation, where such a name has not been so prescribed;
- (b) the name and business address of the manufacturer, the packer of the contents of the package, or the vendor;
- (c) such other particulars as may be prescribed.

Penalty: \$2 000.

(2) Subject to subsection (3), a person shall not sell a food other than packaged food unless it is labelled in accordance with the regulations.

Penalty: \$2 000.

(3) The regulations may prescribe any food or kind, class, or description of food to which all or any of the provisions of subsection (1) or the provisions of subsection (2) do not apply or any circumstances in which all or any of the provisions of subsection (1) or the provisions of subsection (2) do not apply.

(4) Unless otherwise specified in regulations in relation to a particular type of food, subsection (1) does not apply where the food was packed before or at the time of sale and in the presence of the purchaser.

(5) For the purposes of this section, “appropriate designation”, in relation to any food, means a name or description, or a name and description, sufficiently specific in each case to indicate the true nature of the food to which it is applied.

13—After section 69 of the Principal Act, the following section is inserted:—

69A—(1) The regulations may require that the label required by section 69 (1) shall also set out all or any of the following particulars in respect of the food to which it relates:—

- (a) a statement of ingredients of that food in such detail as is prescribed;
- (b) the place of manufacture of that food;

Insertion in
Principal Act
of new
section 69A.

Further
labelling
provisions.

- (c) the country of origin of that food;
- (d) in the manner prescribed, a date marking in respect of that food.

(2) For the purposes of subsection (1) (d), the regulations may, in relation to a particular type of food, specify the period from the date of manufacture or packing within which that type of food should be sold or consumed.

(3) Regulations made for the purposes of subsection (1) may apply to all food or to a particular food or kind, class, or description of food and may make different provision with respect to any food or kind, class, or description of food.

(4) Where regulations for the purposes of subsection (1) are in force, a person shall not sell a package of food unless the package bears, or has attached to it, a label that complies with those regulations.

Penalty: \$2 000.

(5) A person shall not sell a package of food that bears, or has attached to it, a label setting out a statement of ingredients present in the food unless the statement sets out those ingredients—

- (a) in the manner prescribed; or
- (b) where no manner is prescribed, in descending order of their relative proportion by weight.

Penalty: \$2 000.

(6) Except as otherwise provided in the regulations, a person who sells any food that is in a package that bears, or has attached to it, a label setting out a statement in relation to any particular ingredient or ingredients in the food is guilty of an offence unless the proportion by weight in which the ingredient or ingredients is or are present in the food is also set out in the statement.

(7) A person who sells an article as food for animals or that is described in any label or advertisement as food for animals is guilty of an offence where the article is described on the package in which it is contained, or on the label or advertisement or otherwise, as suitable or safe for consumption by man unless the article is sold, prepared, and packed in accordance with this Part.

(8) For the purposes of subsection (7), the definition of “sale” in section 62 (1) applies to the sale of an article as food for animals as if such a sale were the sale of an article for consumption or use by man.

(9) A person who is guilty of an offence under subsection (6) or (7) is liable on summary conviction to a penalty not exceeding \$2 000.

14—Sections 90, 91, and 92 of the Principal Act are repealed and the following sections are substituted:—

Substitution of sections 90, 91, and 92, and insertion of sections 92A, 92B, 92c, 92D, 92E, and 92F, of Principal Act.

Prohibition on sale of certain food.

90—A person who sells any food which—

(a) is unfit for consumption by man;

(b) is adulterated; or

(c) is damaged, deteriorated, or perished,

is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$2 500.

Prohibition on preparation of certain food.

91—A person who prepares for sale any food which—

(a) is unfit for consumption by man;

(b) is adulterated; or

(c) is damaged, deteriorated, or perished,

is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$5 000.

Prohibition on packaging of certain food.

92—A person who packs for sale any food which—

(a) is unfit for consumption by man;

(b) is adulterated; or

(c) is damaged, deteriorated, or perished,

is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$2 500.

Prohibition on preparation of food not complying with prescribed standard.

92A—(1) A person who prepares for sale any food for which there is a standard prescribed is guilty of an offence unless the food complies with that standard.

(2) A person who is guilty of an offence under subsection (1) is liable on summary conviction to a penalty not exceeding \$3 000.

92B—(1) A person who sells any food which bears or has attached to it, or is contained in a package which bears or has attached to it, a name prescribed for a food for which there is a standard prescribed, or which is otherwise designated or represented as being a food for which a standard is prescribed, is guilty of an offence unless the food complies with the prescribed standard. False labelling of certain food.

(2) A person who is guilty of an offence under subsection (1) is liable on summary conviction to a penalty not exceeding \$2 000.

92C—(1) A person who sells any food which is not of— Protection for purchasers of food.

- (a) the nature;
- (b) the substance; or
- (c) the quality,

of the food demanded by the purchaser is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$2 000.

(2) A person who sells any food which does not comply with the standard prescribed in the regulations for the food demanded by the purchaser is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$2 000.

(3) Where a person demands any food by a name prescribed in the regulations for a food for which there is a standard so prescribed, he shall be deemed to have demanded food which complies with that standard.

92D—(1) A person who packs, or labels, for sale any food in a manner which is false or misleading in any particular or deceptive is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$3 000. False packaging and labelling.

(2) Any food which is packed, or labelled, for sale contrary to, or not in compliance with, any other provision of this Part shall be deemed to be packed or labelled contrary to subsection (1).

(3) A person who sells any food which has been packed or labelled contrary to subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$2 500.

False
advertising.

92E—(1) Subject to subsection (3), a person who, for the purpose of effecting or promoting the sale of any food, publishes or causes to be published an advertisement which is false or misleading in any particular or deceptive is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$3 000.

(2) In any proceedings under subsection (1) against the manufacturer, producer, or importer of any food, the onus of proof is on the defendant that he did not publish the advertisement or did not cause the advertisement to be published.

(3) In any proceedings under subsection (1), it is a defence for the defendant to prove either—

(a) that he did not know, and could not with reasonable diligence have ascertained, that the advertisement was of such a character as is described in that subsection; or

(b) that, being a person whose business it is to publish or to arrange for the publication of advertisements, he received the advertisement for publication in the ordinary course of business and did not himself make, or cause to be made, any material alteration in the substance of that advertisement.

Despatch of
certain food.

92F—A person who, in or from Tasmania, sells any food which is to be despatched outside Tasmania and which is—

(a) food such as is mentioned in section 90; or

(b) food which is packed or labelled contrary to, or not in compliance with, a provision of this Part,

whether the actual sale is effected or is to become effective in Tasmania or elsewhere, is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$2 500.

Amendment of
section 116 of
Principal Act
(Inspection of
animals, places,
and articles).

15—(1) Section 116 (1) of the Principal Act is amended by inserting “ premises or ” before “ place ”.

(2) Section 116 of the Principal Act is further amended by omitting subsection (2) and substituting the following subsections:—

(2) An inspector may, at any reasonable time in the day or night, enter and remain in any premises or place which he has reasonable grounds for believing is kept or used for the sale, preparation for sale, storage, delivery, conveyance, or manufacture of any article.

(2A) Where an inspector enters any premises or place as mentioned in subsection (2), he may inspect—

- (a) those premises or that place;
- (b) any article, in or on those premises or that place, which he has reasonable grounds for believing to be an article used, or to be sold or used, as a food; and
- (c) any prohibited article in or on those premises or that place.

(3) Section 116 (4) (d) of the Principal Act is amended by omitting “ or appears to him to be ” and substituting “ or which he has reasonable grounds for believing to be ”.

16—Section 131 of the Principal Act is amended by omitting “ inspector ” and substituting “ surveyor ”.

Amendment of section 131 of Principal Act (Name of owner or occupier to be disclosed).

17—After section 134 of the Principal Act, the following section is inserted:—

Insertion in Principal Act of new section 134A.

134A—(1) Where in this Act there is a reference to an amount in relation to a penalty for a contravention of, or failure to comply with, a provision of this Act, the Governor may make regulations amending that amount by substituting for it the amount specified in the regulations.

Power of Governor to make regulations altering amounts in relation to penalties in Act.

(2) In subsection (1), “ this Act ” does not include the regulations made under this Act.

18—(1) Section 142 (9) of the Principal Act is amended as follows:—

Amendment of section 142 of Principal Act (Regulations).

(a) by inserting after paragraph (c) the following paragraphs:—

- (ca) prohibit the sale of food generally, or food of a specified kind, class, or description, containing a micro-organism of a specified kind or containing a micro-organism of any specified kind in excess of a specified number in a specified quantity;

- (*cb*) require laboratory and testing facilities to be provided at premises where any food is prepared for sale, prescribe procedures and facilities to be used for the testing and examination of any such food, and require the notification of the results of any such test and examination;
- (*b*) by omitting paragraph (*da*);
- (*c*) by inserting the following paragraph after paragraph (*f*):—
 - (*fa*) require notices containing specified words, or words having the same or a similar effect, or specified pictorial representations and designs to be affixed to vehicles used in the selling, preparing, packing, storing, handling, serving, supplying, or conveying for sale of food, or food of a specified kind, class, or description or prohibit the use in any such notices of specified words, words having the same or a similar effect, or specified pictorial representations and designs;
- (*d*) by omitting paragraph (*b*) and substituting the following paragraphs:—
 - (*b*) exempt any food, or any package of food, of any specified kind, class, or description from any provision of Part VIII or of the regulations relating to labelling;
 - (*ba*) prohibit any mode of packing food;
- (*e*) by omitting paragraph (*k*) and substituting the following paragraph:—
 - (*k*) prohibit the sale and provide for the recalling, destruction, or denaturation of any food which is damaged, deteriorated, impoverished, contaminated, or perished, or otherwise injurious to health within the meaning of Part VIII or not in accordance with the regulations made under or for the purposes of that Part and specify circumstances in which any such food shall be destroyed or denatured;

(f) by omitting paragraph (*m*) and substituting the following paragraph:—

(*m*) prescribe the mode of labelling food generally or food of a specified kind, class, or description or packages of food generally or food of a specified kind, class, or description, the forms or kinds of labels, the matter to be contained in labels (including specified words, statements, expressions, pictorial representations or designs of any specified kind), the size, style, or colour of any such matter or the nature or colour of the background on which it appears, or prohibit in labels the use of specified words, or words having the same or similar effect, or representations or designs of a similar nature;

(g) by inserting the following paragraphs after paragraph (*n*):—

(*na*) require advertisements relating to food or to food of a specified kind, class, or description to contain specified words, or specified pictorial representations or designs, or prohibit in advertisements the use of specified words, or words having the same or a similar effect, or representations or designs of a similar nature;

(*nb*) prescribe the minimum size of, and the packing required for, an article other than food which is included in a package of food;

(*nc*) require that where any food, or any food of a particular kind, class, or description which is not contained in a package is displayed for sale, it shall be displayed in conjunction with a notice or labels bearing the information required by or under this Act;

(2) Section 142 of the Principal Act is further amended by inserting after subsection (9B) the following subsections:—

(9BA) Regulations made under this section for the purposes of Part VIII may authorize the Minister to exempt from the operation of the regulations, either wholly or to a prescribed extent, and unconditionally or subject to such conditions as the Minister may determine—

- (a) any particular premises or place, any premises or place of a specified kind, class, or description, or any premises or place used for a specified purpose, or in specified circumstances; and
- (b) any food, package of food, or other specified thing of a specified kind, class, or description, or any food, package of food, or specified thing sold or used for a specified purpose, or in specified circumstances.

(9BB) Regulations made under this section for the purposes of Part VIII may—

- (a) be made subject to such conditions, or be made so as to apply differently according to such factors, as may be specified in the regulations or according to such limitations or restrictions, whether as to time or circumstance or otherwise, as may be so specified; and
- (b) adopt, either wholly or in part, and either specifically or by reference and with or without modification, any of the regulations, standards, rules, codes, recommendations, specifications, methods, or drawings prescribed, published, or issued by any authority or body specified in the regulations, whether the regulation, standard, rule, code, recommendation, specification, method, or drawing is prescribed, published, or issued before or after the commencement of section 18 of the *Public Health Amendment Act 1984*.

(9BC) A reference in subsection (9BB) (b) to a regulation, standard, rule, code, recommendation, specification, method, or drawing includes a reference to an addition to, or amendment of, that regulation, standard, rule, code, recommendation, specification, method, or drawing, whether the addition or amendment is prescribed, published, or issued before or after the commencement of section 18 of the *Public Health Amendment Act 1984*.

(3) Section 142 of the Principal Act is amended by omitting subsection (11) and substituting the following subsection:—

(11) The regulations may provide that it is an offence, punishable on summary conviction, for a person to contravene, or fail to comply with, any of the regulations and may provide in respect of any such offence—

- (a) in relation to any of the regulations for the purposes of Part VIII, for the imposition of a penalty not exceeding \$2 500; or
- (b) in relation to any of the other regulations under this Act, for the imposition of a penalty not exceeding \$200 and, in the case of a continuing offence, a further penalty not exceeding \$20 for each day during which the offence continues.

19—The Principal Act is amended as set out in Schedule 1.

Consequential
amendments of
Principal Act.

20—The *Public Health Act (No. 2) 1976** is amended as set out in Schedule 2.

Consequential
amendments of
*Public Health
Act (No. 2)
1976.*

* No. 21 of 1976. Subsequently amended by No. 99 of 1982.

SCHEDULE 1

Section 19

CONSEQUENTIAL AMENDMENTS OF PRINCIPAL ACT

COLUMN 1 Provisions of Principal Act amended	COLUMN 2 Amendment
Section 78	Omit " food, drug," (twice occurring), substitute " drug ".
Section 78A (1)	(a) Omit " food, drug," (twice occurring), substitute " drug "; (b) Omit " that food or drug ", substitute " that drug or article ".
Section 78A (2)	Omit " food, drug," substitute " drug ".
Section 79 (3)	Omit ", drug, or article " (twice occurring), substitute " or drug ".
Section 80	Omit " food, drug," substitute " drug ".
Section 83 (1)	Omit " food, drug," substitute " drug ".
Section 84 (1)	Omit " food, drug," (twice occurring), substitute " drug ".
Section 102	Omit " food, drug, article, or package," substitute " drug or article ".
Section 102A	Omit " food, drug," (wherever occurring), substitute " drug ".
Section 103 (1)	Omit " food, drug," substitute " drug ".
Section 105	Omit " food, drug," substitute " drug ".
Section 106	Omit " food, drug," substitute " drug ".
Section 107	Omit " food, drug," (wherever occurring), substitute " drug ".
Section 108	Omit " of food ".
Section 111 (1)	Omit " food, drug," (twice occurring), substitute " drug ".
Section 112 (1)	Omit " food, drug," (twice occurring), substitute " drug ".
Section 117 (1)	Omit " food, drug," (twice occurring), substitute " drug ".
Section 142 (9) (g)	Omit " food, drug," substitute " drug ".
Section 142 (9) (t)	Omit " food, drugs," substitute " drugs ".

SCHEDULE 2

Section 20

CONSEQUENTIAL AMENDMENTS OF PUBLIC HEALTH ACT
(No. 2) 1976

Part III of the Schedule is amended as follows:—

(a) by omitting the items relating to sections 78, 79, 80, 83, and 84 of the Principal Act and substituting the following items:—

- 78 Omit “ drug or ” (wherever occurring).
- 78A From subsections (1) and (2) omit “ drug or ” (wherever occurring).
- 79 From subsection (3) omit “ or drug ” (wherever occurring).
- 80 Omit “ drug or ”.
- 83 From subsection (1) omit “ drug or ”.
- 84 From subsection (1) omit “ drug or ” (wherever occurring).

(b) by omitting the items relating to sections 102A, 103, 105, 106, 107, 111, and 112 and substituting the following items:—

- 102 Omit “ drug or ”.
- 102A Omit “ drug or ” (wherever occurring).
- 103 From subsection (1) omit “ drug or ”.
- 105 Omit “ drug or ”.
- 106 Omit “ drug or ”.
- 107 Omit “ drug or ” (wherever occurring).
- 111 From subsection (1) omit “ drug or ” (wherever occurring).
- 112 From subsection (1) omit “ drug or ” (wherever occurring).

(c) by omitting the item relating to section 117 and substituting the following item:—

- 117 From subsection (1) omit “ drug or ” (wherever occurring).

(d) by omitting from the item relating to section 142 of the Principal Act “ From paragraph (g) of that subsection omit ‘ drug, ’ ” and substituting “ From paragraph (g) of that subsection omit ‘ drug or ’ ”;

(e) by omitting from that item “ From paragraph (t) of that subsection omit ‘ drugs, ’ ” and substituting “ From paragraph (t) of that subsection omit ‘ drugs or ’ ”.

