

# THE FOOD AND DRUGS ACT, 1910.

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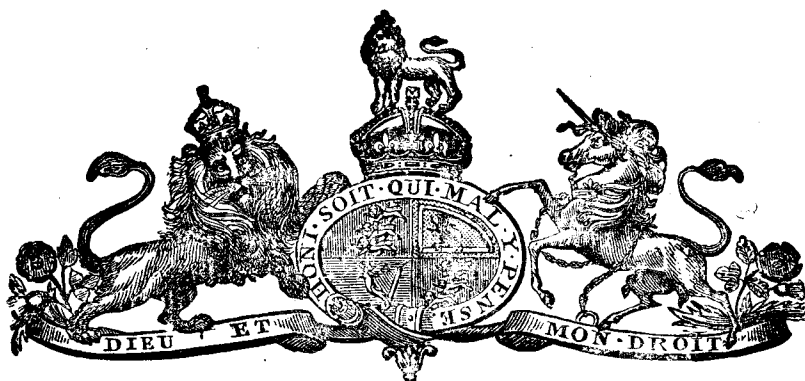
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# TASMANIA



1910.

ANNO PRIMO

## GEORGII V. REGIS,

### No. 22.

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AN ACT to make Better Provision for the  
Regulation of the Sale of Food and Drugs,  
and for other purposes. [11 *November*, 1910.]

A.D.  
1910.

**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 :—

### PART I.

#### PRELIMINARY.

**1**—(1.) This Act may be cited as “The Food and Drugs Act, 1910,” and shall be construed with “The Public Health Act, 1903” (in this Act referred to as the Principal Act), and any amendment thereof.

Short title and construction.  
3 Ed. VII.  
No. 37.

(2.) This Act shall come into force on the First day of *March*, One thousand nine hundred and eleven.

Commencement.

**2** This Act is divided into parts, as follow :—

Part I.—Preliminary. (Sections 1 to 5.)

Part II.—Administration. (Sections 6 to 12.)

Division of Act into parts.

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- Part III.—Food and Drugs. (Sections 13 to 28.)  
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*Repeals.*

Repeal.

- 3 Parts XI. and XV. of the Principal Act are hereby repealed.

*Definitions.*

Interpretation.

“Act.”

“Appliance.”

“Analyst.”

“Animal.”

“Article.”

“Authorised.”

“Chief Health  
Officer.”

“Council.”

“Drug.”

“Food” or “article  
of food.”

“Inspector.”

“Local  
authority.”

“Package.”

“Place.”

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

“Act” includes regulations :

“Appliance” includes the whole or any part of any utensil, machinery, instrument, apparatus, or article used or intended for use in or for the making, keeping, preparing, supplying, or administering of any food, and also includes any instrument or contrivance which is held out to any person or to the public as of use for curative purposes :

“Analyst” means an analyst appointed under this Act :

“Animal” means and includes mammal, fish, fowl, crustacean, mollusc, and all animals used as food :

“Article” includes any substance, compound, or appliance :

“Authorised” means authorised either generally or specially in writing by the Chief Health Officer :

“Chief Health Officer” means the person who for the time being holds the office of Chief Health Officer under the Principal Act :

“Council” means council of a city or municipality :

“Drug” means any substance or mixture or composition of substances used as a medicine by man, whether internally or externally, and includes soaps, dusting powders, dentifrice, essences, unguents, vaccines, serums, anti-toxins, narcotics, and anæsthetics used by man ; and also disinfectants, deodorants, cosmetics, hair dyes, germicides, antiseptics, and preservatives used for any purpose :

“Food” or “article of food” means any article used for food or drink by man, and includes infant foods, confectionery, condiments, and every article that enters into or is used in the composition or preparation of food, and any spices, flavouring substances, essences, and colouring matters or stains so used :

“Inspector” means any inspector appointed under this Act, and includes the Chief Inspector :

“Local authority” means a local authority within the meaning of “The Public Health Act, 1903,” that is to say, the municipal council of a city or municipality :

“Package” includes anything in or by which goods for carriage or for sale are cased, covered, enclosed, contained, or packed :

“Place” includes any booth, house, premises, or building :

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- “ Prescribed ” means prescribed by this Act or the regulations : A.D. 1910.
- “ 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 :  
 “ Prescribed.”  
 “ Prohibited article.”
- “ Regulation ” means regulation made under this Act : “ Regulation.”
- “ Retail trades ” shall mean trading with the consumers : “ Retail trades.”
- “ Selling,” “ sale,” and “ sold ” are to be construed in relation to the definition of the expression “ to sell :” “ Sale.”
- “ To advertise ” means to publish in a newspaper or public print circulating in this State, or to publish by distributing through the post-office, or otherwise, handbills, circulars, posters, or other written or printed matter : “ To advertise.”
- “ To sell ” includes to barter, and also includes to offer or attempt to sell, or receive for sale, or have in possession for sale, or expose for sale, or send forward or deliver for sale, or cause or suffer or allow to be sold, offered, or exposed for sale, but refers only to selling for consumption or use by man. “ To sell.”

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

- i. 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 which in any other manner operates or may operate to the prejudice or disadvantage of the purchaser or consumer : or
- ii. 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
- iii. When, either wholly or in part, it does not comply with a standard therefor prescribed by any regulation : or
- iv. When it contains any substance prohibited by the regulations : or
- v. 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
- vi. When it is mixed, coloured, powdered, coated, or stained in a manner whereby damage or inferiority may be concealed : or
- vii. 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
- viii. When it is the product of a diseased animal, or of one which has died otherwise than by slaughter : or
- ix. When it is damaged, deteriorated, or perished : or

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- x. When any valuable constituent of the article has been wholly or in part abstracted : or
- xi. When it is in any package, and the contents of the package as originally put up have been removed in whole or in part and other contents have been placed in such package, or if it fails to bear on the package, or on a label attached thereto, a statement of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substances contained therein, or any other substance specified by the regulations as necessary to be so stated : or
- xii. 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 : or
- xiii. When it is in package form and the package, or any label attached thereto, bears a statement, design, or device regarding such article of food or drug, or the ingredients or substance contained therein, which is false or misleading in any particular.

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

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

**PART II.****ADMINISTRATION.**

Department of  
Public Health to  
administer Act.

**6** The Department of Public Health constituted by the Principal Act is hereby charged with the administration and enforcement of this Act throughout the State.

Officers to be  
appointed under  
this Act.

**7** The Governor may appoint a chief inspector of food and drugs and inspectors of food and drugs, who shall act under the Chief Health Officer (or in the case of an inspector being a member of the police force, under the direction of the Commissioner of Police); and every such inspector shall have and may exercise throughout the State all the powers and authorities of an inspector under this Act.

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- 8**—(1.) Any local authority may, and when required so to do by the Chief Health Officer shall, appoint one or more inspectors of food and drugs; and every such inspector so appointed shall have and may exercise, under the direction and control of and within the district of the local authority by which he is appointed, all the powers and authorities of an inspector under this Act. A.D. 1910.  
Appointment by local authority of inspector.
- (2.) Any Two or more local authorities may appoint the same person as inspector of food and drugs.
- (3.) No such appointment or exercise of power or authority shall be deemed in any way to limit the powers and authorities by virtue of this Act exercisable throughout the State by the Department of Public Health or its inspectors or officers.
- 9** Every officer of health appointed under "The Public Health Act, 1903," or any Act amending or substituted for that Act, shall have all the powers and authorities of an inspector under this Act in the district for which he is appointed. Officer of health to have powers of inspector.
- 10** Every inspector under this Act shall have all the powers and authorities of an inspector under "The Sale of Bread Act, 1896," or any Act amending the same or substituted therefor. Inspectors' powers under "Bread Act."  
60 Vict. No. 30.
- 11**—(1.) The Governor may appoint persons possessing competent knowledge to be analysts, and may fix the amount of their fees or their remuneration and allowances for expenses; and any such amount may be defrayed out of moneys from time to time appropriated by Parliament for the purpose: Provided that no person shall be appointed an analyst who is directly or indirectly engaged or interested in the manufacture or sale of any food or drug. Appointment of analysts.
- (2.) Notice shall be published in the "Gazette," whenever such appointment is made, stating the residence, place of abode, or laboratory of the person appointed.
- (3.) Every analyst shall, on or before the Thirty-first day of *July* in every year, report to the Chief Health Officer the number of articles analysed by him under this Act during the preceding period of Twelve months ending the Thirtieth day of *June*, and shall specify the result of each analysis.
- (4.) The Government Analyst shall have and exercise throughout the State all the powers and authorities of an analyst under this Act.
- 12** The expenses of administering and enforcing this Act, where incurred by the Department of Public Health, shall be defrayed out of moneys from time to time appropriated by Parliament for the purpose, and where incurred by any local authority or its inspectors, shall be borne by that local authority. Expenses of administration.

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## PART III.

## FOOD AND DRUGS.

*Description of Offences.*

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

**13** 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.

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

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

i. Mix, or cause or permit to be mixed, any ingredient or material with any article of food, or colour, stain, or powder any such article, or cause or permit the same to be coloured, stained, or powdered, so as in any such case to render such article dangerous or injurious to health : or

ii Mix, or cause or permit to be mixed, any ingredient or material with any drug, or colour, stain, or powder any such drug, or cause or permit the same to be coloured, stained, or powdered so as to affect injuriously the quality or potency of such drug.

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

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

Exemption in case of proof of absence of knowledge.

(3.) No person shall be liable to be convicted under the last preceding subsection of this Act in respect of the sale of any article of food or drug, if he shows to the satisfaction of the court before which he is charged that he did not know of the article of food or drug sold by him being so mixed, coloured, stained, or powdered as in the said subsection mentioned, and that he could not by analysis or other adequate test have obtained that knowledge.

Mixing or selling food to increase bulk.

**15**—(1.) No person shall—

i. 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

ii. 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.

Selling food or drugs not of the nature demanded.

(2.) No person shall—

i. Sell any food or drug which is not of the nature, substance, or quality of the food or drug demanded by the purchaser : or

ii. Sell any compounded food or drug which is not composed of ingredients in accordance with the demand of the purchaser.



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

- i. That the purchaser, having bought only for analysis, was not prejudiced by such sale :
- ii. 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 or in more than one of such respects.

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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* or *British Pharmaceutical Codex* shall, unless such drug be included in a list of exceptions published in the "Government 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* or *British Pharmaceutical Codex*.

**16**—(1.) Where any person sells a food or drug which is mixed with any foreign substance, such food or drug shall be in accordance with the standards of this Act, and the ingredients shall be pure and in an undeteriorated and sound condition ; and such person shall deliver the mixture to the purchaser in a package on or attached to which shall be a statement or label, marked, written, or printed in accordance with the regulations, stating that the food or drug is a mixture, and the names of the ingredients and such other particulars as may be prescribed, and when the mixture is a food, the proportions of ingredients, when so prescribed.

Sale of mixture.

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

- i. A drug supplied by prescription or order signed by a legally-qualified medical practitioner for any person : or
- ii. A drug or food which is a proprietary medicine, or is the subject of a patent in force, and is supplied in the condition required by the specification of the patent :
- iii. A mixture exempted from this section by the regulations, which exemption may be applied to classes of articles : or
- iv. A mixture supplied by a registered pharmaceutical chemist.

(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.

**17** No person shall manufacture, expose for sale, or keep or store for the purpose of trade or commerce, any food or any drug that is mixed with any foreign substance, or is not in accordance with the standards of this Act, unless the vessel, tin, bottle, package, or other receptacle containing the same has affixed to it a label, marked, written, or printed, in accordance with the regulations, stating that the food or drug is a mixture, and the names of the ingredients, and such other

Mixed articles for sale or in stock to be labelled.

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particulars as may be prescribed, and when the mixture is a food, the proportion of ingredients, when so prescribed.

If the defendant satisfies the court that the food or the drug which is the subject-matter of the prosecution was contained in an unopened vessel, tin, bottle, package, or other receptacle, and was purchased by him from any manufacturer, importer, or wholesale dealer in the Commonwealth named by the defendant, and that the defendant had no reason to believe that such food or drug was mixed with any foreign substance, or was not in accordance with the standards prescribed by this Act, the information shall be dismissed.

Regulation of sale  
of spurious butter.

**18** No person shall make, prepare, or compound for sale, sell, offer, keep, or expose for sale, any compound of fats, oils, or similar substances other than the fat of milk, or any article not made exclusively of milk or cream, or both, with or without salt or other preservative, and with or without the addition of colouring matter, and not the legitimate product of the dairy, in imitation of or as a substitute for butter, unless a conspicuous and legible brand or mark in accordance with the regulations, indicating the nature of such compound, is placed upon each piece or pat, and on every jar, parcel, cask, case, or package that contains any such compound or article.

Any person who contravenes this section shall be guilty of an offence against this Act.

Inspector to be  
furnished with list  
of vendors and  
customers.

**19** Any vendor of milk or cream or meat shall, at the request in writing of any inspector, furnish to the inspector—

- i. The names and addresses of persons from whom he has received any milk or cream or meat indicated by the inspector, and the respective dates upon which such milk or cream or meat was received : and
- ii. In the case of milk or cream the names and addresses of his customers generally, or of the customers of any milk or cream indicated by the inspector.

Lead pipe for  
drawing beer.

**20** No person shall use for drawing from any receptacle any fermented liquor known as beer, ale, porter, stout, or any other malt liquor for the purpose of sale—

- i. Any pipe made wholly or partly of lead :
- ii. Any pipe which is not kept in a clean and wholesome condition, or which contains any matter, sediment, or growth likely to be injurious to health.

Any person who contravenes this section shall be liable to a penalty not exceeding Five Pounds.

Feeding of swine  
and other animals.

**21** No person shall feed, or cause or suffer any pig or other animal in his possession or under his control to be fed—

- i. On any offal or blood that has not been treated in the prescribed manner : or
- ii. On any manure, nightsoil, or other filthy or offensive matter : or

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iii. On the flesh of any animal which has died of any disease or natural cause, or has been slaughtered by reason of such disease. A.D. 1910.

No person shall feed, or cause or suffer any pig or other animal in his possession or under his control to be fed, on any milk from a cow suffering from any disease of the udder unless such milk has been boiled or sterilised.

*Food in Packages.*

**22**—(1.) Except in the case of a package of food which has been exempted from any or all of the provisions of this section by the regulations, there shall be legibly and durably written on or attached to every package of food packed or enclosed for sale a statement or label indicating the trade name or description, the net weight or the number, true measure, or volume of the contents thereof, and the name and address of the vendor or the maker thereof, or of the agent therefor or the owner of rights of manufacture: Provided that where such vendor, maker, agent, or owner is a company registered under "The Companies Act, 1869," or is a firm having its name registered under "The Registration of Firms Act, 1899," the address of such company or firm may be omitted.

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

33 Vict. No. 22.  
63 Vict. No. 34.

No person shall, after the expiration of Six months from the commencement of this Act, sell in a package any food unless such a statement or label is written on or attached to such package as required by this section.

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

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

**23** 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 inspector or other person, then any person who appears from any statement or label thereon, or attached thereto, to have imported, manufactured, or prepared such food or drug, or to have enclosed it in such package, shall, unless he proves to the contrary, be deemed to have so imported, manufactured, prepared, or enclosed such food or drug, and (unless the contravention is shown to be due to the default of the person on whose premises the package is found, or to deterioration or other causes beyond the control of the person named on the package or label) shall be guilty of an offence against this Act. Liability of person named on package.  
*Ibid.*, s. 16.

*Advertised Articles.*

**24**—(1.) The Chief Health Officer may cause to be examined any food, drug, or appliance which is advertised, for the purpose of ascertaining its composition and properties, and shall compare the results of the examination with any advertisement which relates to the food, drug, Examination and report upon food, drugs, and appliances advertised,

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or appliance, and with the price at which it is sold, and shall prepare and forward to the Minister a report upon the whole matter, which may include any comment which the Chief Health Officer thinks desirable in the public interest.

(2.) The Chief Health Officer may thereupon, with the approval of the Minister, cause the report to be published in the "Government Gazette," and in any newspaper or public print which circulates within this State, and to be distributed among the public in any other way, and no action shall lie in respect to 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 Chief Health Officer as aforesaid, and no action shall lie against such proprietor or manager in respect of the republication.

Prohibition of sale of injurious drugs or appliances.

**25**—(1.) The Governor, on the recommendation of the Chief Health Officer, or of a judge of the Supreme Court, on appeal, may by notification in the "Government Gazette," and in any newspaper circulating in this State, prohibit, after the date therein mentioned, the advertising or sale of any food or drug or appliance which, in the opinion of the Chief Health Officer or of the said judge, is injurious to life or health, or which by reason of its inactivity or inefficiency is useless for the advertised purposes of cure.

Advertisement.

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

*Disinfectants and Preservatives.*

Prohibition of sale of disinfectants and preservatives.

**26**—(1.) The Governor, on the recommendation of the Chief Health Officer, or of a judge of the Supreme Court on appeal, by notification in the "Government Gazette," may prohibit the sale of any substance or compound as a disinfectant, germicide, antiseptic, or preservative.

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

Labelling of disinfectant.

**27**—(1.) The Chief Health Officer, by notification in the "Government 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 he deems fit shall be set out on a statement or label written on or attached to any package containing the same.

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

*Appeal.*

Appeal.

**28** Any person deeming himself aggrieved by any report or recommendation of the Chief Health Officer under Section Twenty-four, or Section Twenty-five, or Section Twenty-six, may appeal therefrom to a judge of the Supreme Court, who may hear and determine such appeal,

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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. A.D. 1910.

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

**PART IV.**

## INSPECTION AND ANALYSIS.

*Inspection, Seizure, Removal, and Disposal of Animals, Food, Drugs, or Articles.*

**29**—(1.) Any inspector may, for the purposes of this Act, at any reasonable time in the day or night, enter any place and inspect and examine any animal. Inspection of animals.

(2.) Any inspector may, at any reasonable time in the day or night, 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 carcass or article used, or which he has reasonable grounds for believing is intended to be offered or used, as a food or drug, or which he has reasonable grounds for believing is a prohibited article; and may inspect any such article. Entry and inspection of place and articles therein.

(3.) Any inspector may inspect any carcass or article used, or which he has reasonable ground for believing is intended to be offered or 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.) Any inspector may—

- i. Examine any carcass, and examine and open any such article or any package enclosing the same in any such place, or conveyed as aforesaid:
  - ii. Remove for examination or analysis portions or samples of any such carcass or article:
  - iii. Weigh, count, measure, gauge, or mark such carcass or article or package, and fasten, secure, or seal the same, or any door or opening affording access to the same:
  - iv. Seize any animal, or carcass, or any such article wherever found 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 any such article:
  - v. Destroy or dispose of, otherwise than for human consumption, any carcass, article of food, or drug wherever found which is decayed, putrefied, or unwholesome:
- Examination, seizure, and destruction of articles.

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Claimant may  
complain to  
justice within  
Forty-eight hours  
after seizure.

Procedure if no  
such complaint,  
&c.

Expenses of  
destruction, &c.

Evidence.

Application of  
section.

vi. If he is satisfied that any animal is utterly unfit for human consumption, and should forthwith be destroyed in order to prevent disease, cause it to be destroyed accordingly or disposed of otherwise than for human consumption.

(5.) Any person claiming anything seized under this section, but not destroyed in accordance with Paragraph v. or vi. of the immediately preceding subsection, may within Forty-eight hours after such seizure complain thereof to any justice, and such complaint may be heard and determined before any police magistrate or any Two or more justices, who may either confirm or disallow such seizure wholly or in part, and may order the animal, carcase, or article seized to be restored.

(6.) If within Forty-eight hours after such seizure no complaint has been made, or if such seizure is confirmed, the animal, carcase, or article seized shall be destroyed or disposed of, otherwise than for human consumption, as the Chief Health Officer or inspector directs.

(7.) The destruction or disposal of any animal, carcase, or article of food, or drug under this section shall be at the expense in all respects of the owner or the person in whose possession the same was found.

(8.) 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.

(9.) 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.

*Purchase of Samples for Analysis.*

Power to demand,  
select, and take  
samples.

**30**—(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 any food or drug, of the current market value thereof or at the rate of payment prescribed, any inspector 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 inspector 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 inspector to sell less than the whole of such package.

(3.) If any rates have been fixed by regulation for the payment for samples of any food or drug it shall not be necessary for any 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 any inspector to purchase a sample of any food or drug and submit the same for analysis.

*Food and Drugs.**Procedure on taking Sample.*

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**31**—(1.) The person purchasing or the inspector 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.

(2.) The said person or inspector 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.

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 be inconvenient, or 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. Provided further that where Three of such bottles, tins, or packages are taken as a sample, each One may be taken and dealt with, and shall be deemed to be a Third part of the sample.

Where quantity in package is insufficient for analysis.

(3.) Notwithstanding anything to the contrary contained in this section, the Governor, if he thinks fit, may by regulation prescribe a different procedure to be adopted in the case of milk or any specified food or drug, in lieu of the procedure prescribed in this section.

Power to Governor to vary procedure in specified case.

**32** Where the person purchasing or the inspector 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 *Hobart*, such sample under seal may be forwarded to an analyst through the post-office or 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.

*The Analysis.*

**33** Any owner or purchaser of any food, drug, or article on payment of a fee according to a scale to be prescribed shall be entitled to have such food, drug, or article analysed, and to receive from the analyst a certificate of the result of his analysis.

Power to owner or purchaser of food, &c., to have it analysed.

**34**—(1.) 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.

(2.) At the hearing of any proceedings under this Act the production by the informant or the defendant of a certificate purporting

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to be signed by an analyst shall be sufficient evidence of the identity of the food or drug analysed, and of the result of the analysis, and of the facts therein stated, without proof of the signature of the person appearing to have signed the same, unless either party shall require that the analyst shall be called as a witness, and that the parts of the articles retained by the person who purchased the article shall be produced.

Provided that at least Three clear days' notice before the return day shall be given to the analyst if he is required to attend as a witness; and provided that a copy of a certificate to be used by the defendant shall be sent to the informant at least Three clear days before the return day; and if it is not so sent the magistrate, justices, or court may, if they think fit, adjourn the hearing on such terms as they may deem proper.

Certificate of analysis.  
"Pure Food Act"  
(Vic.), s. 19.

**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.

Mode of determining strength of liquors.  
*Ibid.*

**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.

Disqualification of analyst for non-compliance.  
*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 Minister is satisfied that the offence has been wilfully committed, be disqualified by the Minister for appointment as an analyst for such period as the Minister thinks fit.

Costs of analysis.

**38**—(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.

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

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



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**39** A copy of the result of any analysis of any food, drug, or article taken or obtained by the person purchasing or an inspector shall, on demand, be supplied by the analyst to the person from whom the food, drug, or article was taken or obtained, and to the manufacturer or his agent in this State, on payment of a fee to be prescribed.

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

**40** 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.

**PART V.**

## 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, 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.

"Pure Food Act"  
(Vic.), s. 36.

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

Imprisonment in certain cases.

**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 inspector 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—

- i. Assaults, intimidates, obstructs, or attempts to obstruct in any manner any inspector or authorised person in the exercise of his powers or in the discharge of his duties under this Act: or
- ii. Refuses to allow to be taken any sample demanded in accordance with this Act or the regulations: or
- iii. Gives, procures, offers, or promises any bribe, recompense, or reward to influence any inspector or person as aforesaid in

Obstruction of officer in discharge of his duties.

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the exercise of his powers or in the discharge of his duties as aforesaid : or

- iv. Retakes or attempts to retake any food, drug, or article seized or sold under this Act, or resists or attempts to prevent such seizure—

shall be liable to a penalty not exceeding Twenty Pounds.

*Forfeiture.*

Forfeiture of articles of food or appliance.

**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.) All articles forfeited under this Act shall be disposed of as the Chief Health Officer may direct.

*Legal Procedure.*

Procedure.  
19 Vict. No. 8.

**45** All information for offences against the provisions of this Act, and all penalties, fines, and forfeitures imposed by or under the provisions of this Act, may be heard, determined, recovered, and enforced in a summary way by and before a police magistrate or any Two or more justices in the mode prescribed by "The Magistrates Summary Procedure Act," the provisions of which Act shall apply.

Limit of time for prosecutions.

**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 Thirty days from the time when it was so taken or obtained.

Return day of summons.

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

Copy of analyst's certificate.

**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.

Possession *prima facie* evidence of contravention of Act.

**49** Where any sample of any article of food or drug for sale procured by any inspector has been proved by analysis to have been adulterated or 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 article shall be deemed *prima facie* evidence that the same is in his possession for sale in contravention of this Act.

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**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.

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Source of  
information or  
reports.

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.

**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.

*Guarantee.*

**52**—(1.) Where any person is prosecuted under this Act for the sale of any food, drug, or article which is adulterated or falsely described, or is mixed, coloured, composed, or constituted in contravention of any provision of this Act, he shall be entitled to be discharged from such prosecution upon proving—

Guarantee a  
defence to  
prosecution.

- i. That he has received from the person from whom he purchased such food, drug, or article, or his duly authorised agent, a guarantee in writing that the same is not adulterated, falsely described, or mixed, coloured, composed, or constituted as aforesaid : and
- ii. That he had no reason to believe that the same was adulterated or falsely described : and
- iii. That he sold it in the same state as when he purchased it—  
subject to the following conditions:—
  - i. The person giving the guarantee must be resident in the Commonwealth, or, if a company, must have a registered office in the Commonwealth :
  - ii. The guarantee must state the name and address of the place of business of guarantor, and the name under which he trades :
  - iii. A guarantee may be general or specific :
  - iv. A general guarantee shall apply to the sale of the description of goods or classes of goods named therein, and a copy of the same shall be filed in the Treasury. A serial number shall be allotted to each such guarantee, which number shall be placed by the guarantor on each package of such goods sold by him, with the words "Guaranteed under 'The Food and Drugs Act, 1910,'" with the name of the guarantor inserted as prescribed. Such guarantee shall not apply to any package of goods unless such number and words are placed thereon :
  - v. A specific guarantee shall apply to the sale of specific goods, and shall refer to a bill of sale, invoice, bill of lading, or other document describing the goods and the weight, measure, and number of the same, but shall not be available as a defence unless the defendant has, within Seven days after service of the summons, sent to the purchaser a copy of such guarantee with a written notice stating that

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he intends to rely on the same as a defence, and specifying the name and address of the place of business of the person giving the guarantee, and has also sent a like notice of his intention to the person giving the guarantee :

vi. The person by whom any guarantee is alleged to have been given under this section shall be entitled to give or tender evidence at the hearing, and the court may, if it thinks fit, adjourn the hearing to enable him to do so :

vii. The form of guarantee under this section may be prescribed by the regulations.

Penalty on guarantor.

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

Proceedings for such penalty.

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

*Prosecution of Agent or Servant.*

Agent or servant liable in addition to principal.

**53** 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.

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.

Agent or servant may recover from principal.

**54**—(1.) If the defendant, being an owner 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.

(2.) Where an agent or servant has been convicted as aforesaid, the convicting magistrate or justices may, if he or they think fit, suspend

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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. A.D. 1910.

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

**PART VI.**

## GENERAL AND SUPPLEMENTAL.

*Miscellaneous.*

**56**—(1.) If, in the opinion of the Chief Health Officer, there is reasonable ground for suspecting that any person is in possession, for the purposes of sale, or for manufacturing or preparing for sale, of any food, drug, or article in contravention of this Act, he may require such person to produce for his inspection, or to produce to any officer authorised by him in that behalf, any books of the nature of store records, or which deal with the reception, possession, or delivery of any food, drug, or article. Power to require information to be made available.

(2.) The Chief Health Officer may make or cause to be made copies of or extracts from any such books, and such copies or extracts, purporting to be certified as such by the Chief Health Officer or an inspector, shall be deemed to be true and correct copies or extracts.

(3.) Any person refusing to comply with any requirement of the Chief Health Officer under this section shall be liable to a penalty not exceeding Ten Pounds.

(4.) Any inspector 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.

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

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Publication of  
names of  
offenders.

**58**—(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, drug, or appliance, 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 Chief Health Officer in the "Government 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 appliance was supplied to the said person by some other person, and was sold by the firstmentioned 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 Minister so directs, be republished in any newspaper circulating in this State, 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 Chief Health Officer, 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.

*Licence for Manufacture of Ice-cream and Aerated Waters.*

Licence required  
for the manufac-  
ture of ice-cream  
and aerated  
waters.  
Cf. Victoria,  
"Pure Food Act,"  
No. 2010 of 1905.  
8 Ed. VII. No.  
968, s. 65 (S.A.).

**59**—(1.) If, after the expiration of Six calendar months from the commencement of this Act, any person establishes or carries on the business of manufacturing or preparing for sale ice-cream, or ginger-beer, or hop-beer, or any similar beer, or soda-water, lithia-water, or other mineral water, or lemonade, or other aerated waters or cordials without being the holder of a licence in force for the purpose, granted by the local authority subject to the approval of the Department of Public Health, he shall be liable to a penalty not exceeding Twenty Pounds.

(2.) The local authority, subject to the approval of the Department of Public Health, may grant any such licence, and the annual fee therefor shall be Ten Shillings; and every such fee shall be paid into the Treasury, and form part of the Consolidated Revenue.

(3.) The local authority, subject to the approval of the Department of Public Health, may refuse a licence if upon the report of an inspector such Department deems the premises unsuitable, or the applicant unfit to hold a licence.

(4.) The Supreme Court by *mandamus* directed to the local authority may compel the issue of a licence to any person who in the opinion of the court shall have been unreasonably refused a licence.

*Food and Drugs.**Regulations.*

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Regulations.

**60** (1.) 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—

- i. Prescribing standards for the composition, strength, purity, or quality of any food or drug, or for the nature or proportion of any substance which may be mixed with or used in the preparation or preservation thereof, or prohibiting the addition of any substance to any article of food :
- ii. Prohibiting in the manufacture, preparation, storing, preservation, packing, or in the delivering of any article of food for sale, the use of appliances containing any substance that may be specified and any substance in or exceeding any proportion that may be specified, and prohibiting the sale of such appliances :
- iii. Prohibiting such modes of manufacture and of preparation or preservation of articles of food as may be specified :
- iv. With respect to the analysis of any food, drug, or article :
- v. Exempting any package or food or drug from any provision of this Act relating to marking or labelling :
- vi. 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 :
- vii. Prescribing what substances and what quantities thereof added to any article of food or drug shall render such article of food or drug injurious to health within the meaning of this Act :
- viii. Prohibiting the sale and providing for the destruction of such drugs and chemicals, and the destruction or denaturation of such articles of food, as are injurious to health within the meaning of this Act, or not in accordance with the regulations under this Act :
- ix. Publishing reports of analyses of foods and drugs made by the Government Analyst, together with the names and addresses of the dealers and the prices at which such articles were sold :
- x. Requiring statements or labels that may be specified, and of a kind that may be specified, to be written on or attached to articles of food, or to packages containing such articles, or to be delivered with articles of food, and regulating the contents of and details as to labels, and prohibiting the use in such statements or labels of words that may be specified :
- xi. Fixing rates for payment for samples of food or drugs taken or obtained under this Act, and for payment of analysts :
- xii. Regulating the mode of application for licences under Section Fifty-nine, and the manner and form in which such licences shall be granted ; and prescribing any con-

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ditions on which any such licences may be granted, suspended, or revoked :

- xiii. As to any matter in connection with which the expression "prescribed" is used in this Act, or in respect to any purpose for which regulations are contemplated by this Act :
- xiv. Prescribing penalties not exceeding Twenty Pounds or a continuing penalty not exceeding Two Pounds per diem for a contravention of any regulation : and
- xv. 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.