

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 233.

Pure Food Act.

ARRANGEMENT OF SECTIONS.

PART I.—PRELIMINARY.

1. Interpretation—
 - "analyst"
 - "food"
 - "inspector"
 - "package"
 - "place"
 - "the regulations"
 - "sell"
 - "this Act".
2. Adulteration and false description.

PART II.—ADMINISTRATION.

3. Appointment of inspectors.
4. Appointment of analysts.
5. Representation of Minister.

PART III.—STANDARDS.

6. Setting of standards for food.

PART IV.—INSPECTION, ETC.

7. Inspection of premises.
8. Examination of persons handling food, etc.
9. Samples.
10. Dealing with samples.
11. Certificate of analyst.
12. Supply of copy of analysis.
13. Service of analyst's certificate with summons.
14. Examination of imported food.

PART V.—OFFENCES IN RELATION TO PURITY OF FOOD, ETC.

15. Sale of adulterated or falsely described food.
16. Sale of food mixed with injurious substances, etc.
17. Mixing food to increase bulk, etc.
18. Sale of mixed foods.
19. Infected persons handling food, etc.
20. Cleanliness of clothes and bodies.

PART VI.—LABELLING, ETC.

21. General requirements.
22. Special requirements.
23. Liability of person named on package.

PART VII.—GENERAL OFFENCES, LEGAL PROCEEDINGS, ETC.

- 24. Interference with official marks, etc.
- 25. Obstruction, bribery, etc.
- 26. General penalty.
- 27. Forfeiture.
- 28. Proof of possession for sale.
- 29. Onus of proof.
- 30. Time for prosecution in certain cases.
- 31. Guarantee as defence.

PART VIII.—MISCELLANEOUS.

- 32. Strength of spirits.
- 33. Requirement of name of person selling food.
- 34. Protection of trade secrets.
- 35. Regulations.

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CHAPTER NO. 233.

Pure Food Act.

Being an Act for securing wholesome and pure food, and for other purposes.

PART I.—PRELIMINARY.

1. Interpretation.

In this Act, unless the contrary intention appears—

- "analyst" means an analyst appointed under Section 4;
- "food" means any article used for food or drink by man, other than a drug or water;
- "inspector" means an inspector appointed under Section 3;
- "package" includes a box, bottle, basket, tin, barrel, case, receptacle, wrapper or other thing in which an article is placed or packed;
- "place" includes a house, premises or building;
- "the regulations" means any regulations made under this Act;
- "sell" includes—
 - (a) barter; and
 - (b) offer or attempt to sell; and
 - (c) receive for sale; and
 - (d) have in possession for sale; and
 - (e) expose for sale; and
 - (f) send forward for sale; and
 - (g) deliver for sale; and
 - (h) cause or permit to be sold, offered or exposed for sale,
 but refers only to selling for consumption or use by man;
- "this Act" includes the regulations.

2. Adulteration and false description.

(1) An article of food is adulterated or falsely described within the meaning of this Act where—

- (a) a substance has been mixed with it so as to reduce, lower or injuriously affect its quality and strength; or
- (b) an inferior or cheaper substance has been substituted wholly or in part for it; or
- (c) a valuable constituent of it has been wholly or in part abstracted; or
- (d) it consists wholly or in part of a diseased, putrid or rotten animal or vegetable substance, whether manufactured or not; or
- (e) it was obtained from a diseased animal or an animal that has died otherwise than by the hand of a slaughterman; or

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(c) made up or included in, or prepared or cooked for, a meal to be consumed in—

(i) a shop; or

(ii) premises in respect of which a licence is in force relating to the sale of alcoholic liquor; or

(iii) any other place.

8. Examination of persons handling food, etc.

(1) The Departmental Head may, by written order, require—

(a) a person who is employed in preparing or handling an article of food for sale; or

(b) a person who is employed in preparing or handling a utensil or receptacle in which an article of food for sale is kept or served; or

(c) an article of food for sale; or

(d) a utensil or receptacle in which an article of food for sale is kept or served, to submit, or to be submitted, as the case may be, to—

(e) a process specified in the order; or

(f) a clinical or bacteriological examination,

for the purpose of ascertaining if he or it is unclean or likely to convey infection.

(2) A person who fails to comply with an order under Subsection (1) is guilty of an offence.

9. Samples.

(1) An inspector may demand, select and take or obtain samples of any food for sale required by him for the purposes of this Act, on payment or tender—

(a) to a person selling, manufacturing, distributing or preparing the food; or

(b) to the agent or servant of any such person,

of the current market value or at the rate of payment prescribed for the food.

(2) An inspector may require a person referred to in Subsection (1)(a), or his agent or servant, to produce and permit the inspection of a package in which the food is at the time kept, and may take or draw from the package the samples demanded.

(3) Where food is kept for retail sale in a closed package, an inspector shall not demand less than the whole package.

10. Dealing with samples.

(1) An inspector taking or obtaining food with the intention of submitting it to analysis shall notify his intention to the person from whom the sample was procured.

(2) At the time of taking a sample under Subsection (1), the inspector shall—

(a) divide the sample into three parts; and

(b) label or mark, and seal or fasten up, each separate part in such manner as its nature allows; and

(c) deliver one part to the person from whom the sample was procured, retain one part and submit the remaining part to an analyst.

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(3) A sample may be forwarded to an analyst—

- (a) through the post as a registered article; or
- (b) under seal in any convenient way.

(4) Where a sample is forwarded in accordance with Subsection (3)(b), the certificate of the analyst that on receipt by him the seal was unbroken is sufficient evidence of identity.

11. Certificate of analyst.

(1) An analyst analysing food submitted to him under this Act may give a certificate, in the prescribed form, of the result of the analysis.

(2) In any legal proceedings under this Act, the production of a certificate purporting to be signed by an analyst is prima facie evidence—

- (a) of the identity of the food analysed; and
- (b) of the result of the analysis,

without proof of the signature of the person appearing to have signed it.

12. Supply of copy of analysis.

On demand, a copy of the result of an analysis shall be supplied to the person from whom the sample was procured and to the manufacturer or his agent in the country.

13. Service of analyst's certificate with summons.

In a prosecution concerning any food there shall be served with the summons a copy of any analyst's certificate that has been obtained on behalf of the prosecution, and in default of such service the certificate is not admissible in evidence in the prosecution.

14. Examination of imported food.

(1) Food intended for human consumption imported by sea or air is subject to examination by an inspector or analyst, and if on inspection or analysis the food is found unfit for human consumption it shall be forfeited and destroyed or otherwise disposed of in such manner as the Departmental Head directs.

(2) No action lies against the State or an officer in respect of any examination, inspection, analysis, forfeiture or destruction referred to in Subsection (1).

PART V.—OFFENCES IN RELATION TO PURITY OF FOOD, ETC.

15. Sale of adulterated or falsely described food.

A person who sells an article of food that is adulterated or falsely described, or that is packed or enclosed for sale in any manner contrary to this Act or to a notice under Section 6, is guilty of an offence.

16. Sale of food mixed with injurious substances, etc.

(1) A person who—

- (a) mixes with; or
- (b) uses in the preparation or preservation of; or
- (c) adds to; or

- (d) permits to be mixed with, used in the preparation or preservation of, or added to,

any food intended for sale, any ingredient or substance so as—

- (e) to make the food dangerous or injurious to health or injuriously to affect its quality; or
- (f) to contravene or fail to comply with a provision of this Act or of a notice under Section 6,

is guilty of an offence.

(2) Where an ingredient or substance has been mixed with, or used in the preparation or preservation of, or added to, any food so that—

- (a) it is made dangerous or injurious to health; or
- (b) its quality is injuriously affected; or
- (c) it contravenes or fails to comply with a provision of this Act or of a notice under Section 6,

any person who sells the food is guilty of an offence.

17. Mixing food to increase bulk, etc.

(1) A person who—

- (a) in order fraudulently—
 - (i) to increase the weight, bulk or measure; or
 - (ii) to conceal the inferior quality,of any food intended for sale—
 - (iii) mixes any ingredient or material with it; or
 - (iv) permits any ingredient or material to be mixed with it; or
- (b) sells any food mixed with an ingredient or material by which the weight, bulk or measure of the food has been fraudulently increased or its inferior quality fraudulently concealed,

is guilty of an offence.

(2) A person who—

- (a) sells any food that is not of the nature, substance or quality of the food demanded by the purchaser; or
- (b) sells any compounded food that is not composed of ingredients in accordance with the demands of the purchaser,

is guilty of an offence.

18. Sale of mixed foods.

(1) Subject to Subsection (2), where a person sells food that is a mixture—

- (a) the ingredients must be pure and in an undeteriorated and sound condition; and
- (b) he must deliver the mixture to the purchaser in a package on or attached to which is a statement or label stating—
 - (i) that the food is a mixture; and
 - (ii) the names of the ingredients; and

(iii) if required by this Act—the proper proportions of the ingredients.

(2) It is not necessary to attach a statement or label in the case of—

(a) an article of food that is generally known to users as a compounded article mixed with any matter or ingredients not injurious to health and not intended fraudulently to increase its bulk, weight or measure or fraudulently to conceal its inferior quality; or

(b) a mixture that is exempted from this section by the regulations.

(3) A person who sells food that is a mixture and in respect of which Subsection (1) has been contravened or has not been complied with is guilty of an offence.

Penalty: A fine not exceeding K10.00.

19. Infected persons handling food, etc.

(1) A person suffering from an infectious skin disease or any other infectious disorder, who prepares or handles, or is employed in preparing or handling—

(a) an article of food for sale; or

(b) a utensil or receptacle in which an article of food for sale is kept or served, is guilty of an offence.

(2) A person who permits a person suffering from an infectious skin disease or any other infectious disorder, to prepare or handle, or to be employed in preparing or handling—

(a) an article of food for sale; or

(b) a utensil or receptacle in which an article of food for sale is kept or served, is guilty of an offence.

20. Cleanliness of clothes and bodies.

A person engaged in the preparation or handling of food for sale who, when so engaged, fails to keep his clothes and body clean, to the satisfaction of an inspector, is guilty of an offence.

PART VI.—LABELLING, ETC.

21. General requirements.

(1) Subject to this section, there shall be legibly and durably written on or attached to a package of food packed or enclosed for sale a statement or label indicating—

(a) the trade name or description; and

(b) the correct net weight, true measure or volume of the contents; and

(c) the name and address of the vendor or maker, or of the agent of the vendor or maker.

(2) The regulations may prescribe the amounts of permissible variation between the correct net weight, true measure or volume of a package of food and the net weight, measure or volume indicated on the statement or label on or attached to the package in accordance with Subsection (1).

22. Special requirements.

A person who sells a package of food that is not labelled in accordance with this Act or a notice under Section 6(d) is guilty of an offence.

23. Liability of person named on package.

Where any food, in connexion with which there is a contravention of this Act, is sold in a closed package to a purchaser, a person who appears from a statement or label on or attached to the package to have—

- (a) imported, manufactured or prepared the food; or
- (b) enclosed it in the package,

shall be deemed to have imported, manufactured, prepared or enclosed the food and, unless the contravention is shown to be due—

- (c) to the act or default of the person on whose premises the package is found; or
- (d) to deterioration; or
- (e) to other causes beyond the control of the person named on the package or label,

is guilty of an offence.

PART VII.—GENERAL OFFENCES, LEGAL PROCEEDINGS, ETC.**24. Interference with official marks, etc.**

(1) A person who, not being authorized to do so, wilfully removes, erases, alters, breaks or opens a label, mark, seal or fastening placed by an inspector on any food is guilty of an offence.

Penalty: A fine not exceeding K20.00.

(2) Subsection (1) does not apply to—

- (a) a person selling, manufacturing, distributing or preparing food for sale; or
- (b) the agent or servant of such a person,

in respect of a part of a sample of food delivered by an inspector to the person from whom the sample was procured under Section 10.

25. Obstruction, bribery, etc.

A person who—

- (a) assaults, intimidates, obstructs or attempts to obstruct in any manner an inspector in the exercise of his powers or the discharge of his duties under this Act; or
- (b) refuses to allow a sample demanded in accordance with this Act to be taken; or
- (c) gives, procures, offers or promises a bribe, recompense or reward to influence an inspector in the exercise of his powers or the discharge of his duties under this Act; or
- (d) retakes or attempts to retake any food or article seized or sold under this Act, or resists or attempts to prevent any such seizure,

is guilty of an offence.

Penalty: A fine not exceeding K20.00.

26. General penalty.

(1) A person who is guilty of an offence against this Act for which no other penalty is provided is liable to a penalty—

(a) in the case of a first offence—of a fine not exceeding K50.00; and

(b) in the case of a second offence—of a fine not exceeding K100.00; and

(c) in the case of a third or subsequent offence—of a fine not exceeding K250.00, and in addition, in the case of a continuing offence to a default penalty of a fine not exceeding K10.00.

(2) Where a person is found guilty of an offence against this Act and—

(a) a certificate of an analyst states that an adulterated article the subject of the charge has been so adulterated as to be injurious to health; or

(b) the offence, in the opinion of the court, was committed wilfully by, or by the culpable negligence of, the person accused,

and the court is of the opinion that a fine will not meet the circumstances of the case, he is liable, in addition to or instead of a fine, to imprisonment for a term not exceeding six months.

27. Forfeiture.

(1) On the conviction of a person for an offence against this Act, any food to which the conviction relates may, by order of the court, be forfeited to the State.

(2) A forfeiture under Subsection (1) may extend to the whole of the article, and to—

(a) the whole of any similar articles; and

(b) all packages containing similar articles,

belonging to the defendant or found on the defendant's premises or in his possession at the time of the commission of the offence.

28. Proof of possession for sale.

Where a sample of an article of food taken or obtained and labelled, marked, sealed or fastened up by an inspector under this Act is proved by evidence of analysis to be adulterated or falsely described, proof of the possession by a person of the article of food from which the sample was taken is prima facie evidence that that article was intended for sale by that person in contravention of this Act.

29. Onus of proof.

Where in a prosecution for an offence against this Act in respect of the sale of food it is proved that the food was sold, the onus of proof that the food was not sold for consumption or use by man is on the defendant.

30. Time for prosecution in certain cases.

Where food has been taken or obtained for analysis, a prosecution for an offence against this Act in respect of it shall not be instituted after the expiration of 50 days from the time when it was taken or obtained.

31. Guarantee as defence.

(1) It is a defence to a charge of an offence against this Act for the sale of any food that is adulterated or falsely described, or is mixed, coloured, composed or constituted in contravention of this Act, if the defendant proves that—

- (a) he purchased the article in question for and as an article of the same nature, substance and quality as that demanded of him by the purchaser or inspector and with a written warranty or invoice to that effect; and
- (b) he sold it in the state in which he purchased it; and
- (c) he could not with reasonable diligence have obtained knowledge of its adulteration or false description, or that it was mixed, coloured, composed or constituted in contravention of this Act.

(2) A warranty or invoice is not available as a defence unless, within seven days after service of the summons, the defendant has sent to the purchaser or inspector a copy of the warranty or invoice with a written notice—

- (a) stating that he intends to rely on the warranty or invoice; and
- (b) specifying the name and address of the person from whom he received it; and
- (c) stating that he has sent a like notice of his intention to that person.

(3) The person by whom a warranty or invoice referred to in this section is alleged to have been given is entitled to appear at the hearing and to give evidence, and if it thinks fit the court may adjourn the hearing to enable him to do so.

(4) A warranty or invoice given by a person resident outside the country is not available as a defence unless the defendant proves that he did in fact believe in the accuracy of the statement contained in the warranty or invoice.

(5) A person who gives a warranty or invoice referred to in this section that is false is, in addition to any penalty for the sale of any food contrary to this Act, guilty of an offence unless he proves to the satisfaction of the court that when he gave the warranty or invoice he believed on reasonable grounds that the statements or descriptions in it were true.

PART VIII.—MISCELLANEOUS.**32. Strength of spirits.**

The prescribed apparatus shall be used and the prescribed method observed for determining the degree of strength of any spirits.

33. Requirement of name of person selling food.

(1) An inspector may require a person selling food to state his full name and address and, where he is employed to sell food, the name and address of his employer.

(2) A person required to give his name and address under Subsection (1) who—

- (a) fails to state his full name and address and the name and address of his employer (if any); or
- (b) gives a false name or address,

is guilty of an offence.

Penalty: A fine not exceeding K20.00.

34. Protection of trade secrets.

This Act does not require proprietors or manufacturers of proprietary foods that contain no unwholesome added ingredient to disclose their trade formulas except so far as this Act requires in order to secure freedom from adulteration or false description.

35. Regulations.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for—

- (a) prohibiting the use, in the manufacture, preparation, storing, preservation, packing or delivery of an article of food for sale, of appliances containing a specified substance, and prohibiting the sale of such appliances; and
- (b) prohibiting such modes of manufacture and of preparation or preservation of articles of food as are specified; and
- (c) prescribing the method of analysing any food submitted for analysis under this Act; and
- (d) exempting a package of food from any provision of this Act relating to marking or labelling; and
- (e) requiring the destruction or denaturation of articles of food that have become deteriorated or impoverished to such extent as is specified, and of such other articles of food as are specified; and
- (f) requiring statements or labels to be written on or attached to articles of food or to packages containing articles of food, being statements or labels that are designed to prevent the public or the purchaser being deceived or misled as to the character, strength, quality, quantity or uniformity of the articles, and prohibiting the use in such statements or labels of specified words; and
- (g) prescribing the form of statements or labels referred to in Paragraph (f); and
- (h) prescribing the qualifications of analysts; and
- (i) prescribing penalties for offences against the regulations, not exceeding—
 - (i) for a first offence—a fine not exceeding K50.00; and
 - (ii) for a second offence—a fine not exceeding K100.00; and
 - (iii) for a third or subsequent offence—a fine not exceeding K250.00,and for a continuing offence a default penalty of a fine not exceeding K10.00, and generally for—
- (j) carrying out the provisions of this Act; and
- (k) securing the wholesomeness, cleanliness and freedom from contamination and adulteration of food; and
- (l) securing the cleanliness and sanitation of receptacles, places and vehicles used for the manufacture, preparation, packaging, storage, carriage or delivery of food.