

HEALTH.

No. 26 of 1985.

AN ACT to amend the Health Act 1911.

[Assented to 6 May 1985.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Health Amendment Act 1985*.

Short title
and principal
Act.

(2) In this Act the Health Act 1911 is referred to as the principal Act.

Reprinted as
approved
14 May 1981
and
amended by
Acts Nos. 63
of 1981, 30
and 116 of
1982 and
28 of 1984.

Commence-
ment.

2. This Act shall come into operation on the expiry of a period of 6 months commencing on the day on which this Act receives the Royal Assent.

Section 2
repealed.

3. Section 2 of the principal Act is repealed.

Section 3
amended.

4. Section 3 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting the definition of “Analyst” and substituting the following definition—

“ “analyst” means analyst registered under section 203; ”;

(ii) by deleting the definition of “Food” and substituting the following definition—

“ “food” means substance or matter ordinarily consumed or intended for consumption by man and includes—

(a) drink;

(b) chewing gum;

(c) 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) other substance or matter for the time being declared under subsection (1a) to be food,

but does not include substance or matter used only as a drug or declared under subsection (1a) not to be food; ”;

- (iii) in the definition of “Premises” by inserting before “includes” the following—

“ , except in Part VIII, ”;

- (iv) in the definition of “Regulation” by inserting before “means” the following—

“ , except in Part VIII, ”;

- (v) by inserting after the definition of “School” the following definition—

“ “sell” includes—

(a) barter, offer or attempt to sell, receive for sale, have in possession for sale, expose for or on sale, send, forward or deliver for sale or cause or permit to be sold or offered for sale;

(b) sell for resale; and

(c) in relation to food, supply or use under an agreement or arrangement or a contract, together with accommodation, service or entertainment, in consideration of an inclusive charge for the food supplied and the accommodation, service or entertainment; ”; and

(vi) by inserting after the definition of "Street" the following definition—

“ “the Food Advisory Committee” means the Food Advisory Committee established by section 246H (1); ”

and

(b) by inserting after subsection (1) the following subsection—

“ (1a) The Executive Director, Public Health, may by notice published in the *Gazette*—

(a) declare any substance or matter to be food or not to be food, as the case requires, for the purposes of this Act or any provision thereof; and

(b) amend or repeal a declaration made under this subsection. ”.

Section 4
amended.

5. Section 4 of the principal Act is amended by deleting “the First Schedule” in the first paragraph and substituting the following—

“ Schedule 1 ”.

Section 186
amended.

6. Section 186 of the principal Act is amended—

(a) in subsection (1) by deleting “the Second Schedule” and substituting the following—

“ Schedule 2 ”; and

(b) in paragraph (a) of subsection (2) by deleting “the Second Schedule to this Act” and substituting the following—

“ Schedule 2 ”.

7. Part VIII of the principal Act is repealed and the following Parts are substituted—

Part VIII
repealed and
Parts VIIA
and VIII
substituted.

“ PART VIIA—ANIMAL PRODUCE, DRUGS, MEDICINES,
DISINFECTANTS, THERAPEUTIC SUBSTANCES
AND PESTICIDES

Division 1.—Preliminary.

201. In this Part, unless the contrary intention appears—

Interpreta-
tion in
Part VIIA.

“the Drug Advisory Committee” means the
Drug Advisory Committee established
by section 202 (1).

202. (1) There is hereby established a committee to be known as the Drug Advisory Committee.

Drug
Advisory
Committee.

(2) The Drug Advisory Committee shall consist of 6 members of whom—

- (a) one shall be the Executive Director, Public Health, or a medical officer nominated by him;
- (b) one shall be the Government Analyst;
- (c) one shall be the principal pharmaceutical chemist of the Department;
- (d) one shall be the person who is for the time being holding the office of Secretary of the Drug Advisory Committee under subsection (6);
- (e) one shall be a person appointed by the Minister to represent consumer interests; and

- (f) one shall be a person appointed by the Minister to represent the drug industry,

together with such person or persons as the regular members may for the time being co-opt to advise the Drug Advisory Committee on the drug industry.

(3) The Executive Director, Public Health, or the medical officer referred to in subsection (2) (a), as the case requires, shall be the Chairman of the Drug Advisory Committee (in this section called "the Chairman").

(4) The Minister may appoint a deputy for a regular member and, at any meeting of the Drug Advisory Committee at which the regular member is not present but his deputy is present, his deputy shall have all the functions of the regular member.

(5) At any meeting of the Drug Advisory Committee—

- (a) the Chairman or, in his absence, his deputy shall preside, but if neither the Chairman nor his deputy is present the other regular members present shall elect one of their number to preside;
- (b) each regular member and, in relation to matters in respect of which he is co-opted under subsection (2), each co-opted member present has a deliberative vote and, in the event of an equality of votes, the person presiding at that meeting shall also have a second or casting vote; and
- (c) any 3 regular members constitute a quorum.

(6) The Minister shall appoint a person to the office of Secretary of the Drug Advisory Committee, but that office may be held in conjunction with any other office under the Public Service Act 1978.

(7) An appointed member or his deputy shall be—

(a) appointed for such period not exceeding 3 years as is specified in the instrument of his appointment; and

(b) eligible for reappointment.

(8) The Minister may at any time remove from office an appointed member or his deputy.

(9) Each member may be paid such attendance fees as are prescribed in his case.

(10) In this section—

“appointed member” means person referred to in paragraph (e) or (f) of subsection (2);

“co-opted member” means person co-opted under subsection (2);

“member” means regular member or co-opted member;

“regular member” means person referred to in paragraph (a), (b), (c), (d), (e) or (f) of subsection (2).

203. (1) Subject to subsection (3), the Executive Director, Public Health, shall cause—

**Registration
of analysts.**

(a) to be maintained a register of analysts; and

(b) every analyst—

(i) who is appointed as such under section 6 of the Health Legislation Administration Act 1984, or under section 27; or

- (ii) who is a qualified person approved by the Executive Director, Public Health, for the purpose of this section,

to be registered in the register referred to in paragraph (a) on payment of the prescribed fee.

(2) A person who performs the functions of an analyst under this Act without being registered under subsection (1) commits an offence and is liable to a penalty not exceeding \$500.

(3) The Minister may by notice published in the *Gazette*—

- (a) exempt any analyst or class of analysts from the obligation to pay the prescribed fee referred to in subsection (1) (b); or
- (b) revoke an exemption granted under this subsection,

and every such notice shall have effect according to its tenor.

Division 2.—Slaughtering of animals and meat.

Power to
inspect and
seize food
animals.

204. (1) A medical officer or health surveyor may at any time—

- (a) enter into or on any house, land or premises; and
- (b) inspect any animal offered, or being prepared, for sale or slaughter for human consumption.

(2) If, on an inspection under subsection (1), it appears to the medical officer or health surveyor concerned that there are reasonable grounds to believe that the animal inspected is diseased, unsound, unwholesome or unfit for human consumption, he may cause that animal to be seized, or seized and carried away, for inspection under section 205 and shall, if he does so, cause the owner of that animal to be notified forthwith.

205. (1) Subject to this section, if, after having inspected an animal seized, or seized and carried away, under section 204 (2), a medical officer or health surveyor—

Disposal of
food animals
seized, or
seized and
carried away,
for
inspection.

- (a) is satisfied that that animal is diseased, unsound, unwholesome or unfit for human consumption and should forthwith be destroyed, he shall cause it to be destroyed;
- (b) considers that he requires more time in which to decide whether or not he is satisfied within the meaning of paragraph (a), he shall cause that animal to be detained for such period not exceeding 14 days as he considers necessary; or
- (c) is not satisfied within the meaning of paragraph (a), he shall cause that animal to be restored to the person from whose possession it was seized.

(2) On being notified under section 204 (2), the owner of an animal seized or seized and carried away under that section shall, if he intends to submit the matter to the determination of justices under this section, forthwith give notice in writing of that intention to the medical officer or health surveyor who caused that animal to be so seized or seized and carried away.

(3) When a medical officer or health surveyor receives notice given under subsection (2), he shall, if he has not already performed any duty imposed on him by subsection (1) in relation to the animal to which that notice relates, refrain from performing any such duty in relation to that animal and shall cause that animal to be kept at the expense of the owner of that animal for a period of 48 hours commencing at the time when he received that notice, and that owner may within that period complain to a justice of the seizure or seizure and carrying away concerned, in which case that owner shall forthwith notify the medical officer or health surveyor of—

- (a) the fact that he has so complained; and
- (b) the time, date and place appointed by the justice for the hearing of that complaint.

(4) Any 2 justices may hear and determine a complaint made under subsection (3).

(5) The justices hearing and determining a complaint made under subsection (3) may, if it appears to them that the animal to which that complaint relates—

- (a) is diseased, unsound, unwholesome or unfit for human consumption, by order—
 - (i) condemn that animal and direct it to be destroyed or otherwise disposed of at the expense of the complainant so as to prevent it from being used for human consumption; and
 - (ii) fix the expenses incurred in seizing and keeping, or seizing, carrying away and keeping, that

animal until the determination of that complaint and require the complainant to pay those expenses and the costs of the complaint proceedings;

or

- (b) is not diseased, unsound, unwholesome or unfit for human consumption, order that animal to be restored to the complainant.

(6) A person to whom an order made under subsection (5) is directed and who does not comply with that order commits an offence and is liable to a penalty not exceeding \$5 000.

(7) If the owner of an animal, having given notice in writing to a medical officer or health surveyor under subsection (2), does not complain to a justice of the seizure, or seizure and carrying away, concerned within the period referred to in subsection (3), the medical officer or health surveyor to whom notice was so given shall perform the appropriate duty imposed on him by subsection (1) in relation to the animal forthwith on the expiry of that period.

(8) Subject to subsection (3), the owner of an animal seized, or seized and carried away, under section 204 (2) and destroyed under subsection (1), shall, if that animal was diseased, unsound, unwholesome or unfit for human consumption, pay to the local authority concerned all expenses incurred by that local authority in that inspection and seizure or seizure and carrying away, and destruction, as the case requires.

(9) A local authority may, if any expenses payable to it under subsection (8) are not paid to it, recover those expenses from the owner of the animal concerned in a summary way before any 2 justices.

(10) For the purposes of this section, it shall be presumed, until the contrary is proved, that an animal inspected under section 204 (1) is intended to be sold, or prepared for sale, for human consumption.

Officer
acting under
reasonable
belief
immune.

206. A medical officer or health surveyor who causes an animal to be seized, or seized and carried away, under section 204 (2) is not liable for any costs, damages or expenses on account of any such seizure or seizure and carrying away if he acted under a reasonable belief that the animal was diseased, unsound, unwholesome or unfit for human consumption.

By-laws.

207. (1) A local authority may make by-laws under section 342—

- (a) authorizing the local authority to direct the occupier of, or any other person using, any premises to maintain, repair, cleanse or disinfect the premises and any fixtures, fittings, equipment and utensils thereon in the manner specified in a notice issued by the local authority to that occupier or other person;
- (b) requiring premises to be registered with the local authority;
- (c) requiring the occupiers of premises to be licensed by the local authority;
- (d) requiring—
 - (i) plans of premises and of any alterations of or extensions to premises; and
 - (ii) plans showing the disposition of equipment, fixtures and fittings on premises,

to be lodged with and approved by the local authority before—

(iii) the premises concerned are constructed, altered or extended; or

(iv) any equipment, fixtures or fittings are included on, or removed from, the premises concerned,

as the case requires;

(e) prescribing the equipment, fixtures, fittings and utensils to be provided on premises, and the manner in which that equipment and those fixtures, fittings and utensils are to be set out or arranged;

(f) prescribing the setting out and arrangement of the operations conducted on premises; and

(g) relating to any other matter incidental to the matters for which by-laws may be made under this subsection.

(2) In subsection (1)—

“premises” means premises as defined by section 3, which premises are used or intended to be used for the manufacture, processing, preparation or packaging of meat or products containing meat.

(3) A local authority may make by-laws under section 342 with respect to—

(a) the precautions to be taken and the methods and times to be observed for—

(i) the slaughtering of animals, and the transport, preparation, manufacture, storage or carriage of meat; and

- (ii) the protection of meat from flies and dust when exhibited for sale;
- (b) the precautions to be taken in the method of carriage, storage, distribution, manufacture, inspection, preparation, sale and exposure for sale of food, ice, ice cream and other similar products, and the construction, cleanliness, lighting, ventilation, drainage and sanitation of premises in which those operations are conducted and the precautions to be taken in, and the construction and method of, cleansing vehicles and utensils used in connection therewith;
- (c) the destruction and disposal of unsound food, and the destruction of cases and packing material which may have contained or surrounded the same;
- (d) prescribing some place or places at which all fish, meat or perishable food must be produced for inspection before being sold or offered or exposed for sale within the district of the local authority;
- (e) prescribing and limiting the hours of slaughtering at any slaughter-house;
- (f) prohibiting the exchange by or the return to the vendor of any food, except by reason of the food being unwholesome;
- (g) prohibiting the sale of food by itinerant vendors without a licence issued by the local authority; and
- (h) requiring the registration without fee with the local authority of all makers and vendors (not being persons licensed to sell or supply liquor) of ice creams, ices, aerated waters, temperance drinks, cordials and syrups.

(4) A person who commits an offence under a by-law made under section 342 as read with subsection (1) or (3) is liable to a penalty not exceeding \$2 500.

Division 3.—Sale of horseflesh.

208. In this Division, unless the contrary intention appears—

Interpreta-
tion in
Division 3.

“horse” includes ass or mule;

“horseflesh” includes any part of the carcass of a horse.

209. (1) Subject to the Abattoirs Act 1909, a person who slaughters or causes or permits or suffers any other person to slaughter a horse at an abattoir or slaughter-house at which any animals are slaughtered for human consumption commits an offence and is liable to a penalty not exceeding \$2 500.

Restriction
on slaughter
of horses.

(2) A person who at any place slaughters or causes or permits or suffers any other person to slaughter a horse for human consumption commits an offence and is liable to a penalty not exceeding \$2 500.

210. A person who—

- (a) sells any horseflesh or any food substance or article containing any horseflesh; or
- (b) prepares any horseflesh or prepares or manufactures any food substance or article containing any horseflesh,

Prohibition
of sale,
preparation
or manufac-
ture of
horseflesh
for human
consump-
tion.

for human consumption commits an offence and is liable to a penalty not exceeding \$2 500.

Prohibition
of sale or
possession of
horseflesh
from, at or
on certain
places and
vehicles.

211. (1) A person who sells any horseflesh or any food substance or article containing horseflesh at or from any shop, stall, vehicle or place at or from which—

- (a) any fresh uncooked meat (including sausages) is sold for human consumption; or
- (b) any food substance or article is sold for human consumption, unless that horseflesh or food substance or article containing horseflesh is contained in a sealed metal container bearing a label indicating that the contents of such container consist wholly or partly of horseflesh and are not for human consumption,

commits an offence and is liable to a penalty not exceeding \$2 500.

(2) The owner or occupier of—

- (a) any shop, stall or other place at or from which any fresh uncooked meat (including sausages) is sold for human consumption; or
- (b) any factory or other place at which any food substance or article is prepared or manufactured for human consumption,

who has at that shop, stall, factory or place or causes or permits or suffers to be or to remain at that shop, stall, factory or place any horseflesh or any food substance or article containing horseflesh commits an offence and is liable to a penalty not exceeding \$2 500.

(3) The owner or occupier of any shop, stall or other place at or from which any food substance or article is sold for human consumption who has at that shop, stall or

place or causes or permits or suffers to be or to remain at that shop, stall or place any horseflesh or food substance or article containing horseflesh which is not contained in a sealed metal container labelled within the meaning of subsection (1) (b) commits an offence and is liable to a penalty not exceeding \$2 500.

(4) The owner or person in charge of any vehicle from or on which any fresh uncooked meat (including sausages) is sold or carried for human consumption who has in or on that vehicle or causes or permits or suffers to be or to remain in or on that vehicle any horseflesh or any food substance or article containing horseflesh commits an offence and is liable to a penalty not exceeding \$2 500.

(5) The owner or person in charge of any vehicle from or on which any food substance or article is sold or carried for human consumption who has in or on that vehicle or causes or permits or suffers to be or to remain in or on that vehicle any horseflesh or any food substance or article containing horseflesh which is not contained in a sealed metal container labelled within the meaning of subsection (1) (b) commits an offence and is liable to a penalty not exceeding \$2 500.

212. A person who at or from any works for boiling down meat, blood, bones or offal sells for human consumption any part of the carcass of an animal commits an offence and is liable to a penalty not exceeding \$5 000.

Prohibition
of sale of
meat, etc.,
from boiling
down works.

Division 4.—Milk and dairy produce.

213. In sections 214, 216 and 217—

“milk” includes cream.

Interpreta-
tion in
sections 214,
216 and 217.

Contamina-
tion of milk.

214. (1) A person who—

- (a) sells, offers, or delivers for sale, keeps or has in his possession for sale, or supplies to any person—
 - (i) impure or unwholesome milk, or milk drawn from animals fed on unwholesome food or from animals affected with any disease of livestock, whether contagious, infectious, or otherwise, capable of causing the milk to become unwholesome for food; or
 - (ii) milk drawn from animals within 15 days before or 5 days after parturition;
- (b) uses any milk referred to in paragraph (a) for human consumption;
- (c) mixes any milk referred to in paragraph (a) with other milk intended for sale or for human consumption or for butter or cheesemaking;
- (d) uses any milk referred to in paragraph (a) (i) for the food of swine or other animals; or
- (e) allows any person suffering from any infectious or contagious disease to—
 - (i) milk any animal;
 - (ii) handle any vessel used for the reception of milk intended for sale or for human consumption;
 - (iii) take part or assist in the business of dairyman, cowkeeper or vendor of milk; or
 - (iv) be employed in a dairy,

commits an offence and is liable to a penalty not exceeding \$5 000.

(2) It is not a defence to a prosecution under—

- (a) subsection (1) (a) (i) relating to an animal affected with any disease of livestock referred to therein to show that the defendant did not know that that animal was so affected; or
- (b) subsection (1) (e) to show that the defendant did not know that the person concerned was suffering from an infectious or contagious disease,

unless it is also shown that it was not practicable to discover by the exercise of reasonable diligence that that animal was so affected or that that person was so suffering, as the case requires.

215. A local authority may refuse to register or to renew the registration of any premises as a dairy, unless those premises are constructed in accordance with by-laws made under section 342 as read with section 220 (1).

Dairy
premises to
be properly
constructed.

216. (1) A person who supplies milk obtained from other persons or from his dairy to customers shall, on the production to him of a certificate of a medical officer of health that—

Supplier of
milk to
supply
certain
information
in certain
circum-
stances.

- (a) an epidemic of infectious or contagious disease exists; or
- (b) the milk supplied by that person is suspected of causing disease,

furnish to the local authority and, if so required, to the Executive Director, Public Health, a list of the names and addresses of his customers and, if the milk supplied by that person is obtained from other persons, a full statement of the names and addresses of those other persons.

(2) A person who does not comply with a requirement of, or made under, subsection (1) commits an offence and is liable to a penalty not exceeding \$5 000.

Sale of milk.

217. (1) A person who sells or offers or delivers for sale any milk which has been carried over a milk round or any part thereof thereafter and returned to the dairy premises, milk depot or refrigerating or cooling chamber from which it was so carried commits an offence and is liable to a penalty not exceeding \$500.

(2) A person engaged in the carriage, delivery or sale of milk who has, at the same time and in the same vehicle, any water or skimmed milk commits an offence and is liable to a penalty not exceeding \$500.

(3) A health surveyor may at any time search and inspect any vehicle used for or in connection with the carriage, delivery or sale of milk, and every part thereof, for the purpose of ascertaining whether or not any breach of subsection (2) has been or is being committed.

(4) In any prosecution under this section with respect to the carriage, delivery or sale of milk, it shall be no defence that the defendant is only the servant or agent of the owner of the milk, or is only entrusted for the time being with the milk by that owner, but that servant or agent and that owner shall both be liable.

(5) If the defendant in a prosecution referred to in subsection (4), being a servant or agent of the owner of the milk concerned, proves that he delivered that milk in the same state in which he received it from that owner, and without knowledge that the nature, substance or quality of the milk was injuriously affected, he may, notwithstanding that that owner has himself been convicted and fined, recover from

that owner the amount of any penalty imposed on him as a result of conviction in respect of that prosecution, together with the costs paid, or to be paid, by him on that conviction, and those incurred by him in and about his defence thereto.

(6) If a servant or agent is convicted within the meaning of subsection (5), the justices so convicting him may, if they think fit, suspend the operation of the penalty imposed on him for any period not exceeding 3 months to enable the defendant to recover the amount of the fine and the costs from the owner of the milk concerned.

218. (1) A person who makes, prepares or compounds for sale or sells, offers, keeps or exposes for sale—

Regulation
of sale of
spurious
butters.

(a) any compound of fats, oils or similar substances other than the fat of milk;
or

(b) any article not made exclusively of milk or cream, or both, with or without salt, 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—

(c) commits an offence; and

(d) is liable to a penalty not exceeding \$500,

unless a conspicuous and legible brand or mark indicating the nature of that compound or article is placed upon each piece or part of, and on every jar, parcel, cask, case or package that contains, any such compound or article.

(2) Any compound or article referred to in subsection (1)—

- (a) not being genuine butter; and
- (b) not being branded or marked as provided by subsection (1),

may be forthwith seized and destroyed or otherwise disposed of by any public health official or any officer of any local authority.

Imitation
cheese to be
labelled.

219. A person who sells any imitation or filled cheese—

- (a) commits an offence; and
- (b) is liable to a penalty not exceeding \$500,

unless that cheese is distinctly marked with the true and appropriate name of the article, and a label bearing that name is delivered to the purchaser at the time of that sale.

By-laws as
to dairies.

220. (1) A local authority may make by-laws under section 342—

- (a) for the annual licensing of cowkeepers, dairymen and vendors of milk;
- (b) for the annual registration of dairies, milk stores and milk shops;
- (c) prohibiting the sale of milk except by licensed persons, and except from registered dairies, milk stores or milk shops;
- (d) for the inspection of cattle bred or kept for dairying purposes and of dairy farms and grazing grounds, dairies, milk stores and milk shops, and pro-

hibiting the use thereof if likely, in the opinion of a medical officer of health, to be injurious or dangerous to health by affecting the milk or otherwise;

- (e) for preserving the health and good and cleanly condition of cattle kept at any dairy, and for the inspection and the testing for the presence of tuberculosis in and among the same, and empowering the local authority to order the isolation or destruction of diseased cattle bred or kept for dairying purposes;
- (f) prescribing and regulating the situation, construction, lighting, ventilation, cleansing, paving, draining, and water supply of dairies, milk stores and milk shops;
- (g) prescribing the precautions to be taken for protecting milk against infection or contamination;
- (h) for the sterilisation and delivery of milk;
- (i) for cleansing and disinfecting dairies, milk stores and milk shops, and for destroying or removing any diseased animals, and for removing any sick persons from the premises of any dairy, milk store or milk shop;
- (j) for the prevention of the adulteration of milk and dairy produce;
- (k) for temporarily prohibiting the sale of milk from dairies where animals are diseased or supposed to be diseased, or where persons are suffering, or supposed to be suffering, from an

infectious disease, or if there are reasonable grounds for suspecting that the milk supply from those dairies is causing the spread of infectious disease;

- (l) prescribing the fees to be paid for every annual licence and registration;
- (m) defining areas within the district of the local authority within which it shall not be lawful to establish and open dairies and prohibiting the establishment and opening of dairies in those areas.

(2) The Governor may make regulations under section 341 providing for payment of such compensation as he may think just by the local authority to the owner of any cattle destroyed under any by-law made under section 342 as read with subsection (1), and providing for such total or partial reimbursement of the local authority as he may think just out of such moneys as may be provided by Parliament for the purpose.

(3) A person who commits an offence under—

- (a) a by-law made under section 342 as read with subsection (1); or
- (b) a regulation made under section 341 as read with subsection (2),

is liable to a penalty not exceeding \$2 500.

Division 5.—Drugs.

221. (1) Subject to subsection (2), a person who—

- (a) except for the purpose of compounding, as hereinafter described, mixes, colours, stains or powders, or orders or permits any other person to mix, colour, stain or powder, a drug with

Mixture of
drug, etc.
with
injurious
ingredients
and
selling the
same.

any ingredient or material so as to affect injuriously the quality or potency of the drug, with intent that the same may be sold in that state; or

- (b) sells a drug mixed, coloured, stained or powdered with any ingredient or material so as to affect injuriously the quality or potency of the drug,

commits an offence and is liable to a penalty not exceeding \$5 000.

(2) A person shall not be liable to be convicted of an offence under this section in respect of the sale of any drug, if he shows, to the satisfaction of the justices, that he did not know of the drug sold by him being mixed, coloured, stained or powdered within the meaning of subsection (1), and that he could not with reasonable diligence have obtained that knowledge.

222. A person who, for purposes of sale, mixes or causes or permits to be mixed any ingredient or material with any drug in order thereby fraudulently to increase its mass, bulk or measure, or to conceal its inferior quality, commits an offence and is liable to a penalty not exceeding \$5 000.

Mixing for sale food or drugs to increase bulk.

223. (1) A person who—

- (a) sells any drug which is not of the nature, substance and quality of the drug demanded by the purchaser;
- (b) sells any compounded drug which is not compounded of ingredients in accordance with the demand of the purchaser; or
- (c) exposes for sale or deposits in any place for the purpose of sale or preparation for sale any drug, which is not of the standard referred to in section 229,

Sale of drugs not of nature, substance and quality demanded.

commits an offence and is liable to a penalty not exceeding \$2 500.

(2) In any prosecution under this section, it shall not be a defence to prove that—

- (a) the purchaser bought only for examination or analysis; or
- (b) the drug, though defective in nature or in substance or in quality, was not defective in all 3 respects.

Labelled
description.

224. (1) A person who sells any drug shall deliver the same to the purchaser in its pure state, and in strict accordance with its labelled description (if any), and with the name under which it is sold, unless it is sold as a mixture, in which case the added ingredients shall be pure; and the fact of the admixture, with the names of the added ingredients, shall be distinctly and legibly written or printed on a label affixed to the outside of the containing vessel or parcel, or to the outside wrapper, of the drug.

(2) Any person who contravenes subsection (1) commits an offence and is liable to a penalty not exceeding \$1 000.

Employment
of infected
persons
prohibited.

225. (1) A person who—

- (a) is suffering from any infectious or contagious disease; and
- (b) engages or is employed in the manufacture, manipulation, preparation, handling, storage or sale of drugs,

commits an offence and is liable to a penalty not exceeding \$500.

(2) A medical officer may examine any person engaged or employed within the meaning of subsection (1) who is suspected of suffering from any infectious or contagious disease, and every such person who refuses to submit to such an examination on being required by a medical officer so to do commits an offence and is liable to a penalty not exceeding \$2 500.

226. (1) The Executive Director, Public Health, may, at his own instance or at the request of a local authority, cause to be examined for the purpose of ascertaining its composition and properties any drug or appliance which is advertised, exhibited or offered for sale, and shall compare the results of such an examination with any advertisement which relates to that drug or appliance, and with the price at which it is sold, and shall prepare and forward to the Minister a report thereon, and that report may include any comment which the Executive Director, Public Health, thinks desirable in the public interest.

Executive Director, Public Health, may examine and report on advertised drugs and appliances.

(2) The Executive Director, Public Health, may, with the approval of the Minister, cause a report prepared and forwarded under subsection (1) to be published in—

(a) the *Gazette*; and

(b) any newspaper or public print which circulates within the State,

and to be distributed among the public in any other way, and no action shall lie in respect of that publication.

(3) The proprietor or manager of a newspaper or public print may republish any report which has been published by the Executive Director, Public Health, under subsection (2), and no action shall lie against that proprietor or manager in respect of that republication.

(4) In this section—

“appliance” includes any instrument or contrivance which is advertised, exhibited or offered for sale as of use for curative purposes.

227. (1) A medical officer of health, health surveyor or any other officer authorized in that behalf by the Executive Director, Public Health,

Sample of drug may be obtained for analysis.

or a local authority (in this section called a "competent officer") may procure a sample of a drug, and submit the same to an analyst.

(2) If, when a competent officer applies to purchase a drug from any person having the same for sale, or from the servant or agent of such a person, and tenders the price for the quantity of the drug which he requires for the purpose of analysis, that person, or his servant or agent, refuses to sell the same, he, and also the servant or agent, if any, commits an offence and is liable to a penalty not exceeding \$2 500.

(3) A competent officer who purchases a drug with the intention of submitting the same to analysis (in this section called "the purchaser") shall forthwith notify to the seller or his servant or agent selling the same his intention to have the same analysed, and shall offer to divide the drug so purchased into 3 parts to be then and there separated, and each part to be marked and sealed or fastened up in such manner as its nature permits by the purchaser in the presence of the seller or his servant or agent, and, if the seller or his servant or agent so desires, with the seal or distinguishing mark of the seller or his servant or agent as well as that of the purchaser.

(4) The purchaser shall, if the offer made by him under subsection (3) is accepted, proceed accordingly, and shall deliver one of the parts concerned to the seller or his servant or agent, retain another of those parts for future comparison and submit the third of those parts to an analyst, if he thinks it right to have the drug concerned analysed.

(5) If the purchaser of the drug concerned has under subsection (3) notified the seller or his servant or agent selling the same of his intention to have the same analysed, he shall also, within 3 days after giving that notice, give a similar notice to the manufacturer of that

drug, if that manufacturer is other than the seller and his name and address are known to the purchaser and he resides or carries on business within the State.

(6) If the seller of a drug or his servant or agent, having accepted the offer of the purchaser under subsection (3) to divide the drug, prevents or attempts to prevent the completion of the proceedings prescribed by subsection (4), whether by departing from the place where the purchase was made or otherwise, then the purchaser may proceed as if the offer had not been accepted.

(7) If the seller of a drug or his servant or agent does not accept the offer of the purchaser under subsection (3) to divide the drug, the analyst receiving the same shall divide it into 2 parts, and shall seal or fasten up one of those parts, and cause it to be delivered to the purchaser, either when that analyst receives the drug or when he supplies his certificate to the purchaser, and the purchaser shall retain the part so delivered to him and produce the same if any proceedings are afterwards taken in the matter.

(8) If an analyst does not reside within 3 kilometres of the residence of the person requiring a drug to be analysed for the purposes of this section, the drug may be forwarded to the analyst through a post office as a registered letter or packet, or by such other means or in such other manner as may be prescribed.

(9) An analyst analysing a drug for the purposes of this section shall give a certificate of the result of his analysis and examination in the prescribed form, and in any proceedings before any court the production of a certificate purporting to be signed by that analyst shall be sufficient evidence of the identity of the drug analysed and of the result of that analysis, without proof of the signature of the person appearing to have signed the same.

(10) Notwithstanding anything in subsection (9), the defendant in any proceeding arising out of an analysis under this section may require the analyst concerned to be called as a witness, and the part of the drug concerned retained by the person who purchased the same to be produced.

(11) The court before which any complaint is made, or any appeal is heard, may cause a drug to be sent to an analyst to make an analysis or examination thereof and give a certificate to the court of the result.

(12) The cost of any analysis or examination of a drug sent to an analyst under subsection (11) shall be paid as the court in its discretion directs.

(13) A competent officer purchasing a drug under this section may require the seller to state his name and address, and, if default is made in complying with that requirement, the seller commits an offence.

(14) In any prosecution under this Division proof of non-compliance, or failure to prove compliance, on the part of a competent officer with any of the provisions of this section which ought to have been complied with by him shall not entitle the defendant to have the complaint dismissed or prevent his conviction unless he shall show that the non-compliance has in fact prejudiced him.

Power of
medical
officer of
health,
health
surveyor, etc.
in relation
to drugs.

228. (1) Any medical officer of health, or health surveyor, or any other officer authorized in that behalf by the Executive Director, Public Health, or a local authority (in this section called "the competent officer") may, in the exercise of the powers conferred on him by this Division—

(a) at all reasonable hours have access to all public or private salerooms occupied or used by merchants, brokers, whole-

sale dealers or other persons, and to all public and private warehouses, factories, stores, quays, sheds, ships or barges where drugs are offered for sale, or deposited for the purpose of sale, and seize or procure samples of any drugs so offered for sale;

- (b) seize or procure samples of any drugs at their place of delivery, or at any railway station or other place during transit, or on the premises of or elsewhere in the possession of any person for the purpose of carriage;
- (c) seize on board any vessel or procure at the port of entry or elsewhere samples of any drugs imported as merchandise;
- (d) seize or procure samples of any drug which the competent officer may suspect to have been sold or to be intended to be sold as a drug with the standard appointed for which it is not in conformity;
- (e) for any purpose referred to in paragraph (a), (b), (c) or (d), open any package in which any drugs referred to in that paragraph may be contained.

(2) A person having the possession, custody or control of any drug referred to in subsection (1) who refuses to permit samples to be seized or procured under that subsection commits an offence and is liable to a penalty not exceeding \$10 000.

(3) A competent officer who seizes or procures under subsection (1) a sample of a drug which is consigned to any person shall forthwith divide that sample into 3 parts, and shall deliver or forward one of the parts to the consignor, if

he resides or carries on business in the State, and his name and his address within the State appear on the package containing the drug, but if he does not reside or carry on business in the State or his name and address do not so appear, the part shall be delivered or forwarded by the competent officer to the consignee.

(4) A competent officer who has delivered or forwarded one part of a sample under subsection (3) shall retain one of the other 2 parts of the sample for future comparison, and shall submit the third part thereof to an analyst, if he thinks it right to have that third part analysed.

(5) In addition to complying with subsections (3) and (4), a competent officer shall, within 3 days after seizing or procuring the sample concerned, give to the manufacturer of the drug concerned, if that manufacturer is other than the consignor and his name and address are known to the competent officer and he resides or carries on business within the State, notice in writing of the intention of the competent officer to submit the third part of that sample to an analyst.

(6) Whenever it is desired to forward any portion of a sample under this section, that portion may be sent through a post office as a registered letter or packet, or by such other means or in such other manner as may be prescribed.

(7) A competent officer who seizes or procures under this section a sample of a drug which is not consigned to any person shall submit the whole sample to an analyst if he thinks it right to have the same analysed.

(8) Subsections (8), (9), (10), (11), (12) and (14) of section 227 shall be deemed to be repeated in this section (with the words "seized or procured" substituted for the word "pur-

chased" in subsection (10) of that section), and shall have effect in connection with the foregoing provisions of this section accordingly.

(9) In this section—

“package” includes parcel, box, barrel, basket, bag, case or tin.

229. (1) In every proceeding under this Act with respect to any drug, the standard settled and appointed by regulations under this Act shall be the standard, or if no such standard shall have been settled and appointed in respect of any drug, the pharmacopoeia as defined by *The British Pharmacopoeia* shall be taken as the standard.

The appointed standard or *The British Pharmacopoeia* to be standard.

(2) A purchaser of a drug for which a standard referred to in subsection (1) exists shall, in the absence of proof to the contrary, be deemed to have demanded the standard quality of that drug.

(3) A drug for which a standard referred to in subsection (1) exists shall, for the purposes of this Act, be deemed to be pure if it is in conformity with that standard.

230. If the defendant in any prosecution under this Act for the sale of a drug, having purchased the drug, proves that he sold it—

Right of recourse by defendant in certain cases.

(a) in the state in which he received it from the person from whom he purchased it; and

(b) without knowledge that—

(i) the nature, substance, or quality of the drug was not that of the drug demanded by the purchaser;

- (ii) any ingredient or material had been mixed with the drug contrary to any provisions of this Act;
- (iii) the drug was unfit for human consumption or use; or
- (iv) otherwise any provisions of this Act with regard to the nature, substance, quality or labelling of the drug had been contravened,

as the case requires, he may recover, in any court of competent jurisdiction, from the person from whom he purchased the drug, the amount of any penalty imposed on him on conviction as a result of that prosecution, together with the costs thereof, paid or payable by him on his conviction, and those paid or payable by him in and about his defence thereto; and the court that imposes that penalty on him may suspend the operation of that penalty for any period not exceeding 3 months to enable him to recover, as hereinbefore provided, from the person from whom he purchased the drug.

Responsi-
bility of
manufac-
turer as well
as that of
seller of
drugs.

231. (1) In this section—

“deficient product” means manufactured drug, which, when sold by its manufacturer, is not—

- (a) of the quality, nature, substance, degree of purity, standard or composition;
- (b) free from admixture, colouring, staining, powder, ingredient, material or substance; or
- (c) labelled,

as required by this Act;

“manufacturer” means manufacturer of a deficient product;

“vendor” means person who, not being a manufacturer or wholesaler, sells a deficient product whether he purchases it directly or indirectly from its manufacturer or wholesaler or otherwise.

(2) A person who sells a deficient product commits an offence and is liable to a penalty not exceeding \$2 500.

(3) When in the district of a local authority a vendor commits an offence under subsection (2), the local authority may—

- (a) prosecute the vendor, or the manufacturer, or both of them; or
- (b) the vendor or the wholesaler, or both of them,

as the case requires, for their respective offences under that subsection.

(4) Notwithstanding that anything constituting or partly constituting the sale by the manufacturer or wholesaler of a deficient product was done or omitted, or caused to be done or omitted, by that manufacturer or wholesaler elsewhere than in the district of a local authority, the local authority may prosecute that manufacturer or wholesaler for an offence under subsection (2) in all respects as if the sale had been effected in that district by that manufacturer or wholesaler.

(5) When a prosecution for an offence under subsection (2) is instituted against both the vendor and the manufacturer or both the vendor and the wholesaler, the local authority concerned may, notwithstanding the provisions

of section 43 of the Justices Act 1902, but subject to those of section 51 of that Act, join both matters in the same complaint.

(6) The provisions of this section do not derogate from those of section 230.

Liability
of agent
or servant.

232. (1) In any prosecution for an offence under this Act in respect of the sale of a drug, it shall be no defence that the defendant is only the agent or servant of the owner of or person dealing in the drug or having the same for sale, but the agent or servant and that owner or person shall both be liable.

(2) Notwithstanding anything in subsection (1), it shall be a defence in a prosecution referred to in that subsection if the defendant, being a servant referred to in that subsection, proves that the offence concerned was committed in a store, shop, stall or other similar place in which business was, at the time of the commission of that offence, conducted under the personal superintendence of some other person.

(3) If the defendant in a prosecution referred to in subsection (1), being an agent or servant referred to in that subsection, proves that he sold the drug concerned without knowledge that—

- (a) the nature, substance or quality of that drug was not that of the drug demanded by the purchaser;
- (b) any ingredient or material had been mixed with that drug contrary to any provisions of this Act;
- (c) that drug was unfit for human consumption or use; or
- (d) otherwise any provisions of this Act with regard to the nature, substance, quality or labelling of that drug had been contravened,

as the case requires, he may, notwithstanding that his principal, employer or master has been convicted and fined, recover in any court of competent jurisdiction from his principal, employer or master the amount of any penalty imposed on him on conviction as a result of that prosecution, together with the costs thereof paid or payable by him on his conviction, and those paid or payable by him in and about his defence to that prosecution.

(4) When an agent or servant has been convicted of an offence referred to in subsection (1) the court may, if it thinks fit, suspend the operation of the penalty imposed on that conviction for any period not exceeding 3 months to enable him to recover from his principal, employer or master the penalty and costs referred to in subsection (3).

233. Whenever, after the conviction of a person for an offence under this Act in respect of the selling of a drug, the justices are of opinion that the drug is unfit for use as a drug, they may order the drug to be forfeited and to be destroyed or otherwise disposed of as they think fit.

Unfit drug
may be
destroyed.

234. (1) The consignee or other person having the custody of a drug imported into the State who does not permit any medical officer of health, health surveyor or any other officer authorized in that behalf by the Executive Director, Public Health, or the local authority to take such samples of any such consignment as may be necessary for the enforcement of the provisions of this Act commits an offence and is liable to a penalty not exceeding \$2 500.

Importation
of
adulterated
drugs, etc.

(2) When an officer referred to in subsection (1) takes a sample of a consignment referred to in that subsection, he shall divide it into 3 parts, deliver or send one of the parts to the

consignee or his agent, retain one of the parts for future comparison and submit the third part to an analyst or to a bacteriologist or pathologist appointed under section 6 of the Health Legislation Administration Act 1984.

(3) If on analysis or examination a sample submitted to an analyst or bacteriologist or pathologist under subsection (2) is found to be adulterated or impoverished, or if it has been mixed with any other substance, or if any part of it has been abstracted so as in any case to affect injuriously its quality, substance or nature, the drug from which that sample was taken shall not be delivered to the consignee except with the sanction of the Executive Director, Public Health, and subject to such terms and conditions as he thinks fit to impose.

Drugs may
be declared
dangerous by
Executive
Director,
Public
Health.

235. (1) If the Executive Director, Public Health, is of opinion that any quantity of a drug, even if it is correctly administered, would or may in the circumstances be injurious or dangerous to health, owing to some extraneous matter being by mistake or fraudulently mixed with the drug in the process of preparation, deterioration of the drug, chemical change in the drug or for any other reason whatsoever, the Executive Director, Public Health, may, with the approval of the Minister, declare that the quantity of the drug is dangerous.

(2) While a declaration made under subsection (1) is in force, the Executive Director, Public Health, may from time to time order in writing the owner or person having possession of the drug concerned to—

- (a) secure that drug in a safe place and ensure that it is not removed from his possession or used or sold;
- (b) deliver up that drug to a person specified in that order at a place, and within a time, so specified; or

- (c) do such things in relation to that drug as the Executive Director, Public Health, deems necessary for the protection of the public health and specifies in that order,

but before any action is taken under paragraph (b) or (c) the Executive Director, Public Health, shall give 7 days' notice in writing to the wholesaler or manufacturer of that drug of his intention to exercise his powers under that paragraph.

(3) When the Executive Director, Public Health, is of opinion that the drug to which a declaration under subsection (1) relates is no longer dangerous or injurious to health, he shall forthwith give notice of the fact to the owner of that drug and revoke any order made by him under subsection (2) relating to that drug, but if at any time after a period of 30 days of the date of the making of such an order the Executive Director, Public Health, is of the opinion that that drug is still dangerous or injurious to health he may destroy or otherwise dispose of it as he thinks fit.

(4) The Executive Director, Public Health, may at any time revoke a declaration made under subsection (1).

(5) A person shall not be entitled to any compensation either from the Crown or the Executive Director, Public Health, by reason of anything done, or the destruction of or damage to or loss of value of any drugs as a result of any action taken, in accordance with an order made by the Executive Director, Public Health, under subsection (2) or as a result of any action taken by the Executive Director, Public Health, under subsection (3).

False trade
description
of drug.

236. (1) A person who sells, or exchanges, or offers, stores, keeps, exposes, advertises or delivers for sale or exchange, or authorizes, directs or allows the sale or exchange of any drug—

- (a) to which a false trade description is applied; or
- (b) which bears a description which, or the advertised description of which, is misleading, or which, if relied on, might cause injury or danger to health,

commits an offence and is liable to a penalty not exceeding \$5 000.

(2) A trade description shall be deemed, for the purposes of subsection (1), to be applied to a drug, if it is—

- (a) applied to the drug itself;
- (b) applied to any covering, label, reel or thing used in connection with the drug; or
- (c) applied to the drug by way of advertisement.

(3) In subsection (2)—

“advertisement” includes statements made in circulars or pamphlets, whether issued with the drug concerned or not;

“covering” includes any stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper;

“label” includes any band or ticket.

Division 6.—Medicines and disinfectants.

237. (1) The Executive Director, Public Health, may, from time to time, on the advice of the Drug Advisory Committee, prohibit the sale of any patent or proprietary medicine which, in the opinion of the Drug Advisory Committee, is deleterious or dangerous to health.

Sale of patent or proprietary medicines may be prohibited.

(2) A person who sells, or offers to sell, or advertises for sale, or has in his possession for sale, any patent or proprietary medicine, the sale of which has been prohibited under subsection (1), commits an offence and is liable to a penalty not exceeding \$10 000.

(3) In this section—

“patent or proprietary medicine” means medicine or medicinal preparation for external or internal use which—

(a) the maker or vendor has any exclusive right to make under the authority of letters patent;

or

(b) is recommended to the public by advertisement, price list, handbill or label for the prevention, cure or relief of any malady or disorder incident to or otherwise affecting the human body.

238. (1) A person who publishes, or causes to be published, any statement which is intended by the person or any other person to promote the sale of an article as a medicine, preparation or appliance for the prevention, alleviation or cure of any human ailment or physical defect, and which is false in any material particular relating to the ingredients,

Publication of false statements concerning medicines, etc.

composition, structure, nature or operation of the article, or to the effects which have followed, or may follow, the use thereof, commits an offence and is liable to a penalty not exceeding \$10 000.

(2) A statement shall be deemed to be published within the meaning of this section if it is—

- (a) inserted in any newspaper printed and published in the State;
 - (b) publicly exhibited in view of persons in any road, street or other public place;
 - (c) contained in any document which is—
 - (i) sent to any person through the post office;
 - (ii) gratuitously delivered to any person; or
 - (iii) left on premises in the occupation of any person;
- or
- (d) made and knowingly communicated by spoken word or transmission of sound or light or partly by each.

(3) Subject to subsection (4), if any statement referred to in subsection (1) is published in a newspaper printed and published in the State, the printer, publisher and proprietor of that newspaper severally, and without excluding the liability of any other person, commit an offence and are each of them liable to a penalty not exceeding \$500.

(4) A prosecution shall not be instituted against the printer, publisher or proprietor of any newspaper printed and published in the State for the publication of any statement

referred to in subsection (1), unless within the period of 3 months immediately preceding the day of the publication thereof a warning has been delivered to that printer, publisher or proprietor, as the case requires, under the hand of the Executive Director, Public Health, that that statement, or some other statement substantially to the same effect, is false within the meaning of that subsection, and that the publication thereof is an offence.

(5) Subject to subsection (6), a person who sells, or offers for sale, or has in his possession for sale, any newspaper or publication published outside the State containing any statement which is intended or apparently intended to promote the sale of an article as a medicine, preparation or appliance for the prevention, alleviation or cure of any human ailment or physical defect, and which is false in any material particular relating to the ingredients, composition, structure, nature or operation of the article, or to the effects which have followed, or may follow, the use thereof commits an offence and is liable to a penalty not exceeding \$500.

(6) A prosecution shall not be instituted against any person for an offence under subsection (5), unless within the 3 months immediately preceding the day on which the newspaper or publication concerned came into his possession he has been warned by the Executive Director, Public Health, of the falsity within the meaning of that subsection of that statement or of some other statement substantially to the same effect, and that the sale, offering for sale or possession for sale of that newspaper or publication is an offence.

239. The provisions of section 227 apply to disinfectants and pesticides in all respects as if they were drugs, but if a disinfectant or a pesticide is contained in packages it shall be a

Application
of section 227
to disinfect-
ants and
pesticides.

sufficient compliance with the provisions of subsection (3) of that section if, instead of a division into 3 parts, 3 unopened packages are purchased, in which case each such package shall be regarded as a division of the disinfectant or pesticide into one-third, and shall be marked and sealed or fastened in accordance with the provisions of that subsection.

Disinfectants, etc.

240. (1) A person who sells or exposes for sale any substances or compound under the name or description of, or with intent that the same may be used as, a disinfectant, deodoriser, germicide, insecticide, preservative, antiseptic, sanitary powder or sanitary fluid, without disclosing the names or name of those substances or that compound and the percentage of the active ingredients contained in the same by a label distinctly and legibly written or printed on or with those substances or that compound, commits an offence and is liable to a penalty not exceeding \$2 500.

(2) The provisions of this Act relating to the analysis or examination or labelling of drugs shall apply to all substances and compounds referred to in subsection (1).

False trade description of disinfectant.

241. (1) A person who sells, or exchanges, or offers, stores, keeps, exposes, advertises, or delivers for sale or exchange, or authorizes, directs, or allows the sale or exchange of any disinfectant—

- (a) to which a false trade description is applied; or
- (b) which bears a description which, or the advertised description of which, is misleading, or which, if relied on, might cause injury or danger to health,

commits an offence and is liable to a penalty not exceeding \$5 000.

(2) A trade description shall be deemed, for the purposes of subsection (1), to be applied to a disinfectant, if it is—

- (a) applied to the disinfectant itself;
- (b) applied to any covering, label, reel or thing used in connection with the disinfectant; or
- (c) applied to the disinfectant by way of advertisement.

(3) In subsection (2)—

“advertisement” includes statements made in circulars or pamphlets, whether issued with the disinfectant concerned or not;

“covering” includes any stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper;

“label” includes any band or ticket.

Division 7.—Manufacture of therapeutic substances.

242. (1) A person shall not manufacture for sale any therapeutic substance unless the therapeutic substance is manufactured on premises which are licensed by the Executive Director, Public Health, for the purpose.

Therapeutic substances to be manufactured on licensed premises.

(2) An application for a licence in respect of premises shall be made—

- (a) to the Executive Director, Public Health, by a person who manufactures a therapeutic substance for sale; and
- (b) in the prescribed form accompanied by the prescribed fee,

and the Executive Director, Public Health, may grant or refuse that application.

(3) A person who manufactures for sale a therapeutic substance on any premises, other than premises which are licensed under this Division, commits an offence and is liable to a penalty not exceeding \$2 500.

Duration of
licences, and
licences to
stipulate
premises and
be subject to
conditions.

243. A licence granted by the Executive Director, Public Health, under section 242 (2)—

- (a) shall specify the premises to which it relates;
- (b) may be renewed from time to time by the Executive Director, Public Health, for a period of 12 months from the date of renewal;
- (c) shall continue in force, unless sooner suspended or revoked under this section, for a period of 12 months from the date of issue or renewal;
- (d) may be granted or renewed subject to such conditions and limitations as the Executive Director, Public Health, considers necessary for the proper production of the therapeutic substances to be manufactured on the premises the subject of that licence;
- (e) may specify the therapeutic substances which may alone be manufactured on the premises the subject of that licence;
- (f) may be suspended for such time as the Executive Director, Public Health, thinks fit or revoked, if in the opinion of the Executive Director, Public Health—
 - (i) the manufacturer of a therapeutic substance has not complied with any condition

attached to the licence of the premises whereon the therapeutic substance is being or is manufactured; or

- (ii) for any reason the premises, apparatus, processes, materials or staff used or employed in the manufacture of a therapeutic substance have become inadequate, obsolete or unsuitable, as the case requires, or do not comply with the prescribed standards having regard to the nature of the therapeutic substance being manufactured for sale on those premises.

244. (1) A person aggrieved by a decision of the Executive Director, Public Health, refusing to grant or renew a licence or suspending or revoking a licence may appeal in manner prescribed against the decision to a Judge sitting in open court or in chambers, as that Judge may determine.

Appeal
against
decision of
Executive
Director,
Public
Health.

(2) On an appeal made under subsection (1) the Judge concerned may confirm, modify or reverse the decision appealed against or make such other order thereon, including an order as to the costs of that appeal, as he thinks fit, and the decision of that Judge is final.

245. (1) The Governor on the advice of the Drug Advisory Committee may make regulations under section 341 prescribing forms and fees and other matters and things which appear to him to be necessary or convenient for the protection of health in relation to therapeutic substances, including regulating the manufacture, preparation, packaging, labelling, storage, carriage, distribution, sale or use of therapeutic substances, prescribing a substance or compound to

Regulations.

be a therapeutic substance when used for a prescribed purpose and prescribing the purpose and prescribing a substance or compound to be a therapeutic substance.

(2) The regulations made under section 341 as read with subsection (1) may prescribe a penalty not exceeding \$2 500 for a breach of any regulation thereof.

Division 8.—Pesticides.

Interpreta-
tion in
Division 8.

246. In this Division, unless the context requires otherwise—

“the Pesticides Advisory Committee” means the Pesticides Advisory Committee referred to in section 246B.

Pharmacy
Act 1964 and
Poisons Act
1964 not
affected.

246A. The provisions of this Division do not affect the provisions of the Pharmacy Act 1964 or the Poisons Act 1964.

Pesticides
Advisory
Committee.

246B. (1) The Pesticides Advisory Committee which was, immediately before the coming into operation of the Health Amendment Act 1985, appointed by the Minister under section 241C as section 241C existed immediately before that coming into operation is hereby preserved and continued in existence under this Act.

(2) The Pesticides Advisory Committee shall consist of 4 members of whom—

(a) one shall be the Executive Director, Public Health, or a medical officer nominated by the Executive Director, Public Health;

(b) one shall be the Government Analyst;

- (c) one shall be the Director of Agriculture or an officer of the Department of Agriculture nominated by the Director of Agriculture; and
- (d) one shall be the person who is for the time being holding the office of Secretary of the Pesticides Advisory Committee under subsection (7),

together with such person or persons as the regular members may for the time being co-opt to advise the Pesticides Advisory Committee on the pesticides industry.

(3) The Executive Director, Public Health, or the medical officer referred to in subsection (2) (a), as the case requires, shall be the Chairman of the Pesticides Advisory Committee (in this section called "the Chairman").

(4) The Minister may appoint a deputy for a regular member and, at any meeting of the Pesticides Advisory Committee at which the regular member is not present but his deputy is present, his deputy shall have all the functions of the regular member.

(5) Those members of the Pesticides Advisory Committee and their deputies who were appointed by the Minister and who held office immediately before the coming into operation of the Health Amendment Act 1985 shall, subject to this section, continue in office until the expiry of the respective terms of their appointments.

(6) At any meeting of the Pesticides Advisory Committee—

- (a) the Chairman, or in his absence, his deputy shall preside, but if neither the Chairman nor his deputy is present the other regular members present shall elect one of their number to preside;

(b) each regular member present and, in relation to matters in respect of which he is co-opted under subsection (2), each co-opted member present has a deliberative vote and, in the event of an equality of votes, the person presiding at that meeting shall also have a second or casting vote; and

(c) any 2 regular members constitute a quorum.

(7) The Minister shall appoint a person to the office of Secretary of the Pesticides Advisory Committee, but that office may be held in conjunction with any other office under the Public Service Act 1978.

(8) Each member may be paid such attendance fees as are prescribed in his case.

(9) In this section—

“co-opted member” means person co-opted under subsection (2);

“member” means regular member or co-opted member;

“regular member” means person referred to in paragraph (a), (b), (c) or (d) of subsection (2).

Regulations
relating to
pesticides.

246C. (1) The Governor on the advice of the Pesticides Advisory Committee may make regulations under section 341 prescribing forms, fees, including application fees, and other matters and things, which appear to him to be necessary or convenient for the protection of health in relation to pesticides, including regulating and prohibiting the manufacture, preparation, packaging, labelling, storage, carriage, distribution, sale, use and registration of pesticides, the registration or licensing of the

users of certain pesticides, prescribing a substance or compound to be a pesticide when used for a prescribed purpose and prescribing the purpose, and may in respect of pesticides also make regulations which are authorized by section 246D as if references in that section to drugs were references to pesticides.

(2) The regulations made under section 341 as read with subsection (1) may be prescribed to be of general application or to apply in particular cases, circumstances or localities, and may prescribe the cases, circumstances and localities in which and the conditions on which pesticides or classes of pesticides, or persons or classes of persons, are subjected to or exempted from the application of those regulations, either wholly or to such extent as is prescribed by those regulations.

(3) A regulation made under section 341 as read with subsection (1) shall not be invalid on the ground that it delegates to or confers on a health surveyor or other person authority to determine or direct how or where a pesticide may be used, or any other discretionary authority.

(4) A person who commits an offence under a regulation made under section 341 as read with subsection (1) is liable to a penalty not exceeding \$2 500.

Division 9.—Regulations.

246D. (1) The Governor on the advice of the Regulations.
Drug Advisory Committee may from time to time make regulations under section 341—

- (a) prescribing the fees to be paid by analysts applying to be registered under section 203;

- (b) prescribing the fees to be paid by persons for the analysis or examination of drugs or disinfectants;
- (c) for the taking of samples of drugs and disinfectants, and for the examination or analysis thereof;
- (d) settling and appointing standards for the composition of drugs and disinfectants, and the amount of dilution, if any, to be allowed in the sale by retail of any drugs;
- (e) prohibiting persons having in their possession for sale any drug or disinfectant which has been adulterated by the admixture of any foreign substance;
- (f) prohibiting the manufacture, sale and offering for sale of any textile substance or leather—
 - (i) which is intended for, or is capable of being used in, wearing apparel for use by man; and
 - (ii) which contains arsenic, lead, antimony or barium in any form or compound;
- (g) settling and appointing standards of the amount of deterioration or natural poverty, if any, in any drug to be permitted without prosecution under the provisions of this Act;
- (h) settling and appointing methods of analysis and examination (either exclusive or optional) whereby the composition, quality or conformity or want of conformity to standard of any drug shall or may be ascertained;

- (i) ordaining that any drug shall be labelled;
- (j) prescribing what information relative to a drug shall be set out on its label, and prohibiting the use on such a label of any particular words or expressions;
- (k) prohibiting the sale (except to a health surveyor or public health official demanding a sample of the drug concerned under the authority of this Act) or offering or exposing for sale of any drug which is not labelled as prescribed;
- (l) granting conditional exemption from any requirement of the regulations regarding labelling in respect of any drug and prescribing the conditions of such an exemption;
- (m) regulating marks to be applied to drugs or disinfectants deemed by the Executive Director, Public Health, wholesome or effective, and prescribing the fees to be paid for the inspection and marking of drugs or disinfectants;
- (n) discriminating in respect of labelling between drugs supplied on the order of a medical practitioner within the meaning of section 3 of the Medical Act 1894 or by a pharmaceutical chemist and drugs not so supplied;
- (o) for the prevention of adulteration or contamination of drugs and disinfectants, and for the prohibition of the sale (except to a health surveyor or other officer demanding a sample of a drug or disinfectant under the authority of this Act) or offering or exposure for sale of drugs or disinfectants not in conformity with the prescribed standard; and

- (p) generally for all other matters and things necessary to give effect to this Part.

(2) The Governor may from time to time make regulations under section 341—

- (a) regulating the sale, offer or exposure for sale, movement and storage of meat and, without limiting the generality of the foregoing—
 - (i) providing for meat that is slaughtered for food or imported for food to be inspected to determine whether it is wholesome and appointing places at which meat may be exhibited for that inspection;
 - (ii) imposing rates of fees for the purpose of recovering the costs of carrying out inspections of meat for the purposes of the regulations, which rates may vary according to the class, description or kind of inspection carried out, and prescribing the persons by whom and to whom and the places and times where and when those fees shall be paid;
 - (iii) prescribing marks and brands to be applied to meat inspected for the purposes of the regulations;
 - (iv) prohibiting the sale, or the offer or exposure for sale, within any prescribed district or prescribed part of a district, of meat that—
 - (A) is not accompanied by a certificate evidencing that it has been inspected for the purposes of the regulations and passed as wholesome; or

(B) is not marked or branded with prescribed marks or brands in accordance with the regulations;

- (b) requiring persons who in any shops, vehicles or places exhibit meat that is or has been frozen for sale or have it in their possession for sale to cause notices of that fact to be legibly printed and conspicuously displayed to the satisfaction of a health surveyor on or in those shops, vehicles or places and to keep and maintain those notices conspicuously displayed thereon or therein during the whole time that any such meat is exhibited or kept therein; and

- (c) generally for all other matters and things necessary to give effect to this Part.

(3) A person who commits an offence under a regulation made under section 341 as read with subsection (1) or (2) is liable to a penalty not exceeding \$2 500.

246E. A person—

- (a) commits an offence; and
- (b) is liable to a penalty not exceeding \$2 500,

Offence in respect of uncertified, unmarked or unbranded meat.

if, in a district or part of a district in which a regulation made under section 341 as read with section 246D (2) (a) (iv) is in force, he sells or offers or exposes for sale, or supplies or offers to supply for reward, any meal, or prepared article of food, which consists wholly or partly of meat from a carcass which has not been marked or branded as required by that regulation.

Meat
inspection
fees.

246F. (1) In this section—

“the meat inspection regulations” means the regulations in force from time to time under section 341 as read with section 246D (2) (a).

(2) The rates of fees prescribed in respect of any class, description or kind of inspections carried out for the purposes of the meat inspection regulations shall be fixed so that as nearly as may be the proceeds thereof do not exceed the costs of carrying out such inspections.

(3) No fee shall be payable in respect of an inspection for the purposes of the meat inspection regulations unless the inspection is carried out by an officer appointed under section 6 of the Health Legislation Administration Act 1984 or section 27.

(4) The proceeds of all fees prescribed by the meat inspection regulations to be paid and paid or recovered in respect of inspections carried out for the purposes of the meat inspection regulations shall be paid—

- (a) in the case of fees paid to or recovered by the Director, to the credit of a special account in the Treasury to be called the “State Meat Inspection Account”; or
- (b) in the case of fees paid to a local authority, to the credit of a special fund, which the local authority is hereby authorized to establish and maintain, to be called the “(name of local authority) Meat Inspection Fund”.

(5) Money to the credit of the State Meat Inspection Account shall be applied only to the payment of the costs of inspections carried out for the purposes of the meat inspection

regulations by officers appointed under section 6 of the Health Legislation Administration Act 1984 and acting on behalf of the Director.

(6) Money to the credit of a fund established by a local authority under subsection (4) (b) shall be applied only to the payment of the costs of inspections carried out for the purposes of the meat inspection regulations by—

- (a) officers appointed by the local authority under section 27; or
- (b) officers appointed under section 6 of the Health Legislation Administration Act 1984 and acting on behalf of the local authority.

PART VIII—FOOD GENERALLY.

Division 1.—Preliminary.

246G. (1) In this Part, unless the contrary Interpreta-
tion. intention appears—

“adulterated”, in relation to food, means deemed to be adulterated by virtue of section 246I;

“advertisement” means—

- (a) words, whether written or spoken;
- (b) symbolic or pictorial representation or design; or
- (c) other representation by any means whatever,

used or apparently used to promote directly or indirectly the sale or disposal of food;

“analysis” means analysis or examination carried out by an analyst;

“analyst” includes bacteriologist or pathologist appointed under section 6 of the Health Legislation Administration Act 1984;

“animal” includes bird, fish, crustacean, mollusc and reptile;

“appliance” means whole or part of any utensil, machinery, instrument, apparatus or other thing used or capable of being used in or for preparing, packing, storing, handling, conveying, serving, selling or supplying food and includes thing specified in this definition used or capable of being used in cleaning any other thing so specified;

“appropriate designation”, in relation to any food, means name or description or name and description sufficiently specific in each case to indicate generally the kind of food to which it is or they are applied;

“article” means—

- (a) food;
- (b) appliance;
- (c) package;
- (d) material used in packing food;
- (e) whole or a part of any thing used for or in connection with the sale or conveyance for sale of food; or
- (f) labelling or advertising material used or capable of being used in connection with the sale of food;

“corresponding law” means law of another State or of a Territory of the Commonwealth declared under subsection (2) to be a corresponding law for the purposes of this Part;

“examine” includes weigh, count, test and measure;

“food premises” means premises where food is stored, kept, prepared, manufactured, processed, cooked or served or otherwise dealt with for subsequent sale to the public, either directly or indirectly, and includes eating house, food stores, premises and places;

“food vehicle” means vehicle kept or used for the sale or preparation, packing, storing, handling, serving, supplying or conveying for sale of food;

“food vending machine” means machine or mechanical device used or capable of being used for selling or supplying food without any intervention or attention by or on behalf of the vendor at the time of that sale or supply;

“ingredient” includes ingredient of an ingredient;

“label” includes tag, brand, mark, statement in writing, representation, design or other descriptive matter on or attached to or used or displayed in connection with or accompanying food or a package of food;

“owner” includes consignor, consignee, indenter, importer, agent, broker, manufacturer’s or seller’s agent, or person in possession of the food concerned;

“package” means thing in or by which food is wholly or partly cased, covered, enclosed, contained or packed;

“premises” includes land (whether or not appurtenant to a building), building or part thereof, or tent, stall or other structure, whether permanent or temporary;

“prepare” includes manufacture, process or treat;

“proprietor”, in relation to—

(a) any food premises, means owner of the food premises or, if the owner of the food premises is not the occupier thereof, occupier of the food premises and includes person in charge or apparently in charge of the food premises;

(b) a food vehicle, means—

(i) if the food vehicle is not the subject of a hire-purchase agreement and is not otherwise hired or leased, owner; or

(ii) if the food vehicle is the subject of a hire-purchase agreement or is otherwise hired or leased, hirer or lessee under the agreement concerned,

of the food vehicle and includes person in charge or apparently in charge of the food vehicle; or

(c) an appliance, means—

- (i) if the appliance is in or at any food premises, proprietor of the food premises; or
- (ii) if the appliance is in or on a food vehicle, proprietor of the food vehicle;

“publish” means—

- (a) insert in a newspaper or other publication;
- (b) send to a person by post or otherwise;
- (c) deliver to a person;
- (d) leave on premises or any other place in the occupation of a person;
- (e) disseminate by broadcast, telecast or projected image, whether moving or still; or
- (f) bring to the notice of the public in any other manner;

“sample” includes part or unit of a sample;

“servicing”, in relation to a food vending machine, means stocking or replenishing the food vending machine with food;

“substance” includes mixture or compound;

“the regulations” means the regulations, if any, made under section 341 as read with section 247;

“this Part” includes—

- (a) the regulations; and
- (b) Schedule 3;

“vehicle” means device, whether or not operational, that is usually a means of conveyance by land, water or air and includes cart, caravan, trailer, bicycle, motor vehicle, railway carriage or wagon, ship, boat, barge, hulk, aircraft, airship or air cushion vehicle.

(2) The Governor may by order—

- (a) declare a law of another State or of a Territory of the Commonwealth to be a corresponding law for the purposes of this Part; and
- (b) amend or repeal a declaration made under this subsection.

(3) Section 42 of the Interpretation Act 1984 applies with respect to orders made under subsection (2) and, for the purposes of that application, that section shall be read and construed as if references to regulations therein were references to orders so made.

(4) This Part applies in relation to food—

- (a) offered as a prize or reward, whether in connection with entertainment or for the purpose of advertisement or in furtherance of trade or business or otherwise, as if that food were or had been exposed for sale by each person offering the prize or reward;
- (b) given away for the purpose of advertisement or in furtherance of trade or business as if that food were or had been sold by the person giving away that food; or

- (c) exposed or deposited in any premises or other place for the purpose of being offered as a prize or reward, or given away, within the meaning of paragraph (a) or (b) as if that food were or had been exposed for sale by the occupier of the premises or other place.

(5) If a provision of a written law other than this Part is inconsistent with a provision of this Part, the provision of this Part prevails, and the provision of that written law is inoperative, to the extent of that inconsistency.

246H. (1) There is hereby established a committee to be known as the Food Advisory Committee.

Food
Advisory
Committee.

(2) The Food Advisory Committee shall consist of 6 members of whom—

- (a) one shall be the Director, Public Health, or a medical officer nominated by him;
- (b) one shall be the Government Analyst;
- (c) one shall be the principal food scientist of the Department;
- (d) one shall be a medical practitioner of the Department who specialises in public health microbiology;
- (e) one shall be a person appointed by the Minister to represent consumer interests; and
- (f) one shall be a person appointed by the Minister to represent the food industry,

together with such person or persons as the regular members may for the time being co-opt to advise the Food Advisory Committee on the food industry.

(3) The Director or the medical officer referred to in subsection (2) (a), as the case requires, shall be the Chairman of the Food Advisory Committee (in this section called "the Chairman").

(4) The Minister may appoint a deputy for a regular member and, at any meeting of the Food Advisory Committee at which the regular member is not present but his deputy is present, his deputy shall have all the functions of the regular member.

(5) At any meeting of the Food Advisory Committee—

(a) the Chairman or, in his absence, his deputy shall preside, but if neither the Chairman nor his deputy is present the other regular members present shall elect one of their number to preside;

(b) each regular member and, in relation to matters in respect of which he is co-opted under subsection (2), each co-opted member present has a deliberative vote and, in the event of an equality of votes, the person presiding at that meeting shall also have a second or casting vote; and

(c) any 3 regular members constitute a quorum.

(6) The Minister shall appoint a person to the office of Secretary of the Food Advisory Committee, but that office may be held in conjunction with any other office under the Public Service Act 1978.

(7) An appointed member of the Food Advisory Committee or his deputy shall be—

(a) appointed for such period not exceeding 3 years as is specified in the instrument of his appointment; and

(b) eligible for reappointment.

(8) The Minister may at any time remove from office an appointed member.

(9) Each member may be paid such attendance fees as are prescribed in his case.

(10) In this section—

“appointed member” means person referred to in paragraph (e) or (f) of subsection (2);

“co-opted member” means person co-opted under subsection (2);

“member” means regular member or co-opted member;

“regular member” means person referred to in paragraph (a), (b), (c), (d), (e) or (f) of subsection (2).

246I. (1) Subject to any declaration made under subsection (2), food shall be deemed to be adulterated for the purposes of this Part when—

When food
deemed to be
adulterated.

(a) being labelled or otherwise represented as being food of a particular class or description—

(i) it contains or is mixed or diluted with a substance in a quantity which diminishes in any manner any of its properties as compared with food of that class or description in a pure state and in an undeteriorated condition;

- (ii) any of its constituents has been wholly or partly extracted or removed from it so that its properties, as compared with those of food of that class or description in a pure state and in an undeteriorated condition, are diminished; or
- (iii) it has been prepared, stored or otherwise dealt with so that its taste or smell is not the taste or smell ordinarily associated with food of that class or description;
- (b) it contains a substance prescribed as prohibited generally or in relation to food of that class or description;
- (c) the regulations specify that food generally or food of the class or description concerned is to contain no more than a specified quantity or proportion of a particular substance, and the food contains more than that quantity or proportion;
- (d) it is prepared in a manner whereby damage, deterioration or inferiority is or may be concealed;
- (e) it is wholly or partly the product of a diseased animal or of an animal which has died—
 - (i) naturally; or
 - (ii) in the case of a warm blooded animal, otherwise than by slaughter;
- (f) it is injurious to health, dangerous or offensive;

- (g) a package or a thing included in a package or any thing or matter with which food comes into contact consists wholly or partly of a substance which may render the food concerned injurious to health, dangerous or offensive; or
- (h) it contains a foreign substance or matter.

(2) The Executive Director, Public Health, may by notice published in the *Gazette*—

- (a) declare that a food of a class or description specified in that notice, which food, but for that notice, would be deemed to be adulterated for the purposes of this Part in a particular referred to in subparagraph (i) or (ii) of paragraph (a), or in paragraph (h), of subsection (1), shall not be deemed to be adulterated for the purposes of this Part if it is in a condition specified in that notice; and
- (b) amend or repeal a declaration made under this subsection.

246J. (1) This Part binds the Crown in right of the State. Crown bound by Part VIII.

(2) Nothing in this section affects the question whether or not the Crown in right of the State is bound by any provision of this Act outside this Part.

246K. (1) The Executive Director, Public Health, may— Power of Executive Director, Public Health, to make orders directed to local authorities.

- (a) make an order directed to a local authority with respect to any act, matter or thing required by or under this Part to be performed or done by a local authority; and

- (b) amend or repeal an order made under this subsection.

(2) A local authority to which an order made under subsection (1) is directed shall comply with that order.

*Division 2—Offences in connection with
sale of food.*

Prohibition
on sale of
certain food.

246L. A person who sells food that is—

- (a) unfit for consumption by man;
- (b) adulterated; or
- (c) damaged, deteriorated or perished,

commits an offence and is liable to a penalty not exceeding \$2 500.

Prohibition
on prepara-
tion for sale
of certain
food.

246M. (1) A person who prepares for sale food that is—

- (a) unfit for consumption by man;
- (b) adulterated; or
- (c) damaged, deteriorated or perished,

commits an offence and is liable to a penalty not exceeding \$5 000.

(2) A person who prepares for sale food for which there is a prescribed standard—

- (a) commits an offence; and
- (b) is liable to a penalty not exceeding \$3 000,

unless that food complies with the prescribed standard.

246N. (1) A person who packs for sale food that is—

Prohibition
on packing
for sale
of certain
food.

- (a) unfit for consumption by man;
- (b) adulterated; or
- (c) damaged, deteriorated or perished,

commits an offence and is liable to a penalty not exceeding \$2 500.

(2) A person who packs for sale food for which there is a prescribed standard—

- (a) commits an offence; and
- (b) is liable to a penalty not exceeding \$3 000,

unless that food complies with the prescribed standard.

246 O. (1) A person who sells food that is not of the—

Protection
for
purchasers
of food.

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

of the food demanded by the purchaser commits an offence and is liable to a penalty not exceeding \$2 500.

(2) A person who sells food that does not comply with the standard prescribed for the food demanded by the purchaser commits an offence and is liable to a penalty not exceeding \$2 000.

(3) A person who demands food by a name prescribed for a food for which there is a prescribed standard shall be taken to have demanded food that complies with the prescribed standard.

Sale of food
not
complying
with
prescribed
standard.

246P. A person who sells food—

- (a) that bears or has attached to it, or is in a package that bears or has attached to it, a name prescribed for a food; or
- (b) that is otherwise designated or represented as being a food,

for which there is a prescribed standard—

- (c) commits an offence; and
- (d) is liable to a penalty not exceeding \$2 000,

unless the food complies with the prescribed standard.

False
packing or
labelling of
food.

246Q. (1) A person who packs for sale or labels for sale food in a manner that is false or misleading in any particular or deceptive commits an offence and is liable to a penalty not exceeding \$3 000.

(2) A person who sells food that is packed or labelled in a manner that is false or misleading in any particular or deceptive commits an offence and is liable to a penalty not exceeding \$2 500.

(3) A person who packs for sale or labels for sale food in a manner contrary to or otherwise than in compliance with this Part commits an offence and is liable to a penalty not exceeding \$2 000.

(4) A person who sells food that is packed or labelled in a manner contrary to or otherwise than in accordance with this Part commits an offence and is liable to a penalty not exceeding \$2 000.

246R. (1) Subject to subsection (3), a person who, for the purpose of effecting or promoting the sale of food, publishes or causes to be published an advertisement that is false or misleading in any particular or deceptive commits an offence and is liable to a penalty not exceeding \$3 000.

False
advertising.

(2) In a prosecution for an offence under subsection (1) against a vendor or any manufacturer, packer, producer or importer of food, the onus of proving that he did not publish or cause to be published the advertisement concerned lies on the defendant.

(3) It is a defence to a charge of an offence under subsection (1) for the defendant to prove that—

- (a) he did not know and could not with reasonable diligence have ascertained that the advertisement concerned was false or misleading in any particular or deceptive; or
- (b) being a person whose business it is to publish or to arrange for the publication of advertisements, he received the advertisement concerned for publication in the ordinary course of business and did not himself make or cause to be made a material alteration to that advertisement.

246S. A person who, for the purpose of promoting the sale of any artificial food for infants, advises the mother or any person in charge of a child under the age of 6 months to use any particular class or description of artificial food, in preference to natural food, for the purpose of feeding that child commits an offence and is liable to a penalty not exceeding \$5 000.

Advising use
of artificial
food for
infants.

Prohibition
on despatch
of certain
food.

246T. A person who in or from the State sells food that—

- (a) is to be despatched from outside Western Australia; and
- (b) is unfit for consumption by man, adulterated or damaged, deteriorated or perished or is packed or labelled contrary to or otherwise than in compliance with this Part,

whether that sale is effected or to become effective in the State or elsewhere commits an offence and is liable to a penalty not exceeding \$2 500.

Division 3.—Labelling requirements.

Labelling
requirements
generally.

246U. (1) Subject to subsections (3) and (4), every package of food intended for sale shall bear on it a label setting out in the manner prescribed—

- (a) if there is a standard prescribed for that food and a name has been prescribed to be used in relation to that food, the name so prescribed or, in any other case, an appropriate designation for that food;
- (b) the name and business address of the manufacturer or vendor of that food or the packer of the contents of that package or, in the case of imported food, the name and business address in Australia of the importer of that food; and
- (c) such other particulars as are prescribed.

(2) Food other than packed food that is displayed for sale shall be labelled in accordance with the regulations.

(3) The regulations may prescribe—

(a) the food or class or description of food to which; or

(b) the circumstances in which,

all or any of the provisions of subsection (1) or of subsection (2) shall not apply.

(4) Subsection (1) shall not, unless the regulations otherwise prescribe in relation to food of a specified class or description, apply when the food was packed before or at the time of sale and in the presence of the purchaser.

246V. (1) Regulations made under the power conferred by clause 15 of Schedule 3 may require that the label specified in section 246U shall set out, in addition to the particulars set out in that section—

Further
labelling
require-
ments.

(a) a statement of the ingredients of the food concerned in such detail as is prescribed;

(b) the place of manufacture of the food concerned;

(c) the country of origin of the food concerned; or

(d) a date marking in respect of the food concerned in the manner prescribed,

or any 2 or 3, or all 4, of the particulars referred to in paragraphs, (a), (b), (c) and (d).

(2) Regulations referred to in subsection (1) may apply requirements referred to in that subsection to all or any food or food of a special class or description and may prescribe different provisions with respect to foods of different classes or descriptions.

(3) For the purposes of subsection (1) (d), the regulations may specify in relation to food of a specified class or description the period from the date of packing during which the food in the package may reasonably, if the package is stored in a specified manner, be expected to retain without appreciable deterioration its normal wholesomeness, nature, substance and quality.

(4) A statement of ingredients on a label on a package of food shall set out—

(a) in the manner prescribed; or

(b) if a manner is not prescribed, in descending order of their relative proportions by mass,

the ingredients present in that food.

(5) A label on a package of food shall not, except when the regulations otherwise prescribe, set out a statement in relation to any particular ingredient present in the food in that package unless the proportion by mass in which that ingredient is present in the food is also set out in that label.

(6) An article that is sold or described on a label or advertisement as food for animals shall not be described on the label or advertisement or otherwise as suitable or safe for consumption by man unless it is prepared, packed and sold in accordance with this Part.

Division 4.—Control of food cultivation, food premises, food vehicles, appliances and food vending machines.

Prohibition
of cultivation
etc.
of food in
certain
circum-
stances.

246W. (1) The Executive Director, Public Health, may by order prohibit the cultivation, taking, harvesting or otherwise obtaining of food generally or food of a specified class or description set out in that order in or from an area specified in that order except in accordance

with such conditions, if any, as are specified in that order if he is of the opinion that food generally or food of a specified class or description if cultivated, taken, harvested or otherwise obtained in or from that area may be dangerous or injurious to persons who consume that food.

(2) A person who cultivates, takes, harvests or otherwise obtains food or food of the specified class or description set forth in an order under subsection (1) in or from an area specified in that order except in accordance with such conditions, if any, as are specified in that order—

(a) commits an offence; and

(b) is liable to a penalty not exceeding \$5 000,

unless he has first obtained the approval in writing of the Executive Director, Public Health.

246X. (1) A person who—

(a) is suffering from any infectious or contagious disease; and

(b) engages or is employed in the sale or preparation, packing, storing, handling, serving, supplying or conveying for sale of food in food premises or a food vehicle or by means of an appliance,

Employment
of infected
persons on
food
premises or
food
vehicles or
using
appliances
prohibited.

commits an offence and is liable to a penalty not exceeding \$500.

(2) A medical officer may examine any person engaged or employed within the meaning of subsection (1) who is suspected of suffering from any infectious or contagious

disease, and every such person who refuses to submit to such an examination on being required by a medical officer to do so commits an offence and is liable to a penalty not exceeding \$2 500.

Food
premises,
food
vehicles and
appliances.

246Y. (1) If the Executive Director, Public Health, or a local authority is satisfied from—

- (a) an inspection made or caused to be made by him or it; or
- (b) the report of a health surveyor,

that any food premises, food vehicle or appliance is in an unclean or insanitary condition, he or it may, by order in writing served on the proprietor of the food premises, food vehicle or appliance, direct that the food premises, food vehicle or appliance specified in that order be put into a clean and sanitary condition to the satisfaction of a health surveyor within such period as is specified in that order.

(2) If, on the expiry of the period specified in an order made under subsection (1), the food premises, food vehicle or appliance specified in that order have or has not been put into a clean and sanitary condition to the satisfaction of a health surveyor, the Executive Director, Public Health, or the local authority concerned may, by a further order in writing served on the proprietor of those food premises or that food vehicle or appliance, as the case requires, direct that—

- (a) those food premises shall not be kept or used for the sale or preparation, packing, storing, handling, serving or supplying for sale of food;
- (b) that food vehicle shall not be kept or used for the sale or preparation, packing, storing, handling, serving,

supplying or conveying for sale of food;
or

- (c) that appliance shall not be used in or for the sale or preparation, packing, storing, handling, serving, supplying or conveying for sale of food or in the cleaning of any other appliance,

as the case requires, until a health surveyor has given to the proprietor of those food premises or that food vehicle or appliance, as the case requires, a certificate in writing that those food premises or that food vehicle or appliance have or has been put into and are or is in a clean and sanitary condition.

(3) A further order made under subsection (2) may specify conditions with respect to the keeping or use of the food premises, food vehicle or appliance concerned for the sale or preparation, packing, storing, handling, serving, supplying or conveying for sale of food and, if that further order so specifies, those food premises or that food vehicle or appliance shall not be kept or used otherwise than in accordance with those conditions.

(4) The proprietor of any food premises, food vehicle or appliance on whom a further order made under subsection (2) is served may at any time after the date of service of that further order request in writing the Executive Director, Public Health, or the local authority concerned, as the case requires, to cause the food premises, food vehicle or appliance the subject of that further order to be inspected by a health surveyor.

(5) For the purposes of an inspection referred to in subsection (4), the Executive Director, Public Health, or the local authority concerned, as the case requires, shall, in the case of a food vehicle or appliance, specify the time and place at which that inspection is to be carried out.

(6) If a health surveyor on the completion of an inspection by him following a request under subsection (4) of any food premises, food vehicle or appliance refuses to give to the proprietor thereof in respect of the food premises, food vehicle or appliance so inspected a certificate that those food premises or that food vehicle or appliance have or has been put into and are or is in a clean and sanitary condition, that proprietor may, within 14 days after the date of that refusal, appeal to a Local Court against that refusal.

(7) An appeal made under subsection (6) shall—

- (a) be instituted and conducted in accordance with the regulations;
- (b) not operate as a stay of a further order made under subsection (2); and
- (c) not affect the liability of a person for an offence under subsection (10).

(8) A Local Court to which an appeal has been made under subsection (6)—

- (a) shall hear and determine the appeal;
and
- (b) may make such order in respect of the costs of and incidental to the appeal as it thinks just,

and any decision by it under this subsection shall be final and without appeal.

(9) If any food premises, food vehicle or appliance in respect of which a request has been made under subsection (4) have or has not been inspected within a period of 2 days after receipt of the request by the Executive Director, Public Health, or the local authority concerned, as the case requires, a certificate referred to in subsection (6) in respect of those food premises or that food vehicle or appliance shall for the

purposes of subsection (10) be deemed to have been given to the proprietor of those food premises or that food vehicle or appliance on the expiry of that period unless the Executive Director, Public Health, or that local authority has caused a notice in writing to be served on that proprietor within that period stating that the failure to inspect has been occasioned by the act, default or neglect of that proprietor.

(10) If, a further order made under subsection (2) having been served on the proprietor of any food premises, food vehicle or appliance—

- (a) a certificate in respect of the food premises, food vehicle or appliance has not been given subsequently under this section or is not deemed under subsection (9) to have been given; or
- (b) an appeal made under subsection (6) against the refusal of a health surveyor to give a certificate in respect of the food premises, food vehicle or appliance under that subsection has not been allowed,

a person who—

(c) contrary to that further order—

- (i) keeps or uses the food premises for the sale or preparation, packing, storing, handling, serving or supplying for sale of food;
- (ii) keeps or uses the food vehicle for the sale or preparation, packing, storing, handling, serving, supplying or conveying for sale of food; or

- (iii) uses the appliance in or for the sale or preparation, packing, storing, handling, serving, supplying or conveying for sale of food or in the cleaning of any other appliance,

as the case requires; or

- (d) does not comply with a condition of that further order,

commits an offence and is liable to a penalty not exceeding \$5 000.

(11) An order made under subsection (1) or a further order made under subsection (2) may be so made with respect to—

- (a) any food premises, food vehicle or appliance specified in that order or further order;
- (b) any food premises or food vehicle specified in that order or further order and all appliances contained therein or all appliances specified in that order or further order and contained in those food premises or that food vehicle; or
- (c) all appliances contained in food premises or a food vehicle specified in that order or further order.

Food
vending
machines.

246Z. (1) Subject to this section, a person who uses or intends to use a food vending machine for the purpose of selling or supplying food to others shall register and at all times keep registered the food vending machine with the local authority in the district of which the food vending machine is or is to be so used.

(2) The Executive Director, Public Health, may by writing signed by him—

- (a) exempt from the operation of subsection (1) any food vending machine or class or description of food vending machine specified in that writing; and
- (b) amend or repeal an exemption granted under this subsection.

(3) A food vending machine shall be registered only in the name of some person who, the local authority concerned is satisfied, receives or shares in or intends to receive or share in the proceeds of the sale or supply of food from the food vending machine.

(4) A local authority shall not register or keep registered a food vending machine that sells or supplies food that contravenes this Part.

(5) A person who services a food vending machine which to his knowledge is not registered or exempted under this section commits an offence and is liable to a penalty not exceeding \$2 000.

(6) A person who installs or uses or permits to be used for the purpose of selling or supplying food to others a food vending machine which is not exempted under subsection (2) in, at or on any premises or any other place or any vehicle other than the premises, other place or vehicle—

- (a) approved by the local authority registering; and
- (b) specified in the certificate of registration for the time being in force in respect of,

the food vending machine commits an offence and is liable to a penalty not exceeding \$2 000.

(7) A local authority shall, when considering whether or not to approve any premises or other place or any vehicle for the purposes of subsection (6), have regard to the provisions of this Part relating to the wholesomeness and purity of food.

(8) For the purposes of this Part, food that is sold or supplied through a food vending machine shall be deemed to be sold or supplied—

- (a) by the person in whose name the food vending machine is or is required to be registered under this Part or, if the food vending machine is not required to be so registered, by the person who receives or shares in the proceeds of the sale or supply of food from the food vending machine; and
- (b) on the day when and at the place where that food is received by the purchaser.

(9) When under or for the purposes of this Part a purchaser of food (whether for analysis or otherwise) is required or authorized to give or deliver to a person a notice or part of a sample of food and the food concerned was sold or supplied to the purchaser through a food vending machine, the notice or part of a sample shall be deemed to be sufficiently given or delivered for the purposes of this Part if the notice or that part is given or delivered personally or by registered post—

- (a) to a person in whose name the food vending machine is or is required to be registered under this Part; or
- (b) whether or not the food vending machine is registered under this Part, to a person then present who admits to being in charge of the food vending machine.

Division 5.—Enforcement and Administration.

246ZA. (1) If the Executive Director, Public Health, is of opinion that a food would or may in the circumstances be injurious or dangerous to health, he may, with the approval of the Minister, declare that the food is dangerous.

Food may
be declared
dangerous
by Executive
Director,
Public
Health.

(2) While a declaration made under subsection (1) is in force, the Executive Director, Public Health, may from time to time order in writing the owner or person having possession of the food concerned to—

- (a) secure that food in a safe place and ensure that it is not removed from his possession or used or eaten or sold;
- (b) deliver up that food to a person specified in that order at a place, and within a time, so specified; or
- (c) do such things in relation to that food as the Executive Director, Public Health, deems necessary for the protection of the public health and specifies in that order,

but before any action is taken under paragraph (b) or (c) the Executive Director, Public Health, shall give 7 days' notice in writing to the wholesaler or manufacturer of that food of his intention to exercise his powers under that paragraph.

(3) When the Executive Director, Public Health, is of opinion that the food to which a declaration under subsection (1) relates is no longer dangerous or injurious to health, he shall forthwith give notice of the fact to the owner of that food and revoke any order made by him under subsection (2) relating to that food, but if at any time after a period of 30 days commencing on the date of the making

of such an order the Executive Director, Public Health, is of the opinion that that food is still dangerous or injurious to health he may destroy or otherwise dispose of it as he thinks fit.

(4) The Executive Director, Public Health, may at any time revoke a declaration made under subsection (1).

(5) A person shall not be entitled to any compensation either from the Crown or the Executive Director, Public Health, by reason of anything done, or the destruction of or damage to or loss of value of any food as a result of any action taken, in accordance with an order issued by the Executive Director, Public Health, under subsection (2) or as a result of any action taken by him under subsection (3).

Powers of
health
surveyors.

246ZB. (1) For the purposes of this Part and subject to this section, a health surveyor may—

- (a) enter any premises or other place in or at which he believes on reasonable grounds any article is sold or prepared, packed, stored, handled, served or supplied for sale and may therein—
 - (i) make such investigation and enquiry as are necessary to ascertain whether or not this Part is being complied with;
 - (ii) make an inspection and examination thereof and of any articles, fittings or fixtures found, including anything that he believes on reasonable grounds is used or capable of being used for or in connection with the sale or preparation, packing, storing, handling, serving or supplying for sale of any article;

- (iii) subject to section 246ZC (6), take and remove therefrom any article or samples of any article;
- (iv) open or order to be opened any container used for the conveyance of goods, or any package or other receptacle of any kind that he believes on reasonable grounds to contain any article;
- (v) require a person to produce to him any licence, registration, permit, approval, certificate or authority granted and issued under this Part to the person or alleged by the person to have been so granted and issued to him or any books, accounts, records or documents, and may inspect, examine and make copies of or extracts from any licence, registration, permit, approval, certificate or authority or any book, account, record or document produced to him or remove it for the purpose of making copies thereof or extracts therefrom;
- (vi) seize and detain for such time as is necessary any article found by means of, or in relation to, which he believes on reasonable grounds an offence under this Part has been committed or this Part has been contravened;
- (vii) mark, fasten, secure or seal—
 - (A) an article found; or
 - (B) any door, gate or opening that he believes on reasonable grounds affords access to an article;

(viii) take and remove therefrom—

(A) any thing; or

(B) any sample of any thing, (other than an article) found that he believes on reasonable grounds may be used as evidence in a proceeding under this Part;

(ix) question any person to ascertain whether or not this Part is being complied with and require that person to answer any question put to him; or

(x) take such photographs or films or audio or visual recordings as he considers necessary;

(b) at any time purchase food from a person selling or preparing, packing, storing, handling, serving, supplying or conveying for sale food by payment or offer of the current market value of that food;

(c) require a person—

(i) who is found by him committing an offence under this Part;

(ii) who he believes on reasonable grounds has committed an offence under this Part; or

(iii) whose name and address are in his opinion reasonably required,

to state his full name and the address of his usual place of residence and, if he suspects on reasonable grounds that a name or address so stated is false, may require him to produce evidence of the correctness thereof;

(d) if he is obstructed or believes on reasonable grounds that he may be obstructed in the exercise of the powers or authorities conferred, or the discharge of the functions or duties imposed, on him by or under this Part call to his aid—

(i) another health surveyor; or

(ii) a member of the Police Force of Western Australia, whereupon it shall be the duty of such a member so called to aid him as required and such a member while so aiding shall have the same powers and authorities as are conferred on a health surveyor by or under this Part;

(e) stop, detain and search any vehicle—

(i) which is being used, or which he believes on reasonable grounds is being or is likely to be used, for the conveyance of any article; or

(ii) in or on which he believes on reasonable grounds any article is sold or prepared, packed, stored, handled, served or supplied for sale,

and may in relation to that vehicle discharge any of the functions imposed on him by or under this subsection;

(f) call to his aid a person who he thinks is competent to assist him in the discharge of his functions and that person has, while acting in aid of the health surveyor, the same powers and authorities as are conferred on a health surveyor by or under this Part; and

- (g) use such force as is reasonably necessary in the discharge of the functions imposed on him by or under this Part.

(2) For the purpose of gaining entry to any premises or other place, a health surveyor may call to his aid such persons as he thinks necessary and those persons, while acting in aid of the health surveyor in the lawful exercise by him of his power of entry, have a like power of entry.

(3) If an article is sold or prepared, packed, handled, served, supplied or conveyed for sale during the night-time, an entry and inspection under this section may be made at all reasonable times during the day-time or night-time, but otherwise such an entry and inspection may be made at all reasonable times during the day-time only.

(4) A person is not obliged under this Part to answer any question or give any information or evidence tending to incriminate him.

(5) The functions imposed by or under this Part on a health surveyor who is an officer of a local authority shall be discharged by that health surveyor only—

- (a) within the district of the local authority of which he is an officer or on any vessel deemed under section 350 to be within that district for the purposes of this Act; and
- (b) so far as the discharge of those functions is required for or directed towards the discharge of a function imposed on the local authority by or under this Part.

246ZC. (1) When a health surveyor takes or otherwise obtains under this Part a sample of food with the intention that it be submitted for analysis, he shall, before or as soon as practicable after obtaining that sample, inform the owner of the food comprised in that sample or, if that owner is not present or readily available, the person from whom that sample was obtained or the person having charge of that food of his intention to have that sample analysed.

Procedure
on taking
samples.

(2) A health surveyor acting under subsection (1) shall comply with all regulations that prescribe the number of samples to be obtained, or a method of obtaining samples or of dealing with samples obtained, in relation to the class or description of food concerned or the analysis proposed to be carried out.

(3) Subject to subsection (4), if the regulations do not otherwise prescribe in relation to the class or description of food concerned or the analysis proposed to be carried out and a health surveyor obtains a sample of food with the intention that that sample be submitted for analysis, the health surveyor shall—

- (a) divide that sample into 3 separate parts and mark and seal or fasten each part in such manner as its nature will permit;
- (b) leave one part with the owner of that food or other person from whom that sample was obtained or a person appearing to be the servant or agent of that owner or other person;
- (c) submit one of the remaining parts for analysis; and
- (d) retain the other remaining part for future comparison.

(4) If the regulations do not prescribe a method of dealing with a sample in relation to the class or description of food concerned or the analysis proposed to be carried out and if the division of a sample for analysis into 3 separate parts in accordance with subsection (3) would in the opinion of the health surveyor concerned—

- (a) so affect or impair the composition or quality of the sample as to render the separate parts unsuitable for accurate analysis;
- (b) furnish parts insufficient for accurate analysis; or
- (c) render the sample in any other way unsuitable for analysis, including a method of analysis prescribed in relation to the food from which the sample was taken,

that health surveyor shall deal with the sample in such manner as is appropriate in the circumstances having regard to this Part.

(5) When a sample of food is taken by a health surveyor in the form of separate or severable objects, it shall not be necessary for him in dividing that sample into parts in accordance with this section to divide any one of those objects and it shall be sufficient compliance with this section if he—

- (a) takes a number of those objects;
- (b) divides the number so taken into the requisite number of parts so that each part consists of one or more than one of those separate or severable objects; and
- (c) deals with those parts in accordance with subsection (2), (3) or (4), as the case requires.

(6) Notwithstanding this Part, when food is kept for retail sale in a closed package a person shall not be required by a health surveyor to provide a sample that is less than the whole of that package.

(7) A health surveyor shall be deemed to have complied with this section notwithstanding failure by the owner of the food or other person referred to in subsection (3) (b) to accept any part or parts required to be left with him in accordance with this section.

(8) This section does not apply to the procuring for analysis of a sample of food sold through a food vending machine if the health surveyor concerned obtains the sample by properly making payment for it and no person present at the time that health surveyor obtains the sample admits to being in charge of the food vending machine.

246ZD. A person who—

Offences
with respect
to health
surveyors
and articles.

(a) except with the authority of a health surveyor or under an order of a court—

(i) removes, alters or interferes in any way with—

(A) an article seized and detained under this Part;

or

(B) any article or other thing or a sample of any article or other thing taken or otherwise obtained by a health surveyor under section 246ZB;

or

- (ii) erases, alters, opens, breaks or removes a mark, security, fastening or seal placed by a health surveyor in the discharge of his functions under this Part on—
 - (A) an article other than part of a sample or any sample unit or package left by the health surveyor with a person from whom a sample was taken or otherwise obtained; or
 - (B) any door, gate or opening affording access to an article;
- (b) refuses to sell food to a health surveyor or to allow him to take a sample of food or any other article in such quantity as he reasonably requires;
- (c) does not, when required by or under this Part to do so, render assistance or furnish information to a health surveyor or other person;
- (d) does not on demand duly made produce to a health surveyor for examination any book, account, record or document required or authorized by or under this Part to be produced or does not allow a health surveyor to examine or to make a copy of or an extract from any book, account, record or document so produced;
- (e) does not comply with any lawful direction or order of a health surveyor;
- (f) does not on demand duly made orally by a health surveyor deliver up to him an article authorized by or under this Part to be seized by him or delivered up to him;

- (g) knowingly makes a false or misleading statement orally or in writing to a health surveyor discharging a function under this Part;
- (h) assaults, threatens, abuses, insults, intimidates or attempts to intimidate a health surveyor or other person in the discharge of his functions under this Part;
- (i) when required by a health surveyor to do so, does not state his name and the address of his usual place of residence or states a false such name or address;
- (j) prevents a person from being questioned by a health surveyor; or
- (k) in any manner other than a manner referred to in paragraphs (a) to (j) obstructs or attempts to obstruct a health surveyor or other person in the discharge of his functions under this Part,

commits an offence and is liable to a penalty not exceeding \$5 000.

246ZE. A health surveyor shall, on the seizure and detention by him of an article under this Part, forthwith—

Duties of
health
surveyor
on seizure
and deten-
tion of
article.

- (a) give notice in the prescribed form of that seizure and detention to the person apparently in charge of the article;
- (b) if there is no person apparently in charge of the article and the name and address in the State of a person appearing to the health surveyor to be the consignor or owner of the article is set out on or attached to the article

or a package containing the article, give notice in the prescribed form of that seizure and detention to that person; or

- (c) in any other case, if the name and address of the importer or consignee of the article or of his agent are known to the health surveyor, give notice in the prescribed form of that seizure and detention to such one of those persons as the health surveyor determines.

Keeping and
storage of
certain
articles.

246ZF. An article that has been seized and detained or taken or otherwise obtained under this Part by a health surveyor may, at the direction of a health surveyor—

- (a) be kept and stored in, at or on the premises or other place or vehicle where it was seized and detained or taken or otherwise obtained; or
- (b) be removed to any other proper place and there kept and stored.

Remedy in
respect of
articles
seized.

246ZG. (1) When an article is seized and detained by a health surveyor under section 246ZB, the person from whom the article was seized may within 5 days after that seizure make application in the prescribed form to a Local Court for an order directing the health surveyor to release the article seized and detained by him.

(2) An applicant under subsection (1) shall forthwith give to the health surveyor responsible for the seizure and detention of the article concerned a copy of the application made under that subsection.

(3) A Local Court to which an application is made under subsection (1) shall thereupon appoint a place, date and time for the hearing of the application and notify the applicant and the health surveyor concerned thereof.

(4) On the hearing of an application made under subsection (1), the Local Court concerned may—

(a) if it is satisfied that—

(i) the health surveyor responsible for the seizure and detention of the article concerned did not have reasonable grounds for believing that that article was one by means of or in relation to which an offence under this Part had been committed or this Part had been contravened; or

(ii) the article concerned was not one by means of or in relation to which an offence under this Part had been committed or this Part had been contravened,

set aside the seizure and detention of that article and order that that article be released from detention, but otherwise that Local Court shall refuse that application and confirm that seizure and detention; and

(b) make such order as it thinks fit in respect of the costs and expenses of and incidental to—

(i) that application; and

(ii) the removal and storage of the article seized and detained.

(5) An order made under subsection (4) shall be final and without appeal.

(6) If an application made under subsection (1) is refused then, on that refusal, or, if an application is not made under subsection (1) then, on the expiry of the period of 5 days after the seizure concerned, the article seized shall—

(a) in the case of an article seized by a health surveyor acting on behalf of the Department, be forfeited to the Crown;

or

(b) in the case of an article seized by a health surveyor acting on behalf of a local authority, be forfeited to the local authority.

Destruction
or other
disposal
of seized
food.

246ZH. (1) When, a health surveyor having seized and detained food under this Part—

(a) the owner of the food consents to the destruction or other disposal thereof; or

(b) the food is in the opinion of the health surveyor decayed, deteriorated or putrefied,

the health surveyor may notwithstanding sections 246ZF and 246ZG—

(c) destroy or otherwise dispose of the food; or

(d) if the owner of the food or the person in whose possession the food was at the time of seizure so requests, permit that owner or person to destroy or otherwise dispose of the food subject to such reasonable conditions as the health surveyor stipulates in that permission.

(2) An owner or person permitted under subsection (1) (d) to destroy or otherwise dispose of any food subject to a reasonable condition who destroys or otherwise disposes of that food otherwise than in accordance with that condition commits an offence and is liable to a penalty not exceeding \$2 000.

246ZI. (1) When, an article having been seized and detained under this Part—

Liability for costs and expenses of storage or destruction or other disposal of seized article.

(a) an application is not made for its release under section 246ZG; or

(b) the article is destroyed or otherwise disposed of—

(i) in the case of an article other than food, under section 246ZQ;

or

(ii) in the case of food, under section 246ZH,

the owner of the article at the time of its seizure or, if the article is at the time of its seizure in the possession of a person who is not its owner and the identity of its owner is not known, the person in whose possession the article is when seized shall be liable to pay the costs and expenses incurred in or in connection with the storage and destruction or other disposal of that article.

(2) Costs and expenses referred to in this section which remain unpaid may be recovered by action in a court of competent jurisdiction—

(a) in the case of costs and expenses incurred by or on behalf of the Department, as a debt due and owing to the Crown; or

(b) in the case of costs and expenses incurred by or on behalf of a local authority, as a debt due and owing to the local authority.

246ZJ. When an article has been seized, taken or otherwise obtained from a person under section 246ZB by a health surveyor—

Supply of results of analysis.

(a) acting on behalf of the Department, the Executive Director, Public Health;

or

- (b) acting on behalf of a local authority,
the local authority,

shall, on demand made in that behalf and on payment of the prescribed fee, supply a copy of the result of an analysis of the article carried out under this Part by an analyst to the person or to the manufacturer, packer or importer, or to the agent of the manufacturer, of the article or to the agent in the State of that agent, as the case requires.

Prohibition
of use of
result of
analysis for
certain
purposes.

246ZK. A person who for the purposes of any trade or advertisement uses in whole or in part the result of an analysis made for the purposes of this Part commits an offence and is liable to a penalty not exceeding \$1 000.

Power of
delegation.

246ZL. (1) The Minister, or the Executive Director, Public Health, with the approval of the Minister, may, either generally or otherwise as provided by the instrument of delegation, by writing signed by him, delegate —

- (a) to a person; or
- (b) to the holder of an office, specifying its title but not the name of its holder for the time being,

(in this section called “the delegate”) all or any of his functions under this Part except this power of delegation.

(2) A function delegated under subsection (1) shall, if discharged by the delegate, be discharged in accordance with the instrument of delegation.

(3) The Minister or the Executive Director, Public Health, as the case requires, may make

such and so many delegations of the same function and to such number of persons or holders of offices as he considers necessary or desirable.

246ZM. (1) Subject to subsection (2), a ^{Secrecy.} person who—

- (a) discloses information; or
- (b) publishes a book, account, record or document or part thereof,

obtained by him in connection with the administration of this Part otherwise than—

- (c) with the consent of the person from whom the information or book, account, record or document or part thereof was obtained;
- (d) in connection with the administration of this Part;
- (e) by or with the prior approval of the Minister or the Executive Director, Public Health; or
- (f) for the purposes of a proceeding under or arising out of this Part or a report of such a proceeding,

commits an offence and is liable to a penalty not exceeding \$2 000.

(2) A health surveyor or other person who is so authorized by the Executive Director, Public Health, generally or in a particular case may communicate information that comes to his knowledge in the discharge of his functions under this Part to an officer or authority administering a corresponding law or to such Commonwealth department or authority as the Executive Director, Public Health, specifies.

Division 6—Miscellaneous provisions.

Defence in
respect of
food for
export.

246ZN. It is a defence to a charge of an offence under section 246L, 246M, 246N or 246T or subsection (3) or (4) of section 246Q as read with sections 246U and 246V or under regulations containing the requirements specified in section 246V for the defendant to prove that—

- (a) the food in respect of which that charge is brought is to be exported to another country; and
- (b) the sale, preparation, packing and labelling of the food referred to in paragraph (a) complies with the laws in force in the country to which the food is exported at the time at which it is exported.

Liability of
defendant
for certain
costs and
expenses.

246ZO. (1) Save as is otherwise expressly provided by this Part, a person who is convicted of an offence under this Part or who is charged with an offence under this Part—

- (a) of which he is found guilty; or
- (b) to which he pleads guilty,

and in respect of which a conviction is not recorded is liable, in addition to any penalty or costs or both in respect of the taking of proceedings for that offence, to pay the costs and expenses incurred in or in connection with the examination, seizure, analysis, destruction or other disposal of any article in respect of which the proceedings concerned are taken and the court concerned shall, on that conviction or finding or plea of guilty, as the case requires, make an order accordingly.

(2) Costs and expenses ordered to be paid by a court under subsection (1) shall be deemed to form part of the costs of and incidental to the proceedings concerned and shall be recoverable in the same manner as those costs are recoverable.

246ZP. (1) A court—

Power of
court to
order
forfeiture.

- (a) which convicts a person of an offence under this Part; or
- (b) before which a person is charged with an offence under this Part of which he is found guilty or to which he pleads guilty and in respect of which a conviction is not recorded,

may order that the article by means of or in relation to which that offence was committed, or any similar article belonging to and found in the possession of the defendant at the time of the commission of that offence, be forfeited—

- (c) in the case of an offence the prosecution for which was instituted by the Department, to the Crown; or
- (d) in the case of an offence the prosecution for which was instituted by a local authority, to the local authority.

(2) Subject to subsection (3), a court, in addition to exercising the powers conferred on it by subsection (1), may, on the application of a health surveyor and on such notice as the court determines being given to such persons as the court determines, order that any article seized by the health surveyor under this Part,

or any article of a nature similar to that of an article so seized and found with the article so seized, be forfeited—

- (a) if the health surveyor was acting on behalf of the Department, to the Crown; or
- (b) if the health surveyor was acting on behalf of a local authority, to the local authority.

(3) A court is not empowered to order forfeiture of an article under subsection (2) unless it is satisfied that the article is one by means of or in relation to which an offence under this Part is or has been committed or this Part is or has been contravened.

Disposal of
articles
forfeited.

246ZQ. An article forfeited to—

- (a) the Crown under this Part shall be disposed of in the manner determined by the Executive Director, Public Health; or
- (b) a local authority under this Part shall be disposed of in the manner determined by the local authority.

Proceedings
for offences.

246ZR. (1) Save as otherwise expressly provided by this Part, a prosecution for an offence under this Part—

- (a) shall be taken by way of summary proceedings under the Justices Act 1902 within 12 months after that offence is committed or within 12 months after the commission of that offence first comes to the knowledge of the complainant, whichever period is the later to expire; and

(b) may be instituted by the Executive Director, Public Health, or, in an appropriate case, the local authority of the district in which the offence is committed or by a health surveyor or by a person authorized in writing in that behalf by the Minister or the Executive Director, Public Health, or that local authority.

(2) The summons in a prosecution for an offence under this Part in which the certificate of an analyst is used shall be made returnable not less than 14 days after the date on which it is served.

(3) A copy of the certificate of an analyst proposed to be used by the prosecution shall be served with the summons referred to in subsection (2).

(4) An endorsement on the certificate of an analyst that a copy of it was duly served with the summons referred to in subsection (2) shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of that service.

(5) A prosecution for an offence under this Part in respect of food seized, taken or otherwise obtained for analysis under section 246ZB shall be instituted not later than 90 days after the day on which the food was so seized, taken or otherwise obtained.

(6) Notwithstanding this Act or any other Act, in a proceeding on a complaint under this Part the court concerned may make an order on any matter within its jurisdiction though no application or complaint is made in respect of that matter.

(7) Penalties recovered in respect of offences under this Part shall—

- (a) in the case of penalties recovered on the complaint of a local authority or its health surveyor or other person authorized by it, be paid into the municipal fund of the local authority;

or

- (b) in any case other than that referred to in paragraph (a), be paid into the Consolidated Revenue Fund.

Certificate
of analyst to
be evidence.

246ZS. (1) When in respect of a proceeding for an offence under this Part a copy of the certificate of an analyst (which certificate purports to be signed by the analyst)—

- (a) if obtained on behalf of the prosecution, is served with the summons concerned;

or

- (b) if obtained on behalf of the defendant, is given to the prosecutor at least 3 days before the return day of the summons concerned,

that certificate, a copy of which has been so served or given, shall, on its production in that proceeding, be sufficient evidence of the matters set forth therein unless an order is made in accordance with subsection (2).

(2) When a certificate to which subsection (1) applies is produced or it is proposed to produce such a certificate, the court concerned, if it is satisfied, whether on an application or by other means, that in the circumstances of the case the analyst who issued that certificate should be called as a witness in the proceeding concerned, may order that that analyst be called as a witness by the party who produces or proposes to produce that certificate and for that purpose may grant any necessary adjournment.

(3) An order made under subsection (2) may provide that the analyst concerned be called in lieu of the production by the party concerned of the certificate in question.

(4) When an order is made under subsection (2), the court concerned shall adopt such procedure as to it seems just and equitable to enable the analyst to be called and to be examined by the parties irrespective of the stage reached in the proceeding concerned.

246ZT. When in a proceeding for an offence under this Part in respect of food, a sample of which has been taken or otherwise obtained under this Part, there is disagreement between the evidence of the analyst for the prosecution and that of the analyst for the defence, the court concerned shall, on the application of a party to that proceeding, and may, if it thinks fit, without such an application having been made, order that the health surveyor concerned deliver up or send in such manner as the court determines the part or parts of any sample retained under section 246ZC to—

Independent
analysis.

(a) an independent analyst for analysis;

or

(b) to the analyst for the prosecution and the analyst for the defence for joint analysis.

246ZU. In a proceeding for an offence under this Part—

Protection
of informa-
tion and
reports.

(a) a witness on behalf of the prosecution shall not be compelled to disclose the fact that he received information, the nature of the information received or the name of the person who furnished the information; and

- (b) a health surveyor shall not be compelled to produce a report made or received by him confidentially in his official capacity or containing confidential information.

Liability
for offence
by servant.

246ZV. (1) When a person commits an offence under this Part as a servant, the employer of the person shall, without derogating from section 7 of The Criminal Code, be deemed to have committed that offence and, notwithstanding section 23 of The Criminal Code or any rule of law or practice, to be criminally responsible for the act or omission concerned therein and may be charged with that offence and punished accordingly.

(2) It is immaterial that an offence referred to in subsection (1) was committed without the authority of or contrary to the instructions of the employer concerned.

(3) A person is not liable to be convicted of an offence under this Part committed by him as a servant if he satisfies the court concerned that that offence was committed while the business of his employer was being conducted under the personal superintendence of that employer or of a manager or any other representative of that employer and that that offence was committed with the knowledge of that employer, manager or representative.

(4) Save as provided by subsection (3), this section applies so as not to prejudice liability imposed by or under this Part on any person by whom an offence under this Part is actually committed.

Liability for
offence by
body
corporate.

246ZW. (1) When a body corporate commits an offence under this Part, every person who at the time that offence is committed—

- (a) is the chairman of directors, managing director or other governing officer of the

body corporate, by whatever name called, or any other member of the governing body thereof, by whatever name called; or

- (b) manages or acts or takes part in the management, administration or government of the business in the State of the body corporate,

shall, without derogating from section 7 of The Criminal Code, be deemed to have committed that offence and, notwithstanding section 23 of The Criminal Code or any other rule of law or practice, to be criminally responsible for the act or omission concerned therein and may be charged with that offence and punished accordingly.

(2) This section applies so as not to limit or affect in any way the liability of a body corporate to be proceeded against and punished for an offence under this Part committed by it.

(3) It is a defence to a charge for an offence under this Part brought against a person referred to in subsection (1) (a) or (1) (b) to prove that that offence was committed without the consent or connivance of that person and that he exercised due diligence to prevent the commission of that offence.

246ZX. (1) A defendant charged with an offence under this Part who alleges that the act or omission constituting that offence was due to the act or default of another person (in this section called "the alleged offender") may, on compliance with this section, have the alleged offender brought before the court by which the proceeding is to be heard and determined (in this section called "the court").

Right of
defendant to
have third
person
before court.

(2) A defendant who desires to invoke this section shall—

- (a) give to the complainant (in this section called “the original complainant”) and the court, at least 10 days before the return day of the summons concerned, notice in writing of his intention to do so;
- (b) make a complaint before a justice of the allegations against the alleged offender; and
- (c) forthwith file in the court the complaint made under this subsection.

(3) The court shall on the defendant complying with the requirements of subsection (2) issue a summons directed to the alleged offender requiring him to appear before the court on the date and at the time and place specified in that summons and, if that date is not the return date of the original summons in the proceeding concerned, shall enter necessary adjournments and notify the parties accordingly.

(4) A copy of the complaint made under subsection (2) shall be served with the summons issued by the court on that complaint, together with copies of such other documents filed in the proceeding concerned as the court determines.

(5) On the hearing of the complaints—

- (a) the original complainant or his counsel or solicitor as well as the alleged offender may—
 - (i) cross-examine the defendant, if he gives evidence, and any witness called by him; and

(ii) call evidence in rebuttal;

and

(b) the court—

(i) may convict the alleged offender if the contravention of this Part is proved and the defendant satisfies the court that the contravention was due to the act or omission of the alleged offender;

(ii) shall dismiss the complaint against the defendant and discharge him, if in addition he satisfies the court that he has exercised due diligence to ensure compliance with the relevant provisions of this Part;

and

(iii) may make such orders as to the costs of the proceeding concerned or any step therein as it thinks fit.

(6) If it appears to the Executive Director, Public Health, or a local authority that an offence under this Part has been committed in respect of which a person (in this section called “the initial accused”) may be charged and the Executive Director, Public Health, or the local authority is reasonably satisfied that—

(a) that offence was due to the act or omission of another person (in this section called “the later accused”);

and

(b) the initial accused could successfully defend a proceeding in respect of that offence by invoking this section,

the Executive Director, Public Health, or the local authority may cause to be instituted proceedings against the later accused for that offence without proceedings first being instituted against the initial accused.

(7) In a proceeding instituted in accordance with subsection (6), the later accused may be charged with the offence with which the initial accused might have been charged and, on proof that that offence was due to the act or omission of the later accused, the later accused may be convicted of that offence.

Mode of
service of
documents.

246ZY. Any notice, requisition, order or other writing under this Part required or authorized to be given to or served on a person shall be duly given or served if—

- (a) it is given or served personally to or on the person to whom it is directed;
- (b) it is left at the place of residence or business of the person to whom it is directed last known to the person who gives or serves it;
- (c) it is sent by post to the place of residence or business of the person to whom it is directed last known to the person who gives or serves it;
- (d) when it is addressed to the owner or occupier of premises, it is left with some adult person on the premises or, if there is no such person on the premises, it or a true copy of it is fixed on some conspicuous part of the premises; or
- (e) when it is addressed to the Executive Director, Public Health, or a local authority, it is left with some person at the office of the Executive Director,

Public Health, or the local authority, as the case requires, or forwarded by post to the Executive Director, Public Health, or the local authority.

246ZZ. (1) In a proceeding for the purposes of this Part— Evidentiary provisions.

- (a) it shall not be necessary to prove the appointment of the Executive Director, Public Health, or of a health surveyor or other officer or analyst or his authority to do an act, take a proceeding or give any direction or order;
- (b) a signature purporting to be that of the Executive Director, Public Health, or of a health surveyor or other officer or analyst shall be taken to be the signature it purports to be, until the contrary is proved;
- (c) a document purporting to be a copy of any licence, registration, permit, approval, certificate, order, notice or authority under this Part shall, on its production in that proceeding, be evidence and, in the absence of evidence to the contrary, conclusive evidence of that licence, registration, permit, approval, certificate, order, notice or authority;
- (d) a document purporting to be signed by the Executive Director, Public Health, or the town clerk or shire clerk of a local authority, as the case requires, stating that at a specified time or during a specified period there was or was not in force any licence, registration, permit, approval, certificate, order, notice or authority under this Part as described in that document granted or given to a specified person or in respect of a specified thing and

that that licence, registration, permit, approval, certificate, order, notice or authority was or was not subject to the terms, conditions or restrictions set out in that document shall, on its production in that proceeding, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in that document;

- (e) a certificate purporting to be signed by a person authorized to grant it shall, on its production in that proceeding, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in that certificate;
- (f) a certificate purporting to be signed by the Executive Director, Public Health, or the town clerk or shire clerk of a local authority, as the case requires, certifying the receipt or otherwise of any notice, application or payment or that any amount of fees or other moneys specified in that certificate is payable under this Part by a specified person and has not been paid shall, on its production in that proceeding, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in that certificate;
- (g) without limiting or otherwise affecting the operation of subsections (2) and (2b) of section 98 of the Road Traffic Act 1974, a certificate or document relating to a motor vehicle purporting to be issued under that Act shall, on its production in that proceeding, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in that certificate

or document and that the person named therein as the person in whose name the motor vehicle is registered was the person using the motor vehicle at the material time or during the material period;

(h) an allegation or averment in a complaint—

- (i) that a place is, or that any act, matter or thing was done or omitted, within a specified district;
- (ii) that any person, premises or other place, vehicle or appliance was or was not or were or were not at any material time licensed, registered, permitted, authorized or approved under this Part;
- (iii) that food was prepared or packed by a specified person;
- (iv) that a specified substance is or is not food within the meaning of this Part;
- (v) that any licence, registration, permit, approval, certificate or authority required under this Part to be obtained was not duly obtained by the person required to obtain it; or
- (vi) of the date on which the commission of an offence under this Part came to the knowledge of the complainant,

shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of that allegation or averment;

- (i) a sale of food shall be evidence, until the contrary is proved, that the food was sold for consumption by man;
- (j) the finding of food in any premises or other place or vehicle used for selling or packing, storing, handling, serving, supplying or conveying for sale food shall be evidence, until the contrary is proved, that the food so found was intended for sale for consumption by man;
- (k) the finding of food in any premises or other place or vehicle used for the preparation for sale of food shall be evidence, until the contrary is proved, that the food so found was intended to be used in the preparation for sale of food;
- (l) the obtaining of a sample of food under this Part with the intention that it be submitted for analysis shall be evidence, until the contrary is proved, that the food of which a sample was so obtained was food for consumption by man;
- (m) the onus of proof that food was not sold, prepared for sale, conveyed or intended for sale for consumption by man is on the person charged with the offence concerned; and
- (n) in respect of food comprising a sample taken or otherwise obtained for submission for analysis, each of the parts into which that food is divided shall be taken to be of uniform composition with the other such parts, until the contrary is proved.

(2) This section does not prejudice or in any way affect other means of proving the elements of an alleged offence.

247. (1) The Governor may on the advice of the Food Advisory Committee make regulations under section 341 prescribing all matters that are required or permitted by this Part to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Part. Regulations.

(2) The power to regulate includes the power to prohibit.

(3) The regulations may—

- (a) adopt wholly or partly and specifically or by reference and with any alteration, amendment, modification or variation any of the standards, rules, codes, specifications or methods of any association, body or institution whether as in force or recommended at the time of adoption or as amended from time to time;
- (b) confer powers or authorities or impose functions or duties in connection with the regulations on a government department, public authority or local authority, owners or occupiers of premises or other places or appliances, or owners or operators of vehicles or other persons; and
- (c) create offences under the regulations and provide for a penalty not exceeding \$2 500 in respect of any such offence.

(4) Without limiting the generality of the power conferred upon the Governor by subsection (1), regulations may be made with respect to the specific matters and things set forth in Schedule 3.

(5) The Executive Director, Public Health, may cause to be published codes of practice in connection with matters and things with respect

to which regulations may be made for the purpose of giving advice and guidance to persons responsible for compliance with those regulations and may amend or repeal any such codes. ”.

Section 275
amended.

8. Section 275 of the principal Act is amended in subsection (3) by deleting “the Third Schedule to this Act” and substituting the following—

“ Schedule 4 ”.

First
Schedule
amended.

9. The First Schedule to the principal Act is amended in the heading by deleting “THE FIRST SCHEDULE.” and substituting the following—

“ SCHEDULE 1. (Section 4). ”.

Second
Schedule
amended.

10. The Second Schedule to the principal Act is amended in the heading by deleting “THE SECOND SCHEDULE.” and substituting the following—

“ SCHEDULE 2. (Section 186). ”.

Schedule 3
inserted.

11. The principal Act is amended by inserting before the Third Schedule the following Schedule—

“ SCHEDULE 3. (Section 247 (4)).

SPECIFIC MATTERS AND THINGS WITH RESPECT
TO WHICH REGULATIONS MAY BE MADE.

1. The powers, authorities, functions and duties of persons engaged in the administration of Part VIII.

2. The licensing by the Executive Director, Public Health, or a local authority of persons for specified purposes.

3. The registration by the Executive Director, Public Health, or a local authority of premises or other places, vehicles or appliances for specified purposes and the inspection of premises or other places, vehicles or appliances in respect of which registration has been granted or is sought.

4. Applications for and the grant, issue, revocation, cancellation, suspension or surrender of licences, registrations, permits, approvals, certificates and authorities under Part VIII and transfers, renewals and duplicates thereof; the terms, conditions and restrictions on which those licences, registrations, permits, approvals, certificates and authorities may be granted, issued, revoked, cancelled, suspended, surrendered, transferred or renewed; and the records to be kept in relation thereto.
5. The prescription of standards for the nature, substance, composition, strength, mass, quantity, purity or quality of food generally or food of a specified class or description or of any ingredient or component part thereof or for the nature or proportion of any substance that may be mixed with or used in the preparation or preservation thereof, and the variations, if any, from standards.
6. The prohibition of the addition to, mixture with or use in the preparation of or presence in food generally or food of a specified class or description of a specified substance or a specified substance exceeding a prescribed quantity or proportion.
7. The prescription of the quantity or proportion of a specified substance that is to be the quantity or proportion or the maximum or minimum quantity or proportion that shall or may be added to, mixed with or used in the preparation of or present in food generally or food of a specified class or description.
8. The prohibition in the sale or the preparation, packing, storing, handling, serving, supplying or conveying for sale of food generally or food of a specified class or description of the use of any appliances, articles or materials containing a specified substance or a specified substance exceeding a prescribed quantity or proportion.
9. The prescription or prohibition of specified modes of the preparation of food generally or food of a specified class or description.
10. The prescription of the temperature at which food generally or food of a specified class or description that is prepared, stored, displayed, exposed or conveyed for sale shall be kept.
11. The prohibition of the sale of food generally or food of a specified class or description containing any micro-organism or a micro-organism of a specified kind or a micro-organism or a micro-organism of a specified kind in excess of a specified number in a specified quantity.

12. The provision for and prescription of all matters and things for or with respect to securing the wholesomeness and purity of food and the conditions and practices in connection with the sale or preparation, packing, storing, handling, serving, supplying or conveying for sale of food and, without limiting the generality of this clause, for or with respect to—

- (a) the cleanliness of premises or other places, vehicles or appliances in, at, on or from which food is sold or prepared, packed, stored, handled, served, supplied or conveyed for sale and fittings, fixtures or appliances in, at or on those premises or other places, vehicles or appliances;
- (b) the provision and proper use of satisfactory facilities for the protection of food in, at or on premises or other places, vehicles or appliances in, at, on or from which food is sold or prepared, packed, stored, handled, served, supplied or conveyed for sale;
- (c) the design and construction of premises or other places, vehicles, appliances, fittings or fixtures used for or in connection with the sale or preparation, packing, storing, handling, serving, supplying or conveying for sale of food;
- (d) the prohibition or regulation of the use of specified materials or materials of a specified class in the manufacture of appliances, fittings or fixtures;
- (e) the clothing to be worn by persons attending appliances or in, at or on premises or other places or vehicles in, at, on or from which food is sold or prepared, packed, stored, handled, served, supplied or conveyed for sale;
- (f) the standards of cleanliness and hygiene to be maintained;
- (g) preventing or minimizing the spread of disease;
- (h) the provision and use of appliances, fittings or fixtures;
- (i) prescribing standards for appliances, fittings or fixtures and requiring appliances,

fittings or fixtures of specified kinds to be approved by the Executive Director, Public Health, and specifying the procedure for obtaining that approval;

- (j) the inspection and testing of appliances, fittings or fixtures and the inspection of premises or other places or vehicles in, at, on or from which food is sold or prepared, packed, stored, handled, served, supplied or conveyed for sale; and
- (k) the provision and maintenance of an adequate water supply and drainage, sewerage, lighting and ventilation facilities in premises or other places, vehicles or appliances in, at, on or from which food is sold or prepared, packed, stored, handled, served, supplied or conveyed for sale.

13. The provision for and prescription of all matters and things for or with respect to food vending machines and, without limiting the generality of this clause, for or with respect to—

- (a) the location, surroundings and cleanliness thereof;
- (b) the mode of construction thereof with particular reference to the provision of means for maintaining cleanliness and operating temperatures;
- (c) maintenance and servicing thereof and the keeping of records in relation thereto;
- (d) marking on or affixing thereto operating instructions, evidence of the currency of registration thereof and the name and address or other particulars of the person who receives or shares in the proceeds of the sale of food therefrom;
- (e) requiring labels or other writings containing specified words, statements, expressions or specified pictorial representations or designs to be affixed thereto or prohibiting the use in those labels or other writings of specified words, statements or expressions or words, statements or expressions having the same or a similar effect or representations or designs of a similar or other specified nature;

- (f) regulation and control of the temperature of food contained therein;
- (g) the prevention of the adulteration or contamination of food contained therein;
- (h) the inspection thereof and of their contents;
- (i) the prohibition of the operation thereof and rendering them inoperable whilst in a faulty condition;
- (j) the prohibition or regulation of the sale or supply therefrom of goods other than food or food of any class or description with food of another class or description;
- (k) the prohibition or regulation of the use thereof for dispensing food other than food that they are designed to dispense; and
- (l) generally, the control and use thereof.

14. Regulation and control and, if necessary, prohibition and restriction of advertisements relating to food generally or food of a specified class or description; requiring advertisements to contain specified words, statements or expressions or specified pictorial representations or designs or prohibiting the use therein of specified words, statements or expressions or words, statements or expressions having the same or a similar effect or pictorial representations or designs of a similar or other specified nature or of statements, claims, designs, devices or abbreviations of a specified nature.

15. The prescription of the mode of labelling food generally or food of a specified class or description or packages of food generally or of food of a specified 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 a specified kind; the printing size, style or colour of any such matter or the nature or colour of the background on which it appears; requiring labels that are specified to be written on or attached to food or to packages of food; prohibition generally as to the matter to be contained in labels and without limiting the generality of this provision of the use on labels of specified words, statements or expressions or of words, statements or expressions having the same or a similar effect or of pictorial representations or designs of a

similar or other specified nature; requiring that when food generally or food of a specified class or description that is not in a package is displayed for sale it shall be displayed in conjunction with a label bearing such matter as is prescribed.

16. The provision for and requirements with respect to the seizure, recall, destruction, denaturation or disposal of food that has become damaged, deteriorated, impoverished, contaminated or perished to such degree as is specified or of food of a specified class or description; specifying the circumstances in which food shall be destroyed or denatured.

17. The prescription of modes of making containers, wrappers or other packages or packing materials for food so as to avoid contact with injurious substances; the substances or materials that shall not be used in making containers, wrappers or other packages or packing materials; the minimum size of and the packing required for an article not being food that will be enclosed in a container, wrapper or other package; provision for the requirement that specified food be packed in a specified manner; prohibition of specified modes of packing food.

18. The provision for and requirements as to writings containing specified words, statements or expressions or words, statements or expressions having the same or a similar effect or specified pictorial representations or designs to be affixed to premises or other places, vehicles or appliances used in selling or preparing, packing, storing, handling, serving, supplying or conveying for sale food or food of a specified class or description; prohibition of the use in such writings of specified words, statements or expressions or words, statements or expressions having the same or a similar effect or of pictorial representations or designs of a similar or other specified nature.

19. The prescription of methods of analysis to be observed in analyses under or for the purposes of Part VIII.

20. The prescription of methods for taking or otherwise obtaining samples for the purposes of Part VIII and dealing with samples so taken or otherwise obtained; the rates of the payments to be made for samples taken or otherwise obtained for the purposes of Part VIII; the number of samples to be so taken or otherwise obtained in specified cases.

21. The signing, giving, serving and enforcement of notices for or with respect to the rectification of acts or omissions that constitute a contravention of Part VIII.

22. The books and records to be kept by the proprietor, manager or person in charge of any premises or other place, vehicle or appliance in, at, on or from which food is sold or prepared, packed, stored, handled, served, supplied or conveyed for sale.

23. The conveyance, storage, distribution, inspection and sale of food of a specified class or description.

24. Securing the purity of water used in the preparation of food or in any process in connection with that preparation.

25. The provision for premises or other places, vehicles, appliances, methods, processes, packages, seals or closures and sources of water used in connection with the sale or preparation, packing, storing, handling, serving, supplying or conveying for sale of food to be approved by the Executive Director, Public Health, and requirements to that effect.

26. The fees, charges, allowances, costs and expenses payable or to be paid under or for the purposes of Part VIII and the fixing thereof; the matters and things in respect of which they are payable or to be paid; the methods of collection thereof; the manner, time and place of payment thereof; the persons by whom and to whom they are payable, and all matters with respect to the recovery thereof.

27. The forms to be used for the purposes of Part VIII and the particular purposes for which those forms shall respectively be used.

28. The provision for and requirements as to laboratory and testing facilities to be provided in, at or on premises or other places or vehicles where food is prepared for sale and prescription of procedures and facilities to be used for the examination of food and notification to persons prescribed of the results thereof.

29. The manner in which any application, recommendation, report, order, notice, requisition or other document may be proved for any purpose.

30. All matters required or permitted by or under Part VIII to be prescribed when the manner of prescription is not stated.

31. In this Schedule—

“specified” means specified in regulations made under section 247. ”.

12. The Third Schedule to the principal Act is amended in the heading by deleting "THE THIRD SCHEDULE." and substituting the following—

Third
Schedule
amended.

" SCHEDULE 4. (Section 275). "

13. (1) A complaint pending before justices under the former section 202 or 205 immediately before the commencement date may be continued and disposed of under the new section 205 as if that complaint had been made under that new section.

Transitional
provisions.

(2) Any by-laws made under the former section 205B or 206 and in force immediately before the commencement date shall be deemed to have been made under section 342 of the principal Act as read with the new section 207 and may be amended or repealed accordingly.

(3) Any right of recovery conferred by the former section 211 (4) and subsisting immediately before the commencement date shall be deemed to have been conferred by the new section 217 (5) and may be exercised accordingly.

(4) Any by-laws made under the former section 214 and in force immediately before the commencement date shall be deemed to have been made under section 342 of the principal Act as read with the new section 220 and may be amended or repealed accordingly.

(5) A qualified person who has been approved and registered under the former section 217 and continues to be so registered immediately before the commencement date shall be deemed to have been registered under the new section 203.

(6) A prohibition of the sale of a patent or proprietary medicine made under the former section 226 and in force immediately before the commencement date shall be deemed to have been made under the new section 237.

(7) A certificate of an analyst given under the former section 228 may be used for the purposes of the new section 227 as if it had been given under that new section.

(8) A declaration made under the former section 235A and in force immediately before the commencement date shall be deemed to have been made under the new section 235 or 246ZA, as the case requires, and may be revoked accordingly.

(9) An order made under the former section 235A and in force immediately before the commencement date shall be deemed to have been made under the new section 235 or 246ZA, as the case requires, and may be revoked accordingly.

(10) Any regulations made under the former section 240 and in force immediately before the commencement date shall be deemed to have been made under section 341 of the principal Act as read with the new section 246D and may be amended or repealed accordingly.

(11) The State Meat Inspection Account referred to in the former section 240B (4) (a) and every fund—

(a) established by a local authority within the meaning of the principal Act under the former section 240B (4) (b); and

(b) in existence immediately before the commencement date,

are hereby preserved and continued in existence under the new section 246F.

(12) Any regulations made under the former section 241D and in force immediately before the commencement date shall be deemed to have been made under section 341 of the principal Act as read with the new section 246C and may be amended or repealed accordingly.

(13) A licence granted under the former section 241F and in force or suspended immediately before the commencement date shall be deemed to have been granted under the new section 242 and shall, subject to Division 7 of Part VIIA of the principal Act, and to anything done thereunder, continue in force or remain suspended, as the case requires, accordingly.

(14) An appeal pending under the former section 241H immediately before the commencement date may be continued and disposed of under the new section 244 as if that appeal had been made under that new section.

(15) Any regulations made under the former section 241 I and in force immediately before the commencement date shall be deemed to have been made under section 341 of the principal Act as read with the new section 245 and may be amended or repealed accordingly.

(16) Nothing in this section shall be construed as limiting the generality of Part V of the Interpretation Act 1984.

(17) In this section—

“former section” means section of the principal Act repealed by this Act;

“new section” means section of the principal Act inserted therein by this Act;

“the commencement date” means the day on which this Act comes into operation.
