

# FOOD AND DRUGS ORDINANCE, 1912.<sup>(1)</sup>

## No. 42 of 1912.

### An Ordinance to consolidate and amend the Enactments relating to the Sale of Food and Drugs.

1.—(1.) This Ordinance may be cited as the *Food and Drugs Ordinance, 1912*<sup>(1)</sup> and shall commence on a day to be fixed by the Lieutenant-Governor by proclamation published in the *Gazette*.<sup>(1)</sup> Short title and commencement.

2. The enactments mentioned in the Schedule hereto are repealed. Repeal.

3. In this Ordinance unless the context otherwise requires:— Definitions.

“Government Analyst” means a Government Analyst appointed under this Ordinance;

“Drugs” means any substance vegetable animal or mineral used in the composition or preparation of medicines whether for external or internal use including tobacco;

“District” means a Sanitary District<sup>(2)</sup> established or deemed to have been established under any Ordinance relating to Public Health;

“Food” means any animal meat poultry game fish fruit vegetable corn flour bread dairy produce article or liquid used for food or drink by man other than drugs or water and any article intended to enter into or be used in the preparation of such food and flavouring matters and condiments;

“Inspector” means any inspector appointed under any Ordinance relating to Public Health;

“Health Authority” means any Health Authority appointed under any Ordinance relating to Public Health;

(1) Particulars of this Ordinance are as follows:—

Date of assent by Lieut.-Gov.	Date notified in Papua Govt. Gaz. as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
16.7.1912	(a)	23.12.1912 (Papua Govt. Gaz. of 23.12.1912)

(a) No notice of non-disallowance has been published in *Papua Govt. Gaz.*

(2) For particulars of Sanitary Districts established under the *Health Ordinance, 1912-1924*, see the Table printed on p. 2095, and the notices printed immediately thereafter.

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“Health Officer” means any Health Officer appointed under any Ordinance relating to Public Health;

“Justice” means a Justice of the Peace.

Analysts.  
Q. 45 Vic.  
No. 13,  
ss. 9, 10.

4. The Lieutenant-Governor<sup>(3)</sup> may appoint persons to be Government analysts for the purpose of this Ordinance and may make Regulations<sup>(4)</sup> defining the duties of such analysts.

Mixture of  
food and drugs  
with injurious  
ingredients, and  
selling the same.  
Q. 17. ss. 2, 3, 4.  
Q. 64 Vic. No.  
9, s. 93.

5.—(1.) Any person who—

(a) Mixes colours stains or powders or orders or permits any other person to mix colour stain or powder any food with any ingredient or material so as to render the food unfit for the food of man with intent that the same may be sold in that state; or

(b) Mixes colours stains or powders or orders or permits any other person to mix colour stain or powder any food with any ingredient or material which the Lieutenant-Governor in Council<sup>(3)</sup> by Order in Council<sup>(5)</sup> under the provisions of this section declares to be an injurious ingredient with intent that the same may be sold in that state; or

(c) Sells any food so mixed coloured stained or powdered as in the two last preceding sub-sections mentioned; or

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

(e) Sells any drug so mixed coloured stained or powdered; shall for the first offence be liable to a penalty not exceeding Fifty pounds and for a second or any subsequent offence to be imprisoned for any period not exceeding six months with or without hard labour.

Proof of absence  
of knowledge.

(2.) Provided that no person shall be liable to be convicted under the provisions of this section in respect of the sale of any food or drug if he shows to the satisfaction of the justices that he did not know of the food or drug sold by him being so mixed coloured stained or powdered and that he could not with reasonable diligence have obtained that knowledge.

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(3) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(4) No regulations have been published in *Papua Govt. Gaz.*

(5) No Order in Council has been published in *Papua Govt. Gaz.*

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6.—(1.) Any person who sells any food or any drug which is not of the nature substance and quality of the article demanded by the purchaser shall be liable to a penalty not exceeding Twenty pounds.

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

Q. 45 Vic. No. 13, ss. 5, 31.

Q. 64 Vic. No. 9, s. 94.

(2.) Provided that an offence shall not be deemed to be committed under the provisions of this section in the following cases that is to say—

- (a) When any matter or ingredient not injurious to health has been added to the food or drug because the same is required for the production or preparation thereof as an article of commerce in a state fit for carriage or consumption and not fraudulently to increase the bulk weight or measure of the food or drug or to conceal the inferior quality thereof;
- (b) When the drug or food is a proprietary medicine or is the subject of a patent in force within the Territory and is supplied in the state required by the specification of the patent;
- (c) When the food or drug is compounded as in this Ordinance mentioned;
- (d) When the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation.

(3.) In any proceedings under the provisions of this section for selling spirits not adulterated otherwise than by the admixture of water it shall be a good defence to prove except in the case of spirits sold under a trade mark that such admixture has not reduced the spirit to more than twenty-five degrees under proof for brandy whisky or rum or to more than thirty-five degrees under proof for gin as determined by Sikes's hydrometer.

Reduction allowed in spirits.

7. Any person who sells any compound food or compounded drug which is not composed of such ingredients as are in accordance with the demand of the purchaser shall be liable to a penalty not exceeding Twenty pounds.

Sale of compound food and compounded drugs.

Q. 45 Vic. No. 13, s. 6.

Q. 64 Vic. No. 9, s. 95.

8. No person shall be guilty of any offence in respect of the sale of any food or a drug mixed with any matter or ingredient not injurious to health and not intended fraudulently to increase its bulk weight or measure or to conceal its inferior quality if at the time of delivering such article or drug he supplies to the person receiving the same a notice by a label distinctly and legibly written or printed on or with the article or drug to the effect that the same is mixed and stating the nature or composition of such mixture.

Giving of label.

Q. 45 Vic. No. 13, s. 7.

Q. 64 Vic. No. 9, s. 96.

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Such label shall not be deemed to be distinctly and legibly written or printed unless it is so written or printed that the notice of mixture given by the label is not obscured by other matter on the label.

Abstraction of any part of food, and selling without notice.  
Q. 45 Vic.  
No. 13, s. 8.  
Q. 64 Vic.  
No. 9, s. 97.

9. Any person who with the intent that the same may be sold in its altered state without notice abstracts from any food any part of it so as to affect injuriously its quality substance or nature or sells any article so altered without making disclosure of the alteration shall be liable to a penalty not exceeding Twenty pounds.

In any proceedings under this section it shall not be a good defence to prove that milk has been reduced in value merely by the removal of the whole or a portion of its cream and such removal shall be deemed to injuriously affect the quality of such milk.

But nothing in this section shall prevent the sale of skimmed or separated milk if the vessel containing such milk has the words "skimmed milk" or "separated milk" as the case may be legibly marked thereon in some conspicuous place.

Purchaser may have article analysed.  
Q. 45 Vic.  
No. 13, ss. 16, 18, 22, 26, 27.  
Q. 64 Vic.  
No. 9, s. 98.

10.—(1.) The purchaser of any food or drug shall on payment to a Government analyst of the prescribed fee be entitled to have such food or drug analysed by such analyst.

Officer may obtain a sample of food or drug.

(2.) Any health officer or inspector or other officer authorized in that behalf by a Health Authority may procure a sample of food or drug and if he suspects the same to have been sold to him contrary to any provision of this Ordinance shall submit the same to a Government analyst.

Penalty for refusing to sell article to officer.

(3.) If when such officer applies to purchase any food or drug from the person exposing the same for sale and tenders the price for the quantity which he requires for the purpose of analysis not being more than is reasonably requisite such person refuses to sell the same he shall be liable to a penalty not exceeding Ten pounds.

Dealing with samples when purchased.

(4.) Every person who purchases any food or drug with the intention of submitting the same to analysis shall forthwith notify to the seller or his agent selling the same his intention to have the same analysed and shall offer to divide the food or drug so purchased into three 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 agent and if such seller or agent so desires with the seal or distinguishing mark of such seller or agent as well as of the inspector.

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The purchaser shall if required so to do proceed accordingly and shall deliver one of the parts to the seller or his agent. He shall afterwards retain one of the parts for future comparison and submit the third part to the analyst if he thinks it right to have the food or drug analysed.

(5.) If the seller or his agent does not accept the offer of the purchaser to divide such food or drug the analyst receiving the same shall divide it into two parts and shall seal or fasten up one of the parts and cause it to be delivered to the purchaser either when he receives the same or when he supplies his certificate to the purchaser and such purchaser shall retain the part so delivered to him and produce the same if any proceedings are afterwards taken in the matter.

When sample is not divided.

(6.) If the analyst does not reside within two miles of the residence of the person requiring the food or drug to be analysed such food or drug may be forwarded to the analyst through the post-office as a registered letter or packet.

Sending article to the analyst through the post office.

The charge for the postage of the same shall be deemed one of the charges authorized by this Ordinance or of the prosecution as the case may be.

(7.) In any proceedings the defendant may require that the analyst shall be called as a witness and that the parts of the food or drug retained by the person who purchased the same shall be produced.

Analyst to be called if required.

(8.) The Court before which any complaint is made or before which any appeal is heard may cause any food or drug to be sent to a Government Analyst to make an analysis or examination thereof and such analyst shall give a certificate to the Court of the result. A certificate purporting to be signed by a Government analyst shall be *prima facie* evidence of the facts therein stated.

Court may have food or drug analysed.

The costs of such analysis shall be paid as the Court in its discretion directs.

11. Any health officer or inspector or other officer authorized in that behalf by a Health Authority may in exercise of the powers conferred by this Ordinance—

Powers of inspectors, &c.  
Q. 64 Vic. No. 9,  
s. 99.

- (1) At all reasonable hours have access to all public or private sale-rooms occupied or used by merchants brokers wholesale dealers or other persons and to all public and private warehouses factories stores quays sheds ships or barges where food or drugs are offered for sale or deposited for the purpose of sale and seize or procure samples of any such food or drugs;

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- (2) Seize or procure samples of any food or drugs at the place of delivery or at any railway station or other place during transit or upon the premises of or elsewhere in the possession of any person for the purpose of carriage;
- (3) Seize or procure at the port of entry or elsewhere samples of any food or drugs imported as merchandise;
- (4) For any of the purposes aforesaid break open any parcel box barrel basket bag case tin or other package in which such food or drugs may be contained.

Defences.

Q. 45 Vic.  
No. 13, ss. 30,  
33.

Q. 64 Vic.  
No. 9, s. 100.

12.—(1.) In any prosecution for selling any article of food or any drug which is not of the nature substance and quality of the article demanded by the purchaser it shall be no defence to prove that—

- (a) The purchaser bought only for analysis; or
- (b) The food or drug though defective in nature or in substance or in quality was not defective in all three respects.

(2.) But if the defendant proves—

- (a) That he purchased the food or drug as the same in nature substance and quality as that demanded of him by the purchaser and with a written warranty to that effect from some responsible person carrying on business in the Territory; and
- (b) That he had no reason to believe at the time when he sold it that the food or drug was other in nature substance or quality than that demanded; and
- (c) That he sold it in the same state as when he purchased it he shall be discharged but he shall be liable to pay all costs incurred by the purchaser unless he gave due notice to him that he would rely upon this defence.

Unfit food or  
drug may be  
destroyed.

Q. 45 Vic.  
No. 13, s. 34.  
Q. 64 Vic.  
No. 9, s. 101.

13. Whenever after the conviction of any person for selling any food or drug the justices are of opinion that it is unfit for the food of man or for use as a drug they may order such food or drug to be forfeited and to be destroyed or otherwise disposed of as they think fit.

Standard of  
drugs.

Q. 64 Vic.  
No. 9, s. 102.

14. In every proceeding under the provisions of this Ordinance with respect to any drug the standard settled and appointed by Regulation<sup>(6)</sup> under this Ordinance shall be taken as the standard.

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(6) No regulations have been made.

15. The consignee or other person having the custody of any food or drug imported into the Territory shall permit any health officer or inspector or other officer authorized in that behalf by a Health Authority to take such samples of any such consignment as may be necessary for the enforcement of the provisions of this Ordinance. When such officer takes a sample of any such consignment he shall divide it into three parts and shall deliver or send one of the parts to the consignee or his agent. He shall retain one of the parts for future comparison and shall submit the third part to a Government analyst.

Importation of adulterated foods, &c.  
Q. 45 Vic.  
No. 13, s. 39.  
Q. 64 Vic.  
No. 9, s. 103.

If upon analysis or examination the same 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 food or drug shall not be delivered to the consignee except with the sanction of a Health Authority and subject to such terms and conditions at it thinks fit to impose.

If upon such analysis or examination any food is found to be unfit for the food of man such consignment shall be destroyed or otherwise dealt with as the Health Authority directs:

Provided that no food shall be deemed to be adulterated by the addition merely of vegetable colouring matter of such a nature and in such quantity as not to render the food injurious to health.

16. Any person who sells or exposes for sale any substance or compound under the name or description of or with intent that the same may be used as a disinfectant deodoriser germicide preservative antiseptic sanitary powder or sanitary fluid without disclosing the name or names of such substance or compound and the percentage of the active ingredients contained in the same by a label distinctly and legibly written or printed on or with the substance or compound shall be liable to a penalty not exceeding fifty pounds.

Disinfectants.  
Q. 64 Vic.  
No. 9, s. 104.

The provisions of this Ordinance relating to the analysis or examination of food and drugs shall apply to all substances and compounds in this section referred to.

17. The Lieutenant-Governor<sup>(3)</sup> may from time to time make Regulations<sup>(7)</sup> with respect to all or any of the following matters namely:—

Regulations.  
Q. 64 Vic.  
No. 9, s. 105.

- (1) Prescribing the fees to be paid by persons for the analysis or examination of foods drugs or disinfectants;

(3) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(7) No regulations have been made.

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- (2) Settling and appointing standards for the composition of foods drugs and disinfectants and subject as hereinbefore provided with regard to spirits the amount of dilution if any to be allowed in the sale by retail of any foods or drugs;
- (3) Settling and appointing standards of the amount of deterioration or natural poverty if any in any food or drug to be permitted without prosecution under the provisions of this Ordinance;
- (4) Settling and appointing standards of the amount and kind if any of foreign substances to be allowed for the preservation or flavouring of preserved foods;
- (5) Regulating the wording upon labels to be used in the sale of mixed or altered foods drugs or disinfectants;
- (6) Prescribing penalties not exceeding Fifty pounds for the breach of any Regulation.

Recovery of  
penalties.  
Q. 64 Vic.  
No. 9, s. 179.

18. All offences against the provisions of this Ordinance or the Regulations and all penalties forfeitures costs and expenses under the provisions of this Ordinance or the Regulations may be prosecuted and recovered by complaint before any two justices.

Proceedings for the recovery of any penalty under the provisions of this Ordinance or any Regulation shall not be had or taken by any person other than by a party aggrieved or by the Health Authority health officer or inspector of the district in which the offence is committed without the consent in writing of the Government Secretary.

Evidence.  
Q. 64 Vic.  
No. 9, s. 180.

19. In any legal proceeding under this Ordinance or any Regulation—

- (1) The fact that this Ordinance is in force in any district or part thereof shall be presumed until the contrary is proved;
- (2) The production of a copy of the *Gazette* containing any Regulations or any Orders purporting to be made by the Lieutenant-Governor in Council<sup>(3)</sup> under the provisions of this Ordinance shall be for all purposes conclusive evidence of such By-laws Regulations or Orders;
- (3) The burden of proof that any article of food was not exposed for sale or deposited in any place for the purpose of sale or preparation for sale or was not intended for the food of man shall be upon the party charged;

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(3) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

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(4) If the defendant desires to rely upon any exception or proviso contained in this Ordinance or any Regulations it shall be incumbent upon him to prove the same.

Q. 45 Vic.  
No. 13, s. 32.

20. Nothing in this Ordinance contained shall affect the power of proceeding by indictment or take away any other remedy against any offender under this Ordinance or in any way interfere with contracts and bargains between individuals and the rights and remedies belonging thereto:

Proceedings by  
indictment and  
contracts not to  
be affected.  
Imp. 38 & 39  
Vict. c. 63, s. 28.

Provided that in any action brought by any person for a breach of contract on the sale of any article of food or of any drug such person may recover alone or in addition to any other damages recoverable by him the amount of any penalty in which he had been convicted under this Ordinance together with the costs paid by him upon such conviction and those incurred by him in and about his defence thereto if he proves that the article or drug the subject of such conviction was sold to him as and for an article or drug of the same nature substance and quality as that which was demanded of him and that he purchased it not knowing it to be otherwise and afterwards sold it in the same state in which he purchased it; the defendant in such action being nevertheless at liberty to prove that the conviction was wrongful or that the amount of costs awarded or claimed was unreasonable.

SCHEDULE.

Enactments referred to.	Short Title.	Extent of Repeal.
45 Vic. No. 13 (Queensland Adopted)	<i>“The Sale of Food and Drugs Act of 1881”</i>	The whole.
46 Vic. No. 15 (Queensland Adopted)	<i>“The Sale of Food and Drugs Act Amendment Act of 1882”</i>	The whole.

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