

**Version No. 041**  
**Food Act 1984**

**Act No. 10082/1984**

Version incorporating amendments as at 1 July 1997

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**Version No. 041**

**Food Act 1984**

**Act No. 10082/1984**

Version incorporating amendments as at 1 July 1997

An Act to consolidate and amend the Law relating to the Preparation and Sale of Food, to make Provision for securing the Wholesomeness and Purity of and fixing Standards for Food, to prevent false or misleading packaging and labelling of Food and false or misleading advertising in connexion with Food, to amend the **Health Act 1958**, the **Magistrates (Summary Proceedings) Act 1975** and the **Health Commission Act 1977** and for other purposes.

**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 Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

**PART I—PRELIMINARY**

**1. *Short title***

This Act may be cited as the **Food Act 1984**.

**2. *Commencement***

The several provisions of this Act shall come into operation on a day or on the respective days to be fixed by proclamation or successive proclamations of the Governor in Council published in the Government Gazette.

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**3. Saving and transitional provisions**

\*                    \*                    \*                    \*                    \*

S. 3(1)  
amended by  
No. 95/1986  
s. 4(1),  
repealed by  
No. 42/1993  
s. 64(a).

\*                    \*                    \*                    \*                    \*

S. 3(2)  
repealed by  
No. 42/1993  
s. 64(a).

- (3) A person who immediately before the commencement of section 20 was an authorized officer for the purposes of Part XIV of the **Health Act 1958** shall be deemed to be an authorized officer for the purposes of this Act.
- (4) Every person who immediately before the commencement of section 30 is approved as an analyst pursuant to the **Health Act 1958** for making any kind of analysis specified in the approval shall be deemed to be authorized under section 30 to carry out any kind of analysis specified in the approval given under that Act.
- (5) Subject to this Act—
  - (a) any eating-houses or food premises registered under the **Health Act 1958** shall, if the registration is in force immediately prior to the commencement of section 36, be deemed to be registered as food premises under this Act;

\*                    \*                    \*                    \*                    \*

S. 3(5)(b)  
amended by  
No. 95/1986  
s. 4(2),  
repealed by  
No. 97/1987  
s. 179(1).

\*                    \*                    \*                    \*                    \*

S. 3(5)(c)  
repealed by  
No. 13/1994  
s. 10(a).

- (6) A regulation that continues in force by virtue of sub-section (2)—
  - (a) shall, with such alterations, modifications and substitutions as are necessary, have the like force and effect and be dealt with and enforced as if it were a regulation made under this Act; and
  - (b) may be revoked or amended as if it were a regulation made under this Act.

S. 3(7)  
repealed by  
No. 20/1995  
s. 4(1).

\* \* \* \* \*

4. *Definitions*

- (1) In this Act unless inconsistent with the context or subject-matter—

**"advertisement"** means—

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

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

**"analysis"** means an examination carried out by an analyst;

**"analyst"** means a person authorized under section 30 to carry out analyses for the purposes of this Act;

**"animal"** includes amphibian, bird, crustacean, fish, mollusc and reptile;

**"appliance"** means the whole or any part of any utensil, machinery, instrument, apparatus or other thing which is used or capable of being used in or in connexion with the sale or the

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preparing, packing, storing, handling, serving, supplying or conveying for sale of any food and includes any utensil, machinery, instrument, apparatus or other thing which is used or capable of being used in the cleaning of any other appliance;

**"appropriate designation"**, in relation to any food, means a name or description or name and description sufficiently specific in each case to indicate the true nature of the food to which it is applied;

**"article"** means—

- (a) any food;
- (b) an appliance;
- (c) a package; or
- (d) any labelling or advertising material used or capable of being used in or in connexion with the sale of any food;

**"authorized officer"** means—

- (a) a person who is authorized by the Chief General Manager under section 20(1) for the purposes of this Act; or
- (b) a medical officer of health or an environmental health officer appointed under Division 3 of Part II of the **Health Act 1958**; or
- (c) a person who is an authorised officer under the **Dairy Industry Act 1992**, for the purposes of enforcing this Act and the regulations in respect of any dairy premises, milk or dairy produce within the meaning of the **Dairy Industry Act 1992**; or

S. 4(1) def. of "authorized officer" amended by No. 10262 s. 4, substituted by No. 95/1986 s. 5(a), amended by Nos 12/1989 s. 4(1)(Sch. 2 item 47.1)(as amended by No. 13/1990 s. 38(1)(o)(p)), 88/1992 s. 86, 125/1993 s. 20(5)(a), 13/1994 s. 4(a)(b).

- (d) in relation to food premises or a food vehicle—
  - (i) operated by or on behalf of the Crown; or
  - (ii) on land that is not part of a municipal district—  
the Chief General Manager; or
- (e) a person to whom, under section 8A of the **Health Act 1958**, the Chief General Manager delegates any of the functions, powers or duties of an authorised officer under this Act;

**"books"** includes any register or other record of information and accounts or accounting records (within the meaning of the **Companies (Victoria) Code**), however compiled, recorded or stored, and also includes any document;

**"Chief General Manager"** means the Chief General Manager of the Department of Health and Community Services;

S. 4(1) def. of "Chief General Manager" inserted by No. 10262 s. 4, amended by No. 20/1995 s. 5.  
S. 4(1) def. of "Commission" repealed by No. 10262 s. 4.

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**"Committee"** means the Food Standards Committee established under section 60;

**"corresponding law"** means a law of another State or a Territory of the Commonwealth of Australia which the Governor in Council by

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Order declares to be a law that makes provision substantially similar to a provision of this Act;

**"council"** has the same meaning as in the **Local Government Act 1989**, and **"the council"** means the council to the municipal district of which the provision in which the term is used applies;

S. 4(1) def. of "council" substituted by No. 12/1989 s. 4(1)(Sch. 2 item 47.2).

**"drug"** means any substance used as medicine or in the composition or preparation of medicines whether for external or internal use and without limiting the generality of the foregoing includes a drug that is a listed or registered therapeutic good within the meaning of the **Therapeutic Goods (Victoria) Act 1994** or the Therapeutic Goods Act 1989 of the Commonwealth;

S. 4(1) def. of "drug" amended by No. 79/1994 s. 74.

**"examine"** includes weigh, count, test and measure;

**"food"** means a substance ordinarily consumed or intended to be consumed by man and includes—

- (a) drink;
- (b) chewing gum;
- (c) any constituent or ingredient of food;
- (d) any food additive;
- (e) any substance used or intended to be used in the preparation of food; and
- (f) any substance for the time being declared by an Order made under section 5(1) to be food—

but does not include—

- (g) a substance used only as a drug;

- (h) a substance for the time being declared by an Order made under section 5(1) not to be food; or
- (i) water supplied by a public body in the exercise of its power to supply water;

**"food premises"** means any premises or part thereof or other place kept or used for the sale or the preparing, packing, storing, handling, serving or supplying for sale of any food, but does not include any premises or part thereof or other place for the time being declared by an Order made under section 5(3) not to be food premises;

**"food vehicle"** means any vehicle kept or used for the sale or the preparing, packing, storing, handling, serving, supplying or conveying for sale of any food;

**"food vending machine"** means a machine or mechanical device used or capable of being used for selling food without any intervention or attention by or on behalf of the seller at the time of the sale;

**"label"** includes any tag, brand, mark or statement in writing or any representation or design or other descriptive matter on or attached to or used or displayed in connexion with or accompanying any food or package;

S. 4(1) def. of "medical practitioner" repealed by No. 23/1994 s. 118(Sch. 1 item 21.1(a)).

\* \* \* \* \*

*Food Act 1984*  
*Act No. 10082/1984*

s. 4

\* \* \* \* \*

S. 4(1) defs of  
"National  
Food  
Standards  
Council",  
"National  
Food  
Standards  
Council  
Agreement",  
"National  
Health and  
Medical  
Research  
Council"  
inserted by  
No. 95/1986  
s. 5(b),  
repealed by  
No. 36/1991  
s. 4(a).

**"package"** means anything in or by which food is wholly or partly cased, covered, enclosed, contained or packed;

**"person"** includes a body or association (corporate or unincorporate) and a partnership;

**"premises"** includes—

- (a) a building or part of a building;
- (b) a tent, stall or other structure whether permanent or temporary; and
- (c) land whether or not appurtenant to a building;

**"prepare"** includes manufacture, process and treat;

**"prescribed"** means prescribed by this Act, the regulations or a prescribed food standard;

S. 4(1) def. of  
"prescribed"  
amended by  
No. 42/1993  
s. 64(b).

S. 4(1) def. of  
"prescribed  
food  
standard"  
inserted by  
No. 36/1991  
s. 4(b).

**"prescribed food standard"** has the meaning  
given in section 63A;

**"proprietor"**—

- (a) in relation to food premises, means the owner or, where the owner is not the occupier, the occupier of the food premises and includes a person in charge or apparently in charge of the food premises;
- (b) in relation to a food vehicle, means—
  - (i) where the vehicle is not the subject of a hire purchase agreement or otherwise hired or leased, the owner; or
  - (ii) where the vehicle is the subject of a hire purchase agreement or is otherwise hired or leased, the hirer or lessee—and includes a person in charge or apparently in charge of the vehicle; and
- (c) in relation to an appliance, means—
  - (i) where the appliance is in or at food premises, the proprietor of those food premises; or
  - (ii) where the appliance is in or on or operated in connexion with a food vehicle, the proprietor of that food vehicle;

**"publish"** means—

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

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- (b) disseminate by broadcast, telecast or cinematograph;
  - (c) exhibit by means of posters, film or videotape;
  - (d) send or deliver to any person by any means whatever;
  - (e) throw or leave upon premises in the occupation of any person; or
  - (f) bring to the notice of the public by any other means whatever;

**"registered medical practitioner"** means a registered medical practitioner within the meaning of the **Medical Practice Act 1994**;

S. 4(1) def. of "registered medical practitioner" inserted by No. 23/1994 s. 118(Sch. 1 item 21.1(b)).

**"sample"** includes part of a sample;

**"sell"**, in relation to food, includes—

- (a) barter, offer or attempt to sell, receive for sale, have in possession for sale, expose for sale, send, forward or deliver for sale, or cause or permit to be sold or offered for sale;
- (b) sell for resale; and
- (c) supply pursuant to a contract, together with accommodation, service or entertainment, in consideration of an inclusive charge for the food supplied and the accommodation, service or entertainment;

**"service"**, in relation to a food vending machine, means stock or replenish that machine with food;

**"substance"** includes a mixture or compound;

**"this Act"** includes the regulations;

**"vehicle"** means a conveyance designed to be propelled or drawn by any means, whether or not capable of being so propelled or drawn, and includes cart, caravan, bicycle, railway carriage, tram-car, ship, boat, barge, vessel, aircraft and aircushion vehicle.

- (2) For the purposes of this Act food shall be deemed to be adulterated where—
- (a) it is injurious to health;
  - (b) a package or anything included in a package or any thing or matter with which the food comes into contact consists wholly or partly of a substance that may render the food injurious to health;
  - (c) it contains a substance prescribed as prohibited either generally or in relation to that food;
  - (d) a prescribed food standard specifies that food generally or food of the class or description concerned is to contain no more than or no less than a specified quantity or proportion of a particular substance and the food contains more than or less than (as the case requires) that quantity or proportion;
  - (e) it is prepared in a manner whereby damage, deterioration or inferiority is or may be concealed;
  - (f) it contains a foreign substance or matter;
  - (g) it is wholly or partly the product of a diseased animal or one that has died naturally or, in the case of a warm-blooded animal, otherwise than by slaughter;

S. 4(2)(d)  
amended by  
No. 36/1991  
s. 4(c).

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- (h) it is labelled or otherwise represented as being food of a particular class or description and—
- (i) it contains or is mixed or diluted with a substance in a quantity that diminishes in any manner any of its properties as compared with such food in a pure state and in an undeteriorated condition; or
  - (ii) it has had a constituent wholly or partly extracted or removed from it so that its properties as compared with such food in a pure state are diminished; or
- (i) it is labelled or otherwise represented as being food of a particular class or description and 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.
- (3) For the purposes of this Act—
- (a) food offered as a prize or reward, whether in connexion with entertainment or for the purpose of advertisement or in furtherance of trade or business or otherwise, shall be deemed to have been exposed for sale by each person offering the prize or reward;
  - (b) food given away for the purpose of advertisement or in furtherance of trade or business shall be deemed to have been sold by the person giving away the food; and
  - (c) food which is exposed or deposited in any premises for the purpose of being so offered as a prize or reward or given away shall be deemed to have been exposed for sale by the occupier of the premises.

- (4) Where a word or phrase is given a particular meaning in this Act, other parts of speech and grammatical forms of that word or phrase have, unless the contrary intention appears, corresponding meanings.
- (5) Where a provision of this Act is with respect to a particular subject-matter inconsistent with a provision of any other Act, the provision of this Act shall prevail and the provision of that other Act is, to the extent of the inconsistency, of no force or effect.
- (6) Where a provision of a regulation made under this Act is with respect to a particular subject-matter inconsistent with a provision of a regulation, rule or by-law made under any other Act, the provision of the regulation made under this Act shall prevail and that other provision is, to the extent of the inconsistency, of no force or effect.

#### **5. Orders**

- (1) The Governor in Council may by Order published in the Government Gazette—
    - (a) declare a law of a State or Territory of the Commonwealth of Australia to be a corresponding law for the purposes of this Act; and
    - (b) declare any substance to be or not to be food for the purposes of this Act.
  - (2) An Order made by the Governor in Council under sub-section (1) may by like Order be amended, varied or revoked.
  - (3) The Minister may make an order declaring any premises or part thereof or other place not to be food premises for the purposes of this Act.
  - (4) An order made by the Minister under sub-section (3)—
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- (a) may be made so as to be limited in respect of time or circumstances; and
  - (b) may by like order be amended, varied or revoked.

**6. *Act to bind Crown***

This Act binds the Crown, not only in right of the State of Victoria, but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

**7. *Extension to places outside municipal districts***

- (1) All or any of the provisions of this Act may be extended by proclamation of the Governor in Council to any place not situated in a municipal district and in every such case the Chief General Manager shall have and may exercise in respect of such place all the powers duties and authorities of councils under this Act.
- (2) A proclamation made by the Governor in Council under sub-section (1) may by like proclamation be amended, varied or revoked.

S. 7(1)  
amended by  
No. 10262 s. 4.

**PART II—OFFENCES IN CONNEXION WITH FOOD**

**8. *Prohibition on sale, preparation for sale or packing of certain food***

(1) A person who sells, prepares for sale or packs any food that is—

- (a) unfit for human consumption; or
- (b) adulterated—

is guilty of an offence.

Penalty: For a first offence 100 penalty units, and for a second or subsequent offence 200 penalty units or imprisonment for a term not exceeding 6 months or both.

(2) A court that convicts a person of an offence against sub-section (1) may, if it is of the opinion that the offence was committed wilfully or by the gross negligence of the defendant, impose a penalty of 100 penalty units in addition to any other penalty which may be imposed by the court for the offence in question.

(3) A person who sells, prepares for sale or packs any food that is damaged, deteriorated or perished is guilty of an offence.

Penalty: For a first offence 20 penalty units, and for a second or subsequent offence 40 penalty units.

(4) A person who sells, prepares for sale or packs any food for which there is a prescribed food standard is guilty of an offence if the food does not comply with the prescribed food standard.

Penalty: For a first offence 20 penalty units, and for a second or subsequent offence 40 penalty units.

S. 8(4)  
amended by  
No. 36/1991  
s. 4(d).

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**9. Protection for purchasers of food**

- (1) A person who sells any food that does not comply with the prescribed food standard for the food demanded by the purchaser is guilty of an offence.

S. 9(1)  
amended by  
No. 36/1991  
s. 4(e).

Penalty: For a first offence 10 penalty units, and for a second or subsequent offence 20 penalty units.

- (2) Where a person demands food by a name prescribed for a food for which there is a prescribed food standard, he shall be deemed to have demanded food that complies with that standard.

S. 9(2)  
amended by  
No. 36/1991  
s. 4(f).

- (3) A person must not to the prejudice of the purchaser sell any food that is not of the nature, substance or quality of the food that is demanded by the purchaser.

S. 9(3)  
inserted by  
No. 95/1986  
s. 6.

Penalty: For a first offence 10 penalty units, and for a second or subsequent offence 20 penalty units.

**10. Sale of food not complying with prescribed food standard**

S. 10  
amended by  
No. 36/1991  
s. 4(g).

A person who sells any 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 for which there is a prescribed food standard; or
- (b) that is otherwise designated or represented as being a food for which there is a prescribed food standard—

is guilty of an offence if the food does not comply with the prescribed food standard.

Penalty: For a first offence 20 penalty units, and for a second or subsequent offence 40 penalty units.

### **11. *False labelling or packing of food***

- (1) A person who packs or labels any food in a manner that is—
- (a) false or misleading in any particular;
  - (b) deceptive;
  - (c) otherwise contrary to or not in compliance with the provisions of this Act—

is guilty of an offence.

Penalty: For a first offence 20 penalty units, and for a second or subsequent offence 40 penalty units.

- (2) A person who sells any food that is packed or labelled in a manner such as is described in sub-section (1) is guilty of an offence.

Penalty: For a first offence 10 penalty units, and for a second or subsequent offence 20 penalty units.

### **12. *False advertising***

- (1) Subject to sub-section (3), a person who, for the purpose of effecting or promoting the sale of any food, publishes or causes to be published an advertisement that is—

- (a) false or misleading in any particular; or
- (b) deceptive—

is guilty of an offence.

Penalty: For a first offence 20 penalty units, and for a second or subsequent offence 40 penalty units.

- (2) Where a person is charged under sub-section (1) with publishing or causing to be published an advertisement that is false or misleading in any particular or deceptive the burden of proving that

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he did not publish the advertisement or did not cause the advertisement to be published shall be upon the person charged.

- (3) It is a defence to a charge of an offence under subsection (1) for the person charged to prove—
- (a) that he did not know and could not with reasonable diligence have ascertained that the advertisement in question was false or misleading in any particular or deceptive; or
  - (b) that, being a person whose business it is to publish or to arrange for the publication of advertisements, he received the advertisement in question for publication in the ordinary course of business and did not himself make or cause to be made a material alteration to the substance of that advertisement.

### **13. Labelling requirements**

- (1) Subject to sub-sections (6) and (7), a person who sells a package of food is guilty of an offence if the package does not bear or have attached to it a label setting out in the prescribed manner the following particulars—
- (a) where there is a prescribed food standard for the food and a name has been prescribed to be used in relation to that food, the prescribed name or, in any other case, an appropriate designation;
  - (b) the name and business address in Australia of the vendor, manufacturer or packer or, in the case of food imported into Australia the name and business address in Australia of the importer; and
  - (c) such other particulars as are prescribed.

S. 13(1)(a)  
amended by  
No. 36/1991  
s. 4(h).

- (2) Subject to sub-section (6), a person who sells food other than packaged food is guilty of an offence if the food is not labelled in accordance with the provisions of this Act.
- (3) Regulations made under this Act may require that food bear or have attached to it or be in a package that bears or has attached to it a label setting out, in the prescribed manner, in addition to any particulars required by sub-section (1), all or any of the following particulars—
  - (a) a statement of the ingredients present in the food in such detail as is prescribed;
  - (b) the place of manufacture of the food;
  - (c) the country of origin of the food;
  - (d) the date on which the food was manufactured or packed;
  - (e) the date by which the food should be used.
- (4) Regulations made for the purposes of sub-section (3) may apply the requirements to all or any food or to food of a specified class or description and may make different provisions with respect to foods of different classes or descriptions.
- (5) For the purposes of paragraphs (d) and (e) of sub-section (3) the regulations may specify in relation to food of a specified class or description the period from the date of manufacture or packing during which the food, if stored in the specified manner, may reasonably be expected to retain without appreciable deterioration its normal wholesomeness, nature and quality.
- (6) The regulations may prescribe any food or class or description of food to which all or any of the provisions of sub-section (1) or of sub-section (2)

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shall not apply or any circumstances in which all or any of the provisions of sub-section (1) or of sub-section (2) shall not apply.

- (7) Sub-section (1) shall not, unless the regulations otherwise prescribe in relation to food of a specified class or description, apply where the food was packed in the presence of the purchaser before or at the time of sale.

**14. *Further labelling offences***

- (1) A person who sells a package of food that bears or has attached to it a label setting out a list of the ingredients present in the food is guilty of an offence if the list—
- (a) is not set out in the prescribed manner; or
  - (b) where the manner is not prescribed, does not set out the ingredients present in the food in descending order of their relative proportion by mass.
- (2) Subject to any provision in regulations to the contrary, a person who sells a package of food that bears or has attached to it a label setting out a claim in relation to any particular ingredient present in the food is guilty of an offence if the proportion by mass in which that ingredient is present in the food is not also set out.
- (3) Where any substance is sold or described in any label or advertisement as food for animals it shall be an offence for the person so selling or describing the food to describe it on the label or otherwise as suitable or safe for human consumption unless it is sold, prepared and packed in accordance with this Act.

### 15. *Offence to sell unbranded meat*

S. 15(1)  
amended by  
No. 40/1993  
(Sch. 2 item  
4.1).

(1) A person who in, at, on or from any food premises or food vehicle—

- (a) sells or exposes for sale or uses in the preparation of any food for sale; or
- (b) causes, permits or suffers to remain in, at, or on those premises or that vehicle—

a carcass or any meat obtained from a carcass which has not been branded in the manner required by or under the **Meat Industry Act 1993** shall, whether or not he is guilty of any other offence, be guilty of an offence against this Act.

S. 15(2)  
amended by  
No. 40/1993  
(Sch. 2 item  
4.1).

(2) Notwithstanding anything to the contrary in sub-section (1), a person shall not be guilty of an offence under sub-section (1) by reason only of selling or exposing for sale or causing, permitting or suffering to remain in, at, or on any food premises or food vehicle a carcass or any meat obtained from a carcass which has not been branded in the manner required by or under the **Meat Industry Act 1993** where—

- (a) that carcass or meat has been—
  - (i) packaged in the prescribed manner; and
  - (ii) prepared in a manner prescribed for the purposes of this sub-section; and
- (b) the package bears a label indicating that the contents of the package are not intended for human consumption.

### 16. *Implied warranty*<sup>1</sup>

(1) In a contract of sale of any food for resale there is an implied warranty on the part of the vendor that there has been no contravention of this Act in relation to that food.

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- (2) A term of a contract of sale of any food for resale that purports to exclude, restrict or modify or purports to have the effect of excluding, restricting or modifying a warranty implied by this section is void.
- (3) This section applies (notwithstanding anything to the contrary in any other Act or law) to and in respect of a sale of any food for resale where the vendor carries on business in Victoria.
- (4) If the defendant in any proceedings under this Act in respect of any food proves to the satisfaction of the court that—
- (a) he sold the food in question in the same state as it was in at the time he purchased it; or
  - (b) if he sold the food in question in a different state from the state it was in at the time he purchased it, that change in state did not cause any contravention of this Act in relation to that food—
- he shall be discharged from the prosecution.
- (5) Sub-section (4) shall not apply unless the defendant within 7 days after the service of the summons has—
- (a) given to the informant a written notice stating that he intends to rely on the warranty and specifying the name and address of the person from whom he purchased the food in question; and
  - (b) given to the person from whom he purchased the food in question a written notice stating that he intends to rely on the warranty.
- (6) The person from whom the defendant purchased the food in question shall be entitled to appear at

**S. 16(3)**  
**amended by**  
**No. 13/1994**  
**s. 5.**

the hearing of the summons and to give evidence and the court may, if it thinks fit, adjourn the hearing to enable him to do so.

- (7) Where the defendant has been discharged from a prosecution under sub-section (4) then, notwithstanding anything in section 45(2), a prosecution may within 28 days after the discharge of the defendant be instituted against the person from whom the defendant purchased the food in question and for the purposes of that prosecution that person shall be deemed to have sold that food.
- (8) Nothing in this section shall be taken to derogate in any way from the application of the **Goods Act 1958** to contracts for the sale of food.

### **17. Defences**

- (1) It is a defence to a charge under section 8(1), 8(3), 8(4), 13(1) or 13(2) or under regulations made for the purposes of section 13(3) to prove that—
- (a) the food in respect of which the charge is brought is to be exported to another country; and
  - (b) the sale, preparation, packing or labelling of the food complies with the laws in force in the country to which the food is exported at the time at which it is exported.
- (2) It is a defence to a charge under section 8(1), 8(3), 8(4), 9(1), 10 or 11 for the person charged to prove—
- (a) that having taken all reasonable precautions (including, in the case of milk, analysis or other adequate test) against committing an offence he had at the time of the alleged offence no reason to suspect that there was in

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regard to the food in question any  
contravention of this Act;

(b) that on demand by any authorized officer he  
gave all the information in his power with  
respect to the person from whom he obtained  
the food in question; and

(c) that otherwise he acted innocently—

and has, not less than seven days before the  
hearing of the prosecution, notified the informant  
in writing that he intends to avail himself of the  
protection of this sub-section giving details of the  
reasonable precautions which he claims he has  
taken.

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**PART III—CLEANLINESS OF FOOD PREMISES, ETC.**

S. 18  
amended by  
No. 20/1995  
s. 6(a)(b).

**18. *Duty to maintain food premises etc. in clean and sanitary condition***

The proprietor of any food premises, food vehicle, food vending machine or other appliance must ensure that the premises are or the vehicle, machine or other appliance is at all times maintained in a clean and sanitary condition.

Penalty: 50 penalty units.

**19. *Powers with respect to unclean food premises or food vehicle***

S. 19(1)  
amended by  
No. 10262 s. 4,  
substituted by  
No. 13/1994  
s. 6(1).

(1) If the Chief General Manager or a Council is satisfied from the report of an authorised officer that—

(a) food premises are or a food vehicle is in an unclean or unsanitary condition or in a state of disrepair; or

(b) food being prepared at food premises or in a food vehicle is unfit for human consumption or is adulterated—

the Chief General Manager or Council may direct that, within a time specified in the direction, all or any of the following things must be done—

(c) the food premises or food vehicle must be put into a clean and sanitary condition or be altered or improved to the satisfaction of an authorised officer;

S. 19(1)(d)  
amended by  
No. 20/1995  
s. 7(2)(a)(b).

(d) specified steps must be taken to ensure that food prepared at the food premises or in the food vehicle is fit for human consumption or is not adulterated.

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*Food Act 1984*  
*Act No. 10082/1984*

s. 19

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| <p>(2) The Chief General Manager may in an order made under sub-section (1) or in a subsequent order in writing direct that—</p> <p style="margin-left: 40px;">(a) the food premises shall not be kept or used for the sale or the preparing, packing, storing, handling, serving or supplying for sale of any food; or</p> <p style="margin-left: 40px;">(aa) the food premises must not be kept or used for the preparation of food; or</p> <p style="margin-left: 40px;">(b) the food vehicle shall not be kept or used for the sale or the preparing, packing, storing, handling, serving, supplying or conveying for sale of any food; or</p> <p style="margin-left: 40px;">(c) the food vehicle must not be kept or used for the preparation of food—</p> <p style="margin-left: 40px;">until the food premises have or the food vehicle has been put into a clean and sanitary condition or been altered or improved or that specified steps have been taken to ensure that food prepared at those premises or that vehicle is fit for human consumption or is not adulterated.</p> <p>(3) Where an authorized officer is satisfied that any food vending machine or other appliance is in an unclean or unsanitary condition, or in a state of disrepair he may by order in writing direct that the food vending machine or other appliance be put into a clean and sanitary condition or be altered or improved to his satisfaction within such time as is specified in the order.</p> <p>(4) An authorized officer may in an order made under sub-section (3) or in a subsequent order in writing direct that—</p> | <p>S. 19(2) amended by Nos 10262 s. 4, 13/1994 s. 6(2)(b), 20/1995 s. 7(3)(b)(c).</p> <p>S. 19(2)(aa) inserted by No. 13/1994 s. 6(2)(a).</p> <p>S. 19(2)(b) amended by No. 20/1995 s. 7(3)(a).</p> <p>S. 19(2)(c) inserted by No. 20/1995 s. 7(3)(a).</p> |
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*Food Act 1984*  
*Act No. 10082/1984*

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- (a) the food vending machine shall not be kept or used for the sale or the storing, serving or supplying for sale of any food; or
- (b) the appliance shall not be used in or in connexion with the sale or the preparing, packing, storing, handling, serving, supplying or conveying for sale of any food or in connexion with the cleaning of any other appliance—

until the food vending machine or other appliance has been put into a clean and sanitary condition or has been altered or improved.

- (5) An order under this section shall take effect—
  - (a) in the case of any food premises, food vehicle, food vending machine or appliance, when it is given to or served on the proprietor thereof; or
  - (b) in any case where the name and address of the proprietor of the food premises, food vehicle, food vending machine or appliance is not known, when it is affixed on some conspicuous part of the premises, vehicle, appliance or machine.
- (6) Where any food premises the subject of an order under this section have or any food vehicle, food vending machine or other appliance the subject of such an order has been put into a clean and sanitary condition or been altered or improved or specified steps have been taken to ensure that food prepared at the premises or in the vehicle is fit for human consumption or is not adulterated, the Chief General Manager, council or authorized officer (as the case requires) shall—
  - (a) forthwith revoke any order made under this section with respect to those premises or that vehicle, machine or appliance; and

S. 19(6)  
amended by  
Nos 10262  
s. 4, 13/1994  
s. 6(3),  
20/1995  
s. 7(4)(a)(b).

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- (b) give written notice of the revocation of the order in the same manner in which the order was given or served under this section.
- (7) Any person who is aggrieved by an order made by the Chief General Manager, council or authorized officer under this section may within 21 days after the order is made, appeal to the Magistrates' Court.
- (8) Upon any appeal under sub-section (7) the court shall—
- (a) reconsider the decision of the Chief General Manager, council or authorized officer; and
- (b) hear any relevant evidence tendered whether by the person aggrieved or by the Chief General Manager, council or relevant authorized officer.
- (9) The costs of and incidental to an appeal under sub-section (7) shall be in the discretion of the court.
- (10) Any person who contravenes or fails to comply with an order made by the Chief General Manager or a council under this section is guilty of an offence.
- Penalty: For a first offence 50 penalty units, and for a second or subsequent offence 100 penalty units.
- (11) Any person who contravenes or fails to comply with an order made by an authorized officer under this section is guilty of an offence.
- Penalty: For a first offence 25 penalty units, and for a second or subsequent offence 50 penalty units.
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Pt 3A  
(Heading and  
ss 19A, 19B)  
inserted by  
No. 20/1995  
s. 8.

**PART IIIA—CLEANLINESS OF FOOD HANDLERS ETC.**

S. 19A  
inserted by  
No. 20/1995  
s. 8.

**19A. *Duty for food handlers to be in a clean and sanitary condition***

The proprietor of any food premises, food vehicle or food vending machine must ensure that all persons employed or engaged by the proprietor to handle unpackaged food at those premises or that vehicle or in connection with that machine—

- (a) keep themselves and their clothing in a clean and sanitary condition at all times; and
- (b) take all reasonable care not to render the unpackaged food unfit for human consumption or adulterated while engaged in handling it; and
- (c) do not handle any unpackaged food during any period in which the proprietor knows, or in all the particular circumstances ought reasonably to have known, that the person is suffering from a condition that is liable to render the food unfit for human consumption or adulterated.

Penalty: 50 penalty units.

S. 19B  
inserted by  
No. 20/1995  
s. 8.

**19B. *Powers with respect to unclean food handlers etc.***

- (1) If an authorised officer is satisfied that there has been a contravention of section 19A in relation to a person employed or engaged to handle unpackaged food, he or she may by order in writing direct that specified steps be taken—

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- (a) to ensure that that person or his or her clothing is put in a clean and sanitary condition; or
  - (b) to alter or improve the method of handling of unpackaged food by that person; or
  - (c) to ensure that that person ceases to handle unpackaged food until diagnosed by a registered medical practitioner as not suffering from a condition that is liable to render unpackaged food unfit for human consumption or adulterated.
- (2) An order under this section takes effect when it is given to or served on the proprietor of the food premises, food vehicle or food vending machine.
- (3) If the authorised officer is satisfied that an order made under this section with respect to a person has been complied with, he or she must—
- (a) forthwith revoke the order; and
  - (b) give written notice of the revocation of the order in the same manner in which the order was given or served under this section.
- (4) Any person who is aggrieved by an order made by an authorised officer under this section may, within 21 days after the order is made, appeal to the Magistrates' Court.
- (5) On an appeal under sub-section (4) the court must—
- (a) reconsider the decision of the authorised officer; and
  - (b) hear any relevant evidence tendered whether by the person aggrieved or by the relevant authorised officer.
- (6) The costs of, and incidental to, an appeal under sub-section (4) are in the discretion of the court.
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*Food Act 1984*  
*Act No. 10082/1984*

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(7) A person must not contravene an order made by an authorised officer under this section.

Penalty: For a first offence 25 penalty units, and for a second or subsequent offence 50 penalty units.

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**PART IV—AUTHORIZED OFFICERS**

**20. *Authorized officers***

- (1) The Chief General Manager may authorize in writing either generally or in relation to a particular matter a person who is—
- (a) an officer of the Department; or
  - (b) an officer in the public service—
- to exercise the powers and authorities and discharge the functions and duties of an authorized officer under this Act and may at any time revoke an authorization so given.

S. 20(1)  
amended by  
Nos 10262  
s. 4, 13/1994  
s. 7(1).

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S. 20(2)  
amended by  
Nos 95/1986  
s. 7(1),  
12/1989  
s. 4(1)(Sch. 2  
item 47.3)(as  
amended by  
No. 13/1990  
s. 38(1)(o)),  
repealed by  
No. 125/1993  
s. 20(5)(b).  
S. 20(3)  
amended by  
No. 10262 s. 4.

- (3) Every authorized officer shall be furnished by the Chief General Manager or the council (as the case requires) with a certificate of his authorization bearing on it a photograph of the authorized officer.
- (4) An authorized officer shall carry the certificate furnished to him under sub-section (3) on his person at all times while he is exercising the powers and authorities or discharging the functions and duties conferred or imposed upon him by or under this Act and shall produce that certificate to any person on demand.

S. 20(5)  
amended by  
Nos 95/1986  
s. 7(1),  
12/1989  
s. 4(1)(Sch. 2  
item 47.4)(as  
amended by  
No. 13/1990  
s. 38(1)(o)),  
125/1993  
s. 20(5)(c),  
13/1994  
s. 7(2)(a)(b),  
20/1995  
s. 9(1).

S. 20(6)  
amended by  
Nos 10262  
s. 4, 95/1986  
s. 7(2),  
12/1989  
s. 4(1)(Sch. 2  
item 47.5)(as  
amended by  
No. 13/1990  
s. 38(1)(o)(q)),  
125/1993  
s. 20(5)(d),  
repealed by  
No. 13/1994  
s. 7(3).<sup>2</sup>

- (5) Unless acting in accordance with a delegation from the Chief General Manager under section 8A of the **Health Act 1958**, an authorized officer (being a medical officer of health or an environmental health officer) shall not exercise the powers and authorities or discharge the functions and duties conferred or imposed upon him by or under this Act in or with respect to any food premises or food vehicle being operated by or on behalf of the Crown or on land that is not part of a municipal district.

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## 21. Powers of authorized officers

- (1) In the execution of this Act an authorized officer with such assistants as he thinks necessary may—
- (a) at any reasonable time enter any premises or other place in or at which he believes on reasonable grounds that any article is sold or prepared, packed, stored, handled, served or supplied for sale and therein may—
- (i) make such investigation and enquiry as are necessary to ascertain whether the provisions of this Act are being complied with;
- (ii) inspect the premises or other place (as the case may be) and examine any fittings, fixtures or articles contained

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- therein including anything that he believes on reasonable grounds to be an article;
- (iii) open and examine any package that he believes on reasonable grounds contains an article;
  - (iv) subject to this Act, take samples of any article;
  - (v) seize any article by means of or in relation to which he believes on reasonable grounds that any provision of this Act has been contravened or not complied with and detain or remove to some suitable place any article so seized;
  - (vi) mark, fasten, secure or seal any article or, where it is reasonably necessary to do so, mark, fasten, secure or seal any door, gate or opening that he believes on reasonable grounds affords access to an article;
  - (vii) seize or take samples of any thing or matter (apart from any article of which a sample may be taken pursuant to sub-paragraph (iv) or which may be seized pursuant to sub-paragraph (v)) that he believes on reasonable grounds may be used as evidence in a proceeding under this Act and detain or remove to some suitable place any samples so taken or thing or matter so seized; and
  - (viii) take such photographs or audio or visual recordings as he considers necessary;
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- (b) stop, detain and search any vehicle used or that he believes on reasonable grounds is being or is likely to be used for the conveyance of any article or in or on which he believes on reasonable grounds any article is sold or prepared, packed, stored, handled, served or supplied for sale and exercise in relation to that vehicle any of the powers or authorities conferred upon him by paragraph (a) in relation to any premises or other place;
- (c) require a person found by him committing an offence against this Act or who he believes on reasonable grounds has committed an offence against this Act or 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) in a case where he is obstructed or believes on reasonable grounds that he may be obstructed in the exercise of the powers or authorities or the discharge of the functions or duties conferred or imposed upon him by or under this Act, call to his aid a member of the police force, whereupon it shall be the duty of a member of the police force so called to assist him as required and a member so assisting shall have the same powers and authorities as are conferred upon an authorized officer by this Act; and
- (e) exercise such other powers or authorities and discharge such other functions or duties as are prescribed.

(2) Where the Chief General Manager certifies that the sale or the preparing, packing, storing, handling, serving or supplying for sale of any food having any particular physical characteristics is likely to involve a contravention of or a failure to comply with this Act, the finding of any food having those physical characteristics and appearing to have been sold or prepared, packed, stored, handled, served or supplied for sale shall, for the purposes of sub-section (1), constitute reasonable grounds for believing that there has been a contravention of or a failure to comply with this Act with respect to that food.

S. 21(2)  
amended by  
No. 10262 s. 4.

(3) If in the opinion of the Chief General Manager there are reasonable grounds for suspecting that any person is (for the purposes of the sale or the preparing for sale of food) in possession of any article by means of which or in relation to which any provision of this Act has been contravened or not complied with, the Chief General Manager may require such person to produce for the Chief General Manager's inspection or to produce to an authorized officer any relevant books and the Chief General Manager or the authorized officer may inspect, examine and make copies of or extracts from any book so produced or remove it for the purpose of making a copy thereof or extracts therefrom.

S. 21(3)  
amended by  
No. 10262 s. 4.

**22. *Procuring of samples of food***

(1) An authorized officer may, on payment or tender to the person in whose possession the food is or to his servant or agent of the current market value thereof or of the rate prescribed, demand and procure such samples of the food as are required for the purposes of this Act.

S. 22(1)  
amended by  
No. 95/1986  
s. 8.

(2) Where any food is kept for retail sale in an unopened package, a person shall not be required

by an authorized officer to sell less than the whole of that package.

- (3) If a rate has been prescribed for the payment for a sample it shall not be necessary for an authorized officer to tender any higher price for that sample.
- (4) The procuring of a sample pursuant to this section and the payment or tender of the current market value thereof or of the rate prescribed (as the case requires) shall for the purposes of this Act be deemed to be a sale by the person from whom the sample was obtained to the authorized officer of the food contained in the sample.

### **23. Procedures on taking samples**

S. 23(1)  
amended by  
No. 95/1986  
s. 9(1).

- (1) Where an authorized officer obtains a sample of any food with the intention that it be submitted for analysis, he shall, before or as soon as practicable after obtaining the sample, inform the person from whom the sample was obtained or the person having charge of that food of his intention to have the sample analysed.

S. 23(2)  
amended by  
No. 42/1993  
s. 64(c).

- (2) If a prescribed food standard does not otherwise prescribe in relation to the class or description of food concerned or the analysis proposed to be carried out and an authorized officer obtains a sample of any food with the intention that the sample be submitted for analysis, he shall—
  - (a) subject to sub-section (3), divide the sample into three separate parts and mark and seal or fasten each part in such manner as its nature will permit;

S. 23(2)(b)  
amended by  
No. 95/1986  
s. 9(2).

- (b) leave one part with the person from whom the sample was obtained or a person appearing to be the servant or agent of that person;
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*Food Act 1984*  
*Act No. 10082/1984*

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- (c) submit one of the remaining parts for analysis; and
  - (d) retain the other remaining part for future comparison.
- (3) If the division of a sample into three separate parts in accordance with paragraph (a) of sub-section (2) would in the opinion of the authorized officer—
- (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—
- the authorized officer shall deal with the sample in such manner as is appropriate in the circumstances having regard to this Act.
- (4) Where a sample of any food is obtained by an authorized officer 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) obtains a number of those objects;

S. 23(4)(c)  
amended by  
No. 42/1993  
s. 64(a).

S. 23(5)  
amended by  
No. 95/1986  
s. 9(3).

- (b) divides the number so obtained into the requisite number of parts so that each part consists of one or more than one of such separate or severable objects; and
  - (c) deals with those parts in accordance with a prescribed food standard or sub-section (2) or (3), as the case requires.
- (5) An authorized officer shall be deemed to have complied with the provisions of this section notwithstanding the failure by a person specified in sub-section (2)(b) to accept any part or parts required to be delivered to him in accordance with this section.

**24. *Duties of officer upon seizure and detention of article***

An authorized officer, upon the seizure and detention by him of an article under this Act, shall forthwith—

- (a) give notice in the prescribed form of the 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 Victoria of a person appearing to the authorized officer to be the consignor or owner of the article is set out on or attached to the article or a package containing the article, or the name and address in Victoria of the consignor or owner of the article is otherwise known to the authorized officer, give notice in the prescribed form of the seizure and detention to that person; or
- (c) in any other case, give notice in the prescribed form of the seizure and detention to the importer or consignee of the article or

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his agent if the authorized officer knows the name and address in Victoria of such importer, consignee or agent.

**25. *Keeping and storage of certain articles***

An article that has been seized and detained or otherwise obtained under this Act by an authorized officer may, at the direction of the authorized officer—

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

**26. *Remedy in respect of articles seized***

- (1) Where an article is seized and detained by an authorized officer under section 21, any person claiming the article may within 7 days after the seizure make application in the prescribed form to the Magistrates' Court for an order directing the authorized officer to release from detention the article seized by him.
- (2) Where an application is made to the Magistrates' Court under sub-section (1), the applicant shall forthwith give to the authorized officer responsible for the seizure and detention of the article in question a copy of the application.
- (3) Upon hearing an application under sub-section (1) the Magistrates' Court—
  - (a) if it is satisfied that—
    - (i) the authorized officer responsible for the seizure and detention of the article did not have reasonable grounds for

S. 26(1)  
amended by  
No. 57/1989  
s. 3(Sch. item  
79.3).

S. 26(2)  
amended by  
No. 57/1989  
s. 3(Sch. item  
79.4).

believing that the article was one by means of or in relation to which any provision of this Act had been contravened or not complied with; or

- (ii) the article was not one by means of or in relation to which any provision of this Act had been contravened or not complied with—

shall make an order disallowing the seizure and directing the authorized officer to release the article from detention; or

- (b) if it is not so satisfied, shall refuse the application and make an order confirming the seizure and detention of the article—

and may make such order as it thinks fit in respect of the costs and expenses of and incidental to the removal and storage of the article seized.

- (4) Where—

- (a) an application is made under sub-section (1) and the application is refused, then upon that refusal; or
- (b) an application is not made under sub-section (1), then upon the expiration of the period of 7 days after the seizure—

the article seized shall become the property of the Chief General Manager or where the authorized officer who seized the article is an environmental health officer of a council, the property of that council, and shall be destroyed or otherwise disposed of as the Chief General Manager or the council (as the case requires) directs.

S. 26(4)  
amended by  
Nos 10262  
s. 4, 12/1989  
s. 4(1)(Sch. 2  
item 47.6)(as  
amended by  
No. 13/1990  
s. 38(1)(o)),  
125/1993  
s. 20(5)(e).

\* \* \* \* \*

S. 26(5)  
amended by  
No. 16/1986  
s. 30, repealed  
by No.  
57/1989  
s. 3(Sch. item  
79.5).

**27. *Destruction or other disposal of seized food***

Notwithstanding anything in sections 25 and 26,  
where an authorized officer has seized any food  
under this Act and—

- (a) the owner of the food or the person in whose possession the food was at the time of seizure consents to the destruction or other disposal thereof; or
- (b) the food is in the opinion of the authorized officer decayed, deteriorated or putrefied—  
the authorized officer—
- (c) may 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, may permit the owner or, as the case may be, that person to destroy or otherwise dispose of the food subject to such reasonable conditions as the authorized officer stipulates.

S. 27(a)  
amended by  
No. 95/1986  
s. 10.

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

Where an article is seized and detained under this Act and—

- (a) an application is not made for its release from detention under section 26(1); or

S. 28  
amended by  
No. 95/1986  
s. 11.

- (b) the article is destroyed or otherwise disposed of pursuant to section 26(4) or section 27—

the person in whose possession the article was when seized, shall be liable to pay the costs and expenses incurred in or in connexion with the storage, destruction or other disposal of that article.

**29. *Offences with respect to authorized officers and articles***

A person who—

- (a) except with the authority of an authorized officer or pursuant to an order of a court—
- (i) removes, alters or interferes in any way with—
    - (A) an article seized and detained under this Act; or
    - (B) any article or other thing or matter or a sample of any article or other thing or matter obtained by an authorized officer under section 21; or
  - (ii) erases, alters, opens, breaks or removes a mark, seal or fastening placed by an authorized officer in the exercise of his powers or authorities or the discharge of his functions or duties under this Act—
    - (A) on an article other than part of a sample or any sample, object or package left by the authorized officer with a person from whom a sample was obtained; or
    - (B) on any door, gate or opening affording access to an article;
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- (b) refuses to sell to an authorized officer any food or to allow him to take a sample of any food or other article in such quantity as he reasonably requires;
  - (c) refuses or neglects, when required by or under this Act to do so, to render assistance or to furnish information to an authorized officer or other person;
  - (d) fails, when required by the Chief General Manager to do so, to produce for the Chief General Manager's inspection or to produce to an authorized officer any book required or authorized by or under this Act to be produced, or fails to allow an authorized officer to examine or to make a copy of or an extract from any book so produced or to remove it for the purpose of making a copy thereof or extracts therefrom;
  - (e) contravenes or fails to comply with any lawful direction or order of an authorized officer;
  - (f) makes orally or in writing a statement knowing it to be false or misleading to an authorized officer exercising a power or authority or discharging a function or duty under this Act;
  - (g) assaults, obstructs or attempts to obstruct, threatens, abuses, insults, intimidates or attempts to intimidate any authorized officer or other person in the exercise of his powers or authorities or the discharge of his functions or duties under this Act; or
  - (h) when required by an authorized officer to do so, fails to state his full name and the address of his usual place of residence or states a false name or address—

S. 29(d)  
amended by  
No. 10262 s. 4.

s. 29

*Food Act 1984*  
*Act No. 10082/1984*

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is guilty of an offence.

Penalty: For a first offence 25 penalty units, and  
for a second or subsequent offence 50  
penalty units.

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**PART V—ANALYSTS**

**30. *Analysts***

(1) The Chief General Manager may authorize in writing persons, whom the Chief General Manager considers to be appropriately qualified, to carry out analyses for the purposes of this Act.

S. 30(1)  
amended by  
No. 10262 s. 4.

(2) An authority given under sub-section (1)—

(a) may be in respect of a particular type of analysis specified in the authority; and

(b) may at any time be varied or revoked.

(3) A person who is directly or indirectly engaged in any trade connected with the manufacture or sale of food shall not be authorized to carry out analyses for the purposes of this Act where his engagement in that trade would conflict with his duty as a person authorized to carry out analyses for the purposes of this Act.

(4) A person authorized to carry out analyses for the purposes of this Act who becomes directly or indirectly engaged in any trade connected with the manufacture or sale of food shall forthwith notify the Chief General Manager in writing of that engagement and, upon receipt of that notification, the Chief General Manager may revoke the authority given to that person under sub-section (1).

S. 30(4)  
amended by  
No. 10262 s. 4.

(5) The Chief General Manager shall, at the request of a person authorized to carry out analyses for the purposes of this Act, revoke the authority given to that person under sub-section (1).

S. 30(5)  
amended by  
No. 10262 s. 4.

(6) The Chief General Manager shall maintain a list of persons authorized for the time being to carry out analyses for the purposes of this Act and shall

S. 30(6)  
amended by  
Nos 10262  
s. 4, 95/1986  
s. 12(1).

s. 31

*Food Act 1984*  
*Act No. 10082/1984*

make sure that a copy of the list is open for inspection by any person, and that copies of the list are available, at the principal office of the Department at all reasonable times.

S. 30(6A)  
inserted by  
No. 95/1986  
s. 12(2).

- (6A) The Chief General Manager may charge any fee prescribed by the Governor in Council for providing a copy of the list or part of it to a person for that person's use.
- (7) A person shall not be prohibited from being authorized or continuing to be authorized as an analyst for the purposes of this Act by reason only that he is employed by or on behalf of a government department to carry out analyses and that government department is engaged in any trade connected with the manufacture or sale of food.

**31. Duties of analysts**

Every analyst shall—

- (a) make an analysis of any article submitted to him pursuant to this Act for analysis or supervise the analysis of the article by any other person;

S. 31(b)  
repealed by  
No. 11/1995  
s. 3(2).<sup>3</sup>

\* \* \* \* \*

- (c) supply to the person submitting the article a certificate in the prescribed form setting out the result of the analysis; and
- (d) where any apparatus to be used or method to be observed has been prescribed—use that apparatus and observe that method accordingly and declare in his certificate that he has done so.

**32. Councils to submit samples for analysis**

- (1) Subject to this section, every council shall submit for analysis during each year not less than three samples of food for each thousand persons of the population of the municipal district so that one quarter of those samples shall be submitted for analysis in every quarter of each year.
- (2) Every analyst making an analysis for a council under this section shall report to the council forthwith after the end of each quarter the number of analyses so made by him during that quarter and specify the result of each analysis.
- (3) Every report received by a council from an analyst under this section shall be presented at the next ordinary meeting of the council held after the receipt of that report.
- (4) The Chief General Manager may in writing exempt a Council from compliance with sub-section (1) on any terms or conditions that the Chief General Manager determines including, but not limited to, a requirement that a Council must arrange for specified surveys to be conducted of the standard of food premises within its municipal district and of the food prepared at them.

S. 32(1)  
amended by  
Nos 12/1989  
s. 4(1)(Sch. 2  
item 47.7),  
13/1994  
s. 8(1).

S. 32(4)  
inserted by  
No. 13/1994  
s. 8(2).

**33. *Copy of certificate of analysis***

A person from whom any article has been obtained for the purpose of its being submitted for analysis may, free of charge, obtain a copy of the certificate of the result of the analysis from the person who submitted the article for analysis.

S. 33  
amended by  
No. 20/1995  
s. 10.

**34. *Prohibition on use of analyst's certificate for certain purposes***

A person who for the purposes of any trade or advertisement uses in whole or in part or authorizes or permits the use in whole or in part of any copy of an analyst's certificate obtained under

s. 34

*Food Act 1984*  
*Act No. 10082/1984*

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this Act or the result of an analysis made for the purposes of this Act is guilty of an offence.

Penalty: For a first offence 20 penalty units, and for a second or subsequent offence 40 penalty units.

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**PART VI—REGISTRATION OF FOOD PREMISES AND  
FOOD VEHICLES**

Pt 6 (Heading)  
amended by  
No. 20/1995  
s. 11.

**35. *Definition of food vehicle***

In this Part a reference to a food vehicle is a reference to a vehicle kept or used for the sale or the preparing, handling or serving for sale of any food.

**35A. *Evidence of identity of proprietor***

S. 35A  
inserted by  
No. 95/1986  
s. 13.

- (1) The proprietor of any food premises or food vehicle must paint or affix prominently on the premises or vehicle, and keep painted or affixed, the name of the proprietor.

S. 35A(1)  
substituted by  
No. 20/1995  
s. 12.

Penalty: 10 penalty units.

- (2) The person whose name is so painted or affixed must be taken to be the proprietor of the premises or vehicle and the seller of any food contained on or in the premises or vehicle, unless the contrary is proved.
- (3) A person who sells any food from any premises or vehicle on which the name of any other person appears pursuant to sub-section (1) must be taken to have sold the food as the servant or agent of that other person, unless the contrary is proved.

**36. *Registration of food premises and food vehicles*<sup>4</sup>**

- (1) Every food premises not being operated by or on behalf of the Crown or on land that is not part of a municipal district and every food vehicle not being operated by or on behalf of the Crown or on land that is not part of a municipal district shall be registered with the council.

S. 36(1)  
amended by  
Nos 13/1994  
s. 9(1),  
20/1995  
s. 9(2).

S. 36(2)  
amended by  
Nos 10262  
s. 4, 13/1994  
s. 9(2),  
20/1995  
s. 9(2).

(2) Every food premises operated by or on behalf of the Crown or on land that is not part of a municipal district and every food vehicle operated by or on behalf of the Crown or on land that is not part of a municipal district shall be registered with the Chief General Manager.

S. 36(3)  
substituted by  
No. 20/1995  
s. 13.

(3) Subject to section 38, the proprietor of any food premises or any food vehicle that is not registered in accordance with this section is guilty of an offence.

**37. Sale of food through food vending machines**

S. 37(1)  
repealed by  
No. 13/1994  
s. 10(b).

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S. 37(2)–(4)  
amended by  
No. 10262 s. 4,  
repealed by  
No. 13/1994  
s. 10(b).

\* \* \* \* \*

(5) For the purposes of this Act any food that is sold through a food vending machine shall be deemed to be sold—

S. 37(5)(a)  
amended by  
No. 13/1994  
s. 10(c).

(a) by the proprietor of the premises on which the machine is located; and

(b) on the day when and at the place where the food is received by the purchaser.

**38. Exemption from registration**

S. 38(1)  
amended by  
No. 10262 s. 4,  
repealed by  
No. 13/1994  
s. 10(d).

\* \* \* \* \*

S. 38(2)  
repealed by  
No. 13/1994  
s. 10(d).

\* \* \* \* \*

*Food Act 1984*  
*Act No. 10082/1984*

s. 38

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- (3) The council may by resolution or the Chief General Manager may in writing exempt any food premises or food vehicle or class of food vehicle from the requirement to be registered with the council or the Chief General Manager (as the case requires) under this Act. S. 38(3)  
amended by  
No. 10262 s. 4.
- (4) An exemption granted under sub-section (3) may be amended, varied or revoked in the same manner in which it was granted. S. 38(4)  
substituted by  
No. 10262 s. 4.
- (5) Premises used solely as— S. 38(5)  
inserted by  
No. 40/1993  
s. 82.
- (a) a pet food processing facility within the meaning of the **Meat Industry Act 1993**; or
  - (b) an abattoir within the meaning of the **Meat Industry Act 1993**; or
  - (c) a place approved by the Victorian Meat Authority where meat is received for inspection or branding under the direction of an inspector under the **Meat Industry Act 1993**; or
  - (d) a place where meat is processed if the meat is not mixed with another product or is to be taken not to be so mixed by virtue of section 3(2) of the **Meat Industry Act 1993**—
- in respect of which a licence is in force under that Act are exempt from the requirement to be registered under this Act while that licence is in force.
- (6) A vehicle used solely as a meat transport vehicle licensed under the regulations made under the **Meat Industry Act 1993** is exempt from the requirement to be registered under this Act while the licence is in force. S. 38(6)  
inserted by  
No. 40/1993  
s. 82.

**39. Powers and duties of council and Chief General  
Manager before granting registration, renewal or  
transfer**

S. 39(1)  
amended by  
Nos 10262  
s. 4, 13/1994  
s. 10(e).

(1) Before granting the registration of any food premises or food vehicle under this Act the council or the Chief General Manager (as the case requires)—

S. 39(1)(a)  
amended by  
No. 13/1994  
s. 10(f).

(a) shall cause an inspection of the premises or vehicle to be made; and

S. 39(1)(b)  
substituted by  
No. 13/1994  
s. 10(g).

(b) may require any alterations or improvements to be made to the premises or vehicle in order that the requirements of this Act with respect to those premises or that vehicle are complied with.

S. 39(2)  
amended by  
Nos 10262  
s. 4, 13/1994  
s. 10(e).

(2) Before granting the renewal of the registration of any food premises or food vehicle under this Act the council or the Chief General Manager (as the case requires)—

S. 39(2)(a)  
amended by  
No. 13/1994  
s. 10(f).

(a) may cause an inspection of the premises or vehicle to be made; and

S. 39(2)(b)  
substituted by  
No. 13/1994  
s. 10(h).

(b) may require any alterations or improvements to be made to the premises or vehicle in order that the requirements of this Act with respect to those premises or that vehicle are complied with.

S. 39(3)  
amended by  
No. 10262 s. 4.

(3) Before granting the transfer of the registration of any food premises under this Act the council or the Chief General Manager (as the case requires)—

(a) shall cause an inspection of the premises to be made; and

(b) may require any alterations or improvements to be made to the premises in order that the requirements of this Act with respect to those premises are complied with.

S. 39(3)(b)  
amended by  
No. 13/1994  
s. 10(i).

\* \* \* \* \*

S. 39(4)  
amended by  
No. 10262 s. 4,  
repealed by  
No. 97/1987  
s. 179(3)(a).

(5) The council or the Chief General Manager (as the case requires) may grant the registration or the renewal of the registration of any food premises or food vehicle, or the transfer of registration of any food premises under this Act on condition that any requirements imposed under sub-section (1)(b), (2)(b) or (3)(b) are complied with.

S. 39(5)  
amended by  
Nos 10262  
s. 4, 13/1994  
s. 10(j).

#### **40. Certificates of registration**

(1) Where any food premises are or food vehicle is registered under this Act, the council concerned or the Chief General Manager (as the case requires) shall cause a certificate of registration in the prescribed form to be issued to the person in whose name those premises are or that vehicle is registered.

S. 40(1)  
amended by  
Nos 10262  
s. 4, 13/1994  
s. 10(k)(l).

(1A) If the food premises are required to be registered with the council by or under Part XII or Part XIX of the **Health Act 1958**, the council may, subject to the requirements of that Act applicable to registration being complied with, incorporate the certificate of registration under this section in one document with any certificate of registration to be issued under that Act.

S. 40(1A)  
inserted by  
No. 20/1995  
s. 14.

(2) Any person (being a person to whom a certificate of registration is issued under sub-section (1))

who, on demand by an authorized officer, does not produce the certificate of registration for inspection is guilty of an offence.

S. 40(3)  
inserted by  
No. 95/1986  
s. 14,  
amended by  
No. 13/1994  
s. 10(m),  
repealed by  
No. 20/1995  
s. 15(1).

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#### **41. Provisions as to registrations**

S. 41(1)  
amended by  
Nos 10262  
s. 4, 13/1994  
s. 10(n).

(1) Every registration of any food premises or food vehicle under this Act shall continue in force until 31 December next following the date on which the registration is granted by the council or the Chief General Manager unless it is sooner revoked or suspended and it shall be renewed annually.

S. 41(2)  
amended by  
Nos 10262  
s. 4, 13/1994  
s. 10(o).

(2) Subject to sub-section (3), the granting or renewal of the registration of any food premises or food vehicle by a Council or the Chief General Manager may be refused if any of the requirements of this Act with respect to those premises or that vehicle are not complied with.

S. 41(3)  
amended by  
Nos 10262  
s. 4, 13/1994  
s. 10(p).

(3) The granting or renewal of the registration of any food premises or food vehicle by a Council shall, when required by the Chief General Manager, be refused if any of the requirements of this Act with respect to those premises or that vehicle are not complied with.

S. 41(4)  
amended by  
Nos 10262  
s. 4, 13/1994  
s. 10(q)(r).

(4) Subject to sub-section (5), on the second or any subsequent conviction of a person for an offence against this Act committed in, at or on any food premises or food vehicle registered under this Act or committed in respect of any such premises or vehicle the council or the Chief General Manager may suspend the registration of those premises or

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that vehicle for such period as the council or the Chief General Manager (as the case requires) determines or revoke the registration of those premises or that vehicle.

- (5) On the second or any subsequent conviction of a person for an offence against this Act committed in, at or on any food premises or food vehicle registered under this Act or committed in respect of any such premises or vehicle the council shall, when required by the Chief General Manager, suspend the registration of those premises or that vehicle for such period as the Chief General Manager determines or revoke the registration of those premises or that vehicle.

**S. 41(5)**  
**amended by**  
**Nos 10262**  
**s. 4, 13/1994**  
**s. 10(q)-(s).**

- (6) The council or the Chief General Manager (as the case requires) may at any time during the currency of any registration transfer that registration to any other person or premises.

**S. 41(6)**  
**amended by**  
**No. 10262 s. 4.**

**41A. *Registration fees***

- (1) The fees for registration, renewal of registration and transfer of registration are—
- (a) if registration is made with a Council, as determined by resolution of the Council; or
  - (b) in any other case, as prescribed.
- (2) Fees determined by the Council under this section—
- (a) may vary according to the size or nature of the food premises or food vehicle; and
  - (b) must not exceed the amount (if any) for the time being fixed by the Governor in Council by Order published in the Government Gazette.

**S. 41A**  
**inserted by**  
**No. 95/1986**  
**s. 15,**  
**substituted by**  
**No. 13/1994**  
**s. 11.**

**42. Appeal**

S. 42(1)  
amended by  
Nos 10262  
s. 4, 16/1986  
s. 30, 57/1989  
s. 3(Sch. item  
79.6), 13/1994  
s. 10(t).

(1) A person who is aggrieved by a decision of a council or the Chief General Manager refusing to grant an application for or for the renewal of the registration of any food premises or food vehicle under this Act or suspending or revoking any such registration may appeal to the Magistrates' Court within one month after receiving notification of the refusal, suspension or revocation.

(2) Upon any appeal under sub-section (1) the court shall—

S. 42(2)(a)  
amended by  
No. 10262 s. 4.

(a) reconsider the decision of the council or the Chief General Manager; and

S. 42(2)(b)  
amended by  
No. 10262 s. 4.

(b) hear any relevant evidence tendered whether by the person aggrieved or by the council or the Chief General Manager.

(3) The costs of and incidental to an appeal under sub-section (1) shall be in the discretion of the court to which the appeal is made.

**43. Register book**

S. 43(1)  
amended by  
No. 10262 s. 4.

(1) Every council and the Chief General Manager shall cause to be prepared and kept books in the prescribed form and containing the prescribed particulars as to all registrations or renewals or transfers thereof made under this Act.

S. 43(2)  
repealed by  
No. 20/1995  
s. 16(1).

\* \* \* \* \*

(3) In any proceedings under this Act any such book as is referred to in sub-section (1) shall be admissible as evidence of the facts stated therein.

S. 43(4)  
amended by  
No. 10262 s. 4.

(4) A copy of any such book as is referred to in sub-section (1) or of any entry therein certified as correct under the hand of the clerk of the

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municipality concerned or an officer of the Department authorized by the Chief General Manager for the purposes of this section (as the case requires) shall for all purposes be sufficient evidence of the facts stated therein without production of the register or of any document or thing on which the registration was based.

- (5) The council concerned or the Chief General Manager (as the case requires) shall cause a copy of any entry in any such book as is referred to in sub-section (1) certified as correct in accordance with sub-section (4) to be supplied free of charge to any person who requests it.

**S. 43(5)**  
**amended by**  
**Nos 10262**  
**s. 4, 13/1994**  
**s. 12, 20/1995**  
**s. 16(2).**

- (6) The fact that any food premises are or food vehicle is not entered in any such book as is referred to in sub-section (1) shall, in the absence of evidence to the contrary, be proof that those premises are or that vehicle is not registered under this Act.

**S. 43(6)**  
**amended by**  
**No. 13/1994**  
**s. 10(u).**

Pt 7 (Heading)  
amended by  
No. 10262 s. 4.

**PART VII—EMERGENCY POWERS OF CHIEF GENERAL  
MANAGER**

**44. *Power of Chief General Manager to act in case of  
emergency***

S. 44(1)  
amended by  
No. 10262 s. 4.

- (1) In a case of emergency or sudden necessity (of the existence of which emergency or necessity the Chief General Manager shall be the sole judge) the Chief General Manager may by order published in the Government Gazette and in a newspaper generally circulating throughout Victoria—
- (a) forbid the production, preparation, sale or supply of any food of a class or description specified in the order—
    - (i) absolutely; or
    - (ii) otherwise than in accordance with such conditions as are specified in the order;
  - (b) forbid the cultivation, taking, harvesting or otherwise obtaining of food generally or food of a class or description specified in the order in or from an area specified in the order—
    - (i) absolutely; or
    - (ii) otherwise than in accordance with such conditions as are specified in the order;
  - (c) cause any food of a class or description specified in the order—
    - (i) to be destroyed or otherwise disposed of in such manner as is specified in the order;

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- (ii) to be examined at such place and in such manner as is specified in the order; or
  - (iii) to be held or isolated in such place as is specified in the order; and
  - (d) forbid the removal of any food ordered to be held or isolated under paragraph (c)(iii) from the place in which it is held or isolated.
- (2) An order made by the Chief General Manager under sub-section (1) may by like order be amended, varied or revoked and shall by like order be amended, varied or revoked if so directed by the Minister.
- (3) An order made by the Chief General Manager under sub-section (1) shall take effect from the date of its publication in the Government Gazette or in the newspaper, whichever is the earlier.
- (4) A person who fails to comply with or contravenes an order made by the Chief General Manager under sub-section (1) is guilty of an offence.

S. 44(2)  
amended by  
No. 10262 s. 4.

S. 44(3)  
amended by  
No. 10262 s. 4.

S. 44(4)  
amended by  
No. 10262 s. 4.

Penalty: For a first offence 50 penalty units, and for a second or subsequent offence 100 penalty units.

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**PART VIII—LEGAL PROCEEDINGS**

**45. *Proceedings for offences***

- (1) Except as is otherwise expressly provided by this Act—
- (a) all charges for offences under this Act may be heard and determined in a summary way before the Magistrates' Court; and
- (b) all money, costs, and expenses made payable or recoverable by this Act may be recovered before the Magistrates' Court as a civil debt recoverable summarily or in any court of competent jurisdiction.
- (2) Subject to sub-section (3), a prosecution for an offence against this Act in respect of any food obtained for analysis under this Act shall be instituted not later than 90 days after the day on which the food was so obtained.
- (3) The Magistrates' Court shall have power to make an order extending the time appointed by sub-section (2) for instituting the prosecution where a person makes application for such an order not later than 90 days after the day on which the food was obtained.
- (4) The summons in a prosecution for an offence against this Act in which an analyst's certificate is to be used shall be made returnable not less than 14 days after the date on which it is served.
- (5) Where a summons referred to in sub-section (4) is served less than 14 days before the return date of the summons the court may, on an application made in that behalf, extend the return date of the summons.

S. 45(1)(a)  
amended by  
No. 57/1989  
s. 3(Sch. item  
79.7(a)(b)).

S. 45(1)(b)  
amended by  
No. 57/1989  
s. 3(Sch. item  
79.7(b)).

S. 45(2)  
amended by  
No. 95/1986  
s. 16.

S. 45(3)  
amended by  
No. 57/1989  
s. 3(Sch. item  
79.8).

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- (6) A copy of any analyst's certificate obtained on behalf of the informant shall be served with the summons in a prosecution for an offence against this Act in respect of any food.

**45A. *Burden of proof as to statements on packages etc.***

In any prosecution under this Act the burden of proving the correctness of any statement in or on any label or advertisement with respect to the origin or composition or the therapeutic or nutritive properties or the therapeutic effects of any food is on the person charged.

S. 45A  
inserted by  
No. 95/1986  
s. 17.

**45B. *Prosecutions***

In any prosecution under this Act—

- (a) a witness for the prosecution is not compelled to disclose the fact that the witness received any information or the name of any person from whom any information was received; and
- (b) no proof is required of the use by the person purchasing any food for analysis of the exact words of the section authorizing the purchase if the court decides that the person from whom the purchase was made was substantially informed of the purchaser's intention to have the food analysed.

S. 45B  
inserted by  
No. 95/1986  
s. 17.

**46. *Right of defendant to have third person before court***

- (1) A defendant charged with an offence against this Act who alleges that the contravention or failure to comply constituting the offence was due to the act or default of another person may, upon compliance with sub-section (2), have that other person brought before the court by which the charge is to be heard and determined.
- (2) A defendant who desires to avail himself of the provisions of this section—

S. 46(2)(b)  
amended by  
No. 57/1989  
s. 3(Sch. item  
79.9).

S. 46(3)  
amended by  
No. 57/1989  
s. 3(Sch. item  
79.10(a)-(d))  
(as amended  
by No.  
34/1990  
s. 5(Sch. 4  
item 65)).

S. 46(4)  
amended by  
No. 57/1989  
s. 3(Sch. item  
79.11(a)).

S. 46(4)(a)  
amended by  
No. 35/1996  
s. 453(Sch. 1  
item 33).

- (a) shall, at least ten days before the return day of the summons in question, give to the informant notice in writing of his intention to avail himself of the provisions of this section and particulars of his claim that—
- (i) the contravention or failure to comply was due to the act or default of another person; and
  - (ii) he exercised due diligence to ensure compliance with the provisions of this Act in question; and
- (b) shall file a charge against the other person for an offence against this Act.

(3) A summons to answer to any charge filed pursuant to paragraph (b) of sub-section (2) shall require the person against whom the charge is filed to appear to answer to the charge at a date and place mentioned in the summons before the court by which the original charge is to be heard and determined and, where that date is not the return date of the original summons, the court shall adjourn the hearing of the original charge to that date or shall adjourn the hearing of the charges to a later date.

(4) On the hearing of the charges—

- (a) the original informant or his legal practitioner as well as the other person who the defendant has alleged committed the offence—
  - (i) may cross-examine the defendant (if he gives evidence) and any witness called by him; and

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- (ii) may call evidence in rebuttal; and
- (b) the court—
- (i) may convict the other person if the contravention of or failure to comply with this Act is proved and the original defendant satisfies the court that the contravention or failure to comply was due to the act or default of that other person;
- (ii) shall dismiss the charge against the original defendant if, in addition to satisfying the court that the contravention or failure to comply was due to the act or default of the other person, he satisfies the court that he exercised due diligence to ensure compliance with the provisions of this Act in question; and
- (iii) may make such orders as to the costs of the proceedings as it thinks fit.
- (5) Where it appears to the Chief General Manager or the council that an offence against this Act has been committed in respect of which some person may be charged and the Chief General Manager or the council (as the case requires) is reasonably satisfied that—
- (a) the offence was due to the act or default of some other person; and
- (b) the first-mentioned person could successfully defend a prosecution for the offence by

S. 46(4)(b)(ii)  
amended by  
No. 57/1989  
s. 3(Sch. item  
79.11(b)).

S. 46(5)  
amended by  
No. 10262 s. 4.

availing himself of the provisions of this section—

the Chief General Manager or the council (as the case requires) may cause proceedings to be instituted against that other person for that offence without proceedings first being instituted against the first-mentioned person.

- (6) In proceedings taken pursuant to sub-section (5) the other person may be charged with the offence with which the first-mentioned person might have been charged and, on proof that the offence was due to the act or default of that other person, he may be convicted of the offence.

S. 46A  
inserted by  
No. 95/1986  
s. 18.

**46A. *Analysis is not necessary to conviction***

Despite any provision of any other Act, in any prosecution under this Act if it appears to the court that the offence is sufficiently proved without an analysis, proof that an analysis has been made or of the results of an analysis is not necessary to conviction for the offence.

**47. *Power of court to order further analysis***

In a prosecution for an offence against this Act the court may, at the request of any party and if satisfied that there are special circumstances which warrant it in so doing, cause the part or parts of any sample retained under section 23 to be sent to an analyst (other than an analyst who has made an analysis of any other part of the sample) and the first-mentioned analyst shall make an analysis of that part or those parts for the information of the court.

**48. *Power of court to order forfeiture***

- (1) A court that convicts a person of an offence against this Act or before which a person is charged with an offence against this Act of which

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he is found guilty or to which he pleads guilty and in respect of which a conviction is not recorded may order that—

- (a) the article by means of or in relation to which the offence was committed; or
- (b) subject to sub-section (3), any similar article belonging to and found in the possession of the defendant at the time of the commission of the offence—

be forfeited to Her Majesty.

- (2) A court, in addition to exercising the powers conferred upon it by sub-section (1) may, upon the application of an authorized officer and such notice as the court determines being given to such persons as the court directs, order that—

- (a) any article seized under this Act by that authorized officer (being an article by means of or in relation to which any provision of this Act is being or has been contravened or not complied with); or
- (b) subject to sub-section (3), any similar article found with an article so seized—

be forfeited to Her Majesty.

- (3) A court shall not order forfeiture of an article under this section if the court is satisfied with respect to that article that it is not one by means of or in relation to which any provision of this Act is being or has been contravened or not complied with.

- (4) Every article forfeited to Her Majesty under this section shall be destroyed or otherwise disposed of as the Chief General Manager directs.

S. 48(4)  
amended by  
No. 10262 s. 4.

**49. *Liability of defendant for certain costs and expenses***

Except as is otherwise expressly provided by this Act, a court that convicts a person of an offence against this Act or before which a person is charged with an offence against this Act of which he is found guilty or to which he pleads guilty and in respect of which a conviction is not recorded shall, without affecting any other power of that court to award costs, have power to make such order as it thinks fit in respect of the costs and expenses of and incidental to the examination, seizure, detention, storage, analysis, destruction or other disposition of any article the subject of proceedings in that court.

**50. *Evidentiary provisions***

- (1) For the purposes of this Act—
- (a) the onus of proof in any prosecution under this Act that any food was not sold, prepared for sale, conveyed or intended for sale for human consumption is on the person charged with the offence;
  - (b) any food found in any premises or other place or vehicle used for the sale or the preparing, packing, storing, handling, serving, supplying or conveying for sale of food shall be presumed, until the contrary is proved, to be intended for sale for human consumption;
  - (c) any food found in any premises or other place or vehicle used for the preparing for sale of food shall be presumed, until the contrary is proved, to be intended to be used in the preparation for sale of food;

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- (d) service of a copy of an analyst's certificate with a summons may be proved in any manner in which service of the summons may be proved and, where proof of the service of the summons is by affidavit, by stating in the affidavit that a copy of the analyst's certificate was served with the summons;
  - (e) each of the parts into which a sample of any food obtained for analysis under this Act is divided shall be presumed, until the contrary is proved, to be of uniform composition with the other parts;
  - (f) any person whose name appears on or is attached to a package shall, unless the contrary is proved, be deemed to have manufactured, packed or imported that food;
  - (g) it shall not be a defence to allege that the person instituting the prosecution is not the person who caused any analysis to be made for the purposes of the prosecution;
  - (h) where the prosecution or proceeding relates to any food purchased for analysis it shall not be a defence that the part of the food retained for future comparison has from spontaneous natural causes deteriorated, perished or undergone a material change in its constitution; and
  - (i) if a defendant relies on any exception or provision contained in this Part the onus of proving the same shall be on him.
- (2) Where in respect of a prosecution for an offence against this Act a copy of an analyst's certificate—
- (a) if obtained on behalf of the informant, is served with the summons; or

**S. 50(1)(e)**  
**amended by**  
**No. 95/1986**  
**s. 19(1).**

S. 50(2)(b)  
amended by  
No. 95/1986  
s. 19(2).

(b) if obtained on behalf of the defendant, is given to the informant at least seven days before the return day of the summons—

that analyst's certificate shall, on its production in the proceedings, be sufficient evidence of the matters stated in the certificate and of the facts on which they are based unless an order is made under sub-section (3) or unless notice is given under sub-section (4).

(3) Where an analyst's certificate, a copy of which has been served or given as mentioned in sub-section (2), is produced or it is proposed to produce such a certificate, the court, where it is satisfied (whether upon an application made to it or by any other means) that in the circumstances of the case the analyst who issued the certificate should be called as a witness in the proceedings, may order that the analyst be called as a witness by the party who produces or proposes to produce the certificate.

S. 50(4)  
amended by  
No. 95/1986  
s. 19(3).

(4) Where in respect of a prosecution for an offence against this Act a copy of an analyst's certificate has been obtained on behalf of a party, another party may at least three days before the hearing give notice in writing to the first-mentioned party that he requires the analyst to be called as a witness.

S. 50(5)  
repealed by  
No. 11/1995  
s. 3(2).<sup>5</sup>

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S. 50(6)  
inserted by  
No. 95/1986  
s. 19(4),  
amended by  
No. 13/1994  
s. 13(a)-(c),  
repealed by  
No. 20/1995  
s. 15(2).

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**51. Offences by bodies corporate**

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- (1) Where a body corporate is guilty of an offence against this Act any person who is concerned or takes part in the management of that body corporate is also guilty of that offence and liable to the penalty for that offence.
  - (2) It is a defence to a charge brought pursuant to subsection (1) against a person who is concerned or takes part in the management of a body corporate to prove that the offence was committed by the body corporate without his consent or knowledge and that he exercised due diligence to prevent the commission of the offence.

**52. *Offences by unincorporated bodies, partnerships etc.***

Where this Act provides that a person, being a partnership or an unincorporated body or association, is guilty of an offence, that reference to the person shall—

- (a) in the case of a partnership—be read as a reference to each member of the partnership;  
and
- (b) in the case of an unincorporated body or association—be read as a reference to each member of the committee of management of the body or association.

**53. *General penalty***

A person who is guilty of an offence against this Act for which a specific penalty is not prescribed by another provision of this Act is liable to a penalty not exceeding 10 penalty units.

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**PART IX—MISCELLANEOUS PROVISIONS**

**54. *Secrecy***

- (1) Except as provided by sub-section (2), an authorized officer shall not disclose information or publish a document or part of a document obtained by him in connexion with the administration of this Act unless the disclosure or publication is made—
- (a) with the consent of the person from whom the information or document was obtained;
  - (b) in connexion with the administration of this Act; or
  - (c) for the purposes of any proceedings under or arising out of this Act or a report of any such proceedings.

Penalty: For a first offence 50 penalty units, and for a second or subsequent offence 100 penalty units.

S. 54(2)  
amended by  
No. 10262 s. 4.

- (2) An authorized officer who is so authorized by the Chief General Manager or a council generally or in a particular case may communicate information that comes to his knowledge in the exercise of his powers or authorities or the discharge of his functions or duties under this Act to a council or the Chief General Manager or to an officer or authority of a State or Territory of the Commonwealth of Australia administering a corresponding law or to such department or authority of the Commonwealth of Australia as the Chief General Manager specifies.

S. 54(3)  
amended by  
No. 10262 s. 4.

- (3) Where a council authorizes an authorized officer pursuant to sub-section (2) the council shall notify the Chief General Manager of such authorization.

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- (4) Notwithstanding sub-section (1)(c), an authorized officer appearing as a witness in any proceedings under or arising out of this Act shall not be compelled to produce any reports made or received by him confidentially in his official capacity or containing confidential information.

**55. *Mode of service of documents and certain samples***

- (1) Where under this Act a notice, order or other document is required or authorized to be given to or served on a person, the notice, order or other document may be given or served—
- (a) by giving it to or serving it personally on the person or by leaving it at or sending it by post to the person at his usual or last known place of abode or business;
  - (b) where it is addressed to the proprietor of any food premises or food vehicle, by leaving it with some adult person on the premises or in the vehicle or, if there is no such person on the premises or in the vehicle, by fixing it or a copy of it on some conspicuous part of the premises or the vehicle;
  - (c) where it is addressed to the Chief General Manager, by giving it to, serving it personally on or sending it by registered post to the Chief General Manager;
  - (d) where it is addressed to a council, by giving it to, serving it personally on or sending it by registered post to the clerk of the municipality concerned.
- (2) Where under or for the purposes of this Act a notice or a part of a sample of any food is required or authorized to be given or delivered to a person and the food in question was sold through a food vending machine, the notice or part of a sample

S. 55(1)(c)  
amended by  
No. 10262 s. 4.

shall be sufficiently given or delivered for the purposes of this Act if the notice or part is given or delivered personally to or sent by registered post to the person in whose name the machine is registered or, if the machine is not registered or is not required to be registered, to the proprietor of the premises on which the machine is located.

S. 56  
amended by  
No. 20/1995  
s. 17.

**56. *Protection against liability***

Any act, matter or thing done by the Chief General Manager or a council or an authorized officer or a member of the police force assisting an authorized officer or an assistant of an authorized officer under section 21 for the purpose of carrying out or giving effect to this Act or done in good faith and purporting to be for the purpose of carrying out or giving effect to this Act shall not subject them or any of them or the Crown to any action, liability, claim or demand.

S. 57  
amended by  
No. 12/1989  
s. 4(1)(Sch. 2  
items 47.8,  
47.9).

**57. *Payment of penalties***

Where an offence against this Act has been prosecuted by the council, all penalties recovered in relation to the offence shall be paid into the municipal fund of that council.

S. 58  
amended by  
No. 10262 s. 4,  
substituted by  
No. 97/1987  
s. 179(3)(b).

**58. *Liquor Licensing Commission to be notified of certain matters***

- (1) If the Chief General Manager or a council makes an order under section 19 in respect of premises in respect of which a licence or permit under the **Liquor Control Act 1987** is in force, the Chief General Manager or the council, as the case requires, shall notify the Liquor Licensing Commission of the making of the order.
- (2) If a person who is the holder of a licence or permit referred to in sub-section (1) is charged with an offence against this Act of which he or she is

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found guilty or to which he or she pleads guilty and in respect of which a conviction is not recorded, the Chief General Manager or the council which caused proceedings to be instituted for the offence shall notify the Liquor Licensing Commission of the result of the proceedings.

**58A. *Delegation to council officers***

S. 58A  
inserted by  
No. 95/1986  
s. 20.

- (1) A council may delegate to one or more of its officers its powers or discretions under Parts III and VI and section 46(5).
- (2) The refusal by an officer to grant, renew or transfer the registration of any food premises or food vehicle is of no effect until it is ratified by the council.

S. 58A(1)  
amended by  
No. 13/1994  
s. 14.

S. 58A(2)  
amended by  
No. 13/1994  
s. 10(v).

**59. *Part XX of Health Act 1958 incorporated with this Act***

The provisions of Part XX of the **Health Act 1958** (except sections 387(1)(b), 389–391, 400–408, 415, 421(2), 422, 423, 425, 430, 444, 451 and 452) are, so far as not inconsistent with this Act and with such modifications and substitutions as are necessary, hereby incorporated with and shall be read and construed as one with this Act.

**PART X—FOOD STANDARDS COMMITTEE**

**60. *Food Standards Committee*<sup>6</sup>**

(1) For the purposes of this Act there shall be established a Committee to be known as the Food Standards Committee.

(2) The Committee shall consist of eleven members of whom—

S. 60(2)(a)  
amended by  
Nos 10262  
s. 4, 13/1994  
s. 15(1)(a),  
23/1994 s. 118  
(Sch. 1 item  
21.2).

(a) one (who shall be the chairman) shall be a registered medical practitioner who is for the time being a health officer of the Department of Health and Community Services and who is appointed by the Governor in Council on the nomination of the Minister;

S. 60(2)(b)  
substituted by  
No. 13/1994  
s. 15(1)(b).

(b) one shall be the person who is for the time being the Department Head (within the meaning of the **Public Sector Management Act 1992**) of the Department of Agriculture or his or her nominee;

(c) one shall be a medical officer of health who is appointed by the Governor in Council on the nomination of the Minister after consideration of a panel of not less than three names submitted to the Minister by the body known as the Municipal Association of Victoria;

S. 60(2)(d)  
amended by  
Nos 12/1989  
s. 4(1)(Sch. 2  
item 47.10)(as  
amended by  
No. 13/1990  
s. 38(1)(o)(r),  
125/1993  
s. 20(5)(e).

(d) one shall be an environmental health officer of a council who is appointed by the Governor in Council on the nomination of the Minister;

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- (e) one shall be a person who is appointed by the Governor in Council on the nomination of the Minister after consideration of a panel of not less than three names submitted to the Minister by the body known as CAFTA (Victoria) Inc., an association incorporated under the **Associations Incorporation Act 1981**;
- (f) one shall be a person who is appointed by the Governor in Council on the nomination of the Minister after consideration of a panel of not less than three names submitted to the Minister by the body known as the Australian Nutrition Foundation;
- (g) one shall be an appropriately qualified person who is appointed by the Governor in Council on the nomination of the Minister administering the **Consumer Affairs Act 1972**;
- (h) one shall be a person who is appointed by the Governor in Council on the nomination of the Minister after consideration of a panel of not less than three names submitted to the Minister by the body known as the Victorian Chamber of Manufactures;
- (i) one shall be a person appointed by the Governor in Council on the nomination of the Minister administering the **Long Service Leave Act 1992**; and
- (j) two shall be appropriately qualified persons who are appointed by the Governor in Council on the nomination of the Minister.
- (3) Where there is or is about to be a vacancy in the office of a member of the Committee referred to
- S. 60(2)(e)  
amended by  
No. 13/1994  
s. 15(1)(c).
- S. 60(2)(i)  
substituted by  
No. 13/1994  
s. 15(1)(d),  
amended by  
No. 59/1996  
s. 10(Sch. 2  
item 7).
- S. 60(3)  
amended by  
No. 13/1994  
s. 15(2).

in paragraph (c), (e), (f) or (h) of sub-section (2) (whether or not an appointment has previously been made to that office) the Minister shall request the relevant body referred to in that paragraph to submit to him in writing on or before the date specified by him when making the request a panel of not less than three names of persons eligible to be appointed as members of the Committee.

- (4) Where a body is requested to submit a panel of names to the Minister pursuant to sub-section (3) and that body fails to submit such a panel on or before the date specified by the Minister when requesting the submission, the Minister may without that submission nominate an otherwise eligible person to fill the vacancy.
- (5) Subject to this Act, a member of the Committee appointed by the Governor in Council shall hold office for such period not exceeding three years as is specified in the instrument of his appointment but shall be eligible for re-appointment.
- (6) The Governor in Council may in the instrument of appointment of a member of the Committee specify terms and conditions of appointment.
- (7) The Governor in Council may at any time remove an appointed member of the Committee from office.
- (8) A member of the Committee appointed by the Governor in Council may resign his office by writing signed by him and delivered to the Governor in Council.
- (9) With the approval of the Minister, the Committee may co-opt not more than two persons for the

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purposes of the Committee for a period not exceeding twelve months in the case of any person so co-opted.

- (10) A member of the Committee is not in respect of his office as member subject to the provisions of the **Public Service Act 1974**.
- (11) A member of the Committee and any person co-opted by the Committee shall, unless he is an officer in the public service, be entitled to receive such fees and allowances as are fixed in relation to him from time to time by the Governor in Council.
- (12) With the approval of the Minister, the Committee may form sub-committees and may co-opt persons for the purposes of any sub-committee so formed.
- (13) Sub-section (11) shall not apply to any person co-opted under sub-section (12).

**61. Procedure of Committee**

- (1) At any meeting of the Committee the chairman (or, in the absence of the chairman, such member as the members present appoint) shall preside.
- (2) A majority of the members of the Committee for the time being holding office shall constitute a quorum.
- (3) Subject to the presence of a quorum the Committee may act notwithstanding a vacancy in its membership.
- (4) A question arising at a meeting of the Committee shall be determined by a majority of the votes of the members of the Committee present and voting and in the event of an equality of votes the person presiding shall have an additional or casting vote.

- (5) A person co-opted by the Committee shall not be entitled to vote on any question arising at a meeting of the Committee.
- (6) An act or decision of the Committee shall not be invalid by reason only of a defect or irregularity in the appointment of a member of the Committee.
- (7) Meetings of the Committee shall be held at such times and places as the chairman of the Committee appoints.
- (8) With the approval of the Minister, the Committee may establish such sub-committees as it deems necessary for the purposes of the Act.
- (9) Subject to this Act, the Committee may regulate its own proceedings.

**62. *Function of Committee***

The function of the Committee is—

- (a) to advise the Minister on any draft regulations to be made under this Act; and
- (b) to advise the Minister or the Chief General Manager on any matter referred to the Committee by the Minister or the Chief General Manager (as the case may be).

S. 62(b)  
amended by  
No. 10262 s. 4.

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**PART XI—REGULATIONS**

**63. Regulations**

- (1) The Governor in Council may make regulations for or with respect to any matter or thing that is required or permitted to be prescribed for the purposes of this Act or is necessary to be prescribed for carrying this Act into effect and, without limiting the generality of the foregoing, for or with respect to—
- (a) prescribing standards for the nature, substance, composition, strength, weight, quantity, purity or quality of food generally or food of a specified class or description or of any ingredient thereof or for the nature or proportion of any substance that may be mixed with or used in the preparation or preservation thereof;
  - (b) prohibiting 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;
  - (c) prescribing the quantity or proportion of a specified substance that is to be the quantity or proportion or the maximum or minimum or maximum and minimum quantities and proportions 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;
  - (d) prohibiting the sale or the preparing, packing, storing, handling, serving, supplying or conveying for sale of food generally or food of a specified class or

- description the use of any appliances containing a specified substance or a specified substance exceeding a prescribed quantity or proportion;
- (e) prescribing or prohibiting specified modes of preparation of food generally or food of a specified class or description;
  - (f) prescribing the temperature at which or range of temperatures within which food generally or food of a specified class or description that is prepared, stored, displayed, exposed or conveyed for sale shall be kept;
  - (g) prohibiting 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 of a specified kind in excess of a specified number in a specified quantity;
  - (h) providing for and prescribing all matters and things for or with respect to securing the wholesomeness and purity of food and the conditions and practices in connexion with the sale or the preparing, packing, storing, handling, serving, supplying or conveying for sale of any food and, without limiting the generality of the foregoing, for or with respect to—
    - (i) the cleanliness of premises or other places or vehicles in, at, on or from which any food is sold or prepared, packed, stored, handled, served, supplied or conveyed for sale and fittings, fixtures or appliances in, at or on such premises or other places or vehicles;
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- (ii) the provision and proper use of satisfactory facilities for the protection of food in, at or on premises or other places or vehicles in, at, on or from which any food is sold or prepared, packed, stored, handled, served, supplied or conveyed for sale;
  - (iii) the design and construction of premises or other places, vehicles, appliances, fittings or fixtures used for or in connexion with the sale or the preparing, packing, storing, handling, serving, supplying or conveying for sale of any food;
  - (iv) the prohibition or regulation of the use of specified materials or materials of a specified class in the manufacture of appliances, fittings or fixtures;
  - (v) 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 any food is sold or prepared, packed, stored, handled, served, supplied or conveyed for sale;
  - (vi) requiring the proprietor of food premises or a food vehicle, or his nominee approved by the Chief General Manager, or any persons employed or engaged by that proprietor to handle unpackaged food at those premises or that vehicle, to attend such courses of instruction in the handling of food as are prescribed;
  - (vii) the standards of cleanliness and hygiene to be maintained;

S. 63(1)(h)(vi)  
amended by  
Nos 10262  
s. 4, 20/1995  
s. 18.

S. 63(1)(h)(x)  
amended by  
No. 10262 s. 4.

- (viii) preventing or minimizing the spread of disease;
  - (ix) the provision and use of appliances, fittings or fixtures;
  - (x) prescribing standards for appliances, fittings or fixtures and requiring appliances, fittings or fixtures of specified kinds to be approved by the Chief General Manager and specifying the procedure for obtaining such approval;
  - (xi) 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 any food is sold or prepared, packed, stored, handled, served, supplied or conveyed for sale;
  - (xii) the provision and maintenance of an adequate water supply and drainage, sewerage, lighting and ventilation facilities in premises or other places or vehicles in, at, on or from which any food is sold or prepared, packed, stored, handled, served, supplied or conveyed for sale;
  - (i) providing for and prescribing all matters and things for or with respect to food vending machines and, without limiting the generality of the foregoing, for or with respect to—
    - (i) the location, surroundings and cleanliness thereof;
    - (ii) the mode of construction thereof with particular reference to the provision of means for maintaining cleanliness and operating temperatures;
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- (iii) maintenance and servicing thereof and the keeping of records in relation thereto;
  - (iv) marking on or affixing thereto operating instructions, evidence of the currency of registration thereof and the name and address or other particulars of any person or body who or which receives or shares in the profits or proceeds of the sale of any food therefrom;
  - (v) requiring notices or other writings containing specified words, statements, expressions or specified pictorial representations or designs to be affixed thereto or prohibiting the use in such notices 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;
  - (vi) the regulation and control of the temperature of food contained therein;
  - (vii) the preventing of the adulteration of food contained therein;
  - (viii) the inspection thereof and of food contained therein;
  - (ix) the prohibition of the operation thereof and rendering them inoperable whilst in a faulty condition;
  - (x) the prohibition or regulation of the sale or supply therefrom of goods other than food or food of a specified class or

- description with food of another class or description;
- (xi) the prohibition or regulation of the use thereof for dispensing food other than food that they are designed to dispense;
  - (xii) generally, the control and use thereof;
- (j) regulating and controlling and where necessary prohibiting and restricting advertisements relating to food generally or food of a specified class or description; requiring any such advertisements to contain specified words, statements, expressions, 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;
- (k) prescribing 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 size, style or colour of any such matter or the nature or colour of the background on which it appears; requiring specified labels to be written on or attached to any food or to packages of any food; prohibiting generally as to the matter to be contained in labels and, without limiting the generality of the foregoing, prohibiting the use on labels of specified words, statements
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- 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 where 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; exempting any food, or any package of food, of any specified class or description from any provision of this Act relating to labelling;
- (l) requiring and providing for the seizure, recall, destruction, denaturation or disposal of food that has become adulterated, damaged, deteriorated or perished to such degree as is specified or of food of a specified class or description and specifying the circumstances in which such food shall be destroyed or denatured;
- (m) prescribing modes of making packages or packing materials for any food so as to avoid contact with injurious substances; prohibiting the use of specified substances or materials in making packages or packing materials for any food; prescribing the minimum size of and the packing required for an article not being food that will be enclosed in a package; requiring that specified food be packed in a specified manner and prohibiting specified modes of packing food;
- (n) requiring notices or other 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
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premises or other places or vehicles used in selling or preparing, packing, storing, handling, serving, supplying or conveying for sale of food or food of a specified class or description; prohibiting the use in such notices or other 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;

- (o) prescribing the mode of storing or conveying for sale of food generally or food of a specified class or description;
- (p) providing for premises or other places, vehicles, appliances, methods, processes, packages, seals or closures and sources of water used in connexion with the sale or the preparing, packing, storing, handling, serving, supplying or conveying for sale of any food to be approved by the Chief General Manager and making requirements to that effect;
- (q) prescribing methods of analysis to be observed in analyses under or for the purposes of this Act;
- (r) prescribing methods for obtaining samples for the purposes of this Act and dealing with samples so obtained; the rates of the payments to be made for samples obtained for the purposes of this Act; the number of samples to be so obtained in specified cases;
- (s) prescribing the books to be kept by the proprietor of any food premises, food vehicle or appliance;

S. 63(1)(p)  
amended by  
No. 10262 s. 4.

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- (t) requiring specified laboratory and testing facilities to be provided in, at or on premises or other places or vehicles where food is prepared for sale and prescribing procedures and facilities to be used for the examination of any food and notification to specified persons of the results of any such examination;
  - (u) prescribing the qualifications of authorized officers and their powers, authorities, functions and duties;
  - (v) providing for the licensing by the Chief General Manager of persons for specified purposes; S. 63(1)(v)  
amended by  
No. 10262 s. 4.
  - (w) providing for the registration by the Chief General Manager 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; S. 63(1)(w)  
amended by  
No. 10262 s. 4.
  - (x) providing for applications for and the grant, issue, revocation, cancellation, suspension or surrender of licences, registrations, permits, approvals, certificates and authorities under this Act and transfers, renewals and duplicates thereof; prescribing the terms and conditions on which 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; prescribing fees for registrations and transfers and renewals thereof; prescribing proportionate fees where registrations are granted during the currency of a year; fixing days for lodging S. 63(1)(x)  
amended by  
No. 95/1986  
s. 21(1).

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applications for renewals of registration;  
prescribing

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- additional fees for renewals of registration in cases where late applications for renewal are lodged;
- (y) providing for the giving, serving and enforcement of notices for or with respect to the rectification of acts or omissions that constitute a contravention of or failure to comply with this Act; and
  - (z) prescribing—
    - (i) forms to be used for the purposes of this Act and the particular purposes for which those forms shall respectively be used; and
    - (ii) fees and charges payable or to be paid under or for the purposes of this Act 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.
- (2) Any regulation made under this Act may—
- (a) be made so as to be limited in respect of time, place or circumstances having regard to the conditions existing in any area in which the regulation is to have effect;
  - (b) leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by any government department, council or public authority or by any officer or member of staff of such department, council or authority;

S. 63(2)(b)  
amended by  
No. 12/1989  
s. 4(1)(Sch. 2  
item 47.11).

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s. 63

S. 63(2)(c)  
amended by  
No. 12/1989  
s. 4(1)(Sch. 2  
item 47.11).

- (c) confer powers or impose duties in connexion with the regulations on any government department, council or public authority or on any officer or member of staff of such department, council or authority or on owners or occupiers of premises or other places or on owners or operators of vehicles or on any persons whomsoever;
- (d) incorporate or adopt by reference the provisions of any document (including any code, standard, rule, specification or method) formulated, issued, prescribed or published by any authority or body whether—
  - (i) wholly or partially or as amended by the regulation; and
  - (ii) as formulated, issued, prescribed or published at the time the regulation is made or at any time before the regulation is made; and
- (e) impose a penalty of not more than 10 penalty units for any contravention of or failure to comply with the regulation.

S. 63(3)  
repealed by  
No. 95/1986  
s. 21(2).

\* \* \* \* \*

(4) Where any form is prescribed by a regulation made under this Act, any form in or to the like effect of the prescribed form shall be sufficient in law.

S. 63(5)  
amended by  
No. 10262 s. 4.

(5) The Chief General Manager may cause to be published codes of practice in connexion with matters and things that may be made the subject of regulations for the purpose of giving advice and guidance to persons responsible for compliance with those regulations and may alter, amend, modify or vary those codes.

(6) Except—

- (a) in a case of emergency or sudden necessity (of the existence of which emergency or necessity the Chief General Manager shall be the sole judge); or
- (b) in the case of regulations to be made under paragraph (a), (b), (c), (d), (e), (f), (g), (k), (m) or (q) of sub-section (1)—

S. 63(6)(a)  
amended by  
No. 10262 s. 4.

where any proposed regulations affect or are likely to affect any municipality copies thereof shall be sent to every such municipality at least six weeks before the making of the regulations.

- (7) Regulations made under this Act shall be subject to disallowance by Parliament.

**63A. Prescribed food standards**

- (1) In this section—

**"Authority"** has the same meaning as in the Commonwealth Act;

**"Commonwealth Act"** means the National Food Authority Act 1991 of the Commonwealth as amended and in force for the time being and includes an Act passed in substitution for that Act;

**"Food Standards Code"** has the same meaning as in the Commonwealth Act;

**"gazetted"** means published in the Commonwealth of Australia Gazette.

- (2) For the purposes of this Act a prescribed food standard is—

- (a) a standard gazetted by the Authority under the Commonwealth Act; or
- (b) a standard contained in the Food Standards Code.

S. 63A  
inserted by  
No. 95/1986  
s. 22,  
amended by  
Nos 26/1990  
s. 3, 6/1991  
s. 7(1)(a)–(c),  
substituted by  
No. 36/1991  
s. 3.

- (3) A prescribed food standard—
  - (a) has effect as amended, varied or partly superseded by a standard or variation of a standard gazetted under the Commonwealth Act; and
  - (b) ceases to have effect if revoked or wholly superseded by a standard or variation of a standard gazetted under the Commonwealth Act.
- (4) A standard or variation of a standard gazetted under the Commonwealth Act has effect—
  - (a) on the date specified for that purpose in the gazette; or
  - (b) if no date is so specified, on the date of gazettal.
- (5) An amendment of the standards contained in the Food Standards Code gazetted before the commencement of the **Food (Amendment) Act 1991** and not incorporated or adopted by reference by the Food Standards Regulations 1987 before that commencement has effect in Victoria from that commencement or the later effective date specified in the gazette.

S. 63B  
inserted by  
No. 20/1995  
s. 19.

**63B. *Limitation on power to make local laws***

- (1) A council must not make a local law under the **Local Government Act 1989** for or with respect to any matter or thing for or with respect to which—
  - (a) regulations made under this Act are in force;  
or

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- (b) regulations could be made under this Act; or  
(c) a prescribed food standard has effect.
- (2) A local law (whether made before or after the commencement of the **Food (Amendment) Act 1995**) is of no effect to the extent that it makes provision for or with respect to any matter or thing referred to in sub-section (1).

\* \* \* \* \*

Pt 12  
(Heading and  
ss 64, 65)  
repealed by  
No. 20/1995  
s. 20.

Sch. 1

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**SCHEDULES**

Sch. 1  
amended by  
No. 95/1986  
s. 23(1),  
repealed by  
No. 42/1993  
s. 64(a).

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Sch. 2  
inserted by  
No. 95/1986  
s. 23(2),  
repealed by  
No. 36/1991  
s. 4(i).

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**NOTES**

**1. General Information**

The **Food Act 1984** was assented to on 15 May 1984 and came into operation (*except* sections 31(b), 50(5)) on 1 January 1986: Government Gazette 6 November 1986 p. 4213. Sections 31(b) and 50(5) were never proclaimed, repealed by No. 11/1995 section 3(2).

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## 2. Table of Amendments

This Version incorporates amendments made to the **Food Act 1984** by Acts and subordinate instruments.

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### **Health (Amendment) Act 1985, No. 10262/1985**

*Assent Date:* 10.12.85  
*Commencement Date:* S. 4(Sch.) on 1.3.86: Government Gazette 26.2.86 p. 451  
*Current State:* This information relates only to the provision/s amending the **Food Act 1984**

### **Courts Amendment Act 1986, No. 16/1986**

*Assent Date:* 22.4.86  
*Commencement Date:* S. 30(Sch.) on 1.7.86: Government Gazette 25.6.86 p. 2180  
*Current State:* This information relates only to the provision/s amending the **Food Act 1984**

### **Food (Amendment) Act 1986, No. 95/1986**

*Assent Date:* 16.12.86  
*Commencement Date:* 16.12.86  
*Current State:* All of Act in operation

### **Liquor Control Act 1987, No. 97/1987**

*Assent Date:* 1.12.87  
*Commencement Date:* S. 179 on 3.5.88: Government Gazette 27.4.88 p. 1044  
*Current State:* This information relates only to the provision/s amending the **Food Act 1984**

### **Local Government (Consequential Provisions) Act 1989, No. 12/1989** (as amended by No. 13/1990)

*Assent Date:* 9.5.89  
*Commencement Date:* S. 4(1)(Sch. 2 items 47.2, 47.7–47.9, 47.11) on 1.11.89: Government Gazette 1.11.89 p. 2798; Sch. 2 items 47.1, 47.3–47.6 on 3.6.92: Government Gazette 3.6.92 p. 1306; Sch. 2 item 47.10 on 1.10.92: Government Gazette 23.9.92 p. 2789  
*Current State:* This information relates only to the provision/s amending the **Food Act 1984**

### **Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989** (as amended by No. 34/1990)

*Assent Date:* 14.6.89  
*Commencement Date:* S. 3(Sch. items 79.1–79.11) on 1.9.90: Government Gazette 25.7.90 p. 2217  
*Current State:* This information relates only to the provision/s amending the **Food Act 1984**

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**Food (Valuation) Act 1990, No. 26/1990**

*Assent Date:* 5.6.90  
*Commencement Date:* 5.6.90  
*Current State:* All of Act in operation

**Interpretation of Legislation (Amendment) Act 1991, No. 6/1991**

*Assent Date:* 16.4.91  
*Commencement Date:* 16.4.91  
*Current State:* All of Act in operation

**Food (Amendment) Act 1991, No. 36/1991**

*Assent Date:* 18.6.91  
*Commencement Date:* 19.8.91—same day as the National Food Authority Act 1991 of the Commonwealth—see Commonwealth Special Gazette (No. 219) of 8.8.91  
*Current State:* All of Act in operation

**Dairy Industry Act 1992, No. 88/1992**

*Assent Date:* 26.11.92  
*Commencement Date:* 24.12.92: Special Gazette (No. 70) 24.12.92 p. 1  
*Current State:* All of Act in operation

**Meat Industry Act 1993, No. 40/1993**

*Assent Date:* 1.6.93  
*Commencement Date:* S. 82, Sch. 2 item 4.1 on 30.6.93: Government Gazette 24.6.93 p. 1596  
*Current State:* This information relates only to the provision/s amending the **Food Act 1984**

**Health and Community Services (General Amendment) Act 1993, No. 42/1993**

*Assent Date:* 1.6.93  
*Commencement Date:* S. 64 on 1.10.93: Government Gazette 16.9.93 p. 2548  
*Current State:* This information relates only to the provision/s amending the **Food Act 1984**

**Local Government (Miscellaneous Amendments) Act 1993, No. 125/1993**

*Assent Date:* 7.12.93  
*Commencement Date:* S. 20(5) on 7.12.93: s. 2(4)  
*Current State:* This information relates only to the provision/s amending the **Food Act 1984**

**Food (Amendment) Act 1994, No. 13/1994**

*Assent Date:* 3.5.94  
*Commencement Date:* 3.5.94  
*Current State:* All of Act in operation

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**Medical Practice Act 1994, No. 23/1994**

*Assent Date:* 17.5.94  
*Commencement Date:* S. 118(Sch. 1 item 21) on 1.7.94: Government Gazette  
23.6.94 p. 1672  
*Current State:* This information relates only to the provision/s  
amending the **Food Act 1984**

**Therapeutic Goods (Victoria) Act 1994, No. 79/1994**

*Assent Date:* 22.11.94  
*Commencement Date:* S. 74 on 22.5.95: s. 2(3)  
*Current State:* This information relates only to the provision/s  
amending the **Food Act 1984**

**Statute Law Revision Act 1995, No. 11/1995**

*Assent Date:* 26.4.95  
*Commencement Date:* 26.4.95: s. 2  
*Current State:* All of Act in operation

**Food (Amendment) Act 1995, No. 20/1995**

*Assent Date:* 16.5.95  
*Commencement Date:* 16.5.95  
*Current State:* All of Act in operation

**Legal Practice Act 1996, No. 35/1996**

*Assent Date:* 6.11.96  
*Commencement Date:* S. 453(Sch. 1 item 33) on 1.1.97: s. 2(3)  
*Current State:* This information relates only to the provision/s  
amending the **Food Act 1984**

**Commonwealth Powers (Industrial Relations) Act 1996, No. 59/1996**

*Assent Date:* 12.12.96  
*Commencement Date:* S. 10(Sch. 2 item 7) on 1.1.97: Special Gazette  
(No. 146) 23.12.96 p. 15  
*Current State:* This information relates only to the provision/s  
amending the **Food Act 1984**

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### 3. Explanatory Details

<sup>1</sup> S. 16: Section 16 of the **Food (Amendment) Act 1994**, No. 13/1994 reads as follows:

#### **16. Implied Warranties**

- (1) The provisions of section 16 of the Principal Act as amended by Part 2 of this Act apply to contracts for the sale of food for resale entered into on or after the commencement of this Act.
- (2) Section 16 of the Principal Act continues to apply to contracts for the sale of food for resale entered into before the commencement of this Act as if Part 2 of this Act had not been enacted.

<sup>2</sup> S. 20(6) (repealed): Section 18 of the **Food (Amendment) Act 1994**, No. 13/1994 reads as follows:

#### **18. Authorised officers**

- (1) An instrument of authorisation in force under section 20(6) of the Principal Act immediately before the commencement of this Act is deemed, on and from that commencement, to be an instrument of delegation under section 8A of the **Health Act 1958**.
- (2) An instrument to which sub-section (1) applies—
  - (a) is deemed to be a delegation by the Chief General Manager of the functions, powers and duties of an authorised officer that are specified in the instrument; and
  - (b) is deemed to have been made for the period and on the same terms and conditions (if any) that are specified in the instrument; and
  - (c) may be varied or revoked under section 8A of the **Health Act 1958**.

<sup>3</sup> S. 31(b): The amendment proposed by section 4(2) of the **Food (Amendment) Act 1995**, No. 20/1995 is not included in this reprint because

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section 31(b) had been repealed by s. 3(2) of the **Statute Law Revision Act 1995**, No. 11/1995.

<sup>4</sup> S. 36: Section 17 of the **Food (Amendment) Act 1994**, No. 13/1994 reads as follows:

**17. *Private food premises and vehicles on Crown property***

If—

- (a) before the date of commencement of this Act a Council purported to register under the Principal Act food premises or a food vehicle on Crown property but those premises were not or that vehicle was not operated by or on behalf of the Crown, and purported to collect fees for that registration or for the renewal or transfer of registration; and

- (b) that registration is in force immediately before that date of commencement—

the purported registration and collection of fees are deemed to be and always to have been as valid and effective as if, when they occurred and since then, section 36 of the Principal Act as amended by this Act were in operation.

<sup>5</sup> S. 50(5): The amendment proposed by section 4(3) of the **Food (Amendment) Act 1995**, No. 20/1995 is not included in this reprint because section 50(5) had been repealed by s. 3(2) of the **Statute Law Revision Act 1995**, No. 11/1995.

<sup>6</sup> S. 60: Section 19 of the **Food (Amendment) Act 1994**, No. 13/1994 reads as follows:

**19. *Alteration of membership of Food Standards Committee***

The Food Standards Committee under the Principal Act is deemed to be the same body after as before the change in its membership made by

the amendments to the Principal Act in Part 2 of this Act, and the current appointment and term of

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office of its members is not affected by that change.