

No. 29 of 1991.

***Food Sanitation Act 1991.***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 29 of 1991.

***Food Sanitation Act 1991.***

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

***Food Sanitation Act 1991,***

Being an Act for securing wholesome, sound and safe food for human consumption, and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice published in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

**PART I. – PRELIMINARY.**

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3C (*qualified rights*) of the *Constitution*, namely–

- (a) the right to freedom from arbitrary search and entry conferred by Section 45 of the *Constitution*; and
- (b) the right to privacy conferred by Section 49 of the *Constitution*,

is a law that is made for the purpose of giving effect to the public interest in public health.

(2) It is hereby declared, for the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, that this Act relates to a matter of national interest.

**2. INTERPRETATION.**

In this Act, unless the contrary intention appears–

“**allied health worker**” means a person registered as an allied health worker under the *Medical Registration Act 1980*;

“**analyst**” means a food analyst appointed under Section 8;

**“animal”** means cattle, pigs, rabbit, poultry, bird (other than a game bird), fish (including crustacean and mollusk), reptile or other animal which is used for human food;

**“apparatus”** means the whole or any part of a utensil such as table-ware or cooking ware, machinery, an instrument, appliance or other thing used for collecting, manufacturing, processing, preparing, handling, packing, storing, conveying, transporting, displaying, selling, supplying, serving, delivery or taking food or a food additive, which comes in direct contact with food or a food additive;

**“article”** includes—

- (a) a food or food additive; or
- (b) an apparatus, package or label;
- (c) anything that is used for preparation of food, a food additive, apparatus, a package or label;

**“business”** means an undertaking for profit by—

- (a) collecting, manufacturing, importing, processing, preparing, storing, transporting or selling food or a food additive; or
- (b) manufacturing, importing or selling apparatus or a package;

**“business manager”** means the person who is in charge of or in control of the daily operations of a business;

**“Council”** means the Food Sanitation Council established under Section 3;

**“food”** means any article or substance used for food or drink for man other than a drug under the *Drugs Act 1952*;

**“food additive”** means anything used by means of adding, mixing, permeating or other process in or upon food in the process of manufacturing food for the purpose of processing or preserving food;

**“inspector”** means a food inspector appointed under Section 8;

**“Inspector of Health”** means an Inspector of Health appointed under Section 8 of the *Public Health Act 1973*;

**“label”** means descriptive matter including a word, mark, brand, tag or pictorial matter written, printed, stencilled, marked, embossed or impressed on, or attached to, such part of a package that can be easily noticed without opening the package (when the package is for retail sale) of food or a food additive for sale;

**“labelling”** means all labels and other written, printed or graphic matter relating to and accompanying food, a food additive, apparatus or a package for sale;

**“Local Medical Authority”** has the same meaning that it has under the *Public Health Act 1973*;



**“meat”** means the whole or any edible part of the dead body of an animal that is ordinarily used as food by man, whether fresh, chilled or frozen;

**“medical practitioner”** means a person registered as a medical practitioner under Section 22 of the *Medical Registration Act 1980*;

**“National Standards Council”** means the National Standards Council established under the *National Institute of Standards and Industrial Technology Act 1993*;

**“package”** means a container including a box, bottle, basket, tin, barrel, case, receptacle or wrapper in which food or a food additive is contained, enclosed, placed, wholly or partly to be offered therewith when food or a food additive is delivered to a retail purchaser;

**“premises”** means any house, building, tent, stall, vehicle, conveyance, vessel or other permanent or temporary structure—

(a) where food or a food additive is manufactured, imported, processed, prepared, stored, transported, sold or where apparatus or a package is manufactured, imported, stored or sold; and

(b) in or from which a business is conducted;

**“prescribed business”** means a business prescribed under Section 33;

**“sell”** includes—

(a) barter; or

(b) offer or attempt to sell; or

(c) receive for sale; or

(d) have in possession for sale; or

(e) expose for sale; or

(f) send forward for sale; or

(g) deliver for sale; or

(h) cause or permit to be sold, offered or exposed for sale, for consumption or use by man;

**“this Act”** include the regulations under this Act.

**PART II. – FOOD SANITATION COUNCIL.**

**3. FOOD SANITATION COUNCIL.**

(1) A Council by the name of the Food Sanitation Council is hereby established.

(2) The Council shall consist of–

- (a) an officer of the Department responsible for health matters; and
- (b) an officer of the Department responsible for finance and planning matters; and
- (c) an officer of the Department responsible for agriculture and livestock matters; and
- (d) an officer of the Department responsible for trade and industry matters; and
- (e) a representative of the Secretariat of the National Standards Council; and
- (f) a representative of the Papua New Guinea Institute of Medical Research established under the *Institute of Medical Research Act 1967*; and
- (g) a representative of the Food Section Chemical Technology, Department of Applied Science of the Papua New Guinea University of Technology; and
- (h) a representative of the food industry nominated by the Chamber of Commerce and Industry; and
- (i) a food inspector; and
- (j) an analyst.

(3) The members of the Council–

- (a) shall be appointed by notice in the National Gazette by the Minister; and
- (b) shall be appointed for a period of two years; and
- (c) are eligible for re-appointment; and
- (d) in the case of members who are not officers or employees of the National Public Service, shall be entitled to be paid reasonable travelling and living expenses while absent from their ordinary places of residence in the course of their duties under this Act, as may be determined by the Minister.

(4) The persons appointed to be members of the Council under Subsection (2)(e), (f), (g) and (h) shall be appointed on account of their competence and relevant experience–

- (a) in the manufacture, distribution or consumption of food, a food additive, apparatus or a package; or
- (b) in the science, technology, administration or commercial aspects relating to food sanitation.

(5) The members of the Council shall elect one of their number to be the Chairman of the Council, and the member so elected shall be appointed as Chairman by the Minister by notice in the National Gazette.

#### **4. MEETING OF THE COUNCIL.**

(1) The Council shall meet and transact business at such times and in such places as are determined by the Chairman and the Secretary to the Council, and in any event shall meet at least four times in each calendar year.

(2) At a meeting of the Council—

- (a) six members constitute a quorum; and
- (b) the Chairman shall preside; and
- (c) in the absence of the Chairman the members present shall elect one of their number to preside; and
- (d) matters arising shall be determined by a majority of the members present and voting; and
- (e) the person presiding shall have a deliberative vote, and in the event of an equality of votes, also a casting vote.

(3) The Council shall cause full minutes of its meetings to be kept in such manner as is determined by it.

(4) Subject to this section, the procedures at a meeting of the Council are as determined by it.

#### **5. FUNCTIONS OF THE COUNCIL.**

The functions of the Council are—

- (a) to investigate and deliberate on matters concerning the administration and the revision of this Act;
- (b) to investigate and deliberate on matters relating to the prevention of food poisoning, the preparation, standards and the requirements of food, food additives, apparatus and packages; and
- (c) to investigate and report to the Minister on any matter relating to food sanitation or any other matter as the Minister directs.

#### **6. COMMITTEES OF THE COUNCIL.**

(1) The Council may establish Committees if necessary for the purposes of the Council.

(2) A Committee shall investigate and report to the Council on any matter referred to it by the Council.

(3) For the purposes of the performance of its functions under Subsection (2), a Committee—

(a) has and may exercise all the powers of; and

(b) is subject to the same rules relating to procedure as,

the Council under this Act.

(4) A member of a Committee—

(a) holds office for period of two years; and

(b) is entitled to the same conditions of appointment applicable to a member of the Council.

## **7. COUNCIL SECRETARIAT.**

(1) A secretariat is hereby established, consisting of such number of persons as are appointed by the Minister.

(2) The functions of the secretariat are—

(a) to manage the affairs of the Council; and

(b) to undertake such duties as the Council may determine; and

(c) generally to provide secretarial service for the Council.

## **8. FOOD ANALYSTS AND INSPECTORS.**

(1) The Minister may, by notice in the National Gazette, appoint persons to be—

(a) food inspectors; and

(b) food analysts,

for the purposes of this Act.

(2) A person shall not be appointed a food inspector or a food analyst under Subsection (1) unless he possesses the prescribed qualifications.

**PART III. – FOOD AND FOOD ADDITIVES.**

**9. STANDARDS FOR FOOD AND FOOD ADDITIVES.**

(1) The Minister may, in liaison with the National Standards Council, by notice in the National Gazette—

- (a) fix the standards for the methods of manufacture, processing, use, preparation, preservation and transportation of, food and food additives for sale; and
- (b) prescribe measures for the prevention of contamination of food or food additives during the manufacturing, processing, preparing, packing, storing, carrying, delivering, serving or handling of food or food additives.

**10. ADULTERATED FOOD AND FOOD ADDITIVES.**

(1) A food or food additive that—

- (a) consists wholly or in part of a putrid, rotten, diseased substance, or is otherwise unfit for human consumption; or
- (b) had contained or contains or has been contaminated with, a poisonous or harmful substance, or has pathogenic micro-organisms, or is otherwise injurious to human health; or
- (c) is mixed or added with foreign substance which is injurious to human health,

is an adulterated food or adulterated food additive.

(2) A person who manufactures, sells, imports, processes, uses, prepares, stores or displays for sale, an adulterated food or adulterated food additive, is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for term not exceeding six months.

**11. MIXING OF FOOD AND FOOD ADDITIVES TO INCREASE BULK, ETC.**

(1) A person who, in order fraudulently—

- (a) to increase the weight, bulk or measure; or
- (b) to conceal the inferior quality,

of any food or food additive intended for sale—

- (c) mixes any—
  - (i) food additive or material with food; or
  - (ii) other food additive or material with a food additive; or

- (d) permits any food additive or material to be mixed with food or a food additive,

is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding six months, or both.

(2) A person who sells any food or food additive mixed with a food additive or material by which the weight bulk or measure of the food or food additive has been fraudulently increased or its inferior quality fraudulently concealed, is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding six months or both.

(3) A person who—

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

is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding six months or both.

## **12. PROHIBITION ON SALE OF MEAT FROM DISEASE SUFFERING ANIMALS.**

(1) A person shall not—

- (a) sell as food for human consumption; or
- (b) collect, process, use, prepare, store or display for sale, as food for human consumption,

any meat, bone, milk, viscera or blood of an animal suffering from or being suspected to be suffering from a prescribed disease.

(2) A person who contravenes Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for term not exceeding six months.

## **13. PROHIBITION ON SALE OF NEWLY DEVELOPED FOOD.**

(1) Where an article or substance intended for human consumption is—

- (a) a newly developed food or food additive; and
- (b) manufactured through or by use of a new method,

the Minister in liaison with the National Standards Council shall investigate or cause an investigation to be made in respect of the article or substance, by requiring

the importer or manufacturer to submit particulars and other necessary documents to enable the Minister in liaison with the National Standards Council to determine whether or not the article or substance is safe for human consumption.

(2) Where, as a result of an investigation under Subsection (1), the Minister is satisfied that an article or substance is not safe for human consumption, the Minister shall prohibit the importation or sale of the article or substance as a food or food additive.

(3) A person who—

- (a) refuses to submit the particulars or documents required under Subsection (1); or
- (b) imports, manufactures or sells an article or substance prohibited under Subsection (2),

is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding six months.

**PART IV. – APPARATUS, PACKAGE AND LABELLING.**

**14. STANDARDS.**

(1) The Minister, in liaison with the National Standards Council may, by notice in the National Gazette, fix standards–

- (a) for the methods of manufacturing apparatus or a package; and
- (b) for the labelling of apparatus or a package.

(2) In determining the standards under Subsection (1), the Minister may specify–

- (a) the structure, composition, strength and purity of apparatus or a package; and
- (b) the method of analysis and sampling of apparatus or a package.

(3) A person shall not–

- (a) sell; or
- (b) manufacture for sale; or
- (c) import for sale; or
- (d) use for business,

apparatus or a package that does not conform to the standards fixed under this section.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding six months.

**15. UNSANITARY OR POISONOUS APPARATUS OR PACKAGE NOT TO BE USED OR SOLD.**

A person who–

- (a) uses unclean or unsanitary apparatus or an unclean or unsanitary package for business; or
- (b) sells, manufactures or imports for sale or uses for business any apparatus or package that is suspected of being injurious to human health due to the apparatus or package, as the case may be, containing or being stained with poisonous or detrimental materials,

is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding six months.



**16. PROHIBITION OF FALSE LABELS AND ADVERTISEMENTS.**

(1) A person shall not label or advertise false, misleading, deceptive or exaggerative representation relating to the character, nature, value, substance, quality, composition, merit or safety of food, a food additive, apparatus or a package.

(2) A person who contravenes Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding six months.

**17. MANUFACTURE AND EXPIRY DATES.**

(1) In this section, unless the contrary intention appears—

**“date of expiry”** means the end of the estimated period under any stated storage condition, after which the food or food additive would not have the quality attributes normally expected by the consumer;

**“date of manufacture”** means the date the food or food additive was enclosed in a package or container;

(2) The Minister may, by notice in the National Gazette, declare a food or food additive to be—

(a) a short life food or food additive; or

(b) a long life food or food additive,

for the purposes of this section.

(3) Where food or a food additive is sold in a closed package or container the statement or label attached to the package or container shall include the date of manufacture and the date of expiry of the food or food additive.

(4) For the purposes of Subsection (3), where—

(a) the food or food additive is a short life food or food additive, the date of expiry shall not exceed 90 days from the date of manufacture of the food or food additive; and

(b) the food or food additive is a long life food or food additive, the date of expiry shall not exceed two years from the date of manufacture of the food or food additive.

(5) A person who manufactures, imports or sells food or a food additive in a closed package or container without the date of manufacture and the date of expiry of the food or food additive specified on the statement or label attached to the package or container, is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for term not exceeding six months.

**18. LIABILITY OF PERSON NAMED ON PACKAGE.**

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

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

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

- (c) the act or default of the person on whose premises the food or food additive was packed; or
- (d) deterioration; or
- (e) other causes beyond the control of the person named on the package or label,

is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding six months.

**PART V. – INSPECTION AND ANALYSIS.**

**19. LABORATORIES FOR FOOD INSPECTION.**

(1) The Minister may appoint a place, building or a part of a building to be a laboratory for food inspection for the purposes of this Act.

(2) A laboratory for food inspection shall comprise such types of rooms and have such equipment and instruments as may be prescribed.

**20. INSPECTION OF PREMISES.**

(1) In this section “**food**” or “**food additive**” includes food or a food additive—

- (a) packed, bottled or tinned for sale; or
- (b) sold or offered for sale; or
- (c) made up or included in, or prepared or cooked for, a meal to be consumed in—
  - (i) a shop; or
  - (ii) premises in respect of which a licence is in force relating to the sale of alcoholic liquor; or
  - (iii) any other place.

(2) At any reasonable time, an inspector may enter and inspect any premises where the inspector believes food, a food additive, apparatus or package is kept or used for sale or is used for business.

(3) For the purposes of an inspection under Subsection (2), an inspector may—

- (a) inspect sanitary conditions of premises and business installations, vehicles, records or books used for business; and
- (b) examine food, a food additive, apparatus or a package; and
- (c) remove for analysis or examination, portions or samples of any article; and
- (d) seize or condemn any article that is or appears to him to be—
  - (i) dangerous; or
  - (ii) injurious to health; or
  - (iii) unwholesome; or
  - (iv) unfit for use.

(4) On the complaint of an inspector, in relation to an article seized or condemned under Subsection (2)(d), a District Court may—

- (a) summon before it, the owner of the article or the person in whose possession the article was found; and

(b) call on him to show cause why the article should not be forfeited and destroyed.

(5) If the owner or person referred to in Subsection (4)–

(a) appears; or

(b) fails to appear after being summoned,

the Court may–

(c) after inquiry into the matter; and

(d) if satisfied, on such evidence as seems to it sufficient, that the article is used or is intended to be sold or used, as food or a food additive, apparatus or a package and did not comply with the standards in relation to the food, food additive, apparatus or package, as the case may be,

declare the article to be forfeited and destroyed, but otherwise the article shall be restored without delay to the owner or person in whose possession it was found.

(6) When exercising his powers under this Part, an inspector shall–

(a) have on his person a prescribed authority certificate and such other identification as may be prescribed; and

(b) if he intends to remove an article under Subsection (3)(c), issue to the owner or to the person in whose possession the article was found, a collection certificate in the prescribed form; and

(c) if he intends to seize or condemn an article under Subsection (3)(d), issue to the owner or to the person in whose possession the article was found, a receipt or condemnation certificate in the prescribed form.

## **21. COLLECTION OF SAMPLES.**

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

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

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

of the current market value of, or at the rate of payment prescribed for, the food, food additive, apparatus or package, as the case may be.

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

**22. DEALING WITH SAMPLES.**

(1) An inspector taking or obtaining food, a food additive, apparatus or a package with the intention of submitting it to inspection, examination or analysis, shall notify his intention to the person from whom the sample was taken or obtained.

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

- (a) take three times the number or amount of sample of the limit necessary for inspection, examination or analysis; and
- (b) divide the sample into three parts; and
- (c) label or mark, and seal or fasten up, each separate part in such manner as its nature allows; and
- (d) deliver one part to the person from whom the sample was procured, retain one part and submit the remaining part to an analyst.

(3) A sample shall be forwarded to an analyst under seal in any convenient way at the earliest opportunity.

(4) Where a sample is forwarded to an analyst under Subsection (3), the certificate of the analyst that on receipt by him the seal was unbroken is sufficient evidence of identity.

**23. CERTIFICATE OF ANALYST.**

(1) An analyst analysing food, a food additive, apparatus or a package obtained in accordance with Sections 20(3)(c) and 21 may give a certificate, in the prescribed form, of the result of the analysis.

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

- (a) of the identity of the food, food additive, apparatus or package analysed; and
- (b) of the result of the analysis,

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

**24. SUPPLY OF COPY OF ANALYSIS.**

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

**25. SERVICE OF ANALYST'S CERTIFICATE WITH SUMMONS.**

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

**26. EXAMINATION OF PERSON HANDLING FOOD OR FOOD ADDITIVE.**

(1) The Local Medical Authority may, by order in writing, require a person who is employed in preparing or handling food or a food additive for sale or used for business, to submit—

- (a) to a process specified in the order; or
- (b) to a clinical examination,

for the purpose of ascertaining if the person is likely to convey infection.

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

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding six months.

**27. INFECTED PERSONS NOT TO HANDLE FOOD AND FOOD ADDITIVES.**

(1) A person suffering from an infectious skin disease or any other infectious disorder, who—

- (a) prepares or handles or is employed in preparing or handling food or a food additive for sale; or
- (b) enters premises in which food or a food additive for sale, is prepared, handled, kept or served,

is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding six months.

(2) A person who permits a person suffering from an infectious skin disease or any other infectious disorder to enter premises in which food or a food additive is prepared, handled, kept or served, is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding six months.

**28. CLEANLINESS AND SANITATION.**

(1) A person who fails to collect, manufacture, process, use, prepare, store, transport, display or deliver any food or food additive in clean and sanitary conditions, is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding six months.

(2) For the purposes of Subsection (1) the conditions of cleanliness and sanitation shall be as prescribed.

**29. REQUIREMENT OF NAME OF PERSON SELLING FOOD, ETC.**

(1) An inspector may require a person selling food, a food additive, apparatus or a package, to state—

- (a) his full name and address; and
- (b) if he is employed to sell the food, food additive, apparatus or package, the name and address of his employer.

(2) A person who fails to comply with Subsection (1) or gives a false name or address is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding six months.

**30. REQUIREMENTS IN RELATION TO IMPORTATION OF FOOD, ETC.**

(1) A person who intends to import into Papua New Guinea, food, a food additive, apparatus or a package—

- (a) for sale; or
- (b) for business purposes,

shall notify the Minister of his intention to import.

(2) Notification for the purposes of Subsection (1) shall be given at such times and at such intervals and include such matters or details as may be required by the Minister.

(3) A person who contravenes or fails to comply with the requirements of this section is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding six months.

**31. EXAMINATION OF IMPORTED FOOD, ETC.**

(1) Food, a food additive, apparatus or a package imported into Papua New Guinea is subject to examination by an inspector or analyst and if on inspection the food, food additive, apparatus or package, as the case may be, does not comply with the requirements for food sanitation under this Act, it shall be forfeited and destroyed or be disposed of in such manner as the Local Medical Authority directs.

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

**32. NOTIFICATION OF FOOD POISONING, ETC., BY MEDICAL PRACTITIONER, ETC.**

A medical practitioner or allied health worker shall, as soon as possible after diagnosing a case of food poisoning or of a food-borne disease, notify the appropriate Local Medical Authority.



**PART VI. – LICENSING.**

**33. PRESCRIBED BUSINESSES.**

(1) The regulations shall prescribe businesses for the purposes of this Part and shall prescribe the minimum requirements for categories of installations of premises in relation to each prescribed business.

(2) Except in accordance with a licence under this Part, a person shall not conduct or carry on a prescribed business.

(3) A person who conducts or carries on a prescribed business other than in accordance with this Part, is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding six months.

**34. APPLICATION FOR LICENCE.**

(1) A person may apply to the Local Medical Authority for or for renewal of, a licence to conduct or carry on a prescribed business.

(2) An application under Subsection (1) shall–

- (a) be in the prescribed form; and
- (b) specify the premises to be used; and
- (c) contain such matters or particulars as may be prescribed.

**35. ISSUE OF LICENCE.**

(1) The Local Medical Authority may–

- (a) on receipt of an application and matters or particulars under Section 34; and
- (b) if it is satisfied that the requirements of Section 33(1) have been complied with; and
- (c) on payment of the prescribed fee,

issue to a person a licence to conduct or carry on a prescribed business.

(2) A licence under this section–

- (a) shall be in the prescribed form; and
- (b) shall specify the type of business in respect of which it is issued; and
- (c) shall specify the premises in which the business is to be conducted or carried on; and
- (d) shall contain such conditions as the Local Medical Authority considers necessary; and
- (e) is valid for a period of two years from the date of issue.

**36. LICENCE TO BE DISPLAYED.**

(1) A licensee shall display the licence in a conspicuous position in the premises specified in the licence throughout the time when the licence is in force.

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

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding six months.

**37. CANCELLATION OF LICENCE.**

If a licensee is convicted of an offence against this Act, the Local Medical Authority may cancel or revoke the licence.

**38. SUSPENSION OF LICENCE.**

(1) Subject to Subsection (2), where the Local Medical Authority or an inspector has reasonable grounds for believing that the minimum requirements for installation of premises in respect of which a licence was issued, are no longer being complied with, the Local Medical Authority may suspend the licence.

(2) Where the Local Medical Authority intends to suspend a licence under Subsection (1), it shall by notice in writing—

- (a) notify the licensee that with effect from a date specified in the notice, the licence is suspended; and
- (b) advise the licensee that until the requirements referred to in Subsection (1) are complied with, he shall not conduct or continue to conduct business in or from the premises referred to in that subsection.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding six months.

(3) Where the Local Medical Authority or an inspector is satisfied that the requirements in relation to the premises are being complied with, the Local Medical Authority shall lift the suspension.

**PART VII. – OFFENCES AND PROCEEDINGS GENERALLY.**

**39. INTERFERENCE WITH OFFICIAL MARKS.**

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

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding six months.

(2) Subsection (1) does not apply to–

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

in respect of a part of a sample of food, food additive, apparatus or package delivered by an inspector to the person from whom the sample was procured under Section 22.

**40. OBSTRUCTION, BRIBERY, ETC.**

A person who–

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

is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding six months.

**41. GENERAL PENALTY.**

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

- (a) in the case of a first offence–of a fine not exceeding K1,000.00; and
- (b) in the case of a second offence–of a fine not exceeding K1,500.00; and
- (c) in the case of a third or subsequent offence–of a fine not exceeding K2,000.00,

and in addition, in the case of a continuing offence, to a default penalty of a fine not exceeding K100.00.

- (2) Where a person is found guilty of an offence against this Act and—
- (a) there is produced to the court a certificate of an analyst stating that an adulterated article the subject of the charge has been so adulterated as to be injurious to health; or
  - (b) the offence, in the opinion of the court, was committed wilfully by, or by the culpable negligence of, that person, and the court is of the opinion that a fine will not meet the circumstances of the case,

that person is liable, in addition to or instead of a fine, to imprisonment for a term not exceeding two years.

#### **42. FORFEITURE.**

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

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

- (a) the whole of any similar articles; and
- (b) all packages containing similar articles,

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

(3) Any food, food additive, apparatus or package forfeited under this section becomes the property of the State and shall be dealt with or disposed of in accordance with the directions of the Minister.

#### **43. PROOF OF POSSESSION.**

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

#### **44. ONUS OF PROOF.**

Where, in a prosecution for an offence against this Act in respect of the sale of food, a food additive, apparatus or a package, it is proved that the food, food additive, apparatus or package was sold, the onus of proof that—

- (a) the food or food additive was not sold for consumption or use by man; or

- (b) the apparatus or package was not sold for use as food or a food additive for human consumption,

is on the defendant.

#### **45. TIME FOR PROSECUTION IN CERTAIN CASES.**

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

#### **46. GUARANTEE AS DEFENCE.**

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

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

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

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

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

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

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

s. 46.

*Food Sanitation 1991*

(6) Subsections (1), (2), (3), (4) and (5) apply also to a charge for an offence in respect of poisonous or stained apparatus or package.

**PART VIII. – MISCELLANEOUS.**

**47. STRENGTH OF ALCOHOLIC BEVERAGES.**

The degree of strength of any alcoholic beverage shall be determined by use of the prescribed apparatus in the prescribed manner.

**48. PROTECTION OF TRADE SECRETS.**

This Act does not require a proprietor or manufacturer of food, a food additive, apparatus or a package that contains no unwholesome or poisonous added ingredient to disclose a trade formula except in so far as this Act requires such disclosure in order to secure freedom from adulteration or false description of food or food additives or poisonous or stained apparatus or package.

**49. MINISTER TO REQUEST REPORTS.**

(1) The Minister may require a person, licensee, business manager or a person in charge of a premises, to present to him—

- (a) such information, material or document; or
- (b) such reports containing such particulars,

as the Minister may require—

- (c) for the purpose of determining that the standards fixed in relation to food, food additives, apparatus, package or labelling are adhered to; or
- (d) in relation to a requirement under the Act.

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

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding six months.

**50. REGULATIONS.**

The Head of State, acting with, and in accordance with, the advice of the National Executive Council may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act and in particular for prescribing fees to be paid and for prescribing penalties for offences against the regulations not exceeding K1,000.00 and default penalties not exceeding K100.00.

s. 51.

*Food Sanitation 1991*

**PART IX. – REPEAL.**

**51. REPEAL.**

The Acts specified in Schedule 1 are repealed.



**SCHEDULE 1 – REPEALED ACTS.**

Sec. 51.

*Pure Food Act* (Chapter 233).

*Restaurants (Licensing) Act* (Chapter 235).

*Sale of Meat Act* (Chapter 237).

Office of Legislative Counsel, PNG