

TASMANIA

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**PRIMARY PRODUCE SAFETY (HORTICULTURE  
PRODUCE) REGULATIONS 2023**

**STATUTORY RULES 2023, No. 85**

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## **PRIMARY PRODUCE SAFETY (HORTICULTURE PRODUCE) REGULATIONS 2023**

I, the Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia, acting with the advice of the Executive Council, make the following regulations under the *Primary Produce Safety Act 2011*.

Dated 20 November 2023.

B. BAKER  
Governor

By Her Excellency's Command,

JO PALMER  
Minister for Primary Industries and Water

### **PART 1 – PRELIMINARY**

#### **1. Short title**

These regulations may be cited as the *Primary Produce Safety (Horticulture Produce) Regulations 2023*.

#### **2. Commencement**

These regulations take effect on the day on which their making is notified in the *Gazette*.

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**3. Interpretation**

(1) In these regulations –

*accredited horticulture producer* means the proprietor of a horticulture produce business who is an accredited producer;

*Act* means the *Primary Produce Safety Act 2011*;

*food business* has the same meaning as in the *Food Act 2003*;

*full-time horticulture produce handler* means a person who directly engages in the primary production of seed sprouts –

- (a) as an employee or agent of a horticulture produce business; and
- (b) for 38 hours in a week;

*home horticulture production* means the production or processing of seed sprouts that does not involve one or more of the following:

- (a) the supply of seed sprouts to a horticulture produce business;
- (b) the supply of seed sprouts to a food business;
- (c) the supply of seed sprouts at a market;

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- (d) the supply of seed sprouts by way of retail or wholesale;

***horticulture produce business*** means a primary produce business, or proposed primary produce business, that consists, in whole or in part, of the primary production of seed sprouts other than home horticulture production;

***horticulture produce premises*** means premises on which a horticulture produce business is carried on;

***horticulture producer*** means a person who engages in the primary production of seed sprouts;

***primary production of seed sprouts*** means one or more of the following activities undertaken to supply seed sprouts for human consumption to a food business or a horticulture business:

- (a) the decontamination of seed or seed sprouts by using a controlled environment to reduce the level of pathogenic organisms that may be present in the seed or seed sprouts;
- (b) the soaking of seed;
- (c) the germination or growth of seed;
- (d) the harvest of seed sprouts;

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- (e) the washing, drying or packing of seed sprouts;

*seed sprouts* means young seedlings that, when prepared for human consumption –

- (a) include all or part of the seed; and
  - (b) are intended for human consumption; and
  - (c) are grown from –
    - (i) alfalfa, broccoli, clover, onion, radish or sunflower seeds or other seeds; or
    - (ii) mung beans or other beans; or
    - (iii) snow peas or other peas.
- (2) In these regulations, a reference to a seed is a reference to a seed used in the production of seed sprouts.

**4. Meaning of *primary production activity***

The primary production of seed sprouts is a prescribed activity, for the purposes of paragraph (j) of the definition of *primary production activity* in section 5(1) of the Act.

**5. Application for accreditation to take into account certain offences**

The following Acts are prescribed Acts for the purposes of section 14(3)(a)(iii) of the Act:

- (a) *Agricultural and Veterinary Chemicals (Control of Use) Act 1995;*
- (b) *Agricultural and Veterinary Chemicals (Tasmania) Act 1994;*
- (c) *Animal (Brands and Movement) Act 1984;*
- (d) *Animal Farming (Registration) Act 1994;*
- (e) *Animal Health Act 1995;*
- (f) *Animal Welfare Act 1993;*
- (g) *Biosecurity Act 2019;*
- (h) *Environmental Management and Pollution Control Act 1994;*
- (i) *Plant Quarantine Act 1997;*
- (j) *Public Health Act 1997;*
- (k) *Seeds Act 1985;*
- (l) *Vermin Control Act 2000;*
- (m) *Weed Management Act 1999.*

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Part 2 – Seed Sprouts Food Safety Scheme

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**PART 2 – SEED SPROUTS FOOD SAFETY SCHEME**

**6. Interpretation**

In this Part –

*approved seed sprouts food safety auditor,*  
means a food safety auditor approved in relation to seed sprouts under Part 11 of the Act to audit food safety programs;

*approved seed sprouts food safety program*  
means a food safety program, in respect of seed sprouts, that is an approved food safety program.

**7. Establishment of seed sprouts food safety scheme**

- (1) A food safety scheme in respect of seed sprouts is established.
- (2) In any document, a reference to the seed sprouts food safety scheme is taken to be a reference to the food safety scheme established by this Part, as amended from time to time.

**8. Application of seed sprouts food safety scheme**

- (1) The seed sprouts food safety scheme applies to –
  - (a) all primary produce comprised, in whole or in part, of seed sprouts; and

- (b) all primary production activities involving the primary production of seed sprouts.
- (2) The following persons must comply with the seed sprouts food safety scheme:
- (a) a person who supplies primary produce to which the seed sprouts food safety scheme applies;
  - (b) a person who engages in, or proposes to engage in, a primary production activity to which the seed sprouts food safety scheme applies.

**9. Standard applying under seed sprouts food safety scheme**

- (1) A person who is required to comply with the seed sprouts food safety scheme must comply with *Standard 4.2.6 – Primary Production and Processing Standard for Seed Sprouts* in the Food Standards Code, as amended or substituted from time to time.
- (2) Subregulation (1) is in addition to, and does not remove or replace, a requirement within another food safety scheme or standard that applies to a person referred to in subregulation (1).

**10. Requirement to be accredited**

The proprietor of a horticulture produce business involved in the primary production of seed

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sprouts is required to be accredited under the seed sprouts food safety scheme.

**11. Requirement for accreditation**

It is a requirement for accreditation under this seed sprouts food safety scheme that the applicant for the accreditation –

- (a) has made appropriate arrangements to comply with the requirements of the Act and this seed sprouts food safety scheme; or
- (b) proposes to make appropriate arrangements to comply with the requirements of the Act and this seed sprouts food safety scheme and has the capacity to make those arrangements before the accreditation is to commence.

**12. Register of accreditation**

- (1) The Chief Inspector is to establish a public register of the persons holding an accreditation under the seed sprouts food safety scheme established by these regulations.
- (2) The register established under this regulation is to contain particulars in respect of the following relevant matters as they relate to an accreditation granted to a horticulture producer in relation to seed sprouts:
  - (a) granting of accreditations;

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- (b) conditions attached to accreditations;
  - (c) variation or revocation of a condition attached to accreditations;
  - (d) suspension of accreditations;
  - (e) cancellation or revocation of accreditations;
  - (f) surrender of accreditations;
  - (g) transfer of accreditations.
- (3) The register is to be available for inspection, without charge and during normal business hours, on a written request to the Chief Inspector.
- (4) A person inspecting the register under subregulation (3) may, on payment of any reasonable fee determined by the Chief Inspector that does not exceed 50 fee units, do one or more of the following:
- (a) obtain an extract of an entry in the register;
  - (b) obtain a copy of anything contained in the register.

**13. Requirement to prepare and implement food safety program**

An accredited horticulture producer must prepare and implement a food safety program in respect of each activity involving seed sprouts

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for which the accredited horticulture producer holds accreditation under the seed sprouts food safety scheme.

**14. Auditing requirements**

- (1) An approved seed sprouts food safety program must be audited by an approved seed sprouts food safety auditor –
  - (a) at intervals determined and notified by the Chief Inspector in respect of –
    - (i) the approved seed sprouts food safety program; or
    - (ii) approved seed sprouts food safety programs generally; or
  - (b) if no intervals are determined and notified under paragraph (a), at least once every 12 months.
- (2) A notification by the Chief Inspector under subregulation (1)(a) is to be made in writing to the accredited seed sprouts producer of the approved seed sprouts food safety program.

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**PART 3 – OFFENCES**

**15. Seed sprouts must be lawfully produced**

- (1) A person must not supply seed sprouts that have not been lawfully produced for human consumption.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 250 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues; or
  - (b) an individual, a fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.
- (2) For the purposes of this regulation, seed sprouts are taken to have been lawfully produced for human consumption if –
- (a) in the case of horticulture produce that has been produced outside of Australia, it has been lawfully imported into Australia; or

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- (b) in the case of, and to the extent that, horticulture produce has been produced or processed, or both, within Australia, the production or processing, or both, has been carried out –
  - (i) if within Tasmania, in accordance with the requirements of the Act; or
  - (ii) if within a State or Territory of Australia other than the State of Tasmania, in accordance with any applicable corresponding law of that State or Territory.
- (3) An offence against this regulation is an offence of strict liability.

**16. Infringement notices**

For the purposes of section 53 of the Act –

- (a) an offence specified in column 1 of the table in Schedule 1 is prescribed as an offence for which an infringement notice may be served; and
- (b) a penalty specified in column 2 of the table in Schedule 1 is prescribed as the penalty for a natural person for the corresponding offence specified in column 1 of the table; and

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- (c) a penalty specified in column 3 of the table in Schedule 1 is prescribed as the penalty for a body corporate for the corresponding offence specified in column 1 of the table.

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**PART 4 – MISCELLANEOUS**

**17. Periodic fees and returns**

For the purposes of section 16 of the Act –

- (a) the period prescribed as the period for which payment of the fee under section 16(1) of the Act must be paid is the period of 12 months ending on the last day of June in any calendar year; and
- (b) the date prescribed for the payment of the fee, and the lodgement of a return, under section 16(1) of the Act is 1 July immediately after the period prescribed under paragraph (a); and
- (c) the fee prescribed to be paid under section 16(1) of the Act is the relevant annual fee specified in item 4 of the table in Schedule 2; and
- (d) the fee prescribed as a penalty for default under section 16(2) of the Act is the penalty for default specified in item 5 of the table in Schedule 2.

**18. Fees generally**

- (1) In this regulation –

*Aboriginal person* has the same meaning as in the *Aboriginal Lands Act 1995*;

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**GST** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

- (2) The fees specified in Schedule 2 –
  - (a) are, unless otherwise specified, exclusive of GST; and
  - (b) are prescribed as the fees payable in respect of the matters to which they relate.
- (3) The Chief Inspector may, in relation to any of the following circumstances, exempt a person, or class of persons, from the liability for all or part of a fee payable under these regulations:
  - (a) the horticulture produce business carried on by the person involves the export of seed sprouts, to another country, in accordance with a law of the Commonwealth;
  - (b) the horticulture produce business carried on by the person forms part of, or is attached to, a food business registered under the *Food Act 2003* that is carried on by that person at the same premises as the horticulture produce business;
  - (c) the person is an Aboriginal person engaging in a primary production activity of traditional or cultural significance within the Tasmanian Aboriginal community;

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- (d) the person holds, or has applied for, accreditation under two or more food safety schemes;
- (e) the horticulture produce business carried on by the person is carried on by the person primarily for a charitable, educational or other non-commercial purpose;
- (f) the circumstances are exceptional circumstances in which it would be just and equitable to exempt the person from all or part of the fee.

**19. Legislation rescinded**

The legislation specified in Schedule 3 is rescinded.

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**SCHEDULE 1 – INFRINGEMENT NOTICE OFFENCES**

			Regulation 16
	<b>Offence</b>	<b>Penalty – Individual (Penalty units)</b>	<b>Penalty – Body corporate (Penalty units)</b>
1.	Regulation 15	5	10

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**SCHEDULE 2 – FEES**

Regulations 17 and 18

	<b>Matter</b>	<b>Fee (Fee units)</b>
1.	Application under section 12 of the Act for accreditation of a horticulture producer	350
2.	Application under section 18 of the Act for variation of accreditation of a horticulture producer –	
	(a) if the variation does not involve the approval or variation of a seed sprouts food safety program	250
	(b) if the variation involves the variation of an approved seed sprouts food safety program for the accreditation	300
	(c) if the variation involves the approval of a new seed sprouts food safety program for the accreditation that is in addition to, or in substitution for, an existing approved seed sprouts food safety program for the accreditation	300
3.	Application under section 19 of the Act for transfer of accreditation of a horticulture producer	300
4.	Annual fee for accredited horticulture producer whose maximum number of persons employed or engaged, by that producer at any point during the 12 months preceding the calculation of the fee, was equivalent to the following:	
	(a) fewer than 5 full-time horticulture produce handlers	175
	(b) 5-50 full-time horticulture produce handlers	350

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	<b>Matter</b>	<b>Fee (Fee units)</b>
	(c) more than 50 full-time horticulture produce handlers	750
5.	Penalty for default in respect of an accredited horticulture producer	75

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**SCHEDULE 3 – LEGISLATION RESCINDED**

Regulation 19

*Primary Produce Safety (Seed Sprouts) Regulations 2014 (No.  
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Printed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on 29 November 2023.

These regulations are administered in the Department of Natural Resources and Environment Tasmania.

**EXPLANATORY NOTE**

*(This note is not part of the regulations)*

These regulations –

- (a) for the purposes of the *Primary Produce Safety Act 2011*–
  - (i) establish a food safety scheme in respect of seed and seed sprouts; and
  - (ii) prescribe the accreditation requirements in respect of the primary production of seed and seed sprouts; and
  - (iii) prescribe infringement notice offences and the penalties payable for those infringement notice offences; and
  - (iv) prescribe certain fees that are payable under that Act; and
- (b) rescind the *Primary Produce Safety (Seed Sprouts) Regulations 2014*.