

TASMANIA

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

STATUTORY RULES 2023, No. 91

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PRIMARY PRODUCE SAFETY (SEAFOOD) 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 19 December 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 (Seafood) 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 –

abalone means fish of the genus *Haliotis*;

accredited seafood producer means the proprietor of a seafood business who is an accredited producer;

Act means the *Primary Produce Safety Act 2011*;

approved area means an area classified as an approved area under regulation 18 as published under regulation 19;

approved seafood food safety auditor means a food safety auditor approved under Part 11 of the Act to audit food safety programs in respect of seafood;

approved seafood food safety program means a food safety program in respect of seafood that is an approved food safety program;

bivalve molluscs includes clams, cockles, mussels, oysters, pipis and scallops;

classification notice means a notice under regulation 18(1);

commercial fishing licence means a fishing licence under the *Living Marine Resources Management Act 1995* other than –

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- (a) a licence issued under that Act for recreational fishing within the meaning of that Act; or
 - (b) a marine farming licence;

depuration means a process of holding live seafood in a controlled aquatic environment to eliminate or reduce the level of pathogenic organisms that may be present in the seafood;

fish means any aquatic animal, whether dead or alive, of any species (other than amphibians, mammals or reptiles) which, in the normal course of events, spends part or all of its life in the aquatic environment;

full-time seafood handler means an individual who engages directly in the primary production of seafood –

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

growing on means the holding of live seafood in a marine farm to enable their growth and development prior to being sold or supplied for human consumption;

marine farm has the same meaning as in the *Living Marine Resources Management Act 1995*;

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marine farming licence has the same meaning as in the *Living Marine Resources Management Act 1995*;

primary production of seafood means any of the following activities undertaken to supply seafood to a food business, within the meaning of the *Food Act 2003*, or a seafood business:

- (a) the growing, cultivating, picking, harvesting, collecting or catching of seafood;
- (b) the growing on of seafood;
- (c) the transportation or delivery of seafood;
- (d) the holding of live seafood;
- (e) seafood processing;

regulated seafood includes –

- (a) abalone; and
- (b) bivalve molluscs; and
- (c) smoked or preserved seafood; and
- (d) any other species, or class, of seafood determined under regulation 4 to be regulated seafood;

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relaying, of regulated seafood, means the transfer of regulated seafood from one area to another for the purposes of –

- (a) the growing on of the regulated seafood; or
- (b) eliminating or controlling pathogenic organisms, toxins or contaminants in the regulated seafood, by using the change of ambient environment as a treatment process;

restricted area means an area classified as a restricted area under regulation 18 as published under regulation 19;

seafood business means a primary produce business, or a proposed primary produce business, that consists, in whole or in part, of the primary production of seafood;

seafood processing, other than the cooking or handling of seafood to prepare a meal for a person or the sale or service of seafood by way of retail, includes –

- (a) the killing, cutting or gutting of seafood; and
- (b) the depuration of seafood; and
- (c) the shucking or peeling of seafood; and

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- (d) the cooking, including steaming or boiling, of seafood; and
- (e) the brining of seafood; and
- (f) the smoking or crumbing of, or addition of other food to, seafood; and
- (g) the packing, treating, washing, freezing, refrigerating, canning or storing of seafood;

seafood producer means a producer who engages in, or is proposing to engage in, the primary production of seafood;

smoked or preserved seafood means seafood (other than live seafood) that has been smoked, cured, brined, or otherwise processed to be made suitable for human consumption without further heating or cooking, including –

- (a) hot or cold smoked seafood; and
- (b) canned seafood; and
- (c) pickled seafood; and
- (d) seafood pate; and
- (e) other similar ready-to-eat seafood;

spat means the juvenile spawn of molluscs that are taken or cultivated for the sole purpose of growing on;

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taking, of seafood, means the capturing, picking, harvesting or collecting of seafood (other than the capturing, picking, harvesting or collecting of seafood from wet storage) and includes the capturing, picking, harvesting and collecting of seafood from an enclosure or pond used in marine farming;

wet storage means the storage of live seafood in a tank, cistern or container that contains water and is not located in the sea or other natural water body;

wet storage facility means any facility, installation or apparatus that is used to hold live seafood on premises (including a vehicle) for the purposes of wet storage or depuration (or both).

- (2) For the avoidance of doubt, a notice made under these regulations is not –
- (a) a statutory rule for the purposes of the *Rules Publication Act 1953*; or
 - (b) subordinate legislation for the purposes of the *Subordinate Legislation Act 1992*.

4. Determination of regulated seafood

- (1) The Chief Inspector may determine a species, or class, of seafood to be regulated seafood for the purposes of these regulations.

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- (2) At least 28 days before making a determination under subregulation (1), the Chief Inspector must –
 - (a) publish a notice of the proposed determination in the *Gazette*; and
 - (b) specify, in the notice, a period of no less than 21 days from the date of publication of the notice during which the Chief Inspector will accept comments and submissions on the proposed determination.
- (3) The Chief Inspector must take into account any comments or submissions received under subregulation (2)(b) in respect of the proposed determination before the Chief Inspector makes a relevant determination under subregulation (1).
- (4) A determination under subregulation (1) takes effect on the day on which its making is notified in the *Gazette* or on such later day as specified in the determination.

5. Meaning of primary production activity

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

6. Seafood food safety scheme

- (1) These regulations establish, in Part 2, a food safety scheme in respect of seafood.

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- (2) In any document, a reference to the seafood safety scheme is taken to be a reference to Part 2 of these regulations, as amended from time to time.

7. 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 the 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 Schedule 1; 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 Schedule 1.

8. Fees generally

- (1) In this regulation –

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

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 1 –
- (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 exempt a person, or class of persons, from all or any part of a fee payable under these regulations in any of the following circumstances:
- (a) the seafood business carried on by the person involves the export of seafood, to another country, in accordance with a law of the Commonwealth;
 - (b) the seafood 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 seafood business;
 - (c) the person is an Aboriginal person engaging in a primary production activity of traditional or cultural significance

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within the Tasmanian Aboriginal community;

- (d) the person holds, or has applied for, accreditation under two or more food safety schemes;
- (e) the seafood 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.

9. 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*;

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- (g) *Biosecurity Act 2019*;
- (h) *Environmental Management and Pollution Control Act 1994*;
- (i) *Living Marine Resources Management Act 1995*;
- (j) *Plant Quarantine Act 1997*;
- (k) *Public Health Act 1997*;
- (l) *Seeds Act 1985*;
- (m) *Vermin Control Act 2000*;
- (n) *Weed Management Act 1999*.

PART 2 – SEAFOOD FOOD SAFETY SCHEME

Division 1 – General

10. Application of seafood food safety scheme

- (1) This seafood food safety scheme applies to –
 - (a) all primary produce comprised, in whole or in part, of seafood; and
 - (b) all primary production activities involving the primary production of seafood.
- (2) The following persons must comply with this seafood food safety scheme:
 - (a) a person who supplies primary produce to which this seafood food safety scheme applies;
 - (b) a person who engages in, or proposes to engage in, a primary production activity to which this seafood food safety scheme applies.

11. Standard applying under seafood food safety scheme

- (1) A person who is required to comply with the seafood food safety scheme must comply with *Standard 4.2.1 – Primary Production and Processing Standard for Seafood* in the Food

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Safety 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).

12. Requirement to be accredited

The proprietor of a seafood business that is involved in the primary production of any regulated seafood is required to be accredited under this seafood food safety scheme.

13. Requirement for accreditation

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

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

14. Requirement to prepare and implement a food safety program

- (1) Subject to subregulation (2), an accredited seafood producer must prepare and implement a food safety program in respect of each activity involving seafood for which the accredited seafood producer holds accreditation under this seafood food safety scheme.
- (2) The Chief Inspector may, by written notice, exempt an accredited seafood producer from the requirement to prepare and implement an approved seafood food safety program if the Chief Inspector is satisfied that –
 - (a) the accredited seafood producer –
 - (i) farms regulated seafood under a marine farming licence; and
 - (ii) moves any regulated seafood so farmed to the marine farm of another accredited seafood producer (who has prepared and implemented an approved seafood food safety program) for growing on before the regulated seafood are sold or supplied for human consumption; or
 - (b) the accredited seafood producer –
 - (i) takes wild regulated seafood under a commercial fishing licence; and

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- (ii) supplies any regulated seafood so taken to another accredited seafood producer (who has prepared and implemented an approved seafood food safety program) for processing or additional primary production before the regulated seafood are sold or supplied for human consumption.

15. Auditing requirements

An approved seafood food safety program must be audited by an approved seafood food safety auditor –

- (a) at intervals determined by the Chief Inspector in respect of the approved seafood food safety program, or approved seafood food safety programs generally, as notified in writing to the accredited seafood producer in respect of the approved seafood food safety program; or
- (b) if no such intervals are specified, at least once every 12 months.

16. Register of accreditation

- (1) The Chief Inspector is to establish a register of accredited seafood producers.

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- (2) The register established under this regulation is to contain the following particulars in respect of an accreditation granted to a seafood producer:
- (a) the granting of such an accreditation;
 - (b) any conditions attached to such an accreditation;
 - (c) any variation or revocation of a condition attached to such an accreditation;
 - (d) any suspension of such an accreditation;
 - (e) if such an accreditation is cancelled or revoked, the cancellation or revocation of the accreditation;
 - (f) if such an accreditation is surrendered, the surrender of the accreditation;
 - (g) if such an accreditation is transferred, the transfer of the accreditation.
- (3) The register established under this regulation is to be available for inspection, without charge and during normal business, 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 either or both of the following:
- (a) obtain an extract of an entry in the register established under this regulation;

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- (b) obtain a copy of anything contained in the register established under this regulation.

Division 2 – Specific requirements

17. Requirements for accredited seafood producers

- (1) An accredited seafood producer must ensure that the following requirements are complied with in respect of regulated seafood to be used in the primary production of seafood by the producer:
 - (a) subject to paragraph (b), the taking of regulated seafood, other than spat, must only be carried out in an approved area, or part of an approved area, that is open in respect of the class or species of the regulated seafood;
 - (b) regulated seafood must not be taken from a restricted area that is open, or an approved area that is closed, or part of that restricted area or approved area, in respect of the class or species of regulated seafood unless –
 - (i) the regulated seafood is not to be supplied for human consumption; or
 - (ii) the taking of the regulated seafood is carried out for the purposes of relaying the regulated seafood in accordance with a relaying authorisation; or

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- (iii) the taking of the regulated seafood is carried out for the purpose of transferring the regulated seafood to a wet storage facility for depuration, in accordance with a wet storage authorisation;
- (c) regulated seafood, other than spat, must not be brought into an approved area unless, immediately before being brought into the area, the regulated seafood was taken from –
 - (i) another approved area, or part of that approved area, in respect of that class or species of regulated seafood; or
 - (ii) a restricted area, or part of a restricted area, that is open in respect of that class or species of regulated seafood;
- (d) regulated seafood must not be relayed, to an approved area that is open in respect of that class or species of regulated seafood, from –
 - (i) an approved area, or part of an approved area, that is closed in respect of the class or species of regulated seafood; or
 - (ii) a restricted area, or part of a restricted area, that is open in

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respect of the class or species of regulated seafood –

except in accordance with a written authorisation (a *relaying authorisation*) issued by the Chief Inspector;

- (e) regulated seafood that have been relayed to an approved area, or part of an approved area, under a relaying authorisation –
 - (i) must be kept in an area that is clearly marked as a relaying area; and
 - (ii) must be adequately separated from other seafood and regulated seafood so as to avoid cross-contamination and mingling; and
 - (iii) must be treated in accordance with each requirement or condition of the relaying authorisation, if any, including requirements and conditions relating to the elimination or control of pathogenic organisms, toxins and contaminants in the seafood;
- (f) regulated seafood intended for human consumption must not be held in a wet storage facility unless –
 - (i) in accordance with a written authorisation (a *wet storage*

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- authorisation*) issued by the Chief Inspector; and
- (ii) all requirements and conditions of the wet storage authorisation, if any, are complied with, including:
- (A) any requirement or condition relating to the design, performance, testing and operation of the wet storage facility; and
 - (B) any requirement or condition relating to the sourcing, treatment and testing of the regulated seafood being held in the facility, and the water in which the seafood is being held; and
 - (C) if the regulated seafood is subject to depuration, any requirement or condition in respect of that depuration;
- (g) regulated seafood taken for human consumption must –
- (i) be stored and handled in a manner that ensures that it can be readily distinguished from any regulated seafood taken on a

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different day, or from a different area; and

(ii) before being supplied to another person, be identified with –

(A) the name of the accredited seafood producer; and

(B) the number of the accredited seafood producer's accreditation; and

(C) the date on which the specific regulated seafood was taken; and

(D) details identifying the approved area, or restricted area, from which the specific regulated seafood was taken;

(h) if the accredited seafood producer is exempt under regulation 14(2)(a) from the requirement to prepare and implement an approved seafood food safety program, any regulated seafood farmed under a marine farming licence must be moved to the marine farm of another accredited seafood producer (who is not exempt from the requirement to prepare and implement an approved seafood food safety program) for

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- growing on before being taken for sale or supply for human consumption;
- (i) if the accredited seafood producer is exempt under regulation 14(2)(b), from the requirement to prepare and implement an approved seafood food safety program, any wild regulated seafood taken under a commercial fishing licence must be supplied to another accredited seafood producer (who is not exempt from the requirement to prepare and implement an approved seafood food safety program) for processing or further primary production before being sold or supplied for human consumption;
 - (j) regulated seafood must not be sold or supplied for human consumption unless –
 - (i) the processing of the regulated seafood has been done in accordance with each condition that applies under regulation 18(2); or
 - (ii) the sale or supply of the regulated seafood is to another accredited seafood producer who complies with each condition that applies under regulation 18(2) before selling or supplying the regulated seafood for human consumption;

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- (k) the accredited seafood producer must, in accordance with a written or verbal request of an authorised officer –
 - (i) provide samples of seafood and water for testing; and
 - (ii) facilitate the taking and testing of samples of seafood or water by, or under the authority of, the authorised officer;
- (l) if the accredited seafood producer forms the belief or suspicion that any seafood, supplied by the accredited seafood producer for human consumption, may be unsafe or unsuitable for human consumption, the accredited seafood producer must notify the Chief Inspector of the belief or suspicion as soon as is reasonably practicable after forming the belief or suspicion.
- (2) If an authorised officer makes a verbal request as referred to in subregulation (1)(k), the authorised officer must, as soon as practicable after making the verbal request, confirm the request in writing and provide it to the accredited seafood producer who was the subject of the request.

18. Classification and opening of certain areas

- (1) The Chief Inspector may, by written notice published in accordance with regulation 19 –

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- (a) classify, for the purposes of this seafood food safety scheme, an area as –
- (i) an approved area for the taking of the class or species of regulated seafood specified in the notice; or
 - (ii) a restricted area for the taking of the class or species of regulated seafood specified in the notice; or
- (b) temporarily close all or part of an approved area, or restricted area, in respect of all regulated seafood or any class or species of regulated seafood specified in the notice; or
- (c) vary or revoke a notice made under this subregulation.
- (2) A classification notice may be made subject to any conditions the Chief Inspector considers appropriate.
- (3) The Chief Inspector is to take into account the following before making a classification notice:
- (a) the objectives of the Act;
 - (b) the relevant standard;
 - (c) any program, code, standard, document or guideline relating to safety or suitability of seafood that the Chief Inspector has notified in the *Gazette*;
 - (d) any advice or direction given to the Chief Inspector by the Director of Public

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Health or the Director of the Environment Protection Authority in respect of the safety or suitability of seafood that may be taken from the area to which the classification notice relates.

- (4) The Chief Inspector must provide the Director of Public Health, and the Director of the Environment Protection Authority, with a reasonable opportunity to assess and comment on a program, code, standard, document or guideline that the Chief Inspector intends to notify under subregulation (3)(c).
- (5) Without limiting subregulation (4), the Chief Inspector provides a reasonable opportunity under that subregulation if the Chief Inspector provides a written copy of the proposed notice to the Director of Public Health, and the Director of the Environment Protection Authority, at least 28 days before the notice is to be published in the *Gazette*.

19. Form and publication of classification notice

- (1) A classification notice is to –
 - (a) specify –
 - (i) the day on which the classification notice takes effect;
or
 - (ii) that the classification notice takes effect on publication; and

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- (b) clearly identify the area or areas to which the classification notice relates; and
 - (c) specify any conditions to which the classification notice is subject.
- (2) A classification notice may specify –
 - (a) the period during the year when an area classified in the classification notice is, or parts of that area are, to be open; and
 - (b) the class or species of regulated seafood for which an area, or part of an area, classified in the classification notice is to be open.
- (3) If a classification notice does not specify –
 - (a) the period when an area, or part of an area, is to be open under subregulation (2)(a); or
 - (b) the class or species of regulated seafood for which the area, or part of an area, is to be open under subregulation (2)(b) –
the area, or part, is taken to be open throughout the year, or open in respect of all classes and species of regulated seafood, respectively.
- (4) The Chief Inspector is to publish a classification notice by one or more of the following means:
 - (a) sending a copy of the classification notice by –

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- (i) electronic mail to the email address of each affected accredited seafood producer; or
 - (ii) any other electronic means to each affected accredited seafood producer who has agreed to receive classification notices in that format;
 - (b) causing a copy of the classification notice to be published electronically on a website able to be viewed or accessed by the general public;
 - (c) publishing a copy of the classification notice in the *Gazette*.
- (5) An accredited seafood producer is taken to have received a classification notice –
- (a) in the case of a classification notice published in accordance with subregulation (4)(a), on the day and at the time a copy of the classification notice is sent by electronic mail, or other electronic means, to the producer; and
 - (b) in the case of a classification notice published in accordance with subregulation (4)(b), on the day and at the time of the electronic publication of a copy of the classification notice; and
 - (c) in the case of a classification notice published in accordance with subregulation (4)(c), on the day a copy of

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the classification notice is published in
the *Gazette*.

PART 3 – OFFENCES

20. Seafood must be lawfully produced

- (1) A person must not supply any seafood that has 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) An offence against this regulation is an offence of strict liability.
- (3) For the purposes of this regulation, seafood is taken to have been lawfully produced for human consumption if –
- (a) in the case of seafood that has been produced outside of Australia, it has been lawfully imported into Australia; and

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- (b) in any other case, to the extent to which the seafood has been produced or processed in Australia, the production or processing has been carried out –
 - (i) in accordance with the requirements of the Act or these regulations; or
 - (ii) in accordance with any applicable corresponding law if the production or processing occurred in another State or Territory.

21. Infringement notices

- (1) The offences that are created by the provisions of these regulations specified in column 2 of the table in Schedule 2 are prescribed offences for the purposes of section 53 of the Act.
- (2) The prescribed penalty for each of the prescribed offences is the penalty specified opposite that offence in column 3 in the table in Schedule 2.

22. Legislation rescinded

The legislation specified in Schedule 3 is rescinded.

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sch. 1

SCHEDULE 1 – FEES

Regulations 7 and 8

	Description	Fee units
1.	Application under section 12 of the Act for accreditation of a seafood producer	350
2.	Application under section 18 of the Act for variation of accreditation of a seafood producer –	
	(a) if the variation does not involve the approval or variation of a seafood food safety program	250
	(b) if the variation involves the variation of an approved seafood food safety program for the accreditation	300
	(c) if the variation involves the approval of a new seafood food safety program for the accreditation that is in addition to, or in substitution for, an existing approved seafood food safety program for the accreditation	300
3.	Application under section 19 of the Act for transfer of accreditation of a seafood producer	300

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sch. 2

SCHEDULE 2 – INFRINGEMENT NOTICE OFFENCES
Regulation 21

	Regulation	Penalty (penalty units)	
		Individual	Body corporate
1.	Regulation 20(1)	5	10

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sch. 3

SCHEDULE 3 – LEGISLATION RESCINDED

Regulation 22

Primary Produce Safety (Seafood) Regulations 2014 (No. 25
of 2014)

Primary Produce Safety (Seafood) Regulations 2023
Statutory Rules 2023, No. 91

Printed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on 20 December 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) prescribe, for the purposes of the *Primary Produce Safety Act 2011* –
 - (i) the food safety scheme in respect of seafood; and
 - (ii) the accreditation requirements in respect of the production of seafood; and
 - (iii) other miscellaneous matters in relation to seafood; and
- (b) rescind the *Primary Produce Safety (Seafood) Regulations 2014*.