

Version No. 012
Seafood Safety Act 2003
No. 24 of 2003

Version incorporating amendments as at
24 May 2012

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Seafood Safety Act 2003

No. 24 of 2003

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24 May 2012

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purpose and outline

- (1) The purpose of this Act is to—
- (a) complement the **Food Act 1984** by providing a regulatory system under which all sectors in the seafood supply chain are required to manage food safety risks in accordance with the relevant applicable standards;
 - (b) make related amendments to the **Meat Industry Act 1993**;
 - (c) amend the **Dairy Act 2000**, the **Food Act 1984** and the **Fisheries Act 1995**.
- (2) In outline this Act—
- provides for a scheme to regulate the safety of seafood in Victoria;
 - defines *seafood* and *seafood business*;
 - confers the administration of this Act on the Victorian Meat Authority as re-named PrimeSafe by this Act;

- specifies that the **Food Act 1984** is to prevail in the event of any inconsistency;
- provides for the licensing of seafood businesses;
- enables the making of Codes of Practice and the approval of food safety programs;
- provides for the enforcement of the Act, including the powers of authorised officers and matters relating to legal proceedings under the Act;
- enables specified decisions of the Authority to be reviewed by the Victorian Civil and Administrative Tribunal;
- empowers the making of regulations for the purposes of this Act;
- makes related amendments to the **Meat Industry Act 1993** and amends the **Dairy Act 2000**, the **Food Act 1984** and the **Fisheries Act 1995**.

(3) Subsection (2) is intended only as a guide to readers as to the general scheme of this Act.

2 Commencement

- (1) Section 1, this section and sections 74(2), 81 and 85 come into operation on the day after the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in subsection (2) does not come into operation before 1 January 2005, it comes into operation on that day.

3 Definitions

In this Act—

authorised officer means any person authorised as an inspector under section 70(1) of the **Meat Industry Act 1993**;

Authority has the same meaning as in the **Meat Industry Act 1993**;

chief executive officer means the chief executive officer of the Authority engaged under section 54 of the **Meat Industry Act 1993**;

Code of Practice means a Code of Practice made under section 19;

food business has the same meaning as in the **Food Act 1984**;

licensee means the holder of a seafood safety licence;

owner in relation to any premises—

(a) includes in any case, the—

(i) occupier; or

(ii) person in charge or apparently in charge; or

(iii) owner's agent; or

(iv) owner's manager; and

(b) in the case of a body corporate or unincorporate, also includes the manager, secretary or other controlling officer of that body;

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

premises includes—

- (a) land (whether or not vacant); and
- (b) the whole or any part of a building, tent, stall or other structure (whether of a permanent or temporary nature); and
- (c) a pontoon;

prescribed means prescribed by the regulations;

prescribed food standard has the same meaning as in section 4(1) of the **Food Act 1984**;

regulations means regulations made under this Act;

seafood means—

- (a) any marine, estuarine or freshwater fish;
- (b) any other aquatic vertebrate animal, except crocodile;
- (c) any other aquatic invertebrate animal;
- (d) any products of fish or other aquatic animals referred to in paragraphs (a), (b) and (c);
- (e) any other food or class of food prescribed to be seafood for the purposes of this Act—

but does not include any species of fish or aquatic animal or any food or class of food prescribed not to be seafood for the purposes of this Act;

seafood business has the meaning given by section 4;

seafood safety licence means a licence issued by the Authority under Part 3;

sell has the same meaning as in section 4(1) of the
Food Act 1984;

Tribunal means the Victorian Civil and
Administrative Tribunal established under
the **Victorian Civil and Administrative
Tribunal Act 1998;**

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 air-cushion vehicle.

4 What is a seafood business?

- (1) In this Act, *seafood business* means a business—
- (a) that involves the handling of seafood
intended for sale (whether wholesale or
retail) for human consumption; or
 - (b) of a type or class prescribed to be a seafood
business—

but does not include a business of a type or class
prescribed not to be a seafood business.

- (2) For the purposes of subsection (1), a seafood
business does not include a food business where
the main activity is not the handling of seafood.
- (3) For the purposes of this Act, the handling of
seafood includes—
- (a) the harvesting or collection of seafood;
 - (b) aquaculture;
 - (c) the maintaining of live shellfish, crustaceans
and echinoderms for later processing;
 - (d) the depuration of shellfish;

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- (e) the processing of seafood including (but not limited to)—
- (i) the skinning, gilling, gutting, filleting or shucking of seafood;
 - (ii) the smoking, preserving, canning, curing or drying of seafood;
 - (iii) the extracting, mincing, blending or slicing of seafood;
 - (iv) the mixing of seafood with other substances;
 - (v) the cooking of seafood (other than the cooking of seafood for immediate sale for human consumption without any further processing);
 - (vi) the packaging, storing and transporting of seafood.
- (4) For the purposes of this Act, the handling of seafood does not include—
- (a) the maintaining or otherwise handling of fin-fish live for later processing; or
 - (b) the maintaining or otherwise handling of live seafood intended for sale for the purpose of growing on.
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PART 2—ADMINISTRATION

5 Administration of Act

Subject to the general direction and control of the Minister, the Authority has the administration of this Act.

6 Objective and functions of the Authority

- (1) The objective of the Authority under this Act is to ensure that all sectors in the seafood supply chain manage food safety risks in accordance with the relevant applicable standards.
- (2) Subject to this Act, the Authority may for the purposes of this Act, perform the functions and exercise the powers conferred on the Authority under this Act or the **Meat Industry Act 1993**.

7 Application of Act to Crown

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

8 Application of Act, inconsistency and exemptions

- (1) This Act does not apply to a seafood business that is a business in respect of which there is an authority in force that corresponds to a seafood safety licence under a corresponding law of the Commonwealth or another State or Territory of the Commonwealth.
- (2) If there is any inconsistency between a provision of this Act and a provision of the **Food Act 1984**, the provision of the **Food Act 1984** prevails to the extent of the inconsistency.

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- (3) The regulations may exempt from the operation of this Act, or a specified provision of this Act, a specified person, business, activity, product, matter or thing or a specified class of persons, businesses, activities, products, matters or things.
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PART 3—LICENSING

9 Seafood business to be licensed

- (1) Subject to subsection (2), a person must not commence or conduct a seafood business unless that person holds a current and valid seafood safety licence in respect of the business.

Penalty: For a first offence, 100 penalty units.

For a subsequent offence, 500 penalty units or 24 months imprisonment or both.

- (2) Subsection (1) does not apply to a person who conducts a seafood business that involves only primary food production, until 6 months after the day that this section comes into operation.
- (3) In this section *primary food production* has the same meaning as in section 4C of the **Food Act 1984**.

10 Exemptions from licensing requirement

- (1) The Authority may in writing grant an exemption to a person conducting a seafood business from the requirement to hold a seafood safety licence if—

(a) the person—

- (i) is the proprietor of a food business for a food premises or a class of food premises that is registered under Part VI of the **Food Act 1984** and that registration is in force; or
- (ii) holds a current and valid licence under Part 4 of the **Meat Industry Act 1993**; or
- (iii) holds a current and valid licence under Part 3 of the **Dairy Act 2000**; and

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- (b) it is a requirement of the relevant Act referred to in paragraph (a) that there is a quality assurance program or food safety program, which in the opinion of the Authority adequately covers seafood safety, in respect of the seafood business of the person.
- (2) An exemption under subsection (1) may be granted by the Authority to a person or to a class of persons—
- (a) on its own motion or on the application of a person on the person's behalf or on behalf of a class of persons; and
 - (b) on payment by a person of a fee fixed in respect of an exemption for the relevant seafood safety licence or class of seafood safety licence by the Authority.
- (3) The Authority may amend, vary or revoke an exemption granted under subsection (1).

11 Application for a seafood safety licence

An application for the issue or renewal of a seafood safety licence must be made to the Authority—

- (a) in the form approved by the Authority; and
- (b) containing the particulars required by the Authority; and
- (c) together with the fee fixed for that seafood safety licence or class of seafood safety licence by the Authority.

12 Licence fees

- (1) The Authority may in respect of the issue or renewal of seafood safety licences fix—
 - (a) specific fees; or
 - (b) maximum or minimum fees; or
 - (c) differential fees; or
 - (d) scales of fees.
- (2) The Authority must determine—
 - (a) the criteria for determining; and
 - (b) the structure of—
licence fees in consultation with the seafood industry.
- (3) The criteria may include—
 - (a) the value of services provided to a licensee;
 - (b) the value of industry wide benefits;
 - (c) the scale of operations of each licensee.

13 Seafood safety licences

- (1) A seafood safety licence must be issued or renewed by the Authority—
 - (a) subject to this Act and to any terms and conditions that are determined by the Authority;
 - (b) in the form approved by the Authority;
 - (c) only in respect of the places or circumstances specified in the licence;
 - (d) for any period that is determined by the Authority being a period not greater than 3 years and which period must be specified in the licence;

- (e) unless sooner cancelled or suspended, to remain in force until the day specified in the licence for the expiration of that licence.
- (2) The Authority may determine different classes of seafood safety licences.

14 Mandatory powers of Authority in respect of licences

- (1) The Authority must—
 - (a) refuse to issue;
 - (b) issue or renew subject to conditions (if any);
 - (c) refuse to renew;
 - (d) cancel;
 - (e) suspend for a specified period—

a seafood safety licence on any of the grounds specified in subsection (2) and must in any such case notify the applicant or licensee in writing of the ground for doing so.
- (2) The grounds are—
 - (a) the Authority is not satisfied that the applicant or licensee, as the case may be, holds an appropriate fishery licence, authorisation or permit under the **Fisheries Act 1995** that is necessary to carry on the activities to which the application or seafood safety licence relates;
 - (b) the licensee has ceased to conduct a business of the nature specified in the application or the licence;

(c) the applicant or the licensee, as the case may be, has been convicted of an offence in relation to a requirement of—

(i) this Act, the **Public Health and Wellbeing Act 2008**, the **Food Act 1984**, the **Meat Industry Act 1993** or the **Dairy Act 2000** (including any regulation, code of practice or other subordinate instrument made under those Acts); or

(ii) a law of the Commonwealth or another State or a Territory of the Commonwealth that corresponds to a requirement specified in subparagraph (i)—

and the Authority considers the gravity of the offence sufficient to justify its decision under subsection (1);

(d) any other ground which is prescribed for the purposes of this section.

S. 14(2)(c)(i)
amended by
No. 46/2008
s. 286.

15 Discretionary powers of Authority in respect of licences

(1) The Authority may—

- (a) refuse to issue;
- (b) issue or renew subject to conditions (if any);
- (c) refuse to renew;
- (d) cancel;
- (e) suspend for a specified period—

a seafood safety licence on any of the grounds specified in subsection (2) and must in any such case notify the applicant or licensee in writing of the ground for doing so.

S. 15(2)(a)
amended by
No. 46/2008
s. 286.

- (2) The grounds are—
- (a) the applicant or the licensee or the seafood business, as the case may be, does not meet or comply with any requirement of this Act, the **Public Health and Wellbeing Act 2008** or the **Food Act 1984** (including any regulation, code of practice or other subordinate instrument made under those Acts) that is applicable and the Authority considers that the failure to meet or comply with the requirement is sufficient to justify its decision under subsection (1);
 - (b) the applicant or licensee owes a debt to the Authority;
 - (c) any other ground which is prescribed for the purposes of this section.

16 Authority may impose conditions

The Authority may insert a new condition or amend, vary or delete any condition or other matter specified in a seafood safety licence and must advise the licensee in writing of any such insertion, amendment, variation or deletion.

17 Failure to comply with licence conditions

A licensee must comply with any conditions specified in the seafood safety licence.

Penalty: For a first offence, 50 penalty units.

For a subsequent offence, 100 penalty units or 12 months imprisonment or both.

18 Suspension or cancellation of licence

- (1) Before suspending or cancelling a licence under section 14(1) or 15(1) the Authority must—
- (a) give written notice to the licensee of its intention and the reasons for it; and

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- (b) give the licensee a reasonable opportunity to make written submissions to it on the matter; and
 - (c) if the ground for suspension or cancellation is non-compliance by the licensee with a requirement of a Code of Practice—
 - (i) state what the licensee has to do to comply with the requirement; and
 - (ii) specify a period within which the requirement must be complied with; and
 - (iii) be satisfied that the licensee has not complied with the requirement within that specified period.
- (2) While a person's licence is suspended, the person must be taken not to hold a licence.
 - (3) If a suspended licence is renewed during the suspension period, the suspension continues to apply to the new licence.
 - (4) The Authority may at any time revoke the suspension of a licence.
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PART 4—SEAFOOD SAFETY

Division 1—Codes of Practice

19 Codes of Practice

- (1) The Authority may make Codes of Practice in accordance with this Division.
- (2) A Code of Practice must be approved by the Minister before it is made.
- (3) A Code of Practice may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—
 - (a) wholly or partially or as amended by the Code of Practice; or
 - (b) as formulated, issued, prescribed or published at the time the Code of Practice is made or at any time before then; or
 - (c) as formulated, issued, prescribed or published from time to time.
- (4) If a Code of Practice has applied, adopted or incorporated any matter contained in any document, code, standard, rule, specification or method as formulated, issued, prescribed or published from time to time and that document, code, standard, rule, specification or method is at any time amended, until the Authority causes notice to be published in the Government Gazette of that amendment, the document, code, standard, rule, specification or method is to be taken not to have been so amended.

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- (5) A Code of Practice may—
- (a) confer a discretionary authority or impose a duty on a specified person or body or a specified class of persons and bodies;
 - (b) leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by the Authority;
 - (c) authorise an officer or employee of the Authority to enforce the Code of Practice.

20 Procedure for making a Code of Practice

- (1) Before the Authority makes a Code of Practice it must comply with the following procedure.
- (2) The Authority must give a notice stating—
 - (a) the purpose and general purport of the proposed Code of Practice;
 - (b) where a copy of the proposed Code of Practice can be obtained or inspected;
 - (c) that any person may make a submission on the proposed Code of Practice to the Authority within the period specified in the notice.
- (3) The Authority must allow at least 28 days after the day on which a notice is given under subsection (2) for the making of submissions.
- (4) After the Authority has considered any submission, the Authority must give a notice stating that it intends to make the Code of Practice.
- (5) A notice under this section must be—
 - (a) published in the Government Gazette;
 - (b) published in a daily newspaper generally circulating in Victoria;

- (c) sent to seafood industry bodies or organisations that the Authority considers are likely to be affected by the proposed Code of Practice.

21 Commencement of Code of Practice

A Code of Practice or a provision of a Code of Practice comes into operation at the beginning of the day on which the Code of Practice is approved by the Minister or at the beginning of any later day that is expressed in the Code of Practice as the day on which the Code of Practice or provision comes into operation.

22 Availability of Codes of Practice

- (1) Upon the making of a Code of Practice, the Authority must cause notice of—
 - (a) the making of the Code of Practice; and
 - (b) the date of commencement of the Code of Practice; and
 - (c) the place where copies of the Code of Practice may be obtained—to be published in the Government Gazette.
- (2) There must be published with a notice under subsection (1) or a notice of an amendment under section 19(4), a notice stating that the Code of Practice, any incorporated document or any amendment to an incorporated document, as the case may be, may be inspected at the office of the Authority specified in the notice.
- (3) Even though a Code of Practice has come into operation, a person cannot be convicted of an offence or be prejudicially affected or made subject to any liability under the Code of Practice if it is proved that at the relevant time notice of the Code of Practice had not been published in the Government Gazette and a copy of the Code of

Practice and any incorporated document was not available for inspection.

- (4) Subsection (3) does not apply if it is proved that at the relevant time reasonable steps had been taken for the purpose of bringing the general purport of the Code of Practice to the notice of the public or of persons likely to be affected by the Code of Practice.

23 Requirement to comply with Code of Practice

A licensee must comply with any applicable Code of Practice.

Note

Failure to comply with any requirement of an applicable Code of Practice is a ground for a refusal to renew a licence, the renewal of a licence subject to conditions or the cancellation or suspension of a licence under section 15(2)(a).

Division 2—Food safety programs

24 Requirement for food safety programs

- (1) The Minister may, by notice published in the Government Gazette, declare that a class of seafood safety licence is to have a food safety program.
- (2) In making a declaration, the Minister must specify that the declaration is to take effect on a specified date on or after the making of the declaration.
- (3) A person issued with a seafood safety licence that is in a class of seafood safety licence before a declaration is made in respect of that class of licence must submit a food safety program in relation to that licence to the Authority for approval by the Authority within—
- (a) a period specified by the Minister in the notice specified under subsection (1) in relation to that class of licence; or

- (b) any further period notified in writing to that person by the Authority.
- (4) On or after a declaration takes effect under this section, the Authority must not issue or renew a licence of a class specified in the declaration unless the Authority has approved a food safety program in relation to the licence.

25 Approval of food safety programs

- (1) The Authority may—
 - (a) on its own initiative; or
 - (b) at the request of the holder of, or an applicant for, a seafood safety licence—
approve a food safety program in relation to the licence.
- (2) The Authority may approve a food safety program under subsection (1) if—
 - (a) the Authority is satisfied that the food safety program is adequate for managing food safety risks of the seafood business of the licensee or applicant; and
 - (b) the food safety program complies with section 26.

26 Contents of food safety program

- (1) A food safety program for a seafood business must—
 - (a) systematically identify the potential hazards that may be reasonably expected to occur in each food handling operation that is to be, or that is being, conducted in the seafood business;
 - (b) identify where, in a food handling operation, each hazard identified can be controlled and the means of control;

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- (c) provide for the systematic monitoring of those controls;
 - (d) provide for appropriate corrective action when an identified hazard is found not to be under control;
 - (e) provide for the regular review of the food safety program by the licensee of the seafood business;
 - (f) provide for appropriate records to be made and kept by the licensee of the seafood business demonstrating action taken in relation to, or in compliance with, the food safety program;
 - (g) set out strategies to ensure that the requirements of this Act and the regulations and seafood safety standards under this Act are complied with;
 - (h) set out strategies for implementing any applicable Code of Practice under this Act;
 - (i) set out strategies and actions for monitoring compliance with the food safety program;
 - (j) describe training of personnel in handling of seafood to ensure compliance with the food safety program;
 - (k) contain any requirement notified in writing by the Authority to the applicant for, or the holder of, a seafood safety licence;
 - (l) contain any other requirement agreed between the Authority and the applicant for, or the holder of, a seafood safety licence.

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- (2) If food other than seafood is handled in the course of conducting the seafood business, the food safety program must—
- (a) in the case of meat, include strategies—
 - (i) to ensure that the standards required under the **Meat Industry Act 1993** are maintained in respect of the meat; and
 - (ii) for implementing any applicable Code of Practice made under the **Meat Industry Act 1993**;
 - (b) in the case of dairy food, provide for the matters set out in sections 39(1)(a), 39(1)(b) and 39(1)(c) of the **Dairy Act 2000**;
 - (c) in the case of any other food, do all of the things listed in section 19D of the **Food Act 1984**.
- (3) For the purposes of subsection (2)—
- meat* means meat in respect of which the **Meat Industry Act 1993** applies;
- dairy food* has the same meaning as in section 3 of the **Dairy Act 2000**.
- (4) For the purposes of subsection (2)(c)—
- food* has the same meaning as in section 4(1) of the **Food Act 1984**.
- (5) The food safety program must comply with any requirements prescribed for food safety programs.

27 Compliance with food safety program condition of licence

- (1) Each seafood safety licence is subject to the condition that the licensee must comply with the food safety program that has been approved by the Authority in relation to that licence.

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- (2) A licensee will not be taken to have failed to comply with a food safety program under subsection (1) unless the Authority determines that the failure to comply is so serious that it cannot be dealt with by increased auditing requirements under this Act.

28 Monitoring compliance with food safety program

The Authority must keep under regular review the extent of compliance with each approved food safety program.

29 Audit of food safety programs

- (1) The Authority may require a licensee to have the food safety program approved in respect of the seafood safety licence audited for the purpose of determining whether the food safety program—
- (a) has been complied with during the period covered by the audit; and
 - (b) is still adequate to meet the requirements of this Act, the regulations or a Code of Practice and any applicable standard under this Act at the date of the audit.
- (2) A requirement under subsection (1)—
- (a) must be made in writing; and
 - (b) may be made on a one-off basis or may require an audit to be performed at any specified frequency; and
 - (c) must specify the minimum qualifications or experience that must be held by the person who is to conduct any required audit; and
 - (d) may impose restrictions on who may conduct any required audit; and
 - (e) must specify by when, how and by whom the results of any required audit are to be reported to the Authority.

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- (3) The Authority may vary any requirement for an audit at any time by giving the licensee written notice of the variation.
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PART 5—ENFORCEMENT AND LEGAL PROCEEDINGS

30 General powers of authorised officers

- (1) For the purposes of the administration of this Act, the regulations or a Code of Practice, an authorised officer may take any action that is necessary to ascertain whether the provisions of—
- (a) this Act; or
 - (b) the regulations; or
 - (c) a Code of Practice; or
 - (d) a seafood safety licence; or
 - (e) a food safety program—
- have been, or are being, complied with.
- (2) For the purposes of subsection (1) an authorised officer may at any reasonable time—
- (a) enter, inspect and examine any premises (that is not a person's dwelling) that the authorised officer believes on reasonable grounds is used in connection with—
 - (i) the handling of seafood intended for sale for human consumption; or
 - (ii) the conduct of a seafood business;
 - (b) enter, inspect and examine any vehicle that the authorised officer believes on reasonable grounds is used in connection with—
 - (i) the handling of seafood intended for sale for human consumption; or
 - (ii) the conduct of a seafood business;
 - (c) stop and detain any vehicle that the authorised officer is authorised by this subsection to enter;

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- (d) direct any person in charge of or apparently in charge of any vehicle that the authorised officer is authorised by this subsection to enter, to proceed elsewhere and stop;
 - (e) require any person to produce for inspection any documents in the possession of that person relating to seafood;
 - (f) require any person to—
 - (i) provide information; or
 - (ii) answer any questions; or
 - (iii) state the person's name and residential address—in connection with the authorised officer's functions under this Act;
 - (g) inspect and examine any documents, seafood or other product, material, equipment, plant or facility on any premises or vehicle specified in paragraph (a) or (b), which in the opinion of the authorised officer relates to—
 - (i) the handling of seafood intended for sale for human consumption; or
 - (ii) the conduct of a seafood business;
 - (h) seize any documents, seafood or other product or material specified in paragraph (g);
 - (i) take copies of or extracts from any documents specified in paragraph (g);
 - (j) take samples of any seafood or other product or material specified in paragraph (g);
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- (k) for the purpose of paragraph (j), open or cause to be opened any package, container or receptacle which contains, or which the authorised officer suspects on reasonable grounds contains, seafood;
 - (l) conduct or cause to be conducted an examination or analysis that the authorised officer considers necessary to determine the composition or safety of any seafood;
 - (m) for the purpose of analysis, take samples of water or soil or any other thing that is a part of the environment in which any seafood is handled to determine whether that environment poses a risk to the safety of the seafood for human consumption;
 - (n) take any photographs, films or audio or visual recordings that the authorised officer considers necessary;
 - (o) take any measurements and make sketches or drawings or any other type of record;
 - (p) monitor any specified functions required by a Code of Practice to be carried out by any person holding specified qualifications.
- (3) The owner of any seafood examined or analysed under subsection (2)(1) is on payment of the prescribed fee entitled to a certificate from the Authority showing the result of the examination or analysis.
- (4) The owner of any premises or the operator of any vehicle specified in subsection (2) must provide an authorised officer who wishes to exercise or is exercising a power under subsection (2) with any assistance that is necessary or desirable to enable the authorised officer to exercise that power effectively.
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31 Actions which an authorised officer may take

(1) If, after entering and inspecting or examining any premises or vehicle under section 30, an authorised officer is satisfied, or suspects on reasonable grounds, that—

(a) any premises or any vehicle, plant, machinery or equipment used in connection with—

(i) the handling of seafood intended for sale for human consumption; or

(ii) the conduct of a seafood business—
is in an unclean or substandard condition; or

(b) any seafood intended for sale for human consumption is unfit for that purpose or is a risk to public health; or

(c) any premises specified in paragraph (a) or seafood does not otherwise comply with any provisions of this Act, a Code of Practice or the regulations that are applicable—

the authorised officer may, by a notice in writing addressed to the owner of the premises, seafood or vehicle, as the case may be, without further name or description, take any one or more of the actions specified in subsection (2), which appear to the authorised officer to be appropriate in the circumstances.

(2) The actions that an authorised officer may take for the purposes of this section are as follows—

(a) order the premises, vehicle, plant, machinery or equipment, as the case may be, to be immediately cleaned and disinfected to the satisfaction of the authorised officer;

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- (b) order that the use of a specified area of any premises or of any vehicle, plant, machinery or equipment used in connection with—
 - (i) the handling of seafood intended for sale for human consumption; or
 - (ii) the conduct of a seafood business—
be stopped;
 - (c) order that no seafood or class of seafood specified in the order be removed from premises for any purpose whatsoever or for any purpose specified in the order for a period of time that is specified in the order;
 - (d) order that any seafood or class of seafood specified in the order be disposed of or destroyed.
- (3) A person to whom an order is addressed under this section must comply with the order.

Penalty: 120 penalty units.

32 Power to seize seafood unfit for human consumption

If an authorised officer believes on reasonable grounds that there is, on any premises (that is not a person's dwelling) or in a vehicle, any seafood intended for sale for human consumption which is unfit for human consumption or is a risk to public health, the authorised officer may, alone or with any member of the police force—

- (a) enter the premises or vehicle; and
- (b) search for and seize and remove or destroy or otherwise dispose of that seafood.

33 Entry or search with consent

- (1) If an authorised officer believes, on reasonable grounds, that a person has contravened this Act, the regulations or a Code of Practice, the authorised officer, with the consent of the occupier of the premises or the operator of the vehicle, may—
- (a) alone, or with any member of the police force, enter and search any premises or vehicle;
 - (b) alone, or with any member of the police force, seize any thing found on the premises or vehicle that the authorised officer believes on reasonable grounds, to be connected with the alleged contravention;
 - (c) inspect and make copies of, or take extracts from, any document found on the premises or vehicle;
 - (d) examine and take and keep samples of any seafood found on the premises or vehicle which the authorised officer believes on reasonable grounds to be connected with the alleged contravention;
 - (e) for the purpose of paragraph (d), open or cause to be opened any package, container or receptacle which contains or which the authorised officer suspects on reasonable grounds contains seafood;
 - (f) conduct or cause to be conducted an examination or analysis that the authorised officer considers necessary to determine the composition or safety of any seafood;
 - (g) inspect and make copies of, or take extracts from, any document found on the premises or vehicle.

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- (2) The owner of any seafood examined or analysed under subsection (1)(f) is on payment of the prescribed fee entitled to a certificate from the Authority showing the result of the examination or analysis.
- (3) An authorised officer must not enter and search premises or a vehicle with the consent of the occupier or operator unless, before the occupier or operator consents to that entry, the authorised officer has—
- (a) produced his or her identity card for inspection; and
 - (b) informed the occupier or operator—
 - (i) of the purpose of the search; and
 - (ii) that the occupier or operator may refuse to give consent to the entry and search or to the seizure of any thing found during the search; and
 - (iii) that the occupier or operator may refuse to consent to the taking of any sample of goods or any copy or extract from a document found on the premises or vehicle during the search; and
 - (iv) that any thing seized or taken during the search with the consent of the occupier or operator may be used in evidence in proceedings.
- (4) If an occupier or operator consents to an entry and search, the authorised officer who requested consent must before entering the premises or vehicle ask the occupier or operator to sign an acknowledgment in the prescribed form stating—

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- (a) that the occupier or operator has been informed of the purpose of the search and that any thing seized or taken in the search with the consent of the occupier or operator may be used in evidence in proceedings; and
 - (b) that the occupier or operator has been informed that he or she may refuse to give consent to the entry and search; and
 - (c) that the occupier or operator has consented to such an entry and search; and
 - (d) the date and time that the occupier or operator consented.
- (5) If an occupier or operator consents to the seizure or taking of any thing during a search under this section, the authorised officer must, before seizing or taking the thing, ask the occupier or operator to sign an acknowledgment stating—
- (a) that the occupier or operator has consented to the seizure or taking of the thing; and
 - (b) the date and time that the occupier or operator consented.
- (6) An occupier or operator who signs an acknowledgment must be given a copy of the signed acknowledgment before the authorised officer leaves the premises or vehicle.
- (7) If, in any proceeding, an acknowledgment is not produced to the court or a tribunal, it must be presumed, until the contrary is proved, that the occupier or operator did not consent to the entry and search or to the seizure or the taking of the thing.

34 Search warrants

- (1) An authorised officer, with the written approval of the Authority, may apply to a magistrate for the issue of a search warrant in relation to a particular premises or vehicle, if the authorised officer believes on reasonable grounds that there is on the premises or in the vehicle evidence that a person or persons may have contravened this Act, the regulations or a Code of Practice.
- (2) If a magistrate is satisfied, by the evidence on oath or by affidavit of the authorised officer that there are reasonable grounds to believe that there is a thing or things of a particular kind connected with a contravention of this Act, the regulations or a Code of Practice on any premises or in a vehicle, the magistrate may issue a search warrant, in accordance with the **Magistrates' Court Act 1989**, authorising an authorised officer named in the warrant, together with any other person or persons named or otherwise identified in the warrant and with any necessary equipment—
 - (a) to enter the premises or vehicle specified in the warrant, if necessary by force; and
 - (b) to do all or any of the following—
 - (i) search for;
 - (ii) seize;
 - (iii) secure against interference;
 - (iv) examine, inspect and take and keep samples of;

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- (v) inspect and make copies of, or take extracts from—
- a thing or things of a particular kind named or described in the warrant and which the authorised officer believes, on reasonable grounds, to be connected with the alleged contravention.
- (3) A search warrant issued under this section must state—
- (a) the purpose for which the search is required and the nature of the alleged contravention; and
 - (b) any conditions to which the warrant is subject; and
 - (c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
 - (d) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.
- (4) Except as provided by this Act, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to warrants under this section.
- (5) For the purposes of subsection (2)(b)(iv), an authorised officer may—
- (a) open or cause to be opened any package, container or receptacle which contains or which the authorised officer suspects on reasonable grounds contains seafood; and
 - (b) conduct or cause to be conducted an examination or analysis that the authorised officer considers necessary to determine the composition or safety of any seafood.
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- (6) The owner of any seafood examined or analysed under subsection (5) is on payment of the prescribed fee entitled to a certificate from the Authority showing the result of the examination or analysis.

35 Announcement before entry

- (1) On executing a search warrant, the authorised officer executing the warrant—
- (a) must announce that he or she is authorised by the warrant to enter the premises or vehicle; and
 - (b) if the authorised officer has been unable to obtain unforced entry, must give any person at the premises or on the vehicle an opportunity to allow entry to the premises or vehicle.
- (2) An authorised officer need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises or vehicle is required to ensure—
- (a) the safety of any person; or
 - (b) that the effective execution of the search warrant is not frustrated.

36 Details of warrant to be given

- (1) If the occupier or operator is present at premises or a vehicle where a search warrant is being executed, the authorised officer must—
- (a) identify himself or herself to the occupier or operator; and
 - (b) give to the occupier or operator a copy of the warrant.

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- (2) If the occupier or operator is not present at premises or a vehicle where a search warrant is being executed, the authorised officer must—
- (a) identify himself or herself to a person at the premises or vehicle; and
 - (b) give to the person a copy of the warrant.

37 Seizure of things not mentioned in the warrant

A search warrant under section 34 authorises an authorised officer executing the search warrant, in addition to the seizure of any thing of the kind described in the warrant, to seize or take a sample of any thing which is not of the kind described in the warrant if—

- (a) the authorised officer believes, on reasonable grounds, that the thing is of a kind which could have been included in a search warrant issued under this Act; and
- (b) in the case of seizure, the authorised officer believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction or its use in the contravention of this Act, the regulations or a Code of Practice.

38 Assistance of member of police force

Any member of the police force may assist an authorised officer in exercising a power or function under this Act.

39 Provisions relating to the seizure of items

- (1) If an authorised officer seizes any thing under section 30, 33 or 34 from a person who is present at the time of the seizure, the authorised officer must as soon as practicable give the person a written receipt for the thing seized.

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- (2) In all other cases, if an authorised officer seizes a thing and it is not possible to immediately give—
- (a) the owner of the thing; or
 - (b) the person in possession or apparently in possession of the thing; or
 - (c) a person apparently aged 16 years or over and who is apparently employed by or an agent of the owner—

a receipt for it, the officer must within 7 days send or cause to be sent a receipt for it by post to the address of the owner of the thing last known by the Authority.

- (3) If the authorised officer is unable to ascertain the identity or the address of the owner of any thing that has been seized, the receipt must be left with, or be posted to, the owner of the premises or vehicle from which the thing was seized.
- (4) A receipt must contain reasonable details of the thing seized.

40 Copies of seized documents

- (1) If an authorised officer retains possession of a document seized from a person under this Part, the authorised officer must give the person, within 21 days of the seizure, a copy of the document certified as correct by the authorised officer.
- (2) A copy of a document certified under subsection (1) is to be received in all courts and tribunals to be evidence of equal validity to the original.

41 Retention and return of seized documents or things

- (1) If an authorised officer seizes a document or other thing under section 30, 33 or 34, the authorised officer must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.

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- (2) If the document or thing seized has not been returned within 3 months after it was seized, the authorised officer must take reasonable steps to return it unless—
- (a) proceedings for the purpose for which the document or thing was retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or
 - (b) the Magistrates' Court makes an order under section 42 extending the period during which the document or thing may be retained.
- (3) This section does not apply to a sample taken by an authorised officer in the exercise of a power under this Act.

42 Magistrates' Court may extend retention period

- (1) An authorised officer may apply to the Magistrates' Court within 3 months after seizing a document or other thing under this Part for an extension of the period for which the authorised officer may retain the document or thing.
- (2) The Magistrates' Court may order such an extension if it is satisfied that retention of the document or other thing is necessary—
- (a) for the purposes of an investigation into whether a contravention of this Act, the regulations or a Code of Practice has occurred; or
 - (b) to enable evidence of a contravention of this Act, the regulations or a Code of Practice to be obtained for the purposes of a proceeding under this Act.
- (3) The Magistrates' Court may adjourn an application to enable notice of the application to be given to any person.

43 Offence in relation to seized or taken property

- (1) A person must not dispose of, remove, damage or interfere with any thing seized or taken under this Act except in accordance with this Act.

Penalty: For a first offence, 50 penalty units.

For a subsequent offence, 100 penalty units or 12 months imprisonment or both.

- (2) If a court convicts a person of an offence against subsection (1) or finds a person guilty of an offence against subsection (1), the court may in addition to any penalty imposed under that subsection, order the person to pay compensation for any damage or loss caused by the offence to any person.

44 Offence in relation to samples

A person must not—

- (a) remove, alter or interfere in any way with any sample taken under this Act; or
(b) erase, alter, open, break or remove a mark, seal or fastening placed by an authorised officer on any part of a sample taken under this Act.

Penalty: For a first offence, 50 penalty units.

For a subsequent offence, 100 penalty units or 12 months imprisonment or both.

45 Offence to hinder or obstruct authorised officer

A person must not, without reasonable excuse, hinder, obstruct, threaten or intimidate—

- (a) an authorised officer; or

- (b) a member of the police force who is assisting an authorised officer—

who is exercising a power under this Act.

Penalty: 60 penalty units.

46 Offence to fail to provide information

A person who has been informed by an authorised officer of the requirements under section 30(2)(f) must not, without reasonable cause, fail or refuse to comply with any of those requirements.

Penalty: 60 penalty units.

47 Offence to give false or misleading information

A person must not—

- (a) give information to an authorised officer, the Authority or an employee of the Authority under this Act that the person believes to be false or misleading in any material particular; or
- (b) produce a document to an authorised officer, the Authority or an employee of the Authority under this Act that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 60 penalty units.

48 Offence to refuse admission to authorised officer

A person must not refuse admission to an authorised officer under section 30(2).

Penalty: 60 penalty units.

49 Offence to refuse assistance to authorised officer

A person must not refuse or neglect to render assistance when required to do so under section 30(4).

Penalty: 60 penalty units.

50 Offence to fail to comply with directions etc. of authorised officers

A person must not contravene or fail to comply with any lawful requirement, direction or order of an authorised officer.

Penalty: 60 penalty units.

51 Protection against self-incrimination

- (1) It is a reasonable excuse for a natural person to refuse or fail to give information or do any other thing that the person is required to do by or under this Part, if the giving of the information or the doing of that other thing would tend to incriminate the person.
- (2) Despite subsection (1), it is not a reasonable excuse for a natural person to—
 - (a) refuse or fail to produce a document that the person is required to keep by or under this Act, if the production of the document would tend to incriminate the person; or
 - (b) refuse or fail to give his or her name and residential address if the giving of the name and address would tend to incriminate the person.

52 Certain records to be kept

- (1) A licensee must send to the Authority any records relating to seafood that may be required by notice in writing by the Authority.

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- (2) A licensee must at all reasonable times permit any authorised officer to inspect and to make abstracts or copies of any records required to be kept under this Act.

53 Powers of chief executive officer

- (1) The chief executive officer has all the powers of an authorised officer under this Act.
- (2) The chief executive officer may, by notice in writing—
- (a) direct the owner, operator, manager or licensee of a seafood business, the occupier of any premises or the operator of a vehicle to remove any seafood from a premises or vehicle; or
 - (b) prohibit the owner, operator, manager or licensee of a seafood business from using a premises or vehicle in relation to that business.
- (3) The chief executive officer may only issue the notice if he or she—
- (a) has considered a report from an authorised officer on the subject matter of the notice; and
 - (b) considers it appropriate to issue the notice in the interests of public health.
- (4) A notice takes effect on being served on the person to whom it is directed.
- (5) A person to whom a notice is directed must comply with the notice.
- Penalty: 50 penalty units.
- (6) The chief executive officer may specify in the notice that it is to cease to apply if one or more specified conditions are met.

- (7) The chief executive officer may amend or revoke a notice at any time by serving written notice of the amendment or revocation on the person to whom the earlier notice was directed (or on any agent or successor of that person).

54 Chief executive officer may obtain enforcement order

The chief executive officer may apply to the Supreme Court for an order against any person who is required to comply with a notice issued under section 53 requiring the person to comply with the notice.

55 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 is—

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

56 Proceedings

Proceedings under this Act may be instituted or conducted by—

- (a) the chairperson of the Authority; or
- (b) a person authorised in writing by the chairperson either generally or in any particular case.

57 Defence of due diligence to a charge

In any proceedings for an offence under this Act, it is a defence if the person charged with the offence proves that he or she took all reasonable precautions and exercised all due diligence to prevent the commission of the offence.

58 Evidence

In any proceedings, evidence of the finding of seafood on any premises or in a vehicle used by a person for the storage of seafood for sale or for the sale of seafood is evidence, and in the absence of evidence to the contrary, is proof that the person possessed the seafood for sale for human consumption.

59 Service of notices or orders

- (1) If under this Act any notice or order is required to be given to or served on the owner of any premises, the notice or order may be addressed to the owner without further name or description and may be given or served by—
 - (a) leaving it with a person on the premises who is apparently at least 16 years old; or
 - (b) sending it by certified mail addressed to the owner at the address of the premises; or
 - (c) fixing the notice or order or a copy of the notice or order on a conspicuous part of the premises.
- (2) If under this Act any notice or order is required to be given to or served on a person, it may be given or served by—
 - (a) giving it or serving it personally on the person; or

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- (b) leaving it at or sending it by certified mail to the person at that person's usual or last known residential or business address.
- (3) Any notice or order served for the purposes of this Act on an owner of any premises is, if due service has been made on an owner, binding on all persons claiming by, from or under, such owner and on all subsequent owners to the same extent as if the notice or order had been served on each of them.
- (4) The provisions of this section are in addition to and not in derogation from the provisions of the Corporations Act.
- (5) A person who provides a document or information in response to a requirement of an authorised officer under this Act may send that document or information to the Authority by registered post.
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PART 6—GENERAL

60 Review of decision of Authority

- (1) Any person whose interests are affected by any decision of the Authority to—
- (a) refuse to grant an exemption under section 10(1) in respect of;
 - (b) refuse to issue;
 - (c) issue or renew subject to conditions;
 - (d) refuse to renew;
 - (e) cancel;
 - (f) suspend;
 - (g) amend, vary or delete a condition or insert a new condition in—
- a seafood safety licence, may apply to the Tribunal for a review of the decision.
- (2) An application for review must be made within 28 days after the later of—
- (a) the day on which the person is notified of the decision; or
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

61 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) A power conferred by this Act to make regulations may be exercised—
 - (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
 - (b) so as to make, as respects the cases in relation to which it is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
 - (ii) any such provision either unconditionally or subject to any specified condition.
- (3) Regulations made under this Act may be made—
 - (a) so as to apply—
 - (i) at all times or at a specified time; or
 - (ii) throughout the whole of the State or in a specified part of the State; or
 - (iii) as specified in both subparagraphs (i) and (ii);

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- (b) so as to require a matter affected by the regulations to be—
- (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a specified person or body or a specified class of persons or bodies;
- (c) so as to apply, adopt or incorporate any matter contained in any document, 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 regulations; or
 - (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
 - (iii) as formulated, issued, prescribed or published from time to time;
- (d) so as to leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by the Authority or any officer or employee thereof;
- (e) so as to confer powers or impose duties in connection with the regulations on the Authority or any officer or employee thereof;
- (f) so as to apply, adopt or incorporate, with or without modification, the provisions of any Act or of any regulations made under any Act as in force at a particular time or from time to time;

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- (g) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to the extent that is specified;
- (h) so as to impose a penalty not exceeding 20 penalty units for a contravention of the regulations.
- (4) If under subsection (3)(c)(iii) a regulation has applied, adopted or incorporated any matter contained in any document, code, standard, rule, specification or method as formulated, issued, prescribed or published from time to time and that document, code, standard, rule, specification or method is at any time amended, until the Minister causes notice to be published in the Government Gazette of that amendment, the document, code, standard, rule, specification or method is to be taken to have not been so amended.
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Seafood Safety Act 2003
No. 24 of 2003

s. 62

**Pts 7–10
(Headings
and ss 62–93)
repealed by
No. 28/2007
s. 3(Sch.
item 60).**

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ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 20 March 2003

Legislative Council: 10 April 2003

The long title for the Bill for this Act was "to regulate the safety of seafood, to make related amendments to the **Meat Industry Act 1993**, to amend the **Dairy Act 2000**, the **Food Act 1984** and the **Fisheries Act 1995** and for other purposes."

The **Seafood Safety Act 2003** was assented to on 13 May 2003 and came into operation as follows:

Sections 1, 2, 74(2), 81 and 85 on 14 May 2003: section 2(1); sections 3–8, 19–22, 24–26, 59, 61–63, 64(1)–(4)(6), 65–73, 74(1)(3), 75–80, 82–84, 86–91 and 93 on 1 July 2003: Government Gazette 26 June 2003 page 1548; sections 10–16 and 60 on 13 November 2003: Government Gazette 13 November 2003 page 2840; sections 9, 17, 18, 23, 27–58, 64(5) and 92 on 1 January 2004: Government Gazette 13 November 2003 page 2840.

Seafood Safety Act 2003
No. 24 of 2003

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Seafood Safety Act 2003** by Acts and subordinate instruments.

Statute Law Revision Act 2007, No. 28/2007

Assent Date: 26.6.07
Commencement Date: S. 3(Sch. item 60) on 27.6.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Seafood Safety Act 2003**

Public Health and Wellbeing Act 2008, No. 46/2008

Assent Date: 2.9.08
Commencement Date: S. 286 on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Seafood Safety Act 2003**

3. Explanatory Details

No entries at date of publication.