

**Authorised Version No. 027**

**Dairy Act 2000**

**No. 37 of 2000**

Authorised Version incorporating amendments as at  
17 December 2019

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**The Parliament of Victoria enacts as follows:**

**Part 1—Preliminary**

**1 Purpose**

The purpose of this Act is to—

- (a) remove the price and supply controls on milk;
- (b) establish Dairy Food Safety Victoria;
- (c) provide a licensing system for the dairy industry;
- (d) enable Codes of Practice and food safety programs to be implemented in relation to dairy food;
- (e) repeal the **Dairy Industry Act 1992**.

**2 Commencement**

- (1) This Part comes into operation on the day after the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act come into operation on a day or days to be proclaimed.

**3 Definitions**

In this Act—

*authorised officer* means any person appointed under section 43;

*Authority* means Dairy Food Safety Victoria;

***Chairperson*** means the Chairperson of the Authority;

***Code of Practice*** means a Code of Practice made under section 31;

***Commonwealth Act*** has the same meaning as in section 63A of the **Food Act 1984**;

***dairy distribution premises*** means any premises where packaged dairy food is sold or distributed other than—

- (a) dairy manufacturing premises; or
- (b) premises used only for retail purposes;

***dairy distributor*** means a person—

- (a) who is the owner of a business that operates a dairy distribution premises; or
- (b) who purchases dairy food for the purposes of distribution and sale;

***dairy farm*** means any premises where an animal is kept or milked for the purpose of producing milk for profit or sale;

***dairy farmer*** means the owner of a business that operates a dairy farm;

***dairy food*** means—

- (a) milk and liquid milk products;
- (b) dried milk and dried milk products;
- (c) condensed milks;
- (d) cream and cream products;
- (e) butter, butter products, dairy blend and dairy spreads;

S. 3 def. of *dairy distributor* substituted by No. 24/2003 s. 87(a), amended by No. 69/2004 s. 37(a).

S. 3 def. of *dairy farm* substituted by No. 40/2019 s. 5(a).

S. 3 def. of *dairy farmer* amended by No. 69/2004 s. 37(b).

S. 3 def. of *dairy food* amended by No. 24/2003 s. 87(b).

- (f) cheese and cheese products;
- (g) yoghurt and yoghurt products;
- (h) ice cream, reduced fat ice cream and low fat ice cream;
- (ha) colostrum and products derived from colostrum;
- (i) any other product or class of products declared by a determination to be dairy food—

but does not include any product or class of product declared by a determination not to be dairy food;

***dairy food carrier*** means the owner of any business engaged in the transport of dairy food in a bulk container;

***dairy industry licence*** means a licence issued by the Authority under Part 3;

***dairy premises*** means—

- (a) a dairy farm;
- (b) a dairy manufacturing premises;
- (c) a dairy distribution premises;

***dairy manufacturing premises*** means any premises where—

- (a) milk is received direct from a dairy farm; or
- (b) dairy food is manufactured or packed;

***dairy manufacturer*** means the owner of a business that operates a dairy manufacturing premises;

S. 3 def. of  
*dairy  
manufacturer*  
amended by  
No. 69/2004  
s. 37(c).

S. 3 def. of  
*Department*  
amended by  
Nos 56/2003  
s. 11(Sch.  
item 5),  
70/2013  
s. 4(Sch. 2  
item 10).

*dairy transport vehicle* means any vehicle used principally to transport dairy food in a bulk container;

*Department* means the Department of Environment and Primary Industries;

*determination* means a determination made by the Authority under this Act;

*Food Standards Code* has the same meaning as in section 63A of the **Food Act 1984**;

*ice cream* has the same meaning as in the Food Standards Code;

*licensee* means the holder of a dairy industry licence;

*low fat ice cream* has the same meaning as in the Food Standards Code;

*manufacture* includes prepare or process;

*member* means a member of the Authority;

S. 3 def. of  
*milk*  
substituted by  
No. 40/2019  
s. 5(b).

*milk* means the mammary secretion of any milking animal;

*Minister* means the Minister for the time being administering this Act;

*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;

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

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

*premises* includes—

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

*prescribed* means prescribed by the regulations or a Code of Practice;

*reduced fat ice cream* has the same meaning as in the Food Standards Code;

*regulations* means regulations made under this Act;

*Secretary to the Department of Health* means the Department Head (within the meaning of the **Public Administration Act 2004**) of the Department of Health;

S. 3 def. of *Secretary to the Department of Health* inserted by No. 29/2010 s. 55(1).

*sell*, for the purposes of this Act, has the same meaning as sell has in relation to food under section 4(1) of the **Food Act 1984**;

S. 3 def. of *sell* substituted by No. 24/2003 s. 87(c).

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

***test*** means to determine the safety, content or constituents of dairy food;

***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.

## **Part 2—Dairy Food Safety Victoria**

### **4 Dairy Food Safety Victoria**

- (1) There is established by this Act an Authority by the name of Dairy Food Safety Victoria.
- (2) The Authority—
  - (a) is a body corporate with perpetual succession;
  - (b) is not to be deemed to represent the Crown in right of the State of Victoria;
  - (c) must have a common seal;
  - (d) may sue and be sued in its corporate name;
  - (e) is, subject to this Act, capable of taking, purchasing, leasing, holding, selling and disposing of real and personal property for the purpose of performing its functions and exercising its powers under this Act;
  - (f) is capable of doing and suffering all such acts and things as bodies corporate may by law do and suffer and which are necessary or expedient for the purpose of performing its functions and exercising its powers under this Act.
- (3) The common seal of the Authority must be kept in such custody as the Authority directs and must not be used except as authorised by the Authority.
- (4) All courts and persons acting judicially must take judicial notice of the seal of the Authority fixed to a document and must presume that it was duly affixed.

## **5 Objectives of the Authority**

The objectives of the Authority are to—

- (a) ensure that standards which safeguard public health are maintained in the Victorian dairy industry;
- (b) ensure that it performs its functions and exercises its powers efficiently and effectively.

## **6 Functions of the Authority**

The functions of the Authority are to—

- (a) establish, maintain and improve—
  - (i) the food safety standards of dairy food;
  - (ii) the standards of construction and hygiene of plant and equipment in a dairy manufacturing premises;
  - (iii) the standards of maintenance, cleanliness and hygiene of dairy transport vehicles;
- (b) monitor and review the standards specified in paragraph (a);
- (c) approve and monitor the implementation of food safety programs;
- (d) administer the licensing system under Part 3;
- (e) ensure that appropriately qualified persons are appointed as authorised officers;
- (f) fix and charge fees in respect of the carrying out of its functions or the exercise of its powers;
- (g) in consultation with the Secretary to the Department of Health or a municipal council, protect public health;

S. 6(g)  
amended by  
No. 29/2010  
s. 55(2).

- (h) advise the Minister on matters relating to the administration of this Act;
- (i) carry out any other function that is conferred on the Authority by this Act or any other Act.

### **7 Powers of the Authority**

- (1) Subject to this Act, the Authority has all the powers necessary to enable it to perform its functions.
- (2) Without limiting its other powers, the Authority may—
  - (a) enter into agreements or arrangements for the provision of services to the Authority or for the provision of services by the Authority;
  - (b) fix and charge fees for the carrying out of its functions or the provision of its services or the services of authorised officers;
  - (c) expend any part of its funds in carrying out its functions and powers, or in paying remuneration and allowances to its members.

### **8 Accountability of Authority**

- (1) The Authority must exercise its powers and perform its functions under this Act subject to any specific written directions given by the Minister in relation to a matter or class of matters specified in the directions.
- (2) Where the Authority has been given a written direction under subsection (1), the Authority—
  - (a) may cause that direction to be published in the Government Gazette; and
  - (b) must publish that direction in its annual report.

## **9 Members of the Authority**

- (1) The Authority is to consist of 7 members.
- (2) The Minister may appoint 1 member who is to be the Chairperson.
- (3) The Minister may appoint 1 member who is to be an employee of the Department nominated by the Secretary to the Department.
- (4) The Minister must appoint the other 5 members after consideration of any recommendations of the selection committee and having regard to their expertise in one or more of the following areas—
  - (a) on-farm milk production;
  - (b) dairy food manufacturing;
  - (c) public health;
  - (d) food technology and safety;
  - (e) business management;
  - (f) consumer issues;
  - (g) any other area which the Minister considers relevant to the functions or powers of the Authority.
- (5) The Authority may appoint one of the members to be Deputy Chairperson.
- (6) If the Minister requests the selection committee to make a recommendation for an appointment to the Authority and specifies a period within which the recommendation must be made and the committee does not comply with the request, the Minister may make that appointment without that recommendation.

## **10 Selection committee**

- (1) A selection committee is to be established and appointed by the Minister to make nominations for appointment to the Authority.
- (2) The selection committee consists of 3 members of whom—
  - (a) one is to be appointed on the nomination of the State organisation or State division of an organisation that the Minister determines is best representative of dairy farmers; and
  - (b) two are to be appointed on the nomination of the State organisations or State divisions of organisations that the Minister determines are best representative of dairy food manufacturers.
- (3) The Minister may reject as unsuitable a nomination for appointment under subsection (2) and may call for a further nomination.
- (4) A person is not eligible to be nominated for appointment under subsection (2) unless he or she has qualifications or experience in the industry which he or she is nominated to represent.
- (5) A member of the Authority is not eligible to be appointed to a selection committee.
- (6) The chairperson is to be selected by the committee from among its members.
- (7) Subject to this Act, a selection committee may regulate its own proceedings.
- (8) The Authority must meet the expenses reasonably incurred—
  - (a) by a member of the committee in performing his or her duties; and
  - (b) in convening and conducting meetings of the committee.

- (9) The Minister may, at any time—
- (a) remove a committee member from office if the member—
    - (i) becomes incapable of performing his or her duties;
    - (ii) is negligent in the performance of those duties;
    - (iii) engages in improper conduct;
    - (iv) is found guilty of an offence against this Act; or
  - (b) dissolve the committee.
- (10) A member of the committee may resign his or her office by writing delivered to the Minister.
- (11) The office of a member of the committee becomes vacant on the receipt by the Minister of a written notice of withdrawal of the person's nomination by the organisation or organisations which nominated the person for appointment.

## **11 Recommendations of a selection committee**

- (1) A selection committee must recommend people to fill vacancies in the membership of the Authority under section 9(4).
- (2) The committee must only recommend a person who is eligible to fill that vacancy.
- (3) A member of the committee is not eligible for recommendation by the committee.
- (4) A recommendation must not be made unless all the members of the committee are present when the decision is made.

- (5) A recommendation—
  - (a) must be in writing;
  - (b) must be given to the Minister in the time requested by the Minister;
  - (c) must only recommend one person in respect of each vacancy;
  - (d) must give reasons as to why the person satisfies the criteria for appointment.
- (6) The Minister must consider the recommendations of the selection committee but may reject a recommendation.

**12 Terms and conditions of office of members of the Authority**

- (1) Subject to this section, each member holds office for a term not exceeding 3 years as is specified in the instrument of appointment.
- (2) A member is eligible for re-appointment.
- (3) The office of a member becomes vacant if the member—
  - (a) becomes bankrupt;
  - (b) is found guilty of an indictable offence or of an offence that, if committed in Victoria, would be an indictable offence;
  - (c) is absent from 2 consecutive meetings of the Authority without the approval of the Authority;
  - (d) retires, resigns or dies.

- (4) The Minister may remove a member from office if the member—
- (a) becomes incapable of performing his or her duties; or
  - (b) is negligent in the performance of those duties; or
  - (c) engages in improper conduct; or
  - (d) fails to disclose a pecuniary interest as required by section 15; or
  - (e) is found guilty of an offence against this Act.
- (5) A member may resign by writing addressed to the Minister.
- (6) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member in respect of the office of member.
- (7) A member who is not an employee in the public service is entitled to the remuneration and allowances (if any) fixed by the Minister.
- (8) An instrument of appointment may specify other terms and conditions of employment not inconsistent with this Act.
- (9) If the office of a member becomes vacant before the end of the term of the office, the Minister may appoint in accordance with section 9 a person to fill the vacancy and to hold office, subject to this Act, for the remainder of the term.
- (10) If the vacancy occurs within 6 months of the end of the term of the office, the office may be left vacant for the remainder of the term.

S. 12(6)  
substituted by  
Nos 108/2004  
s. 117(1)  
(Sch. 3  
item 51.1),  
80/2006  
s. 26(Sch.  
item 23).

### **13 Validity of acts or decisions**

An act or decision of the Authority is not invalid by reason only of—

- (a) any vacancy in the office of a member; or
- (b) any defect or irregularity in or in connection with the appointment of a member.

### **14 Proceedings of the Authority**

- (1) Four members of whom at least one must be either the Chairperson or the Deputy Chairperson constitutes a quorum.
- (2) A question arising at a meeting of the Authority must be determined by a majority of votes of members present and voting on the question.
- (3) If voting is equal, the person presiding has a casting, as well as a deliberative, vote.
- (4) The person presiding at a meeting must ensure that minutes of the meeting are kept.
- (5) Subject to this Act, the Authority may regulate its own proceedings.

### **15 Pecuniary interests of members**

- (1) A member who has a pecuniary interest in a matter being considered or about to be considered by the Authority must as soon as practical after the relevant facts have come to the member's knowledge declare the nature of that interest at a meeting of the Authority.

Penalty: 60 penalty units.

- (2) Subsection (1) does not apply in the case of a member engaged in the dairy industry if the interest is no greater than that of any other person so engaged.

- (3) The Chairperson of a meeting at which a declaration is made under this section must cause a record of the declaration to be made in the minutes of the meeting.
- (4) Unless the Authority otherwise resolves, a member who has made a declaration under subsection (1) must not be present during any deliberation with respect to, or vote on, the matter in respect of which the declaration is made.

Penalty: 60 penalty units.

#### **16 Improper use of information**

A person who is, or has been, a member, officer or employee of the Authority must not make improper use of any information acquired in the course of his or her duties to obtain directly or indirectly any pecuniary or other advantage for himself or herself or for any other person.

Penalty: 60 penalty units.

#### **17 Delegation**

The Authority may by an instrument of delegation under its common seal delegate to an employee of the Authority, by name or position, any power, duty or function of the Authority under this Act, other than this power of delegation.

#### **18 Officers and employees**

- (1) Subject to subsection (2), the Authority must appoint—
  - (a) a General Manager who shall be the Chief Executive Officer of the Authority;
  - (b) such other officers and employees as are necessary to enable the Authority to perform its functions, exercise its powers and achieve its objectives.

S. 17  
amended by  
No. 40/2019  
s. 6.

- (2) The first General Manager appointed under this Act is to be appointed by the Chairperson of the Authority.
- (3) Subject to and in accordance with the policies and directions given to the General Manager by the Authority, the General Manager is—
- (a) responsible for the administration of the day to day management of the affairs and undertakings of the Authority; and
  - (b) under a duty to satisfy the Authority that any—
    - (i) payments for the purposes of this Act are made; and
    - (ii) officers and employees appointed under subsection (1) are deployed—in a manner which is consistent with the objectives and functions of the Authority under this Act.
- (4) An officer or employee of the Authority must at all times—
- (a) act honestly; and
  - (b) use reasonable diligence in the discharge of duties under this Act.
- (5) Persons appointed as officers or employees of the Authority under this section are not subject to the **Public Administration Act 2004**.

S. 18(5)  
amended by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 51.2).

## 19 Borrowing and investment powers

The Authority has the powers conferred on it by the **Borrowing and Investment Powers Act 1987**.

## **20 Corporate plan**

- (1) The Authority must, with its first annual report under this Act, submit to the Minister a corporate plan for the next 5 years containing—
  - (a) an assessment of the operating environment; and
  - (b) the corporate objectives of the Authority; and
  - (c) the strategies for achieving the corporate objectives; and
  - (d) indicators against which the performance of the Authority can be measured.
- (2) The Authority must with each fifth annual report, submit to the Minister a new corporate plan for the next 5 years containing the matters specified in subsection (1).
- (3) The Authority must take into account the views of the dairy industry in preparing a corporate plan.

## **21 Reporting to the dairy industry**

- (1) Within 3 months of submitting its annual report to the Minister, the Authority must hold a general meeting with senior representatives of dairy industry organisations recognised by the Authority as being organisations that represent a significant section or group within the dairy industry.
- (2) The Authority must give at least 6 weeks notice of the general meeting to each organisation under subsection (1).
- (3) The notice of the general meeting must specify matters to be considered and request submission within 3 weeks of further matters for consideration at the general meeting.

- (4) The Authority must report to the general meeting on its performance and activities during the preceding financial year.
- (5) The Authority may present the report in such form as it considers appropriate.

**21A Minister to ensure tabling of report**

The Minister must ensure that any annual report of the Geoffrey Gardiner Dairy Foundation Ltd ACN 094 733 418 that the Minister receives is tabled in each House of Parliament within 10 sitting days after the day that he or she receives the report.

S. 21A  
inserted by  
No. 22/2004  
s. 5.

## **Part 3—Dairy industry licences**

### **22 Certain businesses and vehicles to be licensed**

(1) A person must not commence or conduct business as a—

- (a) dairy farmer;
- (b) dairy manufacturer;
- (c) dairy food carrier;
- (d) dairy distributor—

unless that person holds a current and valid dairy industry licence in respect of the business.

Penalty: 120 penalty units.

**Note to  
s. 22(1)  
inserted by  
No. 13/2013  
s. 16(1).**

#### **Note**

Section 55C applies to an offence against this subsection.

(2) A person must not—

- (a) own a dairy transport vehicle which is used or intended to be used to transport dairy food in bulk; or
- (b) use a dairy transport vehicle to transport dairy food in bulk—

unless there is a current and valid dairy industry licence in respect of the dairy transport vehicle or unless there is a dairy industry licence or corresponding authority in force under this Act or any corresponding law of another State or Territory of the Commonwealth in respect of the dairy transport vehicle.

Penalty: 120 penalty units.

**Note to  
s. 22(2)  
inserted by  
No. 13/2013  
s. 16(2).**

#### **Note**

Section 55A applies to an offence against paragraph (a) and section 55C applies to an offence against paragraph (b).

## 22A Exemptions from licensing requirement

S. 22A  
inserted by  
No. 69/2004  
s. 38.

- (1) The Authority may, in writing, exempt a person from the requirement to hold a dairy industry licence if—
  - (a) the person—
    - (i) is the proprietor of a food business that operates at, on or from a 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 **Seafood Safety Act 2003**; and
  - (b) it is a requirement of the relevant Act referred to in paragraph (a) that there is in place a quality assurance program or food safety program in relation to the food produced or handled in the business of the person; and
  - (c) in the opinion of the Authority, the person's program adequately covers dairy food safety in relation to any dairy food dealt with in the business of the person.
- (2) An exemption under subsection (1) may be granted by the Authority to a person or to a class of person—
  - (a) on the Authority's own motion or on the application of a person on the person's behalf or on behalf of a class of person; and
  - (b) on payment by a person of any fee fixed in respect of an application for exemption.

- (3) The Authority may, in writing, amend, vary or revoke an exemption granted under subsection (1).

### **23 Application for a dairy industry licence**

- (1) An application for the issue, renewal or transfer of a dairy industry 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 amount (if any) required by the Authority to accompany the application in respect of the relevant fee for the issue, renewal or transfer of the licence.
- (2) The Authority may fix a proportionate fee for a licence issued for a period greater or less than 1 year.

S. 23(1)(c)  
substituted by  
No. 69/2004  
s. 39.

### **24 Licence fees**

- (1) The Authority may in respect of the issue, transfer or renewal of dairy industry 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 dairy 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.
- (4) The Authority may, in consultation with the dairy industry, determine—
  - (a) that licence fees may be paid in instalments; and
  - (b) the timing and method of payment of the instalments.

S. 24(4)  
inserted by  
No. 69/2004  
s. 40.

## **25 Dairy industry licences**

- (1) A dairy industry licence must be issued or renewed by the Authority—
  - (a) subject to this Act and to such terms and conditions as 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 such period as is determined by the Authority being a period not greater than 2 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 dairy industry licences.

## 26 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) refuse to transfer;
  - (e) cancel;
  - (f) suspend—

a dairy industry 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 licensee has ceased to carry on business of the nature specified in the licence;
  - (b) the applicant or the licensee, as the case may be, does not, or the premises or the vehicle does not, meet or comply with any requirement of this Act, the regulations or a Code of Practice or of the **Public Health and Wellbeing Act 2008** or the **Food Act 1984** that is applicable;
  - (c) the applicant or the licensee, as the case may be, has been convicted of an offence in relation to a requirement specified in paragraph (b);
  - (d) the licensee has failed to comply with any condition specified in the licence;
  - (e) the Authority has withdrawn or suspended approval of a food safety program;

S. 26(2)(b)  
amended by  
No. 46/2008  
s. 273.

- (ea) the applicant or licensee has defaulted on any debt owed to the Authority;
- (f) any other ground which is prescribed for the purposes of this section.
- (3) The Authority may insert a new condition or amend, vary or delete any condition or other matter specified in a dairy industry licence and must advise the licensee in writing of any such insertion, amendment, variation or deletion.
- (4) The Authority may issue or renew a dairy industry licence for a period not exceeding 6 months so as to enable the applicant or licensee to comply with any requirements under subsection (2)(b) or any condition under subsection (2)(d) or (2)(e).

**S. 26(2)(ea)**  
inserted by  
No. 69/2004  
s. 41.

## **27 Review of decision of Authority**

- (1) Any person whose interests are affected by any decision of the Authority to—
- (aa) refuse to grant an exemption under section 22A(1) in respect of;
- (a) refuse to issue;
- (b) issue or renew subject to conditions;
- (c) refuse to renew;
- (d) refuse to transfer;
- (e) cancel;
- (f) suspend;

**S. 27(1)(aa)**  
inserted by  
No. 69/2004  
s. 42.

(g) amend, vary or delete a condition or insert a new condition in—

a dairy industry licence may within 28 days of being notified of the decision apply to the Victorian Civil and Administrative Tribunal for review of the decision.

(2) A decision of the Authority to cancel or suspend a dairy industry licence does not take effect—

(a) until the expiry of 28 days from the day on which the licensee is notified of the decision;  
or

(b) if an application under subsection (1) is made for review of the decision, unless and until the review has been determined in favour of the Authority.

## **28 Reasons for decision**

If, under the **Victorian Civil and Administrative Tribunal Act 1998**, a person requests a statement of reasons for the decision, the period of 28 days referred to in section 27(1) or 27(2)(a) is extended until 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.

## **29 Effect of issue of dairy industry licence**

The issue of a dairy industry licence does not—

(a) entitle the licensee to any specified business or market share or other entitlement;

(b) guarantee the licensee the supply of any dairy food or other goods or services.

### **30 Offence relating to dairy food**

A person must not in the course of any business accept, collect, take delivery of, sell or buy, or permit or cause to be accepted, collected, taken delivery of, sold or bought any dairy food from a business which is required to be licensed under this Act if there is no dairy industry licence or corresponding authority in force under this Act or any corresponding law of another State or Territory of the Commonwealth in respect of that business.

Penalty: 120 penalty units.

**Note**

Section 55B applies to an offence against this section.

**Note to s. 30  
inserted by  
No. 13/2013  
s. 16(3).**

## **Part 4—Food safety**

### **31 Codes of Practice**

- (1) The Authority may make Codes of Practice in accordance with this Part.
- (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.
- (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.

### **32 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 dairy industry bodies or organisations which the Authority considers are likely to be affected by the proposed Code of Practice.

### **33 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 such later day as is expressed in the Code of Practice as the day on which the Code of Practice or provision comes into operation.

### **34 Availability of Codes of Practice**

- (1) As soon as practicable after the Minister has approved a Code of Practice, the Authority must publish the Code of Practice in the Government Gazette.
- (2) There must be published with a Code of Practice or a notice of an amendment under section 31(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 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.

### **35 Evidentiary provisions**

If it is alleged in any proceedings under this Act, a Code of Practice or the regulations that a product to which the proceedings relate is either milk or cream and it is proved that the product contains lactose and casein, the product is deemed to be milk or cream as the case may be to which this Part applies unless the contrary is proved.

### **36 Sale and delivery of dairy food which has not been pasteurised or packed and sealed as required**

- (1) Except as otherwise provided in subsection (2), a person must not anywhere in Victoria sell, deliver or provide for human consumption, dairy food—
- (a) which has not been treated as required under a Code of Practice; or
  - (b) which has not been packed and sealed as required under a Code of Practice.

Penalty: 400 penalty units.

**Note**

Section 55C applies to an offence against this subsection.

**S. 36(1)**  
amended by  
**No. 24/2003**  
s. 88.

**Note to**  
**s. 36(1)**  
inserted by  
**No. 13/2013**  
s. 16(1).

- (2) Subsection (1) does not apply to the sale or delivery of dairy food to any licensed dairy manufacturing premises.

### **37 Approval of programs**

The Authority may—

- (a) on its own initiative; or
- (b) at the request of the holder of, or an applicant for, a dairy industry licence—

approve a food safety program in relation to the licence.

**38 Minister may require certain dairy industry licences to have food safety program**

- (1) The Minister may, by notice published in the Government Gazette, declare that a class of dairy industry 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) The Authority must not grant a licence to, or renew the licence of, a person which is in a declared class of dairy industry licence on or after the declaration takes effect unless it has approved a food safety program in relation to the licence.

**39 Contents of program**

- (1) A food safety program must provide for the following—
  - (a) strategies to ensure that, subject to paragraph (d), the standards required by this Act and the regulations are maintained in relation to the licence;
  - (b) that the vehicle or premises (including the construction and operation of the vehicle or premises) to which it applies are to comply with any applicable Code of Practice for the time being approved by the Minister and specified in the program;
  - (c) strategies for implementing any applicable approved Code;
  - (d) exempting the licensee from compliance with any requirement of this Act or the regulations relating to inspection, to the extent that the requirement is inconsistent with the program;

- (e) exempting the licensee from compliance with the regulations relating to any other matter covered by the program;
  - (f) strategies for monitoring compliance with the program;
  - (g) records of checks and inspections made by the licensee;
  - (h) strategies for the training of staff in food handling.
- (2) A food safety program may contain any other provision agreed between the Authority and the licensee.
- (3) A licensee is exempt from a requirement of this Act or the regulations to the extent provided in an approved food safety program under subsection (1)(d) or (e).
- (4) If food other than dairy food is produced, manufactured or sold at the premises, the food safety program must, in respect of that other food, do all of the things listed in section 19D of the **Food Act 1984**.

S. 39(4)  
amended by  
No. 24/2003  
s. 89.

#### **40 Compliance monitoring**

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

#### **41 Audit of food safety programs**

- (1) The Authority may require any person holding a licence with a food safety program to have the program audited for the purpose of determining whether the program—
- (a) has been complied with during the period covered by the audit; and
  - (b) is still adequate at the date of the audit.

- (2) Such a requirement—
  - (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.
- (3) The Authority may vary any requirement at any time by giving the licensee written notice of the variation.

#### **42 Withdrawal or suspension**

- (1) The Authority must withdraw or suspend approval for a food safety program by giving written notice of withdrawal or suspension to the licensee, if the Authority considers that there has been a failure to comply with the program and the failure is so serious that it cannot be dealt with by increased monitoring requirements under the program.
- (2) A food safety program must be taken not to be approved while its approval is suspended.
- (3) The Authority may at any time revoke the suspension of approval of a food safety program by giving written notice of revocation to the licensee.

## **Part 5—Enforcement and legal proceedings**

### **43 Authorised officers**

- (1) The Authority may appoint a person to be an authorised officer for the purposes of this Act.
- (2) An authorised officer has such powers, functions and duties as are conferred on an authorised officer by or under this Act or any other Act.
- (3) The Authority must issue an identity card to each authorised officer.
- (4) An identity card must contain a photograph of the authorised officer to whom it is issued.
- (5) An authorised officer must produce his or her identity card for inspection—
  - (a) before exercising a power under this Part; and
  - (b) at any time during the exercise of a power under this Part, if asked to do so.

Penalty: 10 penalty units.

### **44 Certain records to be kept**

- (1) The holder of a dairy industry licence must send to the Authority any records relating to dairy food as may be required by notice in writing by the Authority.
- (2) The holder of a dairy industry licence 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.

#### **45 General powers of authorised officers**

- (1) For the purposes of the administration of this Act, any Code of Practice and the regulations and of ascertaining whether the provisions of this Act, any Code of Practice and the regulations and the conditions of any dairy industry licence have been or are being complied with, an authorised officer may with such assistance as the authorised officer may require, at any reasonable time—
  - (a) enter, inspect and examine any dairy premises or any other premises on which there is conducted a business in respect of which this Act requires the holding of a licence or which the authorised officer suspects on reasonable grounds is used for such a purpose;
  - (b) detain, enter and examine any vehicle which is used or which the authorised officer suspects on reasonable grounds is used to transport dairy food;
  - (c) require any person to produce for inspection any records in the possession of that person relating to dairy food;
  - (d) require any person on any dairy premises or in charge or apparently in charge of any vehicle used for the transportation of dairy food to—
    - (i) give such information as the authorised officer requests; and
    - (ii) answer any questions put to that person by the authorised officer;

- (e) inspect and examine any records, product, material, equipment, plant or facility on any such premises or vehicle which in the opinion of the authorised officer relates to or is used for receiving, collecting, processing, producing, manufacturing, transporting, storing, distributing, packing, sealing, testing, selling, purchasing or disposing of dairy food;
- (f) seize any records, product or material specified in paragraph (e);
- (g) take copies of or extracts from any records specified in paragraph (e);
- (h) take samples of any dairy food or any material, chemical or other substance or thing used or suspected of being used in connection with the production, preparation, processing, manufacture or testing of any dairy food;
- (i) for the purpose of paragraph (h) open or cause to be opened any package, container or receptacle which contains or which the authorised officer suspects on reasonable grounds contains dairy food;
- (j) conduct or cause to be conducted such examination or analysis as the authorised officer considers necessary to determine the composition or safety of any dairy food;
- (k) monitor any specified functions required by a Code of Practice to be carried out by any person holding specified qualifications.

- (2) The owner of any dairy food examined or analysed under subsection (1)(j) is on payment of the prescribed fee entitled to a certificate from the Authority showing the result of the examination or analysis.
- (3) The owner of any premises specified in subsection (1)(a) and the driver of any vehicle specified in subsection (1)(b) must provide an authorised officer who wishes to exercise or is exercising a power under subsection (1) with such assistance as is necessary or desirable to enable the authorised officer to exercise that power effectively.

#### **46 Actions which an authorised officer may take**

- (1) If an authorised officer is satisfied that, or suspects on reasonable grounds that—
  - (a) any dairy premises or any vehicle, plant, machinery or equipment used in connection with any dairy food is in an unclean or substandard condition; or
  - (b) any dairy food is unfit for human consumption; or
  - (c) any milk for use in the manufacture of any dairy food is below the standard prescribed for use in the manufacture of that kind of dairy food; or
  - (d) any dairy premises or dairy food 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 dairy premises, dairy food 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 which an authorised officer may take for the purposes of this section are as follows—
- (a) order the dairy premises, vehicle, plant, machinery or equipment, as the case may be, to be forthwith cleaned and disinfected to the satisfaction of the authorised officer;
  - (b) order that the use of a specified area of any dairy premises or of any vehicle, plant, machinery or equipment in connection with dairy food be stopped;
  - (c) order that no dairy food or class of dairy food specified in the order be removed from the dairy premises for any purpose whatsoever or for any purpose specified in the order for such period of time as is specified in the order;
  - (d) order that any dairy food or class of dairy food specified in the order be seized, detained or destroyed.
- (3) If an authorised officer is satisfied that any dairy food inspected by the authorised officer is unfit for human consumption, the authorised officer may add any colouring material to the dairy food to render it unsaleable for human consumption but so as not to make it unfit for use as food for animals.
- (4) A person to whom an order is addressed under this section must comply with the order.

Penalty: 120 penalty units.

**Note**

Section 55C applies to an offence against this subsection.

**Note to  
s. 46(4)  
inserted by  
No. 13/2013  
s. 16(1).**

#### **47 Destruction of dairy food**

(1) Despite anything in section 48, if an authorised officer has seized or detained any dairy food under this Act which in the opinion of the authorised officer is decayed, deteriorated or putrefied or in respect of which the owner consents to the destruction or other disposal thereof, the authorised officer may—

- (a) destroy or otherwise dispose of the dairy food; or
- (b) if the owner of the dairy food has so requested, permit that person to destroy or otherwise dispose of the dairy food—

in accordance with procedures approved from time to time in writing by the Authority.

(2) If any dairy food is seized or detained under this Act—

- (a) in respect of which an application for release under section 48 has not been made; or
- (b) which is treated, destroyed or otherwise disposed of or dealt with under section 48(4) or subsection (1)(a) as the case may be—

the owner of the dairy food is liable to pay the costs and expenses incurred in or in connection with the storage, treatment, destruction or other disposal of or dealing with the dairy food.

#### **48 Seized or detained dairy food**

(1) Where any dairy food has been seized or detained by an authorised officer under section 46(2)(d)—

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

- (b) any person claiming the dairy food may within 7 days after the seizure or detention make application in writing to the Magistrates' Court for an order directing the authorised officer to release the dairy food.
- (2) If an application is made to the Magistrates' Court the applicant must at the same time send a copy of the application to the authorised officer responsible for the seizure or detention of the dairy food.
- (3) Upon hearing an application the Magistrates' Court—
  - (a) must if it is—
    - (i) satisfied that the dairy food is not unfit for human consumption, make an order disallowing the seizure or detention and directing the authorised officer to release the dairy food; or
    - (ii) satisfied that the dairy food is unfit for human consumption, refuse the application and make an order confirming the seizure or detention of the dairy food; and
  - (b) may make such order as it considers appropriate in respect of the costs of the proceedings and the costs and expenses of and incidental to the seizure or detention of the dairy food.
- (4) If an application—
  - (a) is not made under subsection (1), upon the expiration of the period of 7 days after the seizure or detention; or

(b) is made under subsection (1) and the application is refused, upon that refusal—  
the dairy food becomes the property of the Crown and is to be treated, destroyed or otherwise dealt with as directed in writing by the Authority.

#### **49 Procedure in respect of samples**

- (1) If an authorised officer proposes to take a sample under section 45(1)(h) for use in any legal proceedings under this Act the following provisions apply—
  - (a) the authorised officer must pay or tender to the owner of the premises or the dairy food or where appropriate an agent or employee the current market value of the dairy food or other substance;
  - (b) if any dairy food is kept for retail sale in an unopened package, the authorised officer must not require any person to sell less than the whole of the package;
  - (c) the procuring of the sample and the payment or tender of the current market value are for the purposes of this Act a sale by the owner, agent or employee to the authorised officer of the dairy food contained in the sample.
- (2) If an authorised officer obtains a sample of any dairy food with the intention that it be submitted for analysis for use in any legal proceedings under this Act the authorised officer must—
  - (a) before or as soon as practicable after obtaining the sample, inform the owner or other person from whom the sample was obtained of that intention; and
  - (b) subject to subsections (3) and (4), divide the sample into three approximately equal parts; and

- (c) place each part in a separate package; and
  - (d) mark in accordance with a Code of Practice each part and seal or fasten each part in such manner as its nature permits; and
  - (e) leave one of the parts with the owner or other person from whom the sample was obtained; and
  - (f) submit one of the remaining parts for analysis; and
  - (g) retain the remaining part for future comparison.
- (3) If the division of a sample into three separate parts in accordance with subsection (2)(b) would in the opinion of the authorised officer—
- (a) so affect or impair the composition or quality of the sample as to render the separate parts unsuitable for accurate analysis; or
  - (b) furnish parts insufficient for accurate analysis; or
  - (c) render the sample in any other way unsuitable for analysis—
- the authorised officer must deal with the sample in a manner appropriate in the circumstances having regard to this Act.
- (4) If a sample is obtained by an authorised officer in the form of separate or severable objects it is not necessary to divide that sample into parts and it is sufficient compliance with this section if the authorised officer—
- (a) obtains a number of those objects; and

- (b) divides the number so obtained into the requisite number of parts so that each part consists of one or more such objects; and
  - (c) deals with the parts in accordance with subsection (2) or (3).
- (5) An authorised officer has complied with this section even if the owner or other person from whom the sample was obtained fails or refuses to accept one part of the sample.

S. 50  
amended by  
No. 24/2003  
s. 90(2).

## **50 Offences with respect to authorised officers**

A person must not—

- (a) except with the authority of an authorised officer or an order of a court—
  - (i) remove, alter or interfere in any way with any records, product, material, dairy food or other substance seized or detained under this Act; or
  - (ii) remove, alter or interfere in any way with any sample procured under this Act; or
  - (iii) erase, alter, open, break or remove a mark, seal or fastening placed by an authorised officer on any part of a sample other than the part left with the person from whom the sample was taken; or
- (b) refuse to sell to an authorised officer any dairy food or to allow an authorised officer to take any sample under this Act; or
- (c) assault, obstruct, hinder, threaten, abuse, insult, intimidate or attempt to obstruct or intimidate any authorised officer or other person in the exercise or performance of any power, authority, function or duty under this Act; or

- (d) without reasonable cause fail or refuse to comply with a requirement under section 45(1)(d); or
- (e) give information to an authorised officer, the Authority or an employee of the Authority under this Act, including any information or answer required to be given under section 45(1)(d), that the person believes to be false or misleading in any material particular; or
- (ea) 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; or
- (f) when required by an authorised officer to do so, fail or refuse to state the correct name and address of that person; or
- (g) refuse admission to an authorised officer and any person accompanying an authorised officer under section 45(1); or
- (h) refuse or neglect to render assistance when required to do so under section 45(3); or
- (i) contravene or fail to comply with any lawful requirement, direction or order of an authorised officer.

S. 50(e)  
substituted by  
No. 24/2003  
s. 90(1).

S. 50(ea)  
inserted by  
No. 24/2003  
s. 90(1).

Penalty: 60 penalty units.

**Note**

Section 55A applies to an offence against this section.

Note to s. 50  
inserted by  
No. 13/2013  
s. 16(4).

## 51 Defence to certain charge

It is a defence to a prosecution for the offence constituted by section 50(d) if the person charged with the offence proves that the authorised officer

had not informed that person that he or she was required by this Act to give the information or reply to the question.

## **52 Particular defence not available**

It is not a defence to a prosecution or other legal proceeding under this Act which relates to any dairy food purchased for analysis under section 49 to prove that the part of the sample of the dairy food retained for future comparison has from spontaneous natural causes deteriorated, perished or undergone a material change in its constitution.

## **53 Miscellaneous offences**

- (1) A person must not—
- (a) provide false or misleading information in or in connection with any application with respect to a dairy industry licence under this Act; or
  - (b) fail to comply with any notice or order made under this Act.

### **Note**

Section 55A applies to an offence against paragraph (a) and section 55C applies to an offence against paragraph (b).

**Note to  
s. 53(1)  
inserted by  
No. 13/2013  
s. 16(2).**

- (2) If a person is convicted of the offence constituted by subsection (1)(a), the Authority may by notice in writing to that person—
- (a) cancel any dairy industry licence issued, renewed or transferred upon that false or misleading information and disqualify that person from holding such a licence for such period as the Authority considers appropriate; or
  - (b) suspend the licence for such period as the Authority considers appropriate.

#### **54 General penalty**

A person who is guilty of an offence against this Act for which no penalty is expressly provided is liable to a penalty of not more than 60 penalty units.

#### **55 Persons who are liable for offences**

- (1) A person who aids, abets, counsels or procures or is in any way knowingly concerned in the commission of an offence against this Act is guilty of that offence and liable to the penalty for that offence.
- (2) If two or more persons are responsible for the same offence against this Act each of those persons is liable to the penalty provided by this Act for that offence and the liability of each of them is independent of the liability of any other person.

\* \* \* \* \*

**S. 55(3)(4)**  
repealed by  
No. 13/2013  
s. 13.

- (5) If a person who is guilty of an offence is a partnership or an unincorporated body the reference to a person must be construed as a reference to each member of the partnership or of the committee of management of the unincorporated body, as the case may be.

#### **55A Criminal liability of officers of bodies corporate— accessorial liability**

**S. 55A**  
inserted by  
No. 13/2013  
s. 14.

- (1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer—
  - (a) authorised or permitted the commission of the offence by the body corporate; or

- (b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the body corporate.
- (2) For the purposes of subsection (1), the following provisions are specified—
- (a) section 22(2)(a);
  - (b) section 50;
  - (c) section 53(1)(a).
- (3) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.
- (4) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.
- (5) In this section—
- body corporate*** has the same meaning as corporation has in section 57A of the Corporations Act;
- officer*** in relation to a body corporate means—
- (a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or
  - (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.

- (6) This section does not affect the operation of Subdivision (1) of Division 1 of Part II of the **Crimes Act 1958**.

S. 55A(6)  
substituted by  
No. 20/2015  
s. 56(Sch. 1  
item 3).

**55B Criminal liability of officers of bodies corporate—  
failure to exercise due diligence**

S. 55B  
inserted by  
No. 13/2013  
s. 14.

- (1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.
- (2) For the purposes of subsection (1), section 30 is specified.
- (3) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to—
- (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
  - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
  - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
  - (d) any other relevant matter.
- (4) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so,

the officer bears the same burden of proof that the body corporate would bear.

(5) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.

(6) In this section—

*body corporate* has the same meaning as in section 55A;

*officer* in relation to a body corporate, has the same meaning as in section 55A.

S. 55C  
inserted by  
No. 13/2013  
s. 14.

**55C Criminal liability of officers of bodies corporate—  
failure to exercise due diligence (legal burden of  
proof)**

(1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision.

(2) For the purposes of subsection (1), the following provisions are specified—

(a) section 22(1);

(b) section 22(2)(b);

(c) section 36(1);

(d) section 46(4);

(e) section 53(1)(b).

(3) It is a defence to a charge for an offence against a provision specified in subsection (2) for an officer of a body corporate to prove that the officer exercised due diligence to prevent the commission of the offence by the body corporate.

- (4) In determining whether an officer of a body corporate exercised due diligence, a court may have regard to—
- (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
  - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
  - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
  - (d) any other relevant matter.
- (5) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.
- (6) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.
- (7) In this section—
- body corporate* has the same meaning as in section 55A;
- officer* in relation to a body corporate, has the same meaning as in section 55A.

## 56 Defence to charge

S. 56  
amended by  
No. 13/2013  
s. 15 (ILA  
s. 39B(1)).

- (1) It is a defence to a prosecution or other legal proceeding under this Act if the person charged with the offence proves that—
  - (a) he or she used due diligence to prevent the commission of an offence; and
  - (b) he or she did not know that an offence was being committed or consent to or connive in the commission of the offence.

S. 56(2)  
inserted by  
No. 13/2013  
s. 15.

- (2) This section does not apply to a prosecution or other legal proceeding brought against an officer of a body corporate for an offence against a provision specified in section 55A(2), 55B(2) or 55C(2) in circumstances where the body corporate has committed an offence against that provision.

S. 56(3)  
inserted by  
No. 13/2013  
s. 15.

- (3) In subsection (2) *officer* in relation to a body corporate, has the same meaning as in section 55A.

## 57 Power of authorised officer to prosecute

- (1) Any authorised officer may prosecute for any offence against this Act or any regulations.
- (2) A fee is not payable on the issue or service of any summons or warrant of distress on the complaint of any authorised officer for the purposes of enforcing any of the provisions of this Act or the regulations.

## 58 Service

- (1) Where 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;
  - (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) Where 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
  - (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.

S. 58(4)  
amended by  
No. 44/2001  
s. 3(Sch.  
item 28).

## **59 Evidentiary provisions**

- (1) In any prosecution or other legal proceedings under this Act or the regulations—
- (a) any dairy food found on any dairy premises or other premises or vehicle used for the sale, manufacturing, storing, supplying or conveying for sale of dairy food is presumed in the absence of evidence to the contrary, to be intended for sale for human consumption;

- (b) the production of a copy of the Government Gazette containing any matters required by this Act to be published in the Government Gazette is conclusive evidence of the matters specified therein;
- (c) the production of a certificate purporting to be signed by the General Manager to the Authority stating that a Code of Practice or any incorporated document or any amendment to an incorporated document was available for inspection is evidence of the facts stated in the absence of evidence to the contrary;
- (d) proof is not required as to—
  - (i) the particular or general appointment of any authorised officer, the Chairperson, the General Manager or any other officer or employee of the Authority; or
  - (ii) the authority of any officer or employee to prosecute—until evidence is given to the contrary;
- (e) subject to subsections (2) and (3), if a copy of a certificate of a test bearing an endorsement to the effect that the test were carried out in a laboratory registered by the National Association of Testing Authorities, Australia, in accordance with the terms of that registration—
  - (i) obtained on behalf of the informant, is served with the summons; or

- (ii) obtained on behalf of the accused, is given to the informant at least 7 days before the return date of the summons—

S. 59(1)(e)(ii)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 43).

that certificate is evidence of the matters stated in the certificate.

- (2) If a certificate of a test has been obtained on behalf of a party to a prosecution, any other party may, at least 3 days before the return date of the summons, give notice in writing to the first-mentioned party requiring the person who carried out the test or endorsed the certificate or both to be called as a witness.
- (3) If on the production of a certificate of a test in any proceedings, the court—
- (a) on application by a party; or
  - (b) by any other means—

is satisfied that the person who carried out the test or endorsed the certificate or both should be called as a witness in the proceedings, the Court may order that either or both persons be called as a witness by the party who produced the certificate.

## **60 Immunity**

- (1) An authorised officer is not personally liable for anything done or omitted to be done in good faith—
- (a) in the exercise of a power or the performance of a duty; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a power or the performance of a duty under this Act.

- (2) Any liability resulting from an act or omission that, but for subsection (1), would attach to an authorised officer attaches instead to the Authority.

## **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);
- (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;

- (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 such an extent as 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.

## Part 6—Miscellaneous and transitional

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S. 62  
repealed by  
No. 28/2007  
s. 3(Sch.  
item 16).

### 63 Transfer of Funds

The Victorian Dairy Industry Authority must from its funds transfer to Dairy Food Safety Victoria for the purposes of this Act—

- (a) the amount of \$200 000 on a day to be specified by the Minister in writing; and
- (b) a further amount to be determined by the Minister not exceeding \$1 600 000 on a later day to be specified by the Minister in writing.

### 64 Transfer of staff

- (1) The Secretary to the Department on the recommendation of the Chairperson must list in writing the employees of the Victorian Dairy Industry Authority who are to become employees of Dairy Food Safety Victoria.
- (2) A person listed under subsection (1) is to be regarded as from the commencement of this section as—
  - (a) having been employed by Dairy Food Safety Victoria with effect from that commencement;
  - (b) having been employed on the same terms and conditions as those that applied to the person immediately before that commencement as an employee of the Victorian Dairy Industry Authority;

- (c) having accrued an entitlement to benefits in connection with that employment by Dairy Food Safety Victoria, that is equivalent to the entitlement that the person had accrued as an employee of the Victorian Dairy Industry Authority immediately before that commencement.
- (3) The services of a transferred employee as an employee of Dairy Food Safety Victoria is to be regarded for all purposes as having been continuous with the service of the transferred employee immediately before the commencement of this section as an employee of the Victorian Dairy Industry Authority.
- (4) A transferred employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of the Victorian Dairy Industry Authority because of this Act.
- (5) A certificate signed by the Secretary to the Department certifying that a person named in the certificate was, with effect from the commencement of this section, employed by virtue of this section by Dairy Food Safety Victoria is admissible in any proceedings and is conclusive proof of the matters stated in it.
- (6) Nothing in this section prevents—
  - (a) any of the terms and conditions of employment of a transferred employee from being altered by or under any law, award or agreement with effect from any time after the commencement of this section; or

- (b) a transferred employee from resigning or being dismissed at any time after that commencement in accordance with the then existing terms and conditions of his or her employment with Dairy Food Safety Victoria.

## **65 Independent entity**

- (1) In this section *independent entity* means a company limited by guarantee which—
  - (a) is formed for the purpose of managing the investment of funds to maximise the benefits to all sectors of the Victorian dairy industry and to dairy communities; and
  - (b) is designated for the purpose of this section by the Minister by notice published in the Government Gazette.
- (2) On the commencement of this section—
  - (a) assets of the Victorian Dairy Industry Authority which are designated by the Minister for the purposes of this section are by virtue of this Act vested in the independent entity;
  - (b) such liabilities of the Victorian Dairy Industry Authority as are designated by the Minister for the purposes of this section are by virtue of this Act liabilities of the independent entity;
  - (c) the independent entity is by virtue of this section substituted as a party to any arrangement, agreement or contract—
    - (i) relating to the assets designated under paragraph (a) and the liabilities designated under paragraph (b); or

- (ii) relating to research and development that may be assigned to the independent entity by the Minister under this section.

**66 Repeal of licensing and quality assurance provisions of the Dairy Industry Act 1992**

- (1) In the **Dairy Industry Act 1992**, sections 5(1)(d), 5(2), 6(1)(g) and 6(1)(j), and Parts 3, 4 and 8 are **repealed**.
- (2) Except as in this Act expressly or by necessary implication provided—
  - (a) all persons, things and circumstances appointed or created by or under the **Dairy Industry Act 1992** or existing or continuing under that Act immediately before the commencement of this section shall under and subject to this Act continue to have the same status, operation and effect as they respectively would have had if this section had not come into operation; and
  - (b) in particular and without affecting the generality of paragraph (a), this Act shall not disturb the continuity of, status, operation or effect of any proclamation, order, Order in Council, Code of Practice, determination, declaration, notice, exemption, approval, appointment, authorisation, application, grant, revocation, suspension, condition, certificate, dairy industry licence, permit, registration, contract, agreement, charge, consent, authority, sale, delivery, proceeding, action, appeal, liability, right or other matter or thing made, done, effected, obtained, issued, granted, given, prescribed, fixed, accrued, incurred, acquired, existing or continuing before the commencement of this section under the **Dairy Industry Act 1992**.

- (3) For the purposes of this Act, a person who immediately before the commencement of this section—
- (a) was the holder of a dairy industry licence to conduct business as a factory or milk processor, is deemed to be the holder of a dairy industry licence to conduct business as a dairy manufacturer;
  - (b) was the holder of a dairy industry licence to conduct business as a milk distributor, is deemed to be the holder of a dairy industry licence to conduct business as a dairy distributor;
  - (c) was the holder of a dairy industry licence to conduct business as a milk carrier, is deemed to be the holder of a dairy industry licence to conduct business as a dairy food carrier.

#### **67 Repeal of Dairy Industry Act 1992**

- (1) The **Dairy Industry Act 1992** is **repealed**.
- (2) On the commencement of this section—
  - (a) the members of the Victorian Dairy Industry Authority constituted under the **Dairy Industry Act 1992** go out of office; and
  - (b) Dairy Food Safety Victoria is the successor in law of the Victorian Dairy Industry Authority.

#### **68 No duty or tax chargeable**

No stamp duty or other tax is chargeable under any Act in respect of anything done under this Part.

Ss 69, 70  
repealed by  
No. 28/2007  
s. 3(Sch.  
item 16).

S. 71  
inserted by  
No. 69/2004  
s. 43.

S. 72  
inserted by  
No. 13/2013  
s. 17.

\* \* \* \* \*

## 71 Validation of licences paid in instalments

- (1) A dairy industry licence issued before the commencement of section 43 of the **Primary Industries Legislation (Further Miscellaneous Amendments) Act 2004** is not invalid by reason only of the fact that any licence fee paid in respect of it was paid by instalments.
- (2) All licence fees paid by instalments before that commencement are deemed to have been validly collected.

## 72 Transitional provision—Statute Law Amendment (Directors' Liability) Act 2013

- (1) For the avoidance of doubt, section 55A applies with respect to an offence against a provision specified in subsection (2) of that section that is alleged to have been committed by a body corporate on or after the commencement of section 14 of the **Statute Law Amendment (Directors' Liability) Act 2013**.
- (2) For the avoidance of doubt, section 55B applies with respect to an offence against a provision specified in subsection (2) of that section that is alleged to have been committed by a body corporate on or after the commencement of section 14 of the **Statute Law Amendment (Directors' Liability) Act 2013**.
- (3) For the avoidance of doubt, section 55C applies with respect to an offence against a provision specified in subsection (2) of that section that is alleged to have been committed by a body corporate on or after the commencement of

section 14 of the **Statute Law Amendment  
(Directors' Liability) Act 2013**.

- (4) This section does not limit section 14 of the  
**Interpretation of Legislation Act 1984**.
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## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

*Minister's second reading speech—*

*Legislative Assembly: 4 May 2000*

*Legislative Council: 30 May 2000*

The long title for the Bill for this Act was "to establish Dairy Food Safety Victoria with responsibility for dairy industry licensing and dairy food safety, to repeal the **Dairy Industry Act 1992** and for other purposes."

The **Dairy Act 2000** was assented to on 6 June 2000 and came into operation as follows:

Part 1 (sections 1–3) on 7 June 2000: section 2(1); sections 4, 5(b), 6(h)(i), 7–21, 62, 63, 68 on 1 July 2000: Government Gazette 29 June 2000 page 1455; sections 5(a), 6(a)–(g), 22–61, 64, 66, 69, 70 on 30 September 2000: Government Gazette 28 September 2000 page 2375; section 65 on 27 October 2000; section 67 on 31 October 2000: Government Gazette 26 October 2000 page 2571.

### INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

#### Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

#### References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

#### Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in

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a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

## 2 Table of Amendments

This publication incorporates amendments made to the **Dairy Act 2000** by Acts and subordinate instruments.

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### **Corporations (Consequential Amendments) Act 2001, No. 44/2001**

*Assent Date:* 27.6.01  
*Commencement Date:* S. 3(Sch. item 28) on 15.7.01: s. 2  
*Current State:* This information relates only to the provision/s amending the **Dairy Act 2000**

### **Seafood Safety Act 2003, No. 24/2003**

*Assent Date:* 13.5.03  
*Commencement Date:* Ss 87–90 on 1.7.03: Government Gazette 26.6.03 p. 1548  
*Current State:* This information relates only to the provision/s amending the **Dairy Act 2000**

### **Fisheries (Amendment) Act 2003, No. 56/2003**

*Assent Date:* 16.6.03  
*Commencement Date:* S. 11(Sch. item 5) on 17.6.03: s. 2  
*Current State:* This information relates only to the provision/s amending the **Dairy Act 2000**

### **Primary Industries Legislation (Miscellaneous Amendments) Act 2004, No. 22/2004**

*Assent Date:* 18.5.04  
*Commencement Date:* S. 5 on 19.5.04: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Dairy Act 2000**

### **Primary Industries Legislation (Further Miscellaneous Amendments) Act 2004, No. 69/2004**

*Assent Date:* 19.10.04  
*Commencement Date:* Ss 37–43 on 1.12.04: Government Gazette 18.11.04 p. 3135  
*Current State:* This information relates only to the provision/s amending the **Dairy Act 2000**

### **Public Administration Act 2004, No. 108/2004**

*Assent Date:* 21.12.04  
*Commencement Date:* S. 117(1)(Sch. 3 item 51) on 5.4.05: Government Gazette 31.3.05 p. 602  
*Current State:* This information relates only to the provision/s amending the **Dairy Act 2000**

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**Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006**

*Assent Date:* 10.10.06  
*Commencement Date:* S. 26(Sch. item 23) on 11.10.06: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Dairy Act 2000**

**Statute Law Revision Act 2007, No. 28/2007**

*Assent Date:* 26.6.07  
*Commencement Date:* S. 3(Sch. item 16) on 27.6.07: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Dairy Act 2000**

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

*Assent Date:* 2.9.08  
*Commencement Date:* S. 273 on 1.1.10: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Dairy Act 2000**

**Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009**

*Assent Date:* 24.11.09  
*Commencement Date:* S. 97(Sch. item 43) on 1.1.10: Government Gazette 10.12.09 p. 3215  
*Current State:* This information relates only to the provision/s amending the **Dairy Act 2000**

**Health and Human Services Legislation Amendment Act 2010, No. 29/2010**

*Assent Date:* 8.6.10  
*Commencement Date:* S. 55 on 1.7.10: Special Gazette (No. 235) 23.6.10 p. 1  
*Current State:* This information relates only to the provision/s amending the **Dairy Act 2000**

**Statute Law Amendment (Directors' Liability) Act 2013, No. 13/2013**

*Assent Date:* 13.3.13  
*Commencement Date:* Ss 13–17 on 14.3.13: s. 2  
*Current State:* This information relates only to the provision/s amending the **Dairy Act 2000**

**Statute Law Revision Act 2013, No. 70/2013**

*Assent Date:* 19.11.13  
*Commencement Date:* S. 4(Sch. 2 item 10) on 1.12.13: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Dairy Act 2000**

**Justice Legislation Amendment Act 2015, No. 20/2015**

*Assent Date:* 16.6.15  
*Commencement Date:* S. 56(Sch. 1 item 3) on 17.6.15: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Dairy Act 2000**

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**Primary Industries Legislation Amendment Act 2019, No. 40/2019**

*Assent Date:* 6.11.19  
*Commencement Date:* Ss 5, 6 on 17.12.19: Special Gazette (No. 537)  
17.12.19 p. 2  
*Current State:* This information relates only to the provision/s  
amending the **Dairy Act 2000**

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### **3 Amendments Not in Operation**

There are no amendments which were Not in Operation at the date of this publication.

#### **4 Explanatory details**

No entries at date of publication.