

TRANSCRIPT

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into the Closure of I Cook Foods Pty Limited

Melbourne—Wednesday, 24 June 2020

MEMBERS

Ms Fiona Patten—Chair

Dr Tien Kieu—Deputy Chair

Ms Jane Garrett

Ms Wendy Lovell

Ms Tania Maxwell

Mr Craig Ondarchie

Ms Kaushaliya Vaghela

PARTICIPATING MEMBERS

Dr Matthew Bach

Ms Melina Bath

Mr Rodney Barton

Ms Georgie Crozier

Dr Catherine Cumming

Mr Enver Erdogan

Mr Stuart Grimley

Mr David Limbrick

Mr Edward O'Donohue

Mr Tim Quilty

Dr Samantha Ratnam

Ms Harriet Shing

Mr Lee Tarlamis

WITNESSES

Mr John Bennie, Chief Executive Officer,

Mr Jody Bosman, Director, City Planning, Design and Amenity,

Ms Mandy Gatliff, Manager, Community Care,

Ms Elizabeth Garlick, Environmental Health Officer, and

Ms Leanne Johnson, Coordinator, Public Health, City of Greater Dandenong.

The CHAIR: I declare open the Standing Committee on Legal and Social Issues public hearing. Please could everyone ensure that their mobile phones are turned to silent.

Let me please begin this hearing by acknowledging the Aboriginal peoples, the traditional custodians of the various lands each of us are gathered on here today, and pay my respects to their ancestors, elders and families. I particularly welcome any elders or community members who are here today to impart their knowledge of this issue to the committee or who are watching the broadcast of these proceedings. I would also like to welcome anyone watching the broadcast of these proceedings.

We have had some apologies from some members of the committee. Ms Shing is appearing via videoconference.

The committee is hearing evidence today in relation to our Inquiry into the Closure of I Cook Foods. All evidence taken at this hearing is protected by parliamentary privilege as provided by the *Constitution Act 1975* and also our standing orders in the Legislative Council. Therefore any information that you provide today is protected by law. Any comment repeated outside may not be protected. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

As you can see, this evidence is being recorded. We will provide you with a proof version of the transcript. As you can see, Hansard is here to undertake a very accurate record, but I would encourage you to have a look at it and just make sure we have not mistaken anything or misinterpreted anything in any way. Ultimately it will be made public and posted on the committee's website.

Now, I know you have discussed with the secretariat the format of this, and I appreciate you making some changes to that. I think given the size of the committee, which means we have limited time for questions, we would welcome you making your opening remarks and then we will open it up to the committee, where they will have limited time for questions. Thank you very much.

Mr BENNIE: Thank you, Madam Chair. We had of course communicated with the secretariat, and we had impressed upon the secretariat that we were accommodating and flexible in terms of how you wanted to operate—

The CHAIR: We are very appreciative.

Mr BENNIE: So notwithstanding that our approach has changed slightly, we are very happy to meet your requirements. My name is John Bennie. I am the Chief Executive Officer of Greater Dandenong City Council. I have held this position since 2 October 2006.

I thank the committee for the opportunity to make public a number of pertinent and evidenced facts that will explain and justify council's actions. As well as touching on related matters, I will directly address concerns the committee may have arising from the evidence given to the committee last week by Ian Cook, Paul Brady and Kim Rogerson.

With the committee's permission, I would like to do three things before answering any questions which committee members may have, and some of this has changed but some of it is still relevant. First, I have compiled some relevant documents for the assistance of the committee. Reference will be made to a number of

these documents, and I have now, via the secretariat, handed each of you a copy of those documents that include a number of tabs.

The CHAIR: I just want to ensure everyone has got copies—great, thank you.

Mr BENNIE: Secondly, I would like to outline the proposed arrangements for this morning's presentation to the committee, which have now been changed. The arrangements had been approved by the senior committee manager of Legislative Council standing committees, but to, I guess, reintroduce those who will be speaking, following me will be Mr Jody Bosman, council's Director of City Planning, Design and Amenity, and then Ms Leanne Johnson, council's Coordinator of Public Health. Seated behind us is Ms Mandy Gatliff, council's Manager of Community Care, and also with Ms Gatliff is Ms Elizabeth Garlick, Environmental Health Officer. Under the revised arrangements we can bring those people forward to answer questions as you require.

Thirdly, I intend to read a brief statement that will both provide an overview of council's position and deal with the allegation that I somehow acted improperly in declaring a conflict of interest or allowing council to regulate I Cook Foods, and all other foods businesses within council's municipal district, when I had a conflict of interest.

As an overview, Mr Cook suggested that council had an agenda to target I Cook Foods and close down his business. This is completely untrue. There is and was no premeditated attempt to regulate I Cook Foods out of business and somehow give Community Chef a commercial advantage. Council's investigation of I Cook Foods commenced only after notification from the Department of Health and Human Services that an elderly woman had died in circumstances where the evidence suggested a possible link with food supplied by I Cook Foods. As Ms Johnson and Ms Garlick will explain, the investigation was conducted professionally and ethically. At no point did I direct or cause anyone else to direct them to achieve a particular outcome. Mr Cook also appeared to suggest that, quite apart from a council agenda, there was something of a conspiracy between council and the chief health officer and/or DHHS to target I Cook Foods or to destroy I Cook's business. There was no such conspiracy. At no point during any discussions with the Chief Health Officer or DHHS was there a suggestion that anyone should deviate from accepted practice or act unethically. The point I want to make—and here I will be very direct with the committee—is that council and its staff have acted with integrity throughout.

I do want to comment briefly on some of the other evidence given by Mr Cook and in turn the evidence of Kim Rogerson. As to Mr Cook, firstly, he implied that I Cook Foods had in many years of operation an unblemished record. It might be true that I Cook Foods was not previously prosecuted. A search of council's record does, however, reveal that a number of complaints about I Cook Foods, including complaints relating to the presence of listeria, were made between April 2016 and June 2018. The complaints are summarised behind tab 1 in the folder of documents that you have. On each occasion I Cook Foods was asked to respond and where appropriate take corrective action. Throughout this period Kim Rogerson was the environmental health officer primarily responsible for overseeing I Cook Foods's compliance with *Food Act* obligations.

Secondly, Mr Cook told the committee last week that he had not hired a PR firm to represent his company's interests. I therefore find it surprising that media releases have been published by Hear Hear Communications, a public relations company, providing extensive quotations that are critical of council.

As to the evidence given by Ms Rogerson, firstly, contrary to what she said last week, I am not on the board of JLT, which I understand to be a reference to Jardine Lloyd Thompson Pty Ltd, or MAV Care, which is a board of the Municipal Association of Victoria that oversees a self-insured WorkCover scheme for Victorian government. I am, however, on the MAV Insurance board, but this does not have any connection with WorkCover claims brought by any local government employees, including Ms Rogerson herself.

Secondly, she wrongly said that there had been no attempt by council to reach out to her following her departure on sick leave. A number of attempts were made to make contact with her and provide support. It was Ms Rogerson who made it clear that she did not wish to engage with anyone from council. Ultimately this was reinforced by a letter from her legal advisors in which there was a specific request not to attempt to make any contact with her. And thirdly, she omitted to mention that her allegation that council had 'pressured' her to fabricate evidence and make a false statement was investigated by the Ombudsman and found to have no substance.

Can I ask members of the committee to look behind tab 2 of the folder that I have provided to you. There you will see an email sent on 24 July 2019 on behalf of the Ombudsman. The email notifies council's director of corporate services that, having reviewed the information provided by Ms Rogerson and council, the Ombudsman will not be taking further action. I ask the committee to look at the section of the email from the Ombudsman to Ms Rogerson which appears below the Ombudsman's email to council's director of corporate services. Specifically I ask members to look at the section headed 'Falsification of documents'.

It is clear that the Ombudsman found no evidence of any attempt to put undue pressure on Ms Rogerson to do anything that was unlawful or unethical. Her evidence about fabrication or falsification of evidence has, then, already been objectively assessed and found to be without substance.

While looking at the email from the Ombudsman to Ms Rogerson, can I also request that committee members look at the next section, 'Conflict of interest'. It is to this issue of my conflict of interest, and council's so-called conflict of interest, that I now turn.

In the matter of conflict of interest I firstly say members of the committee will appreciate that Victorian councils have multiple roles and perform a variety of functions. For relevant purposes, they are simultaneously a service planner, a service provider and a regulator. Each council must plan for an ageing community or, more particularly, must ensure that adequate services are provided to ageing members of the community. Further, having planned in this way, a council must provide services to those aged members of the community who require such services, including the provision of meals. Finally of course a council must also regulate food business compliance with the *Food Act*.

Secondly, traditionally Victorian councils provided services directly through a Meals on Wheels service operated by council staff, so council staff would both prepare food and deliver it to the members of the community. By 2006 many Victorian councils found themselves in a position where the costs of producing meals was significantly increasing and tenders for external providers to prepare the meals were met with limited competition. Greater Dandenong council was one of those councils. When I began as council CEO in 2006 council was looking at needing to find \$1 million—in 2006 dollars—to upgrade its kitchen facilities to meet relevant food safety standards. Concerns about the ability of metropolitan councils to continue to fund Meals on Wheels services to an adequate level led to discussions about the possibility of a wholly council-owned entity operating a regional kitchen facility. Greater Dandenong City Council was one of the metropolitan councils to join in the exploration of this possibility. Ultimately it led to the creation of a new company, trading under the name Community Chef, which: (a) was owned by number of councils—I understand that there are currently 17—as shareholders; (b) has been operating from a purpose-built kitchen facility in Altona since its creation; and (c) since 2010 has been providing meals to councils in accordance with contracts entered into between Community Chef on the one hand and a council on the other.

Thirdly, when it was formed, the board of Community Chef was to comprise a mixture of council representatives and independent directors with commercial experience and expertise. I was asked to join the board. I was a board member between December 2007 and 2011. I left the board feeling as though it had established itself as a viable and successful service provider and helped contain costs within this area of local government sector operations. In December 2017 I was asked to rejoin the board to help maintain the balance between council and independent directors. I remained on the board until May 2019, when I stepped aside from the board pending the outcome of any IBAC or related investigation and subsequently any assessment of matters involving Greater Dandenong City Council and I Cook Foods Pty Ltd. This action is recorded in my key management personnel declaration form for Community Chef.

Fourthly, I now come to the events of February 2019. I had not been involved in any aspect of the investigation into I Cook Foods or Mr Cook. I knew little about it. On 21 February I was advised by members of council's staff that the Acting Chief Health Officer had formally and urgently requested that council issue an order that I Cook Foods cease production immediately. This, I was told, was an imperative because the order needed to be served before production resumed the following morning, being 22 February 2019. I was informed that the Acting Chief Health Officer wished to speak to me without delay.

I knew that Community Chef's operations had extended beyond the provision of meals to councils and included the provision of meals to hospitals. I therefore knew that the closure of I Cook Foods for any period would create a vacuum that Community Chef may fill. I therefore recognised that I had a conflict of interest.

I looked to see whether I could delegate that decision to another. Can I ask committee members to look behind tab 3 of the folder, where section 19 of the *Food Act* is set out, and I do not expect that you will be able to glance at that and fully absorb it, but it is there for your consideration. You will see that section 19(2) provides that a relevant authority can make a written order that a food premises must do certain things. Section 19(3) then provides that a relevant authority may, in that order, direct that until the mandated steps are taken the food premises are not to be used for the preparation of food. Section 19(9) sets out who is a relevant authority: paragraph (b) refers to a council and paragraph (d) refers to the CEO of a council.

Can I ask you now to look behind tab 4. It sets out section 58A of the *Food Act*. It defines who can be delegated a power by council. When, on 21 February, I met with Jody Bosman to discuss the proposed closure order, it became obvious that there was a problem. I had a conflict of interest and could not make the closure order. Section 58A did not appear to permit a delegation to another member of council staff. This is because section 19 is not referred to in section 58A.

Jody Bosman, Leanne Johnson, Daniel Maltar, who was the acting manager, regulatory services, at the time, and I telephoned the Chief Health Officer on the evening of 21 February. I explained that I could not sign the closure order because of the conflict of interest. I also explained that, in my opinion, no other member of council staff had the power to sign or issue a closure order. Contrary to Mr Cook's assertion, only Jody Bosman, Leanne Johnson and Acting Manager Daniel Maltar and I participated in the telephone call. Cr Roz Blades, who was mayor at the time, was not present.

The Acting Chief Health Officer accepted my advice as to the existence of the conflict of interest and indicated that he would sign the closure notice. It was, however, agreed that given the urgency of the situation, members of the council staff would serve the closure notice by attending I Cook's premises. Eventually therefore the closure order was signed by Dr Brett Sutton and arrangements were made for council staff to serve the closure order the following morning.

The fifth point, I wish to quickly mention two other things, both related to this conflict of interest issue referred to by both Mr Cook and Ms Rogerson in their evidence: (a) the suggestion that council's involvement in Community Chef created a conflict of interest for all members of council staff and tainted what they did is ill founded. Those performing regulatory functions on council's behalf, including Ms Rogerson, Ms Johnson and Ms Garlick, had no role to play in council's interface with Community Chef. There was a clear and strict separation of roles. And (b), if I had attempted to delegate my section 19 closure powers to another member of staff, such as Mr Bosman, and I repeat that we came to the view that this was not legally permissible, the criticism of me would have been that I was delegating to somebody who was answerable and accountable to me. The suggestion would then have been that the other member of staff would not have been independent of me and would have been influenced by my membership of the Community Chef board.

Chair, thank you for your patience. This was all I wanted to say by way of introductory comments. Council fully cooperated with the Victorian Ombudsman's inquiry into this matter and was pleased to be cleared of any wrongdoing. We are similarly happy to work with the committee through its inquiry process, and I am happy to answer any questions, as are my colleagues. I will now, as you previously requested, hand over to Mr Bosman, who will be followed by Ms Johnson.

Mr BOSMAN: Dear committee, I am Jody Bosman, Director, City Planning, Design and Amenity, at the City of Greater Dandenong. The local government function of public health falls within my directorate. In respect of my involvement in and knowledge of the matter pertaining to I Cook Foods Pty Ltd, I wish to address the committee on some matters pertaining to I Cook Foods.

It is clear that there are two distinct matters—the closure of I Cook Foods by order of the Department of Health and Human Services related to investigations into a listeria link between food manufactured by I Cook Foods and an elderly patient being diagnosed with a Listeria poisoning, which elderly patient subsequently passed away. The second matter is that relating to the involvement by council environmental health officers in a series of inspections of the I Cook Foods premises resulting in the discovery of 48 breaches of the *Food Act* and the issuing of Magistrates Court charges by council for those breaches. It is in relation to the charges brought against I Cook Foods as well as against Ian Cook as the director of the company and my subsequent decision to not proceed with those charges that I now address before the committee.

So what were the charges brought against I Cook Foods? In collaboration with DHHS health officers, council's environmental health officers inspected the premises and found numerous breaches of and non-compliances with the *Food Act*. It is council's responsibility to ensure that all food-related premises in the City of Greater Dandenong comply with the provisions of the *Food Act*. It is also council's primary objective to ensure public safety and confidence by all members of the community who consume foodstuffs manufactured in the City of Greater Dandenong. The *Food Act 1984* is the legislation which regulates the manufacturing, handling and disposal of food for human consumption. The administration and enforcement of that Act is of vital importance in meeting community expectations of food safety and hygiene standards being met.

Council brought 48 charges in the Magistrates Court against I Cook Foods. It alleged that I Cook Foods had failed to meet the requirements of the *Food Act*, putting public health at risk. Amongst the charges were the following, and I will give you some examples. Sampling of food sold to Whitehorse City Council returned a positive test for the presence of *Listeria monocytogenes*. Necessary steps to prevent the likelihood of food being contaminated were not taken. There was a build-up of dirt, debris, residue and other matter observed on a number of fittings, fixtures and equipment throughout the premises. Trolleys in an unclean condition were also observed. Unsafe food handling practices were observed. The handbasin in the hospital food preparation area was observed to be non-functional. The food order that this handbasin be made functional had not been complied with at the time of a subsequent inspection, and an audit undertaken by a DHHS-accredited auditor identified that the food safety program was not compliant. Two—but only two—of the charges brought related to the slug found at the premises.

The sum of the seriousness of the breaches of the *Food Act* clearly demonstrated a food manufacturing business which had put public health at risk over a period of time. Breaches of the *Food Act* carry with them significant penalties for that reason, and on the basis of the evidence presented to me, I gave my approval to proceed with prosecution. It is standard operating procedure for council to issue charges against both a body corporate—a company—and the director. This is also standard prosecution practice by local government authorities in enforcing *Food Act* offences. Further, the *Food Act* provides for liability of officers of companies for specific offences under the *Food Act*, even in circumstances where the body corporate or the company has not been prosecuted or found guilty of an offence.

Why then did council withdraw the charges against I Cook Foods? During the lawyers' conference at the contest mention at the Magistrates Court on 3 October 2019 I received a telephone call from council's barrister, Sebastian Reid, explaining the consequences of pursuing charges and the probability of success of appeals for I Cook Foods should it be found guilty in the Magistrates Court. The lawyers acting for I Cook Foods had put a proposition that both parties walk away from the charges on a non-disparaging basis and each bear their own costs to date. The lawyer for I Cook Foods had been instructed to contest every single charge and advised council's barrister that in the event of the matter going against I Cook Foods in the Magistrates Court they would exhaust every avenue of appeal irrespective of the costs involved.

It is important to stress that the charges for 48 breaches of the *Food Act* brought against I Cook Foods on 14 June were not withdrawn because council considered the charges to be without foundation or because it was doubtful of its prospects for success in prosecuting the case, but rather because pursuing charges of those breaches through the various court levels, including courts of appeal, could have resulted in legal costs to council in the order of up to \$1.2 million. To pursue breaches of the *Food Act* prosecution of a business which was by then in compliance with the *Food Act* was not considered to be prudent use of the public purse. The potential cost to ratepayers was the sole reason for the charges being withdrawn.

In reality I was presented with a situation where within a 5-minute telephone call I had to assess the merits of pursuing or withdrawing the charges. Thus was the decision to withdraw the charges taken at the contest mention hearing on 3 October 2019. Madam Chair, in no way should the withdrawal of the charges be seen as I Cook Foods being cleared of *Food Act* non-compliance or a more general vindication of I Cook Foods' position. Thank you, Madam Chair.

Ms JOHNSON: Members, I apologise, the folder with my photographs that I am to table has been taken off me by Lilian and a copy of my report for each of you is also with Lilian, which is not ideal.

The CHAIR: I am sure she will bring them back.

Ms JOHNSON: So I do have photographs that accompany the report today should you wish to see them.

The CHAIR: Great. Thank you, Ms Johnson. I might actually ask if we might share them around the table.

Ms JOHNSON: Sure. Sorry, they are going to be slippery because they are in plastic pockets.

Ms CROZIER: Is that wise, given—

The CHAIR: With corona. Sorry, yes, we cannot do that.

Ms JOHNSON: I am happy to make more copies and provide them to the committee.

Mr BOSMAN: And leave them with you so that you can see them.

The CHAIR: Yes. Thank you.

Ms JOHNSON: I am Leanne Johnson, Public Health Coordinator at the City of Greater Dandenong. I am also an authorised officer pursuant to the provisions of the *Local Government Act 1989* and the *Food Act 1984*. My interaction with I Cook arose out of a notification of *Listeria monocytogenes*. *Listeria monocytogenes* is a food poisoning bacteria that has the potential to cause severe illness in people, including infections in pregnant women, where around 20 per cent of cases may result in spontaneous abortion or stillbirth. The bacteria also has the capability of being fatal, and in this case it is around 30 per cent of cases. In particular it is deadly towards the aged and immunocompromised—those with poor immune systems. A significant portion of I Cook Foods' clientele is in this category.

I Cook Foods is a large manufacturer that produces food for premises, including meals for Meals on Wheels services, hospitals and nursing homes. A variety of sandwiches intended for the consumption by hospitalised persons are also manufactured at the I Cook Foods premises. The initial investigation concerning *Listeria monocytogenes*, as you have heard, involved an 86-year-old female person that had a confirmed diagnosis of listeriosis and was known to have consumed high-risk foods supplied by I Cook Foods. I am now going to discuss the chronology of events, and a copy of that is with the report.

On 31 January 2019 council was contacted by the communicable disease prevention and control unit at the Department of Health and Human Services. The department was investigating the case of an 86-year-old person, already mentioned. Officer Kim Rogerson was previously the officer for the area in which I Cook premises was located and was familiar with the premises, as she had inspected it many times over the years. Upon notification and a check of immediately available staff members, Officer Rogerson was assigned the task of conducting an inspection of I Cook Foods premises and undertaking the necessary food sampling requested by the department. Some of these samples taken by Officer Rogerson came to show the presence of listeria. In the end, these samples were not relied upon, because it was discovered that Officer Rogerson had not properly maintained a chain of custody. On 1 February 2019 Officer Rogerson visited the premises and took samples and surface swabs for analysis. On 18 February the food safety unit of the department contacted council to advise that some of the food samples obtained on 1 February had tested positive for *Listeria monocytogenes*. The presence of *Listeria monocytogenes* in a food premises at any level is a serious concern and requires immediate action to remove the presence and the serious risk it presents.

Officer Garlick, being the environmental health officer responsible for this area, then attended the site. At this time Officer Rogerson was on leave. On her return, Officer Garlick reported that during her inspection poor food handling and cleaning practices had been observed, and they are included in the photographs to be tabled. The non-compliances included aerosols created from using high-pressure hoses to wash down food preparation areas while food handling activities were still occurring, dirty food handling equipment that had not been cleaned properly, a handwash basin not in operation, staff not demonstrating the skills and knowledge to handle food safely and a slug found on the floor in the food preparation area that would come to my attention days after the event.

As a result of Officer Garlick's report I formed the opinion that the premises were not being maintained to the required food safety standards and directed that two *Food Act* orders be issued. These are formal legal directions, but they are not to be confused with the closure order that was issued later. Those orders directed the company to put the premises into a state of good repair; to ensure that foods prepared, sold or otherwise

handled are safe and suitable for human consumption; and that all food handlers complete food safety training. On 19 February the food safety unit at the department again contacted council; it requested council to obtain specific information from I Cook Foods for the purposes of the listeriosis investigation and required the business to conduct a specific clean-up for *Listeria monocytogenes*. Officer Garlick and Officer Little-Hales attended the I Cook Foods premises to conduct an inspection later that day, instructing I Cook Foods to conduct a clean-up and serving the *Food Act* orders that had been issued.

Over the course of the week council liaised with the department about the listeria investigation. On 20 February Officer Garlic inspected I Cook Foods premises to verify that the clean-up had been adequately carried out. She informed me that she was not satisfied that the cleaning had been conducted to a satisfactory standard. On the same day I attended the food premises together with Officer Garlick. We spoke with Mr Ben Cook and Mr Michael Cook on site. I told Mr Ben Cook that council had concerns with the quality of cleaning that had been conducted. I said that given that I Cook Foods had been the subject of a complaint about listeria, the business needed to ensure that it cleaned the premises thoroughly. At the time of inspection, the business had already completed food operations for the day and in theory should have completed the majority of the daily cleaning. The inspection of the premises was conducted with Mr Michael Cook, the food safety supervisor of the premises. Throughout this inspection significant food safety non-compliances were identified, and again these are captured in the photographs. Ovens located outside the kitchen in an open area and located through a cleaning area were being used to cook meat, a handwash basin in the sandwich preparation room was not working and potentially contaminated large plastic bread crates were used for transporting sandwiches. When asked where the crates were washed, Mr Michael Cook led me outside the building to a driveway and to a bin wash area and said that the crates were being washed there—a photograph is also available.

There was food residue on the blades of food equipment that had not been cleaned properly, dishwashing sinks in close proximity to food equipment allowing for splashing onto equipment and thus the risk of cross-contamination, water pooling between the stainless steel bench and the conveyor belt where the sandwiches were made, water pooling on the floor in the food preparation areas, flooring in disrepair that would prevent the surface from being effectively cleaned and sanitised, a brown slime in water that had built up on the draining board under the bread crates at the dishwasher and food residue found on the meat slicer when it was taken apart.

From the inspection it was evident that food safety was compromised by significant cross-contamination risks due to the food processes not being segregated from clean-up processes, poor hygiene practices and a lack of skills with the key staff. I therefore recommended to I Cook Foods that it engage a food safety consultant to conduct a full risk assessment. The recommendation was followed up in an email that day to Mr Ben Cook. I then notified the department of the non-compliances identified at the inspection. On 21 February I discussed with the department's food safety unit the food safety concerns identified. It was agreed that I Cook Foods' food safety practices needed to change immediately. This included its cleaning practices and training of food handlers. Later on 21 February I visited I Cook Foods' premises with Officer Garlick to conduct an inspection. The purpose of the inspection was to follow up on a full clean that was scheduled the night before and to take new food samples, and this was to check the efficacy of cleaning measures and food safety practices. An onsite meeting was held with Mr Ben Cook, where photographs from the previous day's inspection had been provided and the following was discussed: poor food safety practices identified in the previous day, including cross-contamination risks and poor hygiene practices; staff needing training so that they had the skills and knowledge to handle food safely; concerns that Michael Cook was not suitable to be I Cook Foods' nominated food safety supervisor as he had demonstrated that he did not have the necessary skills or knowledge to identify or alleviate food safety hazards; that the department had discussed with council the option of closing, and if this was the case production would cease that day; that as a decision had not been made to close the premises, however, I did tell them I needed to be satisfied that the staff know how to clean, sanitise and understand food safety risk; council recommended that I Cook Foods engage a food safety consultant today or tomorrow and to conduct a full risk assessment. The actions that I Cook Foods had completed by this time included three large pieces of equipment being removed from operation, including a meat slicer; blades from food equipment that had not been properly cleaned now replaced and the conveyor belt that had been removed from the sandwich preparation bench; and the head chef had trained all the staff on how to correctly wash their hands.

During the meeting it was established that I Cook Foods did not have a food safety supervisor that had completed food safety training. It would be expected for a large manufacturer who was HACCP-accredited to be trained in it. This is a process for identifying food safety issues and for putting in place controls to remove

those dangers. Mr Ben Cook had completed a bachelor of business in hotel management and tourism and commercial cookery, and he had completed the food safety supervisors course, but Mr Michael Cook was the food safety supervisor and Mr Ben Cook was responsible for updating and maintaining the food safety program and that when all food handlers are engaged they have a two-day theory course—

The CHAIR: Ms Johnson, just in regard to timing, this is all presented in the information that you have provided to us. Another couple of minutes, but if you could wrap up so that we can try and keep to the tight time line that we have got.

Ms JOHNSON: Sure. So I had responded to I Cook's premise of the incident that was occurring and the findings that we were identifying, and then during the inspection that day we also identified that staff were washing vegetables and equipment in the same double-bowl sink unit; there was no food-grade sanitiser at the sink for staff to adequately sanitise the sink after use; a handwash basin was obstructed where foods were being minced; a hand basin still not operational in the sandwich preparation room; damaged equipment; and there was a hose used for both preparing foods, filling pans and washing the floors. There were no food processes segregated from the clean-up practices, allowing ample opportunity for cross-contamination to occur; trays that had been cleaned still with food residue on them; and the scullery area was overflowing with dirty equipment to be cleaned where the dishwasher was required to use a metal tray—

The CHAIR: Thank you, Ms Johnson. Thank you all for your willingness to share this information with us today. I have certainly found it very useful. We are now going to ask a series of questions. All of the committee members have got 12 minutes, which we will keep very, very sharply. I will allow them to ask a couple of questions and then move on to the next committee member. I shall start those questions.

Mr Bennie, you stated that the Ombudsman was satisfied with the procedures and processes that the council had followed. The email that you have provided to us I would say does not really go to that. Was there other correspondence between yourself and the Ombudsman? The email that we have received really refers to Ms Rogerson's assertion that there was a conflict of interest, her assertion around her WorkCover status and her assertion around her report being falsified. But I think there have been questions about the processes and procedures at a more general level that were undertaken. And, yes, did you have—

Mr BENNIE: Well, we do not suggest that the Ombudsman was considering anything more than the Ombudsman has reported on. So what we are referring to is that when Ms Rogerson made her whistleblower complaint we immediately referred that matter to IBAC. IBAC in turn referred the matter to the Ombudsman, and the Ombudsman has given consideration only to the matters raised by Ms Rogerson. So the response relates to the allegations that she had made and nothing more. And that is all we contend: that the response to the key assertions that she has made around my conflict of interest and the undue influence that it is alleged we or a member of our staff provided over her to change her report is adequately addressed in that Ombudsman's review.

The CHAIR: Thank you, Mr Bennie. Ms Johnson, on the subsequent charges that were then brought to I Cook Foods—48 substantial charges—it seems that some of the charges surely would have seemed to relate to longstanding issues, if they are the case, of floors not actually with the right angle for drainage, the pooling of—I am just trying to remember the rest off the top of my head. Is there any reason why none of this was noticed prior?

Ms JOHNSON: It had been picked up in numerous reports over the years, and it was noted on their file that in 2017 I Cook Foods did a significant repair to their floors, and at the time of the inspection with Mr Michael Cook he noted to me that it was ongoing maintenance.

The CHAIR: Okay. I will continue my questions later. Dr Kieu?

Dr KIEU: Thank you for presenting today. We have heard some differences and also contradictions to the hearing that we had from I Cook. Particularly I was under the impression that I Cook did not have any [inaudible] in the handling of the food in the past, but there are some submissions here that there were some with the City of Boroondara. I just want to ask one question particularly to Ms Johnson about the level of *Listeria mono* in particular. Is there any safe level? You mentioned that 30 per cent could result in fatalities, but then the report and the submissions said that the level found in I Cook samples was below the admissible or allowable standard level. So what is your opinion on that?

Ms JOHNSON: For the general public, if you are well and healthy, there is a standard. However, food being served to the immunocompromised and our vulnerable, which is our elderly people, is considered potentially hazardous. And the previous history of listeria at this premise—analysts reports have actually stated that. They have a clause saying where being served to vulnerable people, it is a potentially hazardous food when you have *Listeria monocytogenes* present.

Dr KIEU: So why isn't it incorporated into a standard of operation? I was under the impression that a certain level of contamination is acceptable.

Ms JOHNSON: No, it is not acceptable in a food premise.

Dr KIEU: Okay, thank you. Now my next question is for the CEO. During her submission and appearance Ms Rogerson mentioned that there was a culture of changing the records or intimidation. What is your response to that?

Mr BENNIE: Well, my response to that is, I hope, detailed in the Ombudsman's response to that very same query, and that is that the Ombudsman—and if I can refer specifically to it—has concluded that the efforts undertaken by council in relation to the matters raised by Ms Rogerson were, the Ombudsman's representative states:

On the face of the draft and final versions of your statement, it appears the changes made represent a natural progression from draft to final format. The first draft appears incomplete. In contrast, the final signed version appears complete and includes paragraphs about the types of swabs you obtained, how they were obtained and where the swabs were sent to. I have been unable to identify evidence to suggest that the expansion of your statement was due to other council officers falsifying the evidence.

Dr KIEU: I would like the other members to ask questions. If we have time, we will come back to this.

Ms CROZIER: Thank you all for being before us. It is an important inquiry, and we are looking to understand what has gone on here. Ms Garlick, I will just go straight to you. There have been reports and allegations that a slug was planted, that you found. Did you plant that slug?

Ms GARLICK: No, I did not.

Ms CROZIER: Okay, so in relation to the issues that are arising from you going into I Cook Foods, is it normal practice to wear a body camera? We have seen evidence and videos that have been taken in relation to you being on the premises and various conversations with Ms Johnson with I Cook Foods. Is it normal practice for you to wear a body camera?

Ms GARLICK: No, not unless there is a safety concern.

Ms CROZIER: So when you went in, was there a safety concern? Did you wear a body camera all the time?

Ms GARLICK: Not on the first day, no.

Ms CROZIER: So you did not have a concern about safety?

Ms GARLICK: No.

Ms CROZIER: Okay. Mr Bennie, can I just move to you for the moment because we only have got 12 minutes here. In relation to some of the issues around Community Chef and the board meeting, we have received evidence from a board meeting, some papers from a Community Chef meeting at 9.30 am on Friday, 22 February, at which you were present, I understand. At that time, on those board papers, the cash position of Community Chef was discussed. And in the board papers it says:

The cash position is tight, and some Councils had agreed to bring forward their advance payments.

It goes on to say:

Discussions centred on the various equity scenarios, whether the State Government would buy in to the business or whether shareholder Councils should be asked to contribute further.

B. Jaboor suggested that investment from state government would be more likely. Can you just give the committee an understanding of the financial situation of Community Chef at that point in time?

Mr BENNIE: Well, the board meeting was a strategic planning session. It does not alter the thrust of the questions that you are asking—but to put it into context. The conversation was in its broader context around the future directions of Community Chef and strategically and corporately what plans needed to be made for the year ahead. Bearing in mind I had only rejoined the board after a five- or six-year absence, and when I had rejoined the board found that the cash position was not as good as it had been.

Ms CROZIER: So it was in financial difficulty?

Mr BENNIE: I would not say it was in financial difficulty, no. These were manageable matters. The challenges that were being faced by Community Chef were those of declining participation in meal numbers, and that was putting stress on Community Chef. I understand that you do have a presentation this afternoon from Community Chef, and to be quite frank I think many of those questions are best directed to them.

Ms CROZIER: I will be doing that, but could I—

Mr BENNIE: I understand, and from my position as a director on the board at that time the cash position was tight, and again consideration was given in each meeting to how the cash position could be improved.

Ms CROZIER: So this meeting was held just 5 hours after the closure of I Cook Foods. Did you declare a conflict of interest at that board meeting?

Mr BENNIE: Absolutely. The meeting may have been held 5 hours after the closure, but it had been convened many weeks prior. It was the annual—

Ms CROZIER: I just cannot see that in the board papers, that you did declare your—

Mr BENNIE: We have standing conflicts of interest, and if the minutes do not show that, then that is something that the minutes secretary would need to address. But my conflict of interest had been declared from the day that I rejoined them.

Ms CROZIER: Can I just go to your evidence that you provided to the committee this morning.

Mr BENNIE: Yes.

Ms CROZIER: You said that you needed to speak with the Chief Health Officer without delay during—I think it was—the morning of—

Mr BENNIE: It was the evening of 21 February.

Ms CROZIER: It was the evening; I thought it was earlier than that. What I was wanting to know was: why did it take so long for you to do that? When you did speak to the Chief Health Officer later that night—at 10.00 pm, I understand—

Mr BENNIE: At 9.00 pm, yes.

Ms CROZIER: At 9.00 pm. So did the Chief Health Officer receive a report during the day of the 21st?

Mr BENNIE: I cannot speak for the Chief Health Officer. What I can say is that there had been a dialogue prior to this catching up, including an email to Leanne Johnson from Dr Finn Romanes of the DHHS indicating that the Acting Chief Health Officer, as he was at the time, required to meet urgently, as is indicated in my testimony, to talk through matters. He indicated when he met with us that DHHS had begun to draft a closure order, and the conversation really then came down to who was in the position to issue that closure order. So by advice to him about my limitations given my conflict of interest I was able to satisfy him that I was not in a position to issue that closure—

Ms CROZIER: If I could go back to Ms Garlick then, in relation to what you are reported to have said, that the department told you to shut the company down—is that what you said?

Ms GARLICK: No.

Ms JOHNSON: It was me.

Ms CROZIER: It was Ms Johnson who said that? So, Ms Johnson, the department told you to shut the company down. At what time did they tell you?

Ms JOHNSON: Thursday.

Ms CROZIER: At what time?

Ms JOHNSON: Middy.

Ms CROZIER: And who told you that again?

Ms JOHNSON: Ms Mira Antoniou, an officer from the food safety unit who was working on the investigation of the listeriosis. She had advised—

Ms CROZIER: So was it a phone conversation?

Ms JOHNSON: It was a phone conversation. I was onsite, and she said that the department was advising I Cook Foods to close and cease operations.

Ms CROZIER: But they did not have a report to operate under the Act. What report had you provided to the department for them to be able to issue that statement to close down?

Ms JOHNSON: The department had been working on the investigation. They were the lead agency on it, so they had been working on this weeks or days before we were actually notified that the case had been involved, and they had been doing—

Ms CROZIER: Which case?

Ms JOHNSON: The listeriosis of the female. So the department took the lead and had started their investigations, and then we were notified. By the time they identified I Cook Foods as being the supplier of foods, that is when we were involved. The reports given to the department included a copy of the food safety programs from I Cook Foods—

Ms CROZIER: So when were those reports provided to the department?

Ms JOHNSON: The food safety program was provided Wednesday or Tuesday, and then it was Thursday afternoon—

Ms CROZIER: Wednesday or Tuesday—which one was it?

Mr BENNIE: Of the week—

Ms JOHNSON: Sorry. Of the week of 18 February. I will have notes, and I can respond to you.

Ms CROZIER: That is all right; it is just important that we get the time lines. Thank you for understanding.

Ms JOHNSON: And a copy of the food safety program was provided, and then by the Thursday afternoon I had been told that the department had reviewed that food safety program and said it was inadequate, and then the conversation was in relation to the listeria management at the premises.

Ms CROZIER: You said that there was a previous history of listeria—that you had done previous reports on I Cook and that there was a previous history. You have said that this morning.

Ms JOHNSON: It was on the files that there was a previous history.

Ms CROZIER: So why was there not any action at that point in time? Why did it take to this point in time? If that, as you state, was very serious, why were there no reports given to the department previously?

Ms JOHNSON: The difference between this one and previous is that other councils had picked up listeria through routine sampling and had been notified and that the actions taken by council—

Ms CROZIER: Previous samplings from where?

Ms JOHNSON: Boroondara's Meals on Wheels service.

Ms CROZIER: Are there multiple suppliers to Boroondara Meals on Wheels?

Ms JOHNSON: I am unfamiliar with their service. It was a sealed product that was delivered to Boroondara, and—

Ms CROZIER: But it could have come from other suppliers.

Ms JOHNSON: No, I do not believe so, and the department would be able to further explain their investigation. The previous file did show that there was *Listeria monocytogenes* and that Kim Rogerson had instructed the business to conduct a clean-up in accordance with the guidelines each time listeria was detected. The difference between those cases and this is the fact that we had a case, a person who had tested positive for listeria, and that we had samples that had tested positive supplied by I Cook Foods.

Ms CROZIER: So there was a draft closure order drawn up, correct?

Ms JOHNSON: By the department.

Ms CROZIER: So the department, before you had submitted any reports, had a draft closure order in place?

Ms JOHNSON: No.

Ms CROZIER: So when did they—

Ms JOHNSON: The draft order started on Thursday. The department notified me Thursday, late afternoon, that they had started drafting a closure order.

Mr BENNIE: It should be 20 February.

Ms JOHNSON: The 21st.

Mr BENNIE: 21 February.

Ms JOHNSON: Thursday, 21 February. The department had started drafting a closure order that afternoon.

Ms CROZIER: Can I just go back to the slug issue. In relation to photographs we have seen, we have seen—and it has been widely reported—a photograph of a slug with what looks to be just the slug and then the slug with a piece of paper. That was presented, I think, during the court proceedings. Can you explain how those photographs are different, any one of you?

Ms GARLICK: Yes, the allegation that the piece of paper, I believe, was in the photo possessed by the Cooks—there is a piece of paper and a lot of other debris in the photo that council provided as well.

Ms CROZIER: Could we see those photos, then, with the debris?

Ms GARLICK: Yes, I believe there is—

Mr BENNIE: Is that part of the package?

Ms GARLICK: I believe it is.

Mr BENNIE: So it is part of the package that we have tabled today, and I am sure they are being sanitised to provide to you.

Ms CROZIER: So we will need to have a look at that I think, Chair, in relation to—

The CHAIR: Yes.

Mr BENNIE: We are leaving those photos with you, yes.

Ms CROZIER: And other evidence, though, suggests that there was no debris in the photographs.

Ms GARLICK: I cannot speak as to that. I took a photo of what I saw, and in the photo I took was debris.

Ms CROZIER: So just on that, you took the photos. Is that the day you were doing the inspection without the body camera?

Ms GARLICK: The 18th, yes.

Ms CROZIER: So you did not have a body camera on at that time?

Ms GARLICK: No.

Ms CROZIER: So you were doing an inspection, taking photographs, but you did not have a body camera on and previously said that if you were doing an inspection, then you would normally wear a body camera.

Ms GARLICK: Sorry, what was the question?

Ms CROZIER: The question is: I asked previously if you wore a body camera, and you said only if you were doing an inspection. But you were doing photographs—and to me that is an inspection—so why weren't you wearing a body camera on that day?

Ms GARLICK: Apologies, I will clarify that point. We wear body cameras if we feel there is safety or we need to gather specific amounts of evidence—

Ms CROZIER: But you were taking photographs and collecting evidence.

Ms GARLICK: Yes.

Ms CROZIER: Why didn't you have a body camera on that day?

Ms GARLICK: Because we do not have to have both.

Ms CROZIER: But you just said that if you were collecting evidence for safety issues, you needed to wear a body camera. Do you understand what I am saying? It is contradictory in terms of what you have actually said: the body camera was not worn, but you were actually collecting evidence by taking photographs.

Ms GARLICK: Yes, and that is the standard thing we do at all our inspections. It is basically documenting condition at the time of inspection.

Ms VAGHELA: Thank you all for your time today. I just want to establish—the 48 charges which were made against I Cook for the closure of the business, of any of those charges, out of 48 charges, how many of them were the old issues or ongoing issues? So if you had done the site inspection—I do not know on what periodic basis you do the inspection of the site; if it was done, say, on a three-monthly, six-monthly basis or if you do the random site visits—out of those 48 charges, how many of those were new?

Ms JOHNSON: There were many food handling charges in accordance with the food standards code where practices were observed, and also maintenance issues that would have included the handbasin not being operational. I cannot give you a number. I am happy to respond and look at the charges.

Ms VAGHELA: What I am trying to establish over here is: was there any ongoing issue where there were some complaints issues, which upon your site visit you might have brought to the attention of I Cook for them to rectify? But what I want to know is: once you had brought them to the attention of the business, did they actually take any action to rectify those issues? So were these ongoing charges or were these just the new ones that you found once you went there on that day?

Ms JOHNSON: There was a large portion of new ones relating to the food handling practices only observed of the week of 18 February. The ongoing issues that were included were the maintenance of the flooring and that the floor was not laid appropriately—that would have allowed pooling of water. And the files show photographs that I Cook had done an extensive repair of that floor back in 2017. And reports are also on our file showing that I Cook Foods had repeatedly been told about the pooling of water and the maintenance of flooring.

Ms VAGHELA: So once you identified the issues and asked the business to rectify those complaints issues—if that was identified in 2017, the flooring issue—how often then did you go back and check whether that had been rectified or not, or did you just move onto the next issues then when you did another site visit?

Ms JOHNSON: I Cook Foods had repaired the floors in 2017, so they had a new surface. When we inspect, we are looking at risk at the time. So depending on when the officer is there—it will depend on what they are observing. I cannot speak for Ms Rogerson, but if the inspections were in the morning, you may not have seen the pooling of the water. And if the premise is satisfactory in regard to the risk at the time, the premise would normally only receive one annual assessment.

Ms VAGHELA: So if we look at their previous annual assessments, there would not be much difference to the visit that you did when 48 charges were—

Ms JOHNSON: There is one report in 2015, where another officer had attended the inspection in December, highlighting significant issues with the food safety program not being compliant and that an auditor had conducted an inspection. And due to council picking up those non-compliances, it was reported to the Department of Health and Human Services and then they spoke to the auditor. After that, the audit reports from Kim Rogerson then showed a change of focus, so I assumed that the rectifications of the food safety program had been remedied.

Ms VAGHELA: So this is not the first time that the business has been referred to DHHS? It has happened before, in 2015?

Ms JOHNSON: In this case it was the failure of the auditor to identify the critical control points within the food safety program. The failures of that program were not picked up by a department-accredited auditor, and as a result it was picked up by council, and that was reported to the department. Then there is ongoing communication. Council has provided an inspection report to I Cook Foods, identifying and directing them to what corrective actions were required of their food safety program.

Ms VAGHELA: And did you follow the same process that you would have followed with other food manufacturing businesses, or was there some deviation in doing the follow-up with I Cook?

Ms JOHNSON: No, there was no deviation. They were treated the same as any other manufacturer or food premise.

Mr BENNIE: Madam Chair, Mr Bosman has confirmed that the details of the 48 charges are included, and he is happy to leave those with the committee.

The CHAIR: Thank you. I think DHHS has also provided us with some of that information.

Ms VAGHELA: Instead of knowing the list, I just wanted to know how many were the new ones. That is what I am trying to establish over here.

My next question is to Mr Bennie. You have provided this document, and under tab 2 you highlighted a few issues that were identified in terms of the food that was provided by I Cook. So were you aware of these before or have you just done the research and now we have found out that these were the issues with the food that was provided by I Cook? So in 2016, 2017, 2018: there is a list of a few things that you have identified, what was wrong with the food that was provided—

Mr BENNIE: Yes. Sorry, and that is tab 1 for the record, and that is provided in response to the comments made by Mr Cook at last Wednesday's proceedings that there had not been a previous history of non-compliance. So we have only given you a sample. In 2016, 2017 and 2018, which Ms Johnson ultimately

also referred to, there is a history of complaint, as much as anything else, but a couple of instances of reported listeria mono.

Ms VAGHELA: Is this just a sample only and there is a bigger pool or these are the things that you—

Mr BENNIE: These are those that we have on record for the three years—16, 17 and 18.

Ms VAGHELA: And is it normal to see such issues with other, similar food manufacturing businesses?

Ms JOHNSON: No. We may get a *Listeria monocytogenes* notification of a business, but normal practice is that controls and processes are put in place to control listeria, and the department's findings with this food safety program were that the business did not have a listeria management plan.

Ms VAGHELA: So if these cases were identified in 2016, 2017 and 2018, would the council have taken appropriate actions against I Cook and made sure that the issues were rectified at that time?

Ms JOHNSON: I have reviewed the files, and on the notes made by Officer Rogerson it shows that she had directed the business to do a clean-up and where particular issues had been highlighted, she had directed the business to address those issues.

Ms VAGHELA: Okay. So once the issues were identified they were always then corrected? Okay.

The other question is for Mr Bosman. You mentioned about the potential cost of going forward with the charges that were against I Cook, and you said that the decision was made and you have identified a few things on why the decision was made to drop the charges. Has this happened before by council where the charges were dropped on the basis of potential cost to the council and eventually to taxpayers, or is this the first time it has happened?

Mr BOSMAN: No, it is not the first time, Madam. There have been cases. I bring to mind a couple within the instance of building regulations. The one that I am thinking of is where somebody had done an enormous amount of illegal building work. Where the work was ultimately brought into compliance it was then deemed not, if I can say, in the public interest to continue to pursue charges, that little would be gained by pursuing charges. We had now brought the matter into compliance where the matters had been rectified. Certainly this was, if I want to call it, an item where the costs were quite substantial. But it is not the only time where council will have taken a decision to not pursue charges because to do so, if you want to call it, the cost benefit would not have been there. It is not the only time it has done that.

Ms VAGHELA: In the past when you have dropped the charges were the costs similar to what the cost would have been had you gone ahead with the charging or with further legal action against I Cook?

Mr BOSMAN: No, I believe not. I mean, the charges in this particular case to go through a succession of courts of appeal would have raised the costs substantially more in this case than even in the cases that I was bringing to mind on the building matter. So here there was a substantial cost—the possibility of substantial costs being incurred to council.

Ms VAGHELA: So what I am understanding is that what you are saying is if the issues are identified, if those issues are rectified by the businesses, then you do the cost-benefit analysis and decide to drop the charges?

Mr BENNIE: Could I add to that? I mean, we do not have a clear policy position. Each and every situation would be considered on its merits. And as Mr Bosman has indicated, all of the things that he has mentioned would be taken into consideration. On this occasion they were, and he made the determination that he did.

Ms VAGHELA: Have you guys dropped charges against any food manufacturing business other than I Cook before?

Mr BOSMAN: I have never withdrawn any prosecutions against any other food manufacturers, but I have never been presented with the same situation.

Ms MAXWELL: Thank you for attending today. I have just a few questions. In the report here it says that the council food health officers inspected the facility, where a number of breaches and non-compliances with the *Food Act* were noted. What specifically were those breaches and non-compliances? Do we actually have a specific list of those?

Ms JOHNSON: We have the first *Food Act* order issued, that was issued to the company on the Tuesday, which would name the directions at the time that would have been in response to those. I do have my statement and so does Ms Garlick in regard to what was in the prosecution brief—and that can be made available—which will specify each of those observations.

Ms MAXWELL: Okay, thank you. Is it normal protocol to construct a list of current concerns and then add older concerns? I am just wondering why older concerns have perhaps carried over in this instance, particularly in a food manufacturing company. Shouldn't they have all been dealt with?

Ms JOHNSON: With these concerns, the particular organism listeria is known to be in water, and pooling water as well, and the risks that we were observing. So we were seeing the reports coming through where trolleys would have been going through pools of water, where the spray of aerosols would have had the potential to spray up and land on food products as well. And with some large manufacturers it is not uncommon that if we see maintenance, they might schedule an annual shutdown of the plant, where they then go through and they complete all their rectifications. Flooring is quite a major piece of work for a business to do. However, many companies normally have a program, a maintenance program, in place where it is scheduled in accordance to the wear and tear on that floor.

Ms MAXWELL: So at any time previously had there been listeria detected on the premises that related back to the water that was on the flooring, given that the flooring issue had been addressed sometime previously?

Ms JOHNSON: I would need to check the records and surface swabs to see if listeria had been picked up in the presence. With the testing, it all comes down to the time of day and when the operations have been done. The records show that Officer Rogerson had instructed the business to do a clean-up after listeria had been conducted. In this event I actually had an understanding through Mr Ben Cook that the company gets a chlorine fogging done of their premises. And after we do a clean-up, we then take samples to verify that clean-up. It is done immediately after the clean-up, before production has occurred, which means that every surface within that premises technically has had chlorine touch it, which deactivates and kills anything that is present.

Mr BENNIE: Ms Maxwell, I think Mr Bosman would like to add something to that.

Mr BOSMAN: Madam Chair, just through you, if I may: Ms Maxwell, I have here the full list of charges, and I think the answer to your question is that the charges that were brought to the Magistrates Court all relate to observations within a four-day period. They are not charges relating to historical events. They are charges relating to a series of present events, and I am happy to leave the full set of charges for the record of the committee.

The CHAIR: Thank you, Mr Bosman.

Ms MAXWELL: Can I just have the chronological order of the events that happened? Are you aware of the date that the deceased lady was first admitted to hospital?

Ms JOHNSON: Council was notified on Monday the 18th, late in that day.

Ms MAXWELL: And what date did she pass away?

Ms JOHNSON: I do not have that information.

Ms MAXWELL: So the first testing samples were done on 1 February?

Ms JOHNSON: That is correct.

Ms MAXWELL: And the second sample was on 21 February?

Ms JOHNSON: The sampling on—

Mr BENNIE: Thursday the 21st.

Ms JOHNSON: Thursday?

Mr BENNIE: The 21st was the Thursday.

Ms JOHNSON: I think Wednesday the 20th we took routine samples. The next day, the Thursday—that is right, because Wednesday I attended. So Thursday, yes. Thursday, we took new samples.

Mr BENNIE: Just confirm the date.

Ms JOHNSON: Thursday, 21 February—sorry.

Ms MAXWELL: Okay. I just wanted to confirm that.

Ms LOVELL: Mr Bennie, you said that you had a standing conflict of interest lodged with Community Chef. Normally the standing conflict of interest declarations form part of the agenda and board papers for any board meeting. Are you able to supply us that attachment that would have been part of the board papers for, what was it, 22 February 2019, please?

Mr BENNIE: I can. I do not have it before me now, but I certainly can—

Ms LOVELL: Could you just give it to—

Mr BENNIE: provide that. Let us not forget that in the context of my role on the board of Community Chef I was the Chief Executive Officer of Greater Dandenong City Council, so my conflict in that regard speaks for itself. I do not have a conflict per se when I meet as a board member of Community Chef because council is in fact a part owner of that company and is a customer of that company. It is only in the context of the issue around I Cook Foods that that matter became relevant. The importance of the declaration of conflict is the reverse; it is in the other direction. It is in relation to this matter before this parliamentary inquiry, being the issues with I Cook Foods and the fact that I am conflicted in any consideration—

Ms LOVELL: Ms Crozier specifically asked earlier about your conflict of interest in relation to I Cook Foods at that meeting. You told us that that would form part of your standing declaration—

Mr BENNIE: Yes.

Ms LOVELL: Now you are saying you did not need to declare a declaration for I Cook Foods because, you know, you are the CEO—your standing declaration would be because you are CEO of—

Mr BENNIE: No, I do not think there is an inconsistency in what I have said. I have said that I have a standing declaration, which is that of being the Chief Executive Officer of Greater Dandenong City Council, and the only time that I might need to specifically mention that is if in fact there was any matter associated with I Cook Foods that was on the Community Chef agenda, and there was not.

Ms LOVELL: So did you specifically declare that conflict at that meeting?

Mr BENNIE: Not on that day, because there was no reason to do so.

Ms LOVELL: Okay. So in the minutes of that meeting it particularly says that:

J Bennie briefed the meeting on an emerging issue – Environmental Health Officers served a closure notice on iCook due to the presence of Listeria.

You have given a briefing to that meeting, so have you declared your conflict of interest?

Mr BENNIE: I stand by my advice—that is, I had a standing conflict of interest. The briefing was made later in the meeting after the announcement had been made in the public domain on ABC radio, I believe, at about midmorning—10.30 or 11.00 am or something along those lines—that a closure order had been served on the firm. I did not make any mention of that to the board before that time.

Ms LOVELL: How long did the board meeting go that day?

Mr BENNIE: It was a strategic workshop, as I said earlier, and the meeting was about a 3-hour meeting, from memory.

Ms LOVELL: The meeting started at 9.30, so this would have been about the time that it was on the radio. It has not actually got the closure time of the meeting, but you are saying that it was about midday that it was on the radio so—

Mr BENNIE: No, I said it was about 10.30 or 11.00. Look, I have a recollection that it was raised by the officers of Community Chef that a news announcement had been made in relation to I Cook Foods.

Ms LOVELL: Okay. We can check the timing of that anyway.

In this you also say that there will be a coronial inquest. How did you know that?

Mr BENNIE: I did not know that. I do not recall the specifics in the minutes. If it says that, it would be to indicate that that is a possibility, of something like this occurring.

Ms LOVELL: In your briefing it says:

J Bennie briefed the meeting on an emerging issue – Environmental Health Officers served a closure notice on iCook due to the presence of Listeria. The DHHS order for closure was issued under the Health and Wellbeing Act and there will be a Coronial inquest.

That is your briefing to the meeting.

Mr BENNIE: Well, my advice to the meeting would have been along the lines recorded, but I had no particular knowledge that that would be the case. When a person passes away under these circumstances, I would have expected and assumed that a coronial inquiry would follow.

Ms LOVELL: Well, then the minutes would have said ‘and he expects that’, not that ‘there will be’.

Mr BENNIE: I did not take the minutes, Ms Lovell.

Ms LOVELL: Anyway, next question. Why did you think it was appropriate to brief Community Chef on a competitor’s situation?

Mr BENNIE: I thought it was relevant given the context of all the things that we were talking about of what was happening in the sector.

Ms LOVELL: Okay. Because it goes on to say that Community Chef will now contact customers of I Cook in order to offer their assistance for the supply of food.

Did you have access to the customer list for I Cook, and do you think it was actually a conflict of interest in using your information gained as the CEO of the Greater Dandenong council to brief the board of a competitor?

Mr BENNIE: No. It was not me who said that, and I did not have the list and I did not share that list.

Ms LOVELL: But do you think it was a conflict of interest for you as the CEO of Greater Dandenong council to brief a competitor on information that you had gained in your substantive position as the CEO of Greater Dandenong council?

Mr BENNIE: I was briefing them after the matter had come into the public domain. The matter was there, the issue had been raised that a news announcement had been made about the closure of I Cook Foods. I thought it was then relevant and appropriate that I indicate what I knew and understood of the situation.

Ms LOVELL: Mr Bennie, how much of ratepayers funds have been expended so far and how much is still expected to be expended in the court action against I Cook Foods?

Mr BENNIE: I do not have that information to hand. We are not currently pursuing any further court action.

Mr BOSMAN: Excuse me, Madam Chair, I have—

Ms LOVELL: Can you take that on notice and provide that information to us?

Mr BENNIE: Yes.

Ms LOVELL: That would be good, thank you.

Mr BOSMAN: Madam Chair, through yourself again. There was a question asked as to when council was notified that the elderly lady had passed away. I have a note here that council was notified at 4.18 pm on 18 February.

The CHAIR: Mr Bosman, if you could just speak a bit closer to the—

Ms LOVELL: I did not ask that question.

The CHAIR: No. This is actually something that Ms Maxwell asked.

Mr BOSMAN: Madam Chair, it was asked by one of the members as to when council had been notified of when the elderly patient had passed away, and my note is that the council had been notified at 4.18 pm on 18 February.

The CHAIR: Okay. She died on the 4th. One minute left.

Ms LOVELL: Okay. Mr Bennie, have you ever or has council ever conducted an independent audit of your health team or, and in addition, an independent audit into the closure of the I Cook Foods company?

Mr BENNIE: Arising from this matter, it was very important that I along with other executive members had a clear understanding of the position that we were in. If there had been fault, if there had been mistakes made, if there had been certain things done, then we wanted to know about it, so we required an audit to be undertaken in relation to that, but found, arising from that audit, that fundamentally there were no issues for us to be concerned about.

Ms LOVELL: So you are saying there were no issues for you to be concerned about?

Mr BENNIE: In relation to the matter of the prosecution against I Cook Foods.

Ms LOVELL: What did it find about your health team?

The CHAIR: Thank you.

Ms LOVELL: Can I just ask: can you table a copy of that report for our committee, please?

Mr BENNIE: I will take that on advisement.

Ms SHING: I am wanting to talk about the tipping point that has been gotten to in this particular matter, where to quote you, Mr Bennie, there has been a history of complaint in relation to I Cook Foods and that there were 48 charges all relating to a four-day period but that in fact there seemed to be some very in-built problems associated with the very layout of the operation that had presumably attracted council's attention and are referred to, Mr Bennie, in your statement around the location of ovens and around the dishwashing sinks being in close proximity to food equipment. This is not just about water pooling irrespective of the time of day in which an inspection takes place. This is about the set-up of the operation. I am wondering how it was possible, given listeria of this particular strain can thrive in water and can be spread with water, that it was not enough previously to close this business down—given the history that you have indicated took place around discussions with I Cook, despite that that is at odds with Ms Rogerson's evidence—and how it was that all of a sudden there were all of these charges laid, which were abandoned on a commercial basis but were enough in and of themselves to warrant the request for closure or the discussions with DHHS that lead to the order being made. Mr Bennie, perhaps if you can start, and then we can hear from Ms Johnson and Ms Garlick as well on this point.

Mr BENNIE: Just as a point of clarification, Ms Shing, you might have confused my testimony with that of Mr Bosman. I think Mr Bosman referred to that detail.

Ms SHING: I beg your pardon. I am sorry, Mr Bosman.

Mr BENNIE: I will refer to Mr Bosman and then Ms Johnson or Ms Garlick.

Ms SHING: Thank you.

Mr BOSMAN: Ms Shing, the points that I refer to in my address to the committee are evidence or examples of the 48 charges that were brought at the Magistrates Court against I Cook Foods. It is an illustration of some of the matters and the nature, the spread of some of those matters upon which the brief of prosecution was submitted to the Magistrates Court.

Ms SHING: Yes. I am looking at the statement, though, that refers to the very location of the ovens, being outside the kitchen, being used to cook meat, the dishwashing sinks being in close proximity to food equipment along with issues of concern around water pooling. I mean, these are not new issues if they go to the very layout. Despite any maintenance that may have been undertaken to flooring in 2016 or 17, it seems that there is a history of issues which are static, which have not warranted escalation to the point of closure, including in relation to cleaning. Then, all of a sudden, this changes despite the fact that there has been this history of complaint. I am confused as to how it was that we got to this point, particularly on the question of cleaning, where Mr Cook's own evidence was that a deep clean was conducted every day and also that evidence from Mr Cook and Ms Rogerson indicates that listeria is ubiquitous around us and that levels under 100 cfu are in fact a manageable risk.

Mr BENNIE: I think Ms Johnson said that.

Mr BOSMAN: Madam Chair, that was within—

The CHAIR: Yes. Ms Johnson, this does relate back to your report.

Ms JOHNSON: Yes. The ovens that were located outside were identified I believe by Officer Garlick in an inspection, and then when I attended that afternoon, on the Wednesday, I was shown them. I asked Mr Michael Cook how long they had been there for, and I believe his response was one to two years.

On the point regarding the processes and systems within the premises, an officer will conduct a food safety assessment, and our assessment is what we observe at the time. We will review either the highest risk activity at the time or we will say, 'Take us from the beginning to the end'. The difference with this premises is that it had an independent food safety program and so the premise had operating procedures. When they are required to have an independent program they are also required to have a third-party audit. That is done by a third-party auditor by the Department of Health and Human Services. The difference between our assessment and an audit is that an auditor will go through and they will look at the food safety program in detail and they will match those processes to the activities that are being conducted within that premises.

Ms SHING: Right. So if I go to the activities that are being undertaken in that premises and if I go to the fact that there was a fatality that is linked to the presence of listeriosis in corned beef, ham, egg and lettuce, and that by the reckoning of the independent assessment it sat at below 10 cfu, that does not seem to me, based on the evidence that we have heard today, to be enough in and of itself to warrant a closure, unless somebody can shed some light on this for me, because it seems that council had raised numerous concerns about the lack of cleanliness on the premises and the positioning of the layout of things previously and had not actually called for closure, had put in place a number of remedial steps, but all of a sudden it has now escalated to the point where—and I think, Mr Bosman, this was your evidence, that you have not actually ever gone to the point of closing a business down like this before. Is that correct?

Mr BOSMAN: Through you, Madam Chair, I think it is important to remember that the premises were not closed down by council. The premises were closed down by the Department of Health and Human Services on the basis of the risk associated with the link between the listeria and the elderly patient. The actions that were taken by council officers were actions to bring to court charges for breaches of the *Food Act*, as well as other

food orders which are not closure orders to food orders in terms of rectifying matters that were found to be breaches of the *Food Act*. But the council did not—

Ms SHING: But we have a history of complaint that involves the presence of listeria and that that in and of itself was the major contributing factor, or a contributing factor, in the death of the person who had consumed product from I Cook Foods. So it seems to me that but for the death of a person following consumption of food from I Cook Foods this may well have continued to be a process of ongoing complaint and various approaches to I Cook to try to clean up their act. I mean, where does it end in terms of escalation to the point where more decisive action can be taken?

Mr BOSMAN: Well, as I said, through yourself, Madam Chair, the Chief Health Officer decided on that closure on the basis of the evidence that he had in respect of this particular case. I suppose that in the other case, in the ongoing breaches of the *Food Act*, where they reach a risk level where it is warranted, in consultation with DHHS, my council officers would do the assessment and if it was warranted, a proposition to close or a proposal to issue a closure would then be reached, but it would be on the basis of a risk assessment. In this particular case that risk assessment by the health department necessitated that closure.

Ms SHING: It seems to me, though, that with a history of complaint the risk assessment appeared to have been present in a relatively consistent way for a number of years and yet there had been no request or no decision taken—putting the conflict of interest issue to one side—to close the operation, despite what appears to have been a pattern, at least on your evidence, not on the evidence of Mr Cook, of non-compliance with a number of directives to improve cleaning and practices on the premises.

Ms JOHNSON: I think with this, Madam, I only learned recently of Officer Garlick's response when she attended. The inspections I conducted at I Cook Foods myself were unannounced—they were not expecting me to arrive. And yesterday I learned that when Officer Garlick, who can speak to this, arrived on her first day she was given the impression as if inspections had been booked in and appointments made previously. If an appointment is made, it is at a time suitable to the manufacturer. It might be a time when they are at their end-of-day production or they are just starting up and then it is not in their busy peak. The fact that our inspections were occurring when they were in mid-operation was giving us an opportunity to see what the flow of the processes was and what the knowledge was. The other point that I did note in that week of the 18th, Mr Ben Cook had injured himself and he was pretty much stuck behind a desk, and in conversations he had not gone onto the floor to observe and have a look at operations. I do not know how long Mr Cook was disabled for. There were conversations earlier that Ms Garlick had told me that she had recommended to Mr Ben Cook to use the cameras within the food production area to help observe and supervise staff in the food handling practices when he had limited mobility.

Ms SHING: All right, thank you. What I would like to do is just ask Ms Garlick a couple of questions, if you would not mind coming to the table. Thank you. Mr Bosman, you might have to give up your chair.

The CHAIR: Your time is brief, Ms Shing.

Ms SHING: Excellent. Yes, I will be very, very quick. Thank you for that, Chair. Ms Garlick, what was the difference between the day when you attended and did not wear a body camera and the following day when you did? You have talked about safety. Why did you change your position and decide to wear a camera on the second day?

Ms GARLICK: Yes, I can answer that. The main reason was upon returning to the office after the inspection on the 18th I did find out that the case that allegedly had listeriosis had passed away, and then with regard to requests from the department for further information I felt it prudent to wear my body camera during subsequent inspections.

Ms SHING: But you did not have any fear for your safety as a result of the fatality?

Ms GARLICK: No.

Dr BACH: Again, thank you all for being with us and for helping us this morning. Can I ask, Mr Bennie, you a question about the audit that you have discussed with us that you had carried out at the council? You made some comments before about the fact that you wanted to get to the bottom of what had occurred yourself.

Can I ask you broadly about that audit and in particular whether there were any issues of concern regarding the health team?

Mr BENNIE: Not that I can recall. My questions were—again, given the complexity of my role I did not want it to be seen that I was getting any more involved than a CEO might to satisfy themselves around the veracity of the things that we were dealing with. So I have not actually studied or reviewed the audit findings. The director of corporate services did all of that on my behalf. He advised me about the general outcomes. So that is a long answer to effectively say that I am really not aware of the detail.

Dr BACH: Okay, that is fine. Thank you. But my recollection is that to Ms Lovell's question you had said you would look into whether or not that was possible to provide that to us.

Ms LOVELL: He did. He gave a commitment to provide it.

Mr BENNIE: I gave a commitment to take that on advisement, yes.

Dr BACH: That would be very helpful. Thank you so much. Can I ask a question to you, Mr Bosman? I am sorry to have you dancing backwards and forwards. Another member of the committee, Mr Bosman, had previously asked I think you, Mr Bennie, regarding whether or not you had any information to hand about the sum of money that has currently been expended by the council regarding I Cook Foods and any action against I Cook Foods. Do you have personally any more information about that?

Mr BOSMAN: I can check the records and provide the committee with what it had cost us to the point at which I withdrew or instructed the barrister to not proceed. I do not have that figure offhand but I can in fact provide the committee with it. But as I mentioned, subsequent to having instructed the barrister to not proceed obviously there have been no further legal bills in respect of bringing a case against the company.

Dr BACH: Fine. Thank you very much. Mr Bennie, can I ask you: my understanding is that Dandenong council has sold its share of Community Chef to Western Health. If I am correct in that, can you tell us how much that was for?

Mr BENNIE: It was Greater Dandenong City Council, and we, along with all shareholders, had not sold. The company has been bought, as I understand it, by Western Health. Recall that, as I have stated previously, I have stood aside from the board since this incident arose and so I am not privy to all of the detail, but it is, as I understand it now, in the public domain. Western Health has acquired Community Chef, and arising out of that Greater Dandenong, along with all other shareholders—and I think there are another 16 of those—have now had the company that they part owned bought.

Dr BACH: Ms Johnson, can I ask you a question? In response to a question just before from Ms Shing you mentioned that you had only learnt about several matters pertaining to some alleged problems with I Cook Foods recently. Can I ask you: what is it that you only learnt recently, and what does recently mean? Can you be more specific?

Ms JOHNSON: As of yesterday I learnt that when Officer Garlick had first arrived at the premises—you can clarify with Officer Garlick—the business made a comment in relation to, 'Oh, you've come with no appointment', just an offhand comment in that space. I think that was the only—was there another matter I raised?

Dr BACH: So other than that, you were aware of the various issues that it is your evidence are significant issues of concern—as Ms Shing said, that is quite different from what we heard last week, but that is fine—regarding I Cook Foods?

Ms JOHNSON: Yes, I learnt them in the week of 18 February, so as I was getting reports back from Officer Garlick in regard to the non-compliances identified, I then started to review their file to have a look at what their past performance history was.

Dr BACH: I might ask Officer Garlick a question or two, if that is all right. Ms Garlick, you made some comments before about exactly when it was that you found out about the death of this poor woman from listeriosis. It had been my understanding—and I may have this wrong; you may be able to clarify this for me—

that you were there on the 18th, carrying out the work that you were carrying out specifically because of the death of this woman, but that is not right. Would you mind clarifying that for me?

Ms GARLICK: Yes, certainly. I found out through Officer Johnson that an illness had been reported by the department of health to us and that my investigation was to go there and investigate that illness. When I returned to the office after that investigation, that inspection at the time of the 18th, it was then that I found out that the case had actually passed away.

Dr BACH: I understand. I might ask you another question, Ms Garlick. In notes that we have received as a committee, one of the things that you mentioned was regarding coats that you were to wear on the premises.

Ms GARLICK: Yes.

Dr BACH: And I think 'debris' is the word that is used in the information that we have as a committee—that there was debris, in your view, on those coats. My understanding is—I am quoting you when I say — there was debris on some coats. It was from this area that coats were taken for Mr M Cook and I to wear through the premises—

this area where there was debris. Is that correct?

Ms GARLICK: Yes, so in that particular gowning area Mr Michael Cook had provided me with a coat, so he collected that and provided it to me to wear, but as we were gowning up in that area I observed that some of the coats that were hanging in that area for staff and obviously visitors did have some debris present on them. I could not make out what that debris was. It may have been food stains.

Dr BACH: Nonetheless, we have received video evidence that shows you and Mr Cook walking into the gowning area with folded gowns that appear to be clean, folded gowns.

Ms GARLICK: Yes. Like I said, Mr Cook provided me with a coat to wear, and that is where we gowning up in that room.

Dr BACH: Can I come back to my previous question to you, Ms Garlick? Thank you very much for clarifying that for me. You did not understand that you were there based on the fact that a person had died but that they were sick.

Ms GARLICK: Yes.

Dr BACH: Based on the fact that that was your understanding, was it appropriate and normal, again, for you not to be wearing a body camera?

Ms GARLICK: Yes. It was a routine inspection as far as I was aware.

Dr BACH: Can I go to a matter that has been covered by a couple of other members? I might ask you, Ms Johnson, this question, or perhaps you, Ms Garlick. Based on the evidence that you have provided to us on the very serious issues that you say you observed on the 18th, I think it was, at that inspection—and I note the information that you have already provided to us about some of the concerns that you say you had that were ongoing. Of course we have heard evidence from Ms Rogerson that, to come back to a point you made, Dr Kieu, is starkly different from yours—that based on her experience and her involvement with I Cook Foods, really they were quite exemplary in terms of their record. Could I just quickly step through some of these points? I am looking at the information that you have provided to us, Ms Garlick, just to clarify in my mind if these were issues of ongoing concern for the council. So the first point was:

Aerosols created from using high pressure hoses to wash down food preparation areas while food handling activities were still occurring

Was that something new or was that ongoing?

Ms JOHNSON: This was both our first time. We had not stepped foot in the food premise until 18 February, and it was Officer Garlick who observed that practice.

Ms GARLICK: Yes, but I cannot speak as to the history of that practice occurring.

Dr BACH: Right, okay.

Dirty food handling equipment ...

Had that ever been observed before?

Ms JOHNSON: I would have to check the files, I am sorry.

Dr BACH: Okay. I suppose my broader point—perhaps this is to you, Ms Johnson—is that notwithstanding the fact that you are saying that there were some ongoing issues with I Cook Foods, the concerns coming out of your report, based on your effort, seem very significant. And yet, to touch again on some questioning from Ms Shing, some of which had been raised before but many had not, what is your understanding about how it is that things could change so significantly at I Cook Foods?

Ms JOHNSON: There were conversations with Officer Rogerson on her return to council, and when she was discussing the premise with me she was saying that she had asked for areas to be segregated and she told me that she had raised concerns with the flooring in the past. And in the previous June, Officer Rogerson had responded to a routine sample that had tested positive for listeria. She said that the manufacturer had pretty much outgrown the premise and that she was recommending to them back then to look at how their premise was structurally set up or to move. There were discussions in regard to the size of the premise the previous year. I did not record this discussion, but I do—

Dr BACH: Okay. I mean, nonetheless some of these matters are entirely new, as I understand it, based on the evidence you have provided today—for example, staff not demonstrating the skills and knowledge to handle food safely. That seems to be very serious, based on my understanding of some previous concerns that in your evidence you said were ‘abnormal’. You were asked previously about whether this was run-of-the-mill stuff to have some concerns raised about a food manufacturer, a food organisation like I Cook Foods, and you had said, ‘No, that was not’, but this is entirely new that had not been raised before.

Ms JOHNSON: Yes. I think the week we were there there was a combination of factors. Mr Ben Cook was injured and not actively on the floor, and our inspections were unannounced when we were attending. We were attending at various times of the day. I think we ended up doing, from 1 February to 22 February, seven inspections by officers, so there was a lot of contact with the premises, and as our inspections progressed and each day we were observing a different practice within the premise, we were getting a bigger picture of what was occurring.

Dr BACH: Okay. But still—just very, very quickly, to finish, Chair—in your evidence, Ms Johnson, you have noted that in particular regarding the pooling of water in your view that is a significant risk for listeria.

Ms JOHNSON: Yes.

Dr BACH: So, can I press again: based on the fact that that had been known for a long time, why is it that no action regarding that matter had been taken against I Cook Foods previously?

Ms JOHNSON: Officer Kim Rogerson was responsible for the premise in managing it as a health officer for a number of years, and at the time of this incident I had no doubt in her ability to address food safety matters. I was employed by the Dandenong council from May 2018, so any previous history I only learnt from files after 18 February.

Mr ERDOGAN: Thank you all for coming here today. It is very important. I do have a question for Mr Bennie, because obviously Ms Rogerson made some allegations about the way she was treated at your organisation. Was she under any sort of performance management before February 2019?

Mr BENNIE: No, she was not.

Mr ERDOGAN: In terms of environmental health officers looking after certain areas, is it common practice for the one environmental health officer to go to the one business and monitor to the one business over a long extended period of time?

Ms JOHNSON: It is routine for councils to rotate their officers every, maybe, three to four years. The first year the officer is engaging a business and getting to know and build a relationship, and the second year is

when you have got that relationship as well. So usually after three to four years it is routine to swap areas. That I did in January 2019.

Mr ERDOGAN: She did state there was a new manager that came.

Ms JOHNSON: That was me.

Mr ERDOGAN: That was you. So it is when you came in that you had maybe changed some of the areas for the environmental health officer.

Ms JOHNSON: Yes, that was me.

Mr BENNIE: Mr Erdogan, if I can add, I know this was a matter that was canvassed last week, and it is a classic risk management response—that it ceases, I guess, any pattern of familiarity if there are changes. A fresh set of eyes can be brought to the table. So there are a whole lot of common risk management reasons for making the changes that Ms Johnson put in place.

Mr ERDOGAN: What was the standard procedure for inspecting premises? Environmental health officers, would they make appointments to inspect premises?

Ms JOHNSON: No. Many of ours are unannounced. Some large manufacturers you may need to because you may need to go through onsite induction for occupational health and safety and also security. Sometimes they have got gates that you need to pass through. But our practice is to attend unannounced to any inspection.

Mr ERDOGAN: In light of some of the, I guess, issues with the structural issues that you have explained, about possibly there should have been segregation of certain areas and that they may have outgrown the premises et cetera, would that be documented? So the officer that has gone out, would they provide a report? Would they just inform you informally? What is the process?

Ms JOHNSON: I would need to have a look at the file notes to see if it was documented. I do note that Officer Rogerson on her inspection report would routinely write down what had been discussed during those inspections. But I do not have the details at hand.

Mr ERDOGAN: That is all from me for the moment. I think most of what I wanted to ask has already been asked, so I will leave it there.

Mr LIMBRICK: Thank you all for appearing today. I would like to start by asking Ms Johnson about what happened on 21 February when you apparently spoke to the DHHS. What is the sequence of events that day, because my understanding of it is that you had a conversation with someone from DHHS and then that same day did an inspection. Is that correct?

Ms JOHNSON: Yes. The Thursday morning I spoke to an officer at the food safety unit.

Mr LIMBRICK: Was that Mira.

Ms JOHNSON: No. That was a different officer.

Mr LIMBRICK: Right. Okay.

Ms JOHNSON: It was early in the morning before I attended the first inspection on Thursday. It was to discuss the fact that these bread crates, the large plastic crates, were being washed outside in a bin area. I spoke to them about the process. The food safety unit—when there is an incident like this it is common for them to have many officers on the process, and in those conversations we discussed the agreed process: that the business was to rectify processes and look at the food safety training of staff.

Mr LIMBRICK: It is also my understanding that—

Ms JOHNSON: Mira?

Mr LIMBRICK: Yes. Was there another conversation with Mira?

Ms JOHNSON: Yes. So I attended the inspection in the morning at I Cook Foods with Officer Garlick. I took a phone call—I was outside the office of Mr Ben Cook. Ms Antoniou had called me. You will need to clarify with the Department of Health and Human Services; it was I think Thursday I learned that they had an incident management team working on this incident and that they were meeting. Ms Antoniou told me that the Chief Health Officer was advising I Cook Foods to close and cease operations. While I was on the phone, I quickly popped my head in and spoke to Mr Cook to give him a heads-up, and then when I completed that conversation I notified my acting manager. Then I went straight in to Mr Ben Cook and explained what conversation I had just had with the Department of Health and Human Services.

Mr LIMBRICK: In evidence last week from Mr Cook he stated that the night before, on the 20th—so on the evening of the 20th—they had had a forensic clean of the premises that evening.

Ms JOHNSON: The Wednesday night?

Mr LIMBRICK: Yes.

Ms JOHNSON: The Thursday night they had chlorine fogging conducted, and I took surface swabs the Friday morning. So Thursday night was a chlorine fog, and the Wednesday night—Mr Cook told me Thursday morning—the business had been systematically cleaned. At the time when I was there it was in production, and that was when he outlined what actions he had taken in response to the previous day's inspection.

Mr LIMBRICK: Because he claimed in evidence that an opinion on the cleaning on the evening of the 20th, when he said that he had had conducted a forensic clean that cost \$12 000, was expressed to the department before an inspection had taken place. Does that make sense to you? So he was saying that on the Wednesday evening, I think it was, there was a forensic clean, and then an opinion was expressed to Mira on that clean before an inspection had taken place. Was that correct?

Ms JOHNSON: To me a forensic clean means that there was a full commercial clean where you would engage a consultant, and the report I was provided was that the chlorine fog occurred on the Thursday night. I was not of the understanding that there was a forensic clean on the Wednesday night.

Mr LIMBRICK: Okay. Mr Bennie, I would like to ask about the conflict of interest that we have discussed a few times. The nature of that conflict of interest—correct me if I am wrong: is that a competition issue, because Community Chef and I Cook Foods are effectively in competition? Or what is the nature of that conflict of interest?

Mr BENNIE: Well, the nature of the conflict is that council on the one hand is a regulator and council on the other hand is a service planner and service provider, and in relation to this broader matter council had a responsibility in both areas. As the CEO, if I am involved on the board of Community Chef, I need to be extremely mindful of the matters in relation to regulation. So my conflict of interest, which I continually declared in council, was that I was on their behalf on council and, as a part owner of Community Chef, on their behalf on the board of Community Chef and that I should not then have any role to play in relation to the regulatory aspect of all of this—and I did not.

Mr LIMBRICK: At an organisational level, though, the council is a shareholder, or was a shareholder, in Community Chef. Would you consider Community Chef and I Cook Foods to be competitors with each other?

Mr BENNIE: They are both in the business of dealing with similar clients, yes.

Mr LIMBRICK: And when you did not sign the closure order due to believing that was a conflict of interest, that was due to the fact that you were on the board of Community Chef.

Mr BENNIE: Yes.

Mr LIMBRICK: And therefore there was a conflict. But isn't there a wider conflict—not a personal conflict but a conflict with the council itself—in that they are the shareholder of a company that is in competition with a company that they are regulating? Isn't that a wider conflict?

Mr BENNIE: No, and I addressed that in my presentation: about the broader conflict and the perception that was expressed last week by Ms Rogerson that the nature of that meant that all of the officers would be

conflicted. We have 12 500 businesses in our city, and many municipalities would have a similar number. It just so happens to be that in relation to this particular matter the company that we are dealing with is a Greater Dandenong business. So it is not possible for us to pursue the responsibilities that we have as a service planner, service provider—and, as I indicated, historically being involved in food-related premises that we either owned or that we were a shareholder in—and not give consideration to where there might be those conflicts. Conflicts exist. IBAC has determined that conflicts are invariably unavoidable. It is how they are managed that is the important thing, and I maintain that I managed that conflict as well as possible.

Mr LIMBRICK: I would also like to ask a question to Mr Bosman, if that is possible. I would just like to clarify—I know that you have touched on this a few times with these charges that were brought against I Cook Foods and then dropped—when was the decision made to drop them? What date was that?

Mr BOSMAN: Third of October.

Mr LIMBRICK: Okay. So that was way after. By that point where the decision was made to drop it, it would have been fairly clear that I Cook Foods was not able to continue operations. Is that—

Mr BOSMAN: I believe that I Cook could have re-resumed operations. Why they chose not to—it is not up to me to say so. The charges were withdrawn on 3 October simply on the basis, as I said, of the commercial decision that I took. As to why I Cook had chosen to not resume operations, it is not a matter for me speculate.

Mr LIMBRICK: And as this type of charge had not been brought before to other businesses that are regulated by the council, I would like to follow up something that Ms Shing and Dr Bach also said: it seems unusual that, for this business that had been regulated for a long period of time, all of a sudden this great big list of charges comes out. Was the trigger for this the fact that someone had passed away and it was considered that it may have been related to that? What was the trigger for driving this very serious course of action towards the business?

Mr BOSMAN: The event that triggered the inspections, as has been evidenced by Ms Johnson and Ms Garlick, is the listeria connection to the elderly patient. That is what triggered the inspection of the premises, and it is through these subsequent inspections over a period of days that a number of breaches of the *Food Act* were observed. It was as a result of those breaches that the matter was then taken to the Magistrates' Court for prosecution of the breaches of the *Food Act*.

Mr LIMBRICK: And was there certainty about whether the patient had consumed foods produced at I Cook Foods?

Mr BOSMAN: That would be for the department of health to answer. The matter that I prosecuted at the Magistrates Court, or took to the Magistrates Court, was purely for the breaches of the *Food Act* and not for the matter relating to the death of the elderly lady.

Mr LIMBRICK: I think I am out of time.

The CHAIR: Spot on, Mr Limbrick. Thank you. I think I just have a few more questions. Ms Johnson, I was interested that you noted in your report the chain of custody on the food swabs taken on 1 February—you were not satisfied with them. We have seen the reports come that have been returned about those swabs. There is no mention that there was a concern at the chain of custody.

Ms JOHNSON: It does not affect the fact that the products were obtained on 1 February. That still stands—the certificate of analysis. However, it was the administration that I identified later on, after the event, and—

The CHAIR: When did you realise this?

Ms JOHNSON: When I was looking through the chain of custody forms. Ms Rogerson was on leave, and the department contacted me on Monday wanting information relating to the food samples obtained. I was able to obtain a copy of the chain of custody forms. I was also instructed to obtain a copy of the photographs Ms Rogerson took on the day, and I was to put them up to the department as part of the investigation. It was when I was going through the photographs and the chain of custody that I noted that Officer Rogerson had labelled a ham with a different brand on it to what was sampled, and the actual chain of custody form—council did not receive a copy of the sample results from the lab that week because Ms Rogerson had filled in the form

with the details in the wrong location. It was not until Friday when I was able to get a full copy of those analysts' certificates and then provide them to Mr Ben Cook on the Friday.

The CHAIR: Right. So eventually the reports came back saying that—

Ms JOHNSON: They came back saying positive. The samples that had been taken had been obtained within the premises and they were sealed at the premises.

The CHAIR: Yes. The final reports actually came back saying that they were below an unacceptable level—that they were at an acceptable level. Is that correct?

Ms JOHNSON: They were returned back saying that *Listeria monocytogenes* had been detected.

The CHAIR: Yes.

Ms JOHNSON: So with the Melbourne diagnostic unit, we are just looking for a positive or a negative when we are following up on a premises that has had a case. Where it was likely food was consumed from that premises, we are looking for a positive or a negative in regards to that bacteria being present on site.

The CHAIR: Right.

Ms JOHNSON: With those reports, I would have to look. I remember them saying 'detected'. It depends which laboratory. We have a different laboratory, so when we do our routine testing we have engaged that laboratory to quantify how much of the bacteria is in that product. But with the MDU it is actually an agreement between the Department of Health and Human Services, and in an investigation when there has been a food poisoning incident all of our results go through MDU so then they can transfer that information directly through to the department because they have that working relationship.

The CHAIR: Correct. Then we have received the report from the Doherty Institute that, I guess, does that final confirmation around those levels.

Ms JOHNSON: That would have been initiated through the department side.

The CHAIR: Correct. Yes, that might be the case. Certainly what it found was that the levels were not of a level that was over the unacceptable level. I guess I am really curious that if you were concerned about that chain of custody, this is the first time I have heard that there was a concern about the chain of custody with those samples. Why was that not raised?

Ms JOHNSON: The department knew of that.

The CHAIR: Right. This is really the first time we have heard that there was—

Ms JOHNSON: The Department of Health and Human Services knew of that in the first place.

The CHAIR: So what do you do when there is a concern about that chain of custody? Do you get new samples?

Ms JOHNSON: The chain of custody—the samples were taken, but the errors in the chain of custody form were administrative. It was not how it was handled or how it was taken to the lab. It was purely administrative in the way one sample of ham had been named and when Officer Rogerson had completed her submission form, she should have included her details in the top part, which would have allowed us to receive the results that week. Instead I think she populated it with the Department of Health and Human Services details and then she put herself as a cc. The way the MDU work is they have got databases, so depending on how it goes in it would—

The CHAIR: So that is why you say it took some time for you to receive those reports—

Ms JOHNSON: To receive them. It was the actual—

The CHAIR: clearing Cook of having unacceptable levels of listeria.

Mr BOSMAN: We are talking about more than one sampling here.

The CHAIR: Yes, I have got the reports in front of me.

Mr BOSMAN: In other samples that were taken there is no concern with the chain of custody. I think what Ms Johnson was saying was—

The CHAIR: And I think there was no concern with the swabs either.

Mr BOSMAN: Correct, so it was just this one particular sample.

The CHAIR: Which were the swabs which were actually found to be positive, which is—

Ms JOHNSON: Negative. The food product was positive. I was not looking at the swabs; it was the food samples that tested positive.

The CHAIR: And you were not concerned about the chain of custody? You were concerned about the chain of custody for the food, weren't you?

Ms JOHNSON: At the time of our investigation our job is to protect public health, so it is gathering the information and things like that and making sure—

The CHAIR: Yes, I understand that, Ms Johnson. I am just saying that the positive tests were the ones that you now say you were concerned about the chain of custody.

Ms JOHNSON: The errors in the chain of custody related to actual documentation that Officer Rogerson did collect those samples.

The CHAIR: Okay, thank you. Can I ask Ms Garlick a couple of questions? Ms Garlick, I do not want to spend too much time on this, but what happens when you find a slug in a food preparation area?

Ms GARLICK: Well, as with any pest, I immediately look at the surrounding area to determine where it could have possibly come from and if there are any more. For example, cockroaches, because normally with a cockroach if you see one, there is normally more. To see if it is a wider issue you look at the surrounding surfaces to see if it is able to be accommodated, if there is harbourage of pests, and that is what I did at the time of the inspection.

The CHAIR: And then what happens to the slug that you have seen in the middle of the floor?

Ms GARLICK: Well, I did not really touch it. I observed it and then I spoke with Mr Michael Cook about the presence of that slug and from then—

The CHAIR: So you do not take it to confirm what variety it is or—

Ms GARLICK: I would not, no. It is more just about the presence of it and whether there are more that are present. I had a conversation with Michael Cook about the slug and asked him about the pest control for the premises. He said, I believe, it was Hayes Pest Control attended the premises regularly. However, he did tell me at the time that they do not specifically target slugs in their pest control activities. From that point I then noted that there was a gap beneath the nearby personnel door that led directly to outside the premises, and I then went and investigated what was outside that door, to which I found quite an accumulation of items and equipment outside.

The CHAIR: And you took a photo of that, which you have got here?

Ms GARLICK: I did, yes.

The CHAIR: So the slug was just left there and someone threw it away?

Ms GARLICK: I believe I indicated to Mr Cook to, yes.

The CHAIR: Mr Bennie, is it possible to get some information regarding other food preparation companies in the Dandenong region I guess to have some comparison as to the reports that we are getting around I Cook Foods, the investigations that have been done here, and see how they compare to other companies and other processes?

Mr BENNIE: The short answer is absolutely, yes.

The CHAIR: Thank you very much.

Dr KIEU: Ms Garlick, this is not the sole cause for closing down I Cook, but I would like to come back to the slug. You mentioned earlier that when you took the photo of that slug there was a piece of debris, but the photo you provided us is only of the slug itself.

Ms GARLICK: Yes, that looks like a potential photocopy so it does deteriorate, but if you look at the actual digital image, it does show the debris there.

Dr KIEU: There is not a piece of paper there.

Ms GARLICK: I believe that is there.

Dr KIEU: Thank you. As I mentioned, it is not the main cause. May I come back to Mr Bennie, the CEO?

Mr BENNIE: Yes.

Dr KIEU: Prior to your conversation with the Chief Health Officer late on the Tuesday night, did you have any conversation with the Chief Health Officer?

Mr BENNIE: No, I did not. The first time I ever spoke to Dr Brett Sutton was at 9.00 pm on that night when we introduced ourselves to one another over the telephone and I gave him an overview of my position on the board of Community Chef.

Dr KIEU: And during that conversation during that night at 9.00 pm, are you at liberty to tell us what was discussed in relation to I Cook?

Mr BENNIE: The matter was essentially that—and we had been advised, as I indicated earlier in my testimony—at 6.34 pm I think earlier that evening Dr Finn Romanes had sent an email to Leanne Johnson advising that the Department of Health and Human Services had begun to draft a closure order. It was less about the order itself and more about who was going to issue it and how it was going to be issued. The issue of who was a matter of ‘I have a conflict, I can’t issue the order, I can’t delegate the order’. Dr Sutton very quickly then concluded he had separate powers. He would utilise those powers, but he did ask that, given the urgency of the matter, could council’s officers serve the order, which then effectively became a matter for Mr Bosman in the implementation and those sorts of things to confirm that, yes, we could and it would follow through to 4.00 am the next morning.

Dr KIEU: But normally in the course of action the final say in closure decision-making resides with you as the CEO.

Mr BENNIE: Well, there are only two people, as I understand it, that can issue a closure order: the chief executive of the local council and the Chief Health Officer. I would expect, more often than not, matters within the local government authority, and I have served many closure orders or many correction orders or many prosecutions, are invariably done by the chief executive of the council. But here, where we have a conflict of interest, there had to be another solution found.

Dr KIEU: This was made very clear by you that you had to refer that to the department. Just coming back—this may be outside your domain—the cause of the death of the woman was not listed at listeria-connected.

Mr BENNIE: I am not aware.

Ms JOHNSON: The only information we received was on Monday afternoon from the department notifying that the listeriosis case had passed away and that all of the facts were unknown. I do not believe we have ever received a death certificate. It is with the department.

Dr KIEU: That is what I meant it could be outside your domain.

Ms JOHNSON: Yes. It is out.

Dr KIEU: That is all I have.

Mr ERDOGAN: I have got a couple of questions for Ms Johnson. I do not have a transcript of what was discussed last week—it does not help—but nonetheless, from the best of my recollection, I do remember Ms Rogerson referring to I Cook as a professional outfit and that she never had any issues with them in particular. Is that true? You said something about segregating areas. Would you agree that they were a professional outfit with no issues?

Ms JOHNSON: No, there are issues on our records to show non-compliances with the *Food Act*. In the context of ‘professional’ I do not understand what Ms Rogerson’s scope would be. They are a large company, and at the time their records showed that they were servicing 10 hospitals, eight councils, two aged-care facilities and two commercial. Looking at that tells me that they are a successful business.

Mr ERDOGAN: You touched on a point about who they are servicing. They were classed as a class 2, if that is correct.

Ms JOHNSON: Yes.

Mr ERDOGAN: If they are servicing, I guess, people who are elderly or people in hospital, is that the appropriate classification?

Ms JOHNSON: The classification system is gazetted, and a class 1 is where the business is producing foods predominately for vulnerable people. The company does have an independent food safety program and therefore they are going under the same stringent criteria as a class 1, because that is prompting a third-party audit report that class 1 premises also need to have.

Mr ERDOGAN: There is one other last question. I noticed that Mr Cook last week talked about a daily deep clean and today we have heard the terminology of a forensic clean. What is the difference between a deep clean and a forensic clean, and does deep clean have a well-understood meaning?

Ms JOHNSON: Deep clean implies that all of the equipment is taken apart, that it is properly dismantled and then it is properly cleaned and then sanitised before being put back together.

Mr ERDOGAN: From your observation when you entered the premises, did it appear to have a daily deep clean?

Ms JOHNSON: No. I actually found dried food residue on one of the blades of a large piece of equipment, and when brought to Mr Ben Cook’s attention—that was Wednesday, and on Thursday morning Mr Ben Cook told me that anything that had been found with that residue he had replaced.

Mr ERDOGAN: Okay, so there did not appear to be a daily deep clean. Okay. Thank you, that is all I have.

Ms JOHNSON: Thank you.

Ms CROZIER: Thank you, Chair. Can I just go back to some evidence that you gave, Mr Bennie, in relation to what you said about Community Chef and the council not selling their share of Community Chef, it was bought. So did the department approach councils? Did they approach you to buy Community Chef?

Mr BENNIE: For a whole lot of reasons that I have stated, I excluded myself from a lot of those conversations, so I am not—I was not directly involved in that. Again, I relied upon the Director, Corporate Services, to manage that aspect of it. But my understanding was yes, the department approached Community Chef in the first instance.

Ms CROZIER: Okay. And from your further understanding—because the witness behind you was nodding no, so I am a bit confused about whether the government did approach you or not—when did they approach you?

Mr BENNIE: Approach us? Or approach Community Chef?

Ms CROZIER: Well, the council.

Mr BENNIE: They did not approach council; there was never an approach directly to the council. The approaches always would have been to Community Chef.

Ms CROZIER: Thank you. Right, so when did they approach Community Chef?

Mr BENNIE: I do not know the answer to that.

Ms CROZIER: But aren't you on the board of that?

Mr BENNIE: I stood aside for a period of time, and I think any of the approaches would have been made after I stood aside from the board.

Ms CROZIER: Okay. So council had absolutely no role in dealing with the government or DHHS in relation to their shareholding of Community Chef and the recent negotiations that have been undertaken, is that correct?

Mr BENNIE: No, they did not. I can be clear on that aspect, and the answer is no. But no, the council did not.

Ms CROZIER: Okay. If I could just go back to the other issue. Ms Johnson, I think it was your evidence. You said that the Chief Health Officer said to speak to Mr Bennie without delay on the Thursday before the closure, was that you or—

Ms JOHNSON: That would have been Dr Finn Romanes, I had a—

Ms CROZIER: But you had a conversation with Dr Romanes?

Ms JOHNSON: Yes, on the phone.

Ms CROZIER: And Mr Bennie said he did not speak to the Chief Health Officer until 9.00 pm, but there were emails going back and forth to the department. What was that delay? Why didn't Mr Bennie speak to the Chief Health Officer?

Ms JOHNSON: There was a council meeting in progress, I was on the phone—on the mobile—to Dr Romanes and Mr Jody Bosman could see me pacing up and down outside the room, and he then spoke to Dr Romanes.

Ms CROZIER: So was the council meeting to do with the I Cook issue?

Mr BENNIE: No, it was not.

Ms JOHNSON: I do not know what the meeting was.

Mr BENNIE: If I can just elaborate a bit further, it was a council briefing session, as distinct from a council meeting; there is clearly a difference. It was a Thursday night, which again is unusual, but the process that we were going through at that time was undertaking service reviews. We were reviewing all of council's services and we had met for something like three or four Thursday nights in a row, so the briefing on that night was about a service review, coincidentally, on the directorate that Mr Bosman is responsible for.

Ms CROZIER: So there was no issue—even though this was an urgent issue, the department was speaking to you, a woman had died, the listeria issue, which you were saying was very urgent, and yet nothing was—you did not approach the CEO, Ms Johnson, to say, 'We need to speak to you, can you exit the meeting?'.

Ms JOHNSON: Mr Bosman spoke to Dr Romanes on the phone and he explained, and they agreed between the two parties. I was not involved in—that was the end of mine. I literally handed over the phone to Mr Bosman and he spoke to Dr Romanes, and then the next thing I heard was that we were having a meeting once the council briefing had concluded.

Mr BENNIE: Madam Chair, can I just—I know time is short—

The CHAIR: Yes, Mr Bennie.

Mr BENNIE: I do not have the email in front of me, but I can quote from the email that Dr Romanes sent to Leanne Johnson, and to follow up on that point, it states in that email:

As I explained to your Director just now on the telephone, we understand the pressure of time and appreciate that all parties are in a Council meeting expected to run until 10pm tonight. I hope that if the Order is prepared now, it will be able to be made and served as soon as possible after 10pm tonight.

In the end we finished the meeting at 9.00 pm and immediately called Dr Sutton.

Ms CROZIER: So the department did the draft order?

Mr BENNIE: That is what I have led in my earlier testimony, yes.

Ms MAXWELL: Can I just ask: what prompted those first samples on 1 February?

Ms JOHNSON: The department had instructed council. An email was received on 31 January, and in that the department had notified us that they were currently investigating a listeriosis case and they had identified that foods consumed by the person had included food supplied by I Cook Foods.

Ms MAXWELL: So given the background, history, allegations that have been made today and the reports that you have provided, whose responsibility would it be to provide a listeria management plan to I Cook—

Ms JOHNSON: The company—

Ms MAXWELL: They take that upon themselves?

Ms JOHNSON: Yes.

Ms MAXWELL: Okay. Can I just go quickly across to Ms Garlick. You did an inspection on the 18th and you stated that that was because of the illness. What time was that inspection done?

Ms GARLICK: I believe it was around 11 o'clock. I would have to check my notes as to what time that commenced.

Ms MAXWELL: And then you got back and found out after 4.18, when the council were actually notified, that the lady had passed away?

Ms GARLICK: Yes

Ms MAXWELL: Given the significant issues that are claimed in regard to I Cook and the evidence that you have produced today, if the lady passed away on the 4th, I am just wondering why it was not until the 18th that it was actually identified to you that a lady had passed. Surely from the day she had passed away it would have required an immediate response to I Cook Foods if that connection in fact was that that is where the listeria had been—

Ms GARLICK: I do not know the date the lady passed. The department was in charge of the investigation and council was notified on Monday the 18th that samples had tested positive and that we were to attend the premises and conduct an inspection.

Ms SHING: I would like to hear about what has changed at the council in relation to the litigation policy in the first instance where on the one hand I have heard from Ms Johnson that the absolute priority is public safety but on the other hand Mr Bosman's evidence has been that a cost of \$1.2 million was the sole reason for withdrawing the charges. I would also like to hear about any changes that have taken place in relation to the

rotation of officers given that it is evidenced that it has been a risk management strategy to rotate officers every few years when in fact it seems to have been the case, despite Ms Johnson's evidence that there was no issue with the performance of the EO in relation to inspections, that things had in fact been problematic for some time. So what has council done or doing given that there appear to be a few shortcomings in the processes around staying on top of these issues rather than being in a reactive space where after a fatality has occurred a whole lot of actions occur immediately?

Ms JOHNSON: I can speak to the management of the area—

Mr BENNIE: Can I respond in the broader and more general sense. We have not done any work on a litigation policy per se, but we accept that that is something that we do need to be looking at. As far as we are concerned, the urgency of the matter is dealing with the here and now and the matters of food safety and those sorts of things, which Ms Johnson will address very, very shortly. We, like, I would expect, any organisation, are committed to continuous improvement, and where we learn or understand or experience difficulties, we set out to review our processes and procedures to make changes to those. The reference had been made earlier to the audit, which we have been asked to consider making available, and that, too, was an aspect of seeking to understand what occurred. Once we know what occurred, we are in a much better position to respond to that and say, 'Well, we may need to improve in this'. So it is a work in progress, Ms Shing, and we do not have any definitive outcomes yet. But Ms Johnson can talk more specifically about the rotational changes.

Ms JOHNSON: Since the incident, 1 January, we have had a change of areas. And with that change I have also had a new manager come on board who I report to. He has been able to provide changes that have also included additional resources, and we also have conducted peer reviews. Last year our team underwent routine inspections and assessments, and they themselves did peer reviews of each other to get a better understanding of how each other operates. With the structure of the areas, they have all been set up where we now have two officers over a broader area so that we have got that support in amongst the team to help individual officers as well.

Ms SHING: Okay, thank you for that. Mr Bennie, you have talked about continuous improvement and you have talked about changes that need to be made over time. It has now been about a year and a half, so I am concerned that if public safety is guiding what you do and yet no changes have been made in achieving a better commitment to public safety through the work undertaken—putting to one side what Ms Johnson has just explained—that in fact it would be open for any business to say that they would take council to the wall and to see charges dropped as part of a decision-making process that prioritises costs to the public purse over public safety as it stands as an obligation under the *Food Act*. Help me to reconcile those things.

Mr BOSMAN: Ms Shing, there are two different issues here. One is the prosecution for breaches of the *Food Act* and the other is the assurance that the premises complies and is safe in terms of its production of food and that there can be confidence that the food and the premises is in compliance with the *Food Act*. Whether one chooses to prosecute or not does not in any way undermine the efforts or the actions taken by the health officers in ensuring that the premises is compliant. Those inspections will still take place, those risk assessments will still be done and the issues like closure orders et cetera still remain part of that toolbox. Choosing whether or not to prosecute does not mean that there is any more or less confidence in bringing about and ensuring the safety of premises or the safety of food consumed by the public.

Ms SHING: Right, well the problem that we have there is the perception in relation to actions taken or not taken to prosecute and a failure to affect any sort of deterrence where there are ongoing conversations with a business about pre-existing issues that are known to council which do not in prosecution and then it is only after a fatality that those matters change in terms of a decision to prosecute. So perception is obviously an important part of that particular work that council is doing. I would also be really interested in the document which the Chair has asked for around a comparison—sorry, Chair, not to paraphrase you—with other organisations around prosecutions, infringements and the sorts of dialogues that have happened with businesses to encourage them to improve to an acceptable standard, because, again, from the evidence that I have heard today I am still having trouble reconciling why it was that there was not an escalation of matters as identified at I Cook Foods in the years before the fatality occurred. Just any comment in relation to that, Mr Bosman, and then I will leave it at that.

Mr BOSMAN: Yes, Ms Shing, we have undertaken to provide such documents and such comparisons. And if I can just make a point again in respect of a comment that you made: the prosecution that I took to the Magistrates Court was not a prosecution as a result of the passing of an elderly patient; the prosecution that I took to the court was because of breaches of the *Food Act*. That was a separate matter to the death of the elderly lady. None of the charges that were laid or brought before the Magistrates Court related to the death of the elderly patient.

Ms SHING: And yet those matters had been raised with I Cook before in the context of serious breaches and had not resulted in prosecution. Is that correct?

Mr BOSMAN: The 48 charges that I brought before the court were ultimately withdrawn on my instruction for the reasons that I gave. In respect of other matters, other charges or other shortcomings in terms of breaches of the *Food Act*, it has been the evidence of Ms Johnson and Ms Rogerson that they were dealt with, they were attended to, at the time that they were found. Whether or not they should have been escalated is not a matter that I can speculate on now, but certainly the charges that I authorised were for breaches of the *Food Act* that were observed in the period of February 2019.

Ms SHING: But as a question of fact or as a statement of fact, there are previous matters that had been raised between council and I Cook Foods which did not give rise to prosecution in earlier years but which subsequently formed part of the raft of charges that were issued against I Cook following the fatality.

Mr BOSMAN: No, Ms Shing, that is not the case. None of the charges—and I am leaving the charge sheet with the committee—that were brought against I Cook in those that were withdrawn, none of those charges were of an historical nature. They were all for observations of breaches of the *Food Act* in the period of February 2019.

Ms SHING: Yes, I understand the period in which these matters as set out on the charge sheet took place. I am also referring back, though, to evidence which was given by Ms Johnson earlier today in the hearing that there were issues that had been raised following routine inspections over the years at I Cook Foods which identified pooling of water, which identified areas around placement and issues of risk of contamination, that had not previously been escalated to the point where prosecution was entertained but that form a similar basis to those matters which are set out in the charge sheet.

Ms LOVELL: Ms Johnson, as I understand it there were several ingredients in the sandwiches that had the traces of listeria on them. So was the depth of the investigation into the source of the listeria limited to I Cook Foods or did you investigate their suppliers to see, for instance, if it was on the deli meat? There are several suppliers of smallgoods in the state that that could have come from, and if it was out of their factory the listeria infection could have been much more widely spread around the state. So was it limited to I Cook Foods or did you go further than I Cook to find that?

Ms JOHNSON: Our investigation, our inspection, was focused on I Cook Foods. The information regarding suppliers was fed up to the Department of Health and Human Services, who were the lead investigator on this matter.

Ms LOVELL: Okay. Did you ask DHHS if they were investigating the suppliers, the other suppliers?

Ms JOHNSON: No.

Ms LOVELL: Okay. Also, I would just like to ask Mr Bennie: have any of your local MPs been briefed formally or informally on any of these matters since the closure of I Cook Foods?

Mr BENNIE: Not to my knowledge, no. But again for reasons of consistency of my declarations, I did not involve myself in numerous council briefings and I could only refer to Mr Bosman and ask whether he is aware of any briefings that were made of local members.

Mr BOSMAN: The answer is no.

Dr BACH: Ms Johnson, earlier on in your testimony you talked about the fact that there had been ongoing correspondence with I Cook Foods about this particular issue with the pooling of water.

Ms JOHNSON: Yes, the file notes show that it had been raised in past history.

Dr BACH: Is it possible for the committee to get any copies of any of that correspondence?

Ms JOHNSON: All correspondence? I will have to check the inspection reports, but I know the file notes made reference to pooling. Are you after both file notes and inspections?

Dr BACH: Yes, please, that would be lovely. Thank you. I confess I am still not entirely clear in my mind—noting your evidence that the decision to issue the closure notice was made by the Department of Health and Human Services, and we will see them a bit later on—about exactly what material, documentary material in particular, was provided by the council to the Department of Health and Human Services to inform them on making that decision. I understand, fine, that they made that decision so we can unpack that more with them. But just on that specific narrow question of the material that was provided by the council to the Department of Health and Human Services, can you help me understand that a little bit?

Ms JOHNSON: Documentation that was provided to the department included information relating to the food suppliers. That included the food safety program, which would outline the processes documented by I Cook Foods. There were a lot of verbal conversations had about the observations made on the day when I was liaising with the officer in the food safety unit and also communicable disease. Information we provided was regarding the samples, so photographs of the samples and documentation that was obtained at the time of that. That was the information provided.

Dr BACH: All right, fine, thank you very much. As I say, we can ask the department about that a little bit later on. We finished, Ms Johnson, before there was a range of other questions from other members, with me asking you about I Cook's history, I Cook's track record as has been presented to us by the council, and you referenced the fact that you were quite new in your role, and I accept that. I understand that. You do not know what you do not know. I am new in my role too. Nonetheless, looking at the evidence that we have got before us from council and noting what numerous other members have noted—that there had been no previous action taken against I Cook Foods on the basis of food safety—and the deeply contradictory nature of the evidence that this committee has received from you today and other witnesses last Wednesday, it would seem to me that really there are only two eventualities here that are possible: that either the ongoing issues with I Cook Foods were not serious or were, as Ms Rogerson said, just non-existent; or there was a very serious failure by the council. Would you accept that?

Ms JOHNSON: No.

Dr BACH: Well, can I come to you, Mr Bennie? Noting that you were relatively new in your role—

Ms JOHNSON: Yes.

Dr BACH: and the fact that, sir, you had said in response to questioning by Ms Shing that it was not your position to speculate about whether things should have been escalated against I Cook Foods, Mr Bennie, noting that now we have got all this evidence in front of us from you and from the council, should action from the council have been taken against I Cook Foods earlier?

Mr BENNIE: I would want to look more closely at the specifics of any of the previous evidence and situation to come to any conclusion in relation to that. I think you are confusing again some of what I might have said with what Mr Bosman might have said, but you are directing the question at me and I am giving you an opinion that I would want to look far more closely at the specifics and the matters of history to see whether, with the benefit of hindsight or had we had the opportunity again, we should have managed them in another way.

Dr BACH: Well, I wonder if there is anybody here present from the council who could answer my question?

Mr BOSMAN: Doctor, from the evidence that I have heard here today, yes, there have been historical issues, and it is apparent from what Ms Rogerson had evidenced as well that when issues were brought to the attention of the operators the officer dealing with it, in that case Ms Rogerson, was then satisfied that the

remedial action was then taken. So as Mr Bennie said, what those particular instances were and what the remedial actions and what those reports constituted I think we need the opportunity to have a look at.

The CHAIR: Thank you, Mr Bosman, and I understand Ms Johnson has made an undertaking to provide some of that information.

Mr LIMBRICK: Ms Johnson, one question I would like to ask is: given your experience in conducting these types of inspections, is it common to find slugs in the middle of summer? Because I am not an expert on slugs or anything like that, but I do not see them in summer normally.

Ms JOHNSON: I have never found a slug in a premise. I have found an earthworm in a kitchen. That is my experience of that type—

Mr LIMBRICK: So this is the first time you have heard of a slug being found in the middle of summer?

Ms JOHNSON: I could not recall a time of year, but I personally have not found a slug in a premise.

Ms VAGHELA: I would like to know what sort of certificate does Community Chef hold: class 1 or class 2? In terms of the licence permit, I would like to know. I will go back to Ms Johnson. You just mentioned that I Cook has a class 2 certificate or licence or permit—whatever the term you use—and then you also mentioned that they do not have class 1 because you were relying on the external third-party food safety program that they have.

Ms JOHNSON: In the classification system it is expected that an environmental health officer has undertaken an appropriate assessment of that premise and that it has been classified in accordance with the *Gazette*. At the time they were a class 2, but they are now registered as a class 1.

Ms VAGHELA: So what I want to know is—they had class 2, they were providing food to the vulnerable cohort—if you were relying on the third-party independent audits, would the officer ever go to the business and have a look at those audit reports and find out what the issues were and were the steps taken by the business to remedy those findings?

Ms JOHNSON: Yes, as part of the *Food Act* registration under the *Food Act*, in that registration period the business is required to provide council the certificate and the audit report, and then that is reviewed. So, yes, the officer would have an opportunity to review the audit reports.

Ms VAGHELA: And in that last audit report, or whenever you received those findings, how many of those findings of the 48 charges that were—

Ms JOHNSON: The audit report did not form part of the prosecution brief. The audit requirements that I Cook was required to undergo in 2019 post closure, they were a direction from the Chief Health Officer.

Ms VAGHELA: Yes, I understand that. That is the post—

Ms JOHNSON: But they did not bear on our prosecution.

Ms VAGHELA: That is after this event has happened. I am just trying to establish before this has happened, before all these things unravelled. If you are relying on that audit program, if the officers are going, are you checking their audit findings and seeing whether any actions are being taken by them?

Ms JOHNSON: Yes, that is routine that officers do conduct that practice.

Ms VAGHELA: That is routine. And in your routine inspection you never found that those things were identified as any complaints issues?

Ms JOHNSON: My inspection was not a routine inspection. It was in relation to the listeriosis. My inspection related to what was being found at the time—that we had a risk to public health with a known listeriosis case who we had known to have passed away who had consumed foods from I Cook Foods. My role as well as the department's is to remove any potential risks to public health. At that time we are just dealing with the facts at the time of what we are seeing.

Ms VAGHELA: Ms Rogerson visited the site on 1 February 2019.

Ms JOHNSON: Yes.

Ms VAGHELA: Prior to that, from the council who had visited the I Cook Food premises in terms of their inspection, whether that was scheduled or unannounced?

Ms JOHNSON: Officer Rogerson was the environmental health officer allocated to that area. Officer Rogerson was the routine officer.

Ms VAGHELA: When was the last audit of the site? Was it done prior to 1 February 2019?

Ms JOHNSON: I would have to check my notes. I believe it was 2018, but I can provide you information on that. I do not have it at hand.

Ms CROZIER: Could we have that, Chair—the last time you did the audit?

The CHAIR: Yes.

Ms JOHNSON: Yes, that will be part of the inspections and file notes.

The CHAIR: Ms Vaghela, thank you. Your time has expired, as has ours. Thank you; I know this is not necessarily a pleasant exercise, but we greatly appreciate the time that you have been with us. Given the documents that you did provide to us, Mr Bennie, in particular—I think it was referenced—on the past history, could we get some information about the outcomes of each of those reports? I think that would be very useful for the committee to further understand this. And from us, we will provide you with a transcript in the next few days. I do encourage you to have a look at it and ensure that there was no misunderstanding made during that. But thank you, all of you, again. Ms Garlick, thank you; Mr Bosman, Mr Bennie, Ms Johnson, thanks for your time. We look forward to receiving those documents. The committee will adjourn for 30 minutes.

Witnesses withdrew.