

## In 2016:

1. In April 2016, Council was notified by the City of Kingston that a fragment of glass had allegedly been present in soup manufactured by ICook;
2. In November 2016, Council was notified by the City of Ballarat that a foreign item (determined later to be a fragment of rock) was found in a rice dish supplied by ICook;
3. Also in November 2016, Council was notified by the City of Kingston that a foreign item (later found to be a bread clip) had been found in a pre-packaged food item supplied by ICook;
4. In December 2016, Council was notified by the City of Kingston that a foreign object was found in a lamington supplied by ICook.

## In 2017:

1. On 6 June 2017, Council received a complaint from the City of Whittlesea concerning sandwiches supplied by ICook;
2. On 20 September 2017, a sample of mixed sandwiches tested by the City of Boroondara tested positive for listeria and listeria monocytogenes (**listeria mono** or **L mono**);
3. On 24 September 2017, a sample of custard slice and cream tested by the City of Boroondara recorded unsatisfactory results;
4. On 20 October 2017, a sample of custard slice tested by the City of Boroondara produced an unsatisfactory result.

## In 2018:

1. On 8 February 2018, a sample of custard slice and cream tested by the City of Boroondara recorded an unsatisfactory result;
2. On 23 March 2018, a complaint was received from the City of Boroondara concerning a case of alleged food poisoning after a meals on wheels client ate food items manufactured by ICook (Asian noodles and New York baked cheesecake);
3. On 11 April 2018, a complaint was received from the City of Ballarat relating to a foreign item found in food manufactured by ICook;

4. On 29 May 2018, a sample of Asian noodle with egg garnish tested by the City of Boroondara tested positive for both listeria and listeria mono. This test result (the latest in a series of marginal or failed food samples obtained by the City of Boroondara) prompted the Coordinator of Public Health to request a discussion with Council about the ICook facility;
5. On 13 June 2018, a sample of baked fish and fennel sauce tested positive for listeria mono which prompted DHHS to be notified on 14 June 2018.

[REDACTED]

[REDACTED]

I refer to your notification to the Independent Broad-based Anti-corruption Commission (IBAC) dated 9 May 2019 about allegations made by Ms Kim Rogerson. IBAC determined the matter was not a protected disclosure complaint and referred it to our office to consider.

I considered whether the matter should be investigated under the *Ombudsman Act 1973* (Vic).

Having reviewed the information provided by Ms Kim Rogerson and yourself, we will not be taking further action on this matter. I gave Ms Rogerson my reasons, which I set out in my email below to her (see below).

If you have any questions, please feel free to contact me.

Yours sincerely

[REDACTED]



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[REDACTED]

**Sent:** Wednesday, 24 July 2019 6:01 PM

**To:** Kim Rogerson [REDACTED]

**Subject:** Your complaint about the City of Greater Dandenong

24 July 2019

File No: C/19/11438  
DOC/19/54302

Sandra Kim Rogerson

[REDACTED]

Dear Ms Rogerson

### Your complaint about the City of Greater Dandenong

I refer to your complaint, made to the Independent Broad-based Anti-corruption Commission (IBAC) on 9 May 2019, concerning the City of Greater Dandenong. As you are aware, IBAC determined that your disclosure was not a 'protected disclosure complaint' under the *Protected Disclosure Act 2012* (Vic), but referred the matter to this office for consideration.

My role has been to determine whether your complaint should be investigated under the *Ombudsman Act 1973* (Vic).

The concerns you raised are as follows:

- officers from the City of Greater Dandenong (the council) pressured you to falsify your statement to frame the food catering business, 'I Cook Foods'
- the council's Chief Executive Officer (CEO) has a conflict of interest because he is on the board of rival catering business, 'Community Chef'
- when you refused to falsify your statement, you became 'desk bound' and were taken off your normal duties, such as conducting off-site food inspections.

After speaking with you initially, I obtained documents from the council related to your concerns, including (but not limited to):

- the council's brief of evidence against 'I Cook Foods'
- draft and final versions of your witness statement
- information about the CEO's alleged conflict of interest.

I have briefly set out my consideration of each matter you have raised, below.

### Falsification of documents

You mentioned that your statement was falsified because:

- your initial draft was only two pages long, but after the false evidence was included, the statement became about 11 pages long
- towards the end of the [REDACTED] wanted to include a paragraph stating that the food premises were not compliant with standards and you had verbally warned I Cook Food's general manager Mr Ben Cook about this. You said this was not true and that paragraph should not have been included.

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.

There was no evidence in the brief to support your claim that the paragraph about the verbal warning given to Mr Cook was false. On the contrary, the brief sets out substantial other evidence (eg other witness statements, laboratory results) which appear to corroborate claims that the premises were non-compliant.

I understand there are legal proceedings on foot for which your statement may be tendered as relevant evidence. The council advised that it laid charges against I Cook Foods, and there are also media reports about legal action by I Cook Foods against the Department of Health and Human Services to claim compensation as a result of its closure. It would be appropriate for the parties to these matters to challenge the accuracy of your statement during these proceedings.

**Conflict of interest**

I reviewed records from the council which document the CEO's conflict of interest, as well as extracts from council meetings involving the companies in question.

The CEO's conflict of interest regarding I Cook Foods was documented in writing and the council appears to have taken steps to manage the conflict. For example, council minutes show that when the council discussed matters relating to I Cook Foods, the CEO left the room and was not involved in discussions or decisions on such matters.

I was unable to identify evidence demonstrating that the CEO made or influenced the decision to take prosecution proceedings against I Cook Foods. The merit of the council's prosecution of I Cook Foods will be a matter for the relevant court.

**Your employment**

You also mentioned that you made a WorkCover claim as a result of an injury you state you sustained while working at the council. I understand your claim was rejected and that conciliation will shortly follow. This is the appropriate forum for you to pursue this claim.

Under the Ombudsman Act, the Ombudsman is generally unable to deal with complaints about the conditions of employment. As such, there is no role for our office on this issue.

There are other bodies that are specially established to deal with grievances related to employment, such as the Fair Work Commission. If you would like to contact the Fair Work Commission, their contact details are as follows:

Fair Work Commission  
Telephone: 1300 799 675  
Email for the Victorian office: [melbourne@fwc.gov.au](mailto:melbourne@fwc.gov.au)

**Conclusion**

In the absence of compelling evidence to support the allegations you have made against the council, and given the other available forums to pursue your concerns, this office will not be undertaking an investigation into your complaint.

I appreciate you may be disappointed by my assessment. If you would like to discuss my assessment or you have any queries, please contact me on [REDACTED]

Yours sincerely

[REDACTED]



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## Part III—Orders

Pt 3 (Heading and ss 18, 19) amended by Nos 10262 s. 4, 16/1986 s. 30, 57/1989 s. 3(Sch. items 79.1, 79.2), 13/1994 s. 6, 20/1995 ss 6, 7, 98/1997 ss 16(a), 17(a)–(c), 18(1)(c)(d), 14/2001 s. 9(a)–(h), 24/2003 s. 91, substituted as Pt 3 (Heading and ss 19, 19A) by No. 42/2009 s. 9.

### 19 Orders relating to food premises

S. 19 substituted by No. 42/2009 s. 9.

- (1) This section applies if the relevant authority is satisfied from the report of an authorized officer that—
  - (a) a food premises is in an unclean or unsanitary condition or in a state of disrepair; or
  - (b) food being prepared, sold or otherwise handled at a food premises is unsafe or unsuitable; or
  - (c) food is prepared, sold or otherwise handled at a food premises in a manner that makes it likely the food is unsafe or unsuitable.
- (2) The relevant authority may by written order direct that, within a specified time, either or both of the following things must be done—

- (a) the food premises must be put into a clean and sanitary condition or be altered or improved to the satisfaction of an authorized officer;
  - (b) specified steps must be taken to ensure that food prepared, sold or otherwise handled at the food premises is safe and suitable.
- (3) The relevant authority may in an order made under subsection (2) or in a subsequent written order direct that until the matters referred to in subsection (2) are complied with—
- (a) the food premises must not be kept or used for the sale, or the handling for sale, of any food; or
  - (b) the food premises must not be kept or used for the preparation of food; or
  - (c) the food premises must not be used for a specified purpose or for the use of any specified equipment or a specified process.
- (4) If an order under this section includes a direction under subsection (3)(a) or (3)(b)—
- (a) in any case—
    - (i) the relevant authority may direct that a copy of the order be affixed to a conspicuous part of the premises in such a manner that the order can be read by a member of the public from outside the premises; and
    - (ii) the relevant authority may, by notice published in a newspaper or by any other means, inform the general public that the order has been made and the terms of the order;
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- (b) if the relevant authority is anyone other than the Secretary, the relevant authority must notify the Department of the making of the order;
- (c) if the relevant authority is not the registration authority for the premises, the relevant authority must notify the registration authority of—
  - (i) the making of the order; and
  - (ii) any appeal made under section 19BA against the order and the outcome of the appeal.

S. 19(4)(b)  
amended by  
No. 60/2012  
s. 54(1).

**Note**

Under section 43(2) the record of registration maintained by the registration authority in respect of a food premises must include the details of any order in force under this section that includes a direction under subsection (3)(a) or (b) in relation to the premises.

- (5) An order under this section takes effect—
  - (a) when it is given to or served on the proprietor of the food premises; or
  - (b) if the name and address of the proprietor is unknown, when it is affixed to the premises.
- (6) If satisfied that an order made under this section has been complied with, the relevant authority must—
  - (a) revoke the order; and
  - (b) give written notice of the revocation of the order in the same manner in which the order was given or served.
- (7) A person must not contravene an order made under this section.

Penalty: 120 penalty units.

- (8) A person must not remove the copy of an order affixed to a food premises under subsection (4)(a)(i) while that order remains in force.

Penalty: 60 penalty units.

- (9) For the purposes of this section, *relevant authority* means any one of the following—

- (a) the Secretary;
- (b) the council that is the registration authority for the premises;
- (c) if the premises is a temporary food premises or a mobile food premises, the council of the municipal district in which the premises is being operated;

S. 19(9)(ca)  
inserted by  
No. 60/2012  
s. 54(2).

- (ca) DFSV in relation to any food premises in respect of which it has issued a dairy industry licence under Part 3 of the **Dairy Act 2000**;

S. 19(9)(cb)  
inserted by  
No. 60/2012  
s. 54(2).

- (cb) PrimeSafe in relation to any food premises in respect of which it has issued a licence under Part 4 of the **Meat Industry Act 1993** or a seafood safety licence under Part 3 of the **Seafood Safety Act 2003**;

- (d) the chief executive officer of a council referred to in paragraph (b) or (c).

Note to s. 19  
inserted by  
No. 13/2013  
s. 24(7).

**Note**

Section 51B applies to an offence against subsection (7) or (8).

S. 19AA  
inserted by  
No. 60/2012  
s. 55.

**19AA Orders relating to premises on which primary food production and related activities are carried out**

- (1) This section applies if the relevant authority is satisfied from the report of an authorized officer that—

Food Act 1984  
No. 10082 of 1984  
Part IX—Miscellaneous provisions

- (2) If a person who is the holder of a licence or permit referred to in subsection (1) is charged with an offence against this Act of which he or she is found guilty or to which he or she pleads guilty and in respect of which a conviction is not recorded, the Secretary or the registration authority which caused proceedings to be instituted for the offence shall notify the Commission of the result of the proceedings.
- (3) In this section, *Commission* means the Victorian Commission for Gambling and Liquor Regulation (established under Part 2 of the **Victorian Commission for Gambling and Liquor Regulation Act 2011**).

S. 58(2)  
amended by  
Nos 98/1997  
s. 17(i),  
74/2000  
s. 3(Sch. 1  
item 51.2),  
58/2011  
s. 104(Sch.  
item 2.2).

S. 58(3)  
inserted by  
No. 58/2011  
s. 104(Sch.  
item 2.3).

**58A Delegation by council**

S. 58A  
inserted by  
No. 95/1986  
s. 20,  
amended by  
Nos 13/1994  
ss 10(v), 14,  
98/1997 s. 12,  
14/2001  
s. 26(k),  
substituted by  
No. 42/2009  
s. 29.

- (1) A council may delegate to one or more of its officers or members of its staff its powers and discretions under Part III (other than its power under section 19(3), 19AA(4)(a) or 19AA(4)(b)), Part IIIB, Part VI and section 46(5).
- (1A) A council may delegate to one or more of its officers or members of staff any of its powers or discretions under Part III in relation to temporary food premises or mobile food premises.
- (2) The refusal by an officer or member of a council's staff to grant, renew or transfer the registration of a food premises is of no effect until it is ratified by the council or the chief executive officer of the council.

S. 58A(1)  
amended by  
No. 60/2012  
s. 67.

S. 58A(1A)  
inserted by  
No. 42/2009  
s. 54.

S. 58AB  
(Heading)  
amended by  
No. 2/2017  
s. 16(15).

**58AB Delegations by Secretary DEDJTR, the DFSV  
or PrimeSafe**

S. 58AB  
inserted by  
No. 60/2012  
s. 68.

S. 58AB(1)  
amended by  
No. 2/2017  
s. 16(16).

- (1) The Secretary DEDJTR by instrument may delegate any power, duty or function of the Secretary DEDJTR under this Act (other than this power of delegation) to any employee or class of employees employed under Part 3 of the **Public Administration Act 2004**.
- (2) DFSV by instrument may delegate any power, duty or function of DFSV under this Act (other than this power of delegation) to any officer or employee of DFSV.
- (3) Primesafe by instrument may delegate any power, duty or function of PrimeSafe under this Act (other than this power of delegation) to any officer or employee of PrimeSafe.

S. 58B  
inserted by  
No. 42/2009  
s. 30.

**58B Matters occurring outside registration area**

S. 58B(1)  
amended by  
No. 42/2009  
s. 55.

- (1) A registration authority for a temporary food premises, mobile food premises or food vending machine may take action in relation to a thing done or omitted to be done at the food premises regardless of where the thing was done or omitted to be done.