

TRANSCRIPT

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into the Closure of I Cook Foods Pty Limited

Melbourne—Wednesday, 1 September 2021

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

Ms Sheena Watt

WITNESS (*via videoconference*)

Mr John Bennie, Chief Executive Officer, Greater Dandenong City Council.

The CHAIR: Good afternoon, everyone. I would like to declare open the Legislative Council Legal and Social Issues Committee's public hearing of the Inquiry into the Closure of I Cook Foods Pty Limited.

Let me begin by respectfully acknowledging the Aboriginal peoples, the traditional custodians of the many lands that we are meeting on here today, and I would like to pay my respect to their elders past and present and also any First Nations people or Aboriginal people who are joining us today as part of this public hearing and as part of these proceedings. I would like to welcome everyone who is joining us today for this public hearing.

Let me please introduce the committee. My name is Fiona Patten; I am the Chair of the committee. I am joined by Dr Tien Kieu, the Deputy Chair; Ms Georgie Crozier; Ms Kaushaliya Vaghela; Mr David Limbrick; Ms Sheena Watt; Mr Craig Ondarchie; Dr Matthew Bach; and Ms Wendy Lovell.

We are also very pleased and grateful that Mr John Bennie, the CEO of the City of Greater Dandenong, will be joining us for the next little while. Mr Bennie, if I could just give you some introductory comments that all evidence taken today is protected by parliamentary privilege, and this is as provided by our *Constitution Act* but also under the standing orders of our Legislative Council. Therefore any information that you provide during this hearing is protected by law. You are protected against any action for what you say during this hearing, but if you go elsewhere and repeat the same things, those comments may not be protected and any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

As I am sure you are aware, today's proceedings are being recorded. We have Hansard transcribing them. You will receive a transcript of today's hearing, and I would encourage you to have a look at it and make sure we have not misheard you or misrepresented you in any way. Ultimately that transcript will form part of the report and will be made available on the committee's website.

Mr Bennie, did you have any short opening comments, or would you like us just to go straight to committee discussion?

Mr BENNIE: I would like to make a brief opening statement if that is okay, Madam Chair. Can I also say that my colleagues, who I understand will follow me, Ms Johnson and Ms Garlick, will not need to make an opening comment. So I am making one on behalf of the organisation.

The CHAIR: Thank you, Mr Bennie, for that clarification.

Mr BENNIE: Thank you, and good afternoon, ladies and gentlemen. I would like to take this opportunity to respond to the evidence given to the committee last Wednesday, firstly, in relation to Ray Christy. Mr Christy gave evidence about the conclusions he had reached following his investigation into the death of the patient at the Knox Private Hospital. In case there is any misunderstanding about this, none of the charges brought by Greater Dandenong City Council against I Cook Foods Proprietary Limited relate to this. As Mr Christy said in his evidence, the Knox Private Hospital was, when contacted, unwilling to meet and share information about food production, so when charges were laid against I Cook Foods and Mr Cook in his capacity as the company's director, no charge was laid in respect of anything that was consumed at the Knox Private Hospital. Overwhelmingly the charges related to what had been seen by members of my staff during the inspections on 18, 19, 20 and 21 February 2019. It was multiple breaches of the *Food Act 1984* detected during these inspections that founded these charges.

For the record, the deficiencies found during the inspection were subsequently confirmed when DHHS officers visited the I Cook premises on the day after a closure order was issued. To quote Professor Sutton in his evidence to the committee on a previous occasion:

These deficiencies—

meaning the deficiencies reported by members of Greater Dandenong City Council staff—

were subsequently confirmed when my department authorised officers visited I Cook premises on the day after the closure order was issued to determine what specific remediations would be required before I could lift the closure order. Their

observations included (a) the cross-contamination risk posed by the ponding of water and damaged flooring in several places through the premises; (b) that the kitchen sink appeared to have multiple uses, including the cleaning of equipment parts and the washing of some ingredients, such as lettuce, and that it was located near equipment used to chop and slice foods, representing an additional potential cross-contamination point for bacteria; and (c) workflow processes where raw ingredients, food in preparation and cooked food crossed each other, again posing cross-contamination risks.

That concludes Professor Sutton's quote at that time.

Now, in relation to Kim Rogerson, according to Ms Rogerson council has a culture of corruption and bullying. This is completely untrue. The reference to 'culture' suggests some systematic embedding of corruption and bullying within the organisation. When asked to give examples of this, Ms Rogerson offered up nothing more than what she had previously told the committee and the media. Unsurprisingly, no evidence was given of any corruption or bullying beyond what she alleges she observed or experienced in relation to the closure of I Cook.

Pressure to alter a statement—Ms Rogerson again alleged that she had been asked to lie in a statement. There is absolutely no evidence that this is true. Nothing beyond a wild assertion has ever been provided by Ms Rogerson. As the committee knows, when she first raised this allegation in the media, council self-reported to IBAC. IBAC referred the matter to the Ombudsman. The Ombudsman investigated the matter and found that there was no evidence to support the allegation. In correspondence to Ms Rogerson, copied to council, the Ombudsman said in part:

I have been unable to identify evidence to suggest that the expansion of your statement was due to other council officers falsifying the evidence.

In relation to doctoring of body camera footage Ms Rogerson is right about one thing: Leanne Johnson and Elizabeth Garlick were at one point at Ms Garlick's desk having a conversation about body camera footage. This is perhaps the occasion being referred to by Ms Rogerson. This conversation occurred because I Cook had served on council a witness summons in connection with a Magistrates Court proceeding brought against the state. It required council to produce the body camera footage in a short space of time. Council took legal advice on what needed to be provided. Following the receipt of that legal advice the assistance of council's communications department was sought to delete any private conversations that took place while the camera was still running. Ms Johnson asked Ms Garlick to complete that process when the communications department was unable to comply with the court's tight time frame. The editing did not go beyond this. Everything filmed during the course of the inspection was provided. It is simply wrong and incredibly unfair to suggest that this process involved doctoring the body camera footage.

Now, doctoring of images—the allegation that a council officer edited tissue out of the photo is wrong. In the prosecution of I Cook council relied on five photos of the slug. Three of those photos clearly show the tissue that is alleged to have been edited out. The other two are taken too far from the slug to see the tissue, and that may be expected. Printed and digital copies of each of these photos were provided by council to I Cook's former solicitors. Digital copies were also provided to the Magistrates Court in response to the witness summons served by I Cook on council in connection with a proceeding against the state. It is untenable to suggest that council doctored the photos but then provided undoctored photos to I Cook to support the charges against I Cook. Further, I Cook has or should have access to the original copies of photos provided by council to its solicitors that show the tissue. These photos are of a vastly different quality to the copy of the photo that has been bandied about in the media. The allegation that council staff doctored evidence is unfounded and false.

Now, in relation to Mr Cook—Ian Cook—Mr Cook accused almost everyone who gave evidence to the committee on 24 June last year of lying. Insofar as this relates to Greater Dandenong City Council, Ms Johnson, Ms Garlick and I absolutely reject that we lied to the committee. Mr Cook continues to contend that there was a concerted effort by me and my staff to close down his business so that Community Chef Ltd would benefit. He continues to maintain that pressure was exerted so that this objective could be achieved. Mr Cook baulks at using the word 'conspiracy', but let us call it out for what it is: an allegation that I and others within council conspired with Professor Sutton, DHHS and the state more generally to fabricate evidence and thereby pervert the course of justice in an attempt to advantage Community Chef. There was no conspiracy or collusion or understanding—call it what you like. The reality is that Ms Johnson and Ms Garlick knew next to nothing about Community Chef at the time that they carried out their functions as environmental health officers. I played no part in any of the things that they did. I gave them no instruction, no direction. No slug was planted. No images were doctored. It has always been council's position that all of this is a diversion. Council has cooperated with Victoria Police in its investigation. This has included providing it with in excess of

2000 documents. If there is something rotten in Greater Dandenong, I would expect Victoria Police to find it and to take action.

On the basis of my knowledge and the knowledge of Ms Johnson and Ms Garlick no wrongdoing has occurred, and the allegations of both Ms Rogerson and Mr Cook are completely and utterly untrue. Mr Cook has spent a lot of time talking about the toll which all of this has taken on him. Ms Rogerson has done the same. I ask the committee to spare a thought for Ms Garlick and Ms Johnson, who have been pursued relentlessly by Mr Cook and his media adviser. I ask the committee to think about how they feel having their reputations smeared in public and think about their wellbeing. Council is keen for Mr Cook's allegations to be tested in court as part of I Cook's Supreme Court claim against the state and the council. It is also keen for Victoria Police to finish its investigation so that some balance can be introduced into the public conversation. That concludes my statement, Madam Chair.

The CHAIR: Thank you very much, Mr Bennie. We have very short periods of time for each of the questions. All of the committee members will ask their questions as succinctly as possible, and if we could ask for the same in the answers. I will start off quickly. Under the *Food Act*, why did DHHS contact you? I am unclear as to why, given the event happened in Knox council, Knox council was not the lead council for these investigations—that it was sent directly to you. I guess I am just trying to clarify under the Act who would normally be responsible.

Mr BENNIE: Well, I would ask you to please understand my own limitations, Madam Chair, in that I am a number of steps removed from, I guess, *Food Act* matters. I am not fully au fait with all of those matters. I think Ms Johnson would be better placed to respond, I guess, to specific questions around the *Food Act*.

The CHAIR: Thank you, Mr Bennie. In that case I will come back with another question after this one. I will move to Professor Kieu.

Dr KIEU: Thank you, Chair. Thank you, Mr Bennie, for appearing again. The reason we are reopening this inquiry is because of some allegations that are appearing in the press and some of the allegations that there was some motivation or some hidden agenda in the closure of I Cook. As the CEO of a council that is not only a service planner, a service regulator, but in your case also a service provider, namely being a shareholder and you being on the board of Community Chef, what process have you in place to address those perceived or potential conflicts of interest? Thank you.

Mr BENNIE: Well, thank you, Dr Kieu, and you have referred to some of the comments that were made at the first inquiry naturally. I guess managing perceived conflicts of interest is always a challenge. I guess the perception can be in the eye of the person who holds that perception, and sometimes that is extremely difficult to manage. We just need to deal with and manage matters to the best of our ability and try and address any perception if and when it arises. The key I believe is managing the conflict directly. As I said at the first inquiry, and I continue to maintain, one needs to be acutely aware of any conflict that they have, and I was, and to manage that to the best of one's ability, and again, I believe that I consistently was. As I led in my evidence last time, that was about total exclusion from any parts of the process, including the initial part, the key part being the issuance of an order. I was unable to, I guess, issue that order given my conflict of interest. Hence Professor Sutton provided that under the powers that he holds. And from that point on, again, I separated myself from the process as much as possible.

The CHAIR: Thank you. Ms Crozier.

Ms CROZIER: Thank you very much, Mr Bennie, for appearing again before the committee. We appreciate you doing so. I am going to read from some board papers from Community Chef dated 15 April 2019:

On March 14th, a meeting was held with Denise Laughlin and Jane Parry at the DHHS. The meeting was used as an opportunity to provide the DHHS with an update on the YTD performance and a forecast for the 18 month horizon. During the meeting it was flagged that a drawdown of \$800K of the \$1M loan facility in the FY20 was likely.

Can you tell the committee what that \$800 000 was needed for?

Mr BENNIE: Look, it is a long while ago, Ms Crozier, and I have no immediate recollection. Cash flow of course was always an issue—it had long been an issue—and I believe it was for the purposes of supporting working capital or cash flow.

Ms CROZIER: Okay. According to the Pitcher Partners report, which I am going to refer to now—and I want this Pitcher Partners report tabled this time so that it can be made public—when the company was set up, of which you were an initial board member, funding was provided by the commonwealth government. I think it was then Minister Albanese who provided a grant of \$9 million. There was a DHHS grant of \$6 million, and the then health minister was Daniel Andrews. There was a loan from the ANZ bank of \$9.5 million, a loan from Hobsons Bay City Council for \$1.87 million and \$2.2 million of equity from shareholder councils. Have any of those loans been repaid by Community Chef?

Mr BENNIE: Again, I believe—no, sorry, it was not led at the last inquiry from me, but I stood aside from the board for a period of time. I think that is on record.

Ms CROZIER: That is on record, but I want to understand if any of those loans have been repaid or if you cannot recall again.

Mr BENNIE: It is not that I cannot recall again; it is just that I may not be aware of the detail. Community Chef was ultimately purchased by Western Health—

Ms CROZIER: Sorry to interrupt you. You were on the board. You must know if those loans were being repaid. You were on the board for years. You must know.

Mr BENNIE: Yes. I am in the process of responding to the question—that in the ultimate transaction of the purchase of Community Chef by Western Health all debts were settled.

Ms CROZIER: All debts were settled by who? By who?

The CHAIR: Thank you, Ms Crozier. Mr Limbrick. Georgie, we can come back to that. Mr Limbrick.

Mr LIMBRICK: Thank you, Chair. Thank you, Mr Bennie. It seems that a lot of these things that we are talking about here are really disagreements between what Ms Rogerson said and what the other environmental health officers have been saying. Is it usual that there are disagreements between health officers? Ms Rogerson seemed to think that the rectification actions that were taken by I Cook Foods were satisfactory, and the other officers disagreed with that. How would you normally resolve this sort of disagreement? Is that a normal thing that happens?

Mr BENNIE: Again, I think that is a matter that Ms Johnson might be best to respond to when you speak to her. But my understanding of that activity and like many other activities is that it is not an exact science, that there are no precisely right and wrong answers to most things and that there are, appropriately, different opinions about what is the right way forward. So, yes, the way that those sorts of things are resolved are through mature conversations around matters of opinion and matters of appropriate mitigation or resolution.

Mr LIMBRICK: It was ultimately the opinion of the council that Ms Rogerson's opinion that the rectification actions were undertaken satisfactorily—that was not eventually the opinion that the council came to. Is that correct?

Mr BENNIE: Not necessarily. The opinion that the council came to, if we are referring to the 48 charges that were laid or problems that were identified, was that they were identified breaches of the *Food Act* that were determined by council's environmental health officers at the time, in that period of 18 through to 21 February. As I said at the outset, those findings were confirmed and endorsed by DHHS officers.

The CHAIR: Thank you, Mr Limbrick. Ms Vaghela.

Ms VAGHELA: Thanks, Chair. Thanks, Mr Bennie, for appearing once again in front of the committee. I read in your previous testimony that you only became aware of the I Cook Foods investigation the day before the closure order was to be served, which was a number of weeks after the initial investigation had started. Can you please explain what level of involvement you had in the I Cook Foods investigation?

Mr BENNIE: Well, the short answer is none at all. You are correct. On 21 February 2019 I was advised—and I do not want, for the sake of time, to go back and reiterate commentary I made at the first inquiry; you no doubt can read that—that the Chief Health Officer wanted to speak to me about the issuance of a closure order. I ultimately did that at the end of that day. We had the conversation about the fact that I was conflicted by virtue of my position on the Community Chef board and that it was inappropriate, and I was not able therefore to sign the closure order. I then effectively stepped away from any further involvement in the issuance of the order and the furtherance of any prosecution.

Ms VAGHELA: So is that normal? What level of involvement do you usually have in council regulating food business compliance with the *Food Act*?

Mr BENNIE: Look, I do not ever have any more involvement than that anyway, save for signing off on the closure order. So in all other cases that I have ever been involved in, where I am not conflicted, a prosecution brief would come to me; I would spend time reviewing that, as I expect Professor Sutton would have in this case; and I would sign off on an order to close or to prosecute. But in this case we are talking about closure under the provision—section 19 of the *Food Act*. I have that power and I would normally utilise that power, but, as has been said on many occasions, by virtue of my conflict I was unable to do it on this occasion.

Ms VAGHELA: Thanks.

The CHAIR: Thanks, Ms Vaghela. Ms Lovell.

Ms LOVELL: Thanks very much. Mr Bennie, can you tell us the answer to Ms Crozier's question: who settled the debts, please?

Mr BENNIE: Well, I am trying to explain, I guess. There was a settlement. Western Health purchased Community Chef, and in the purchase price, in the settlement price for that, all debts were settled.

Ms LOVELL: Thank you very much. Mr Bennie, when you appeared before our last inquiry the board papers of Community Chef were accessible via the website. They were taken down the day after the inquiry. Can you explain to us why they were removed from public view?

Mr BENNIE: No, I cannot.

Ms LOVELL: Okay. Terrific. Thank you. It just seems coincidental. Also, several times you have told us about your conflict of interest and the reason that you could not make this decision. So why were you witnessed by multiple councillors participating in the videoconference call with Dr Sutton the evening before the closure given your conflict of interest?

Mr BENNIE: Well, it was not a videoconference call. It was a voice call.

Ms LOVELL: A telephone call then.

Mr BENNIE: Yes. And I was simply responding to a request by Dr Sutton to discuss with him the closure of I Cook Foods. I got on the phone—and again I believe I led this evidence at the last inquiry—and explained to him the conflict that I had. So the conversation was all about me explaining to Dr Sutton at the time that I had a conflict of interest and that the advice that I had taken from my officers in relation to sections 19 and, I believe, 56 of the *Food Act* was that I was unable to exercise that authority due to the conflict and I was unable to delegate that authority to any other person and the only other person of authority to issue a closure order, as I understood it, was the Chief Health Officer, Dr Sutton. So that was the extent of the conversation.

Ms LOVELL: Thank you very much.

The CHAIR: Thank you. Ms Watt.

Ms WATT: Thanks, Chair. Thanks, Mr Bennie, for being with us today. How do you ensure there is a separation between the role of council staff who inspect food businesses and the operations role your council has with Community Chef?

Mr BENNIE: Well, first and foremost to be aware of that. There is, due to the structure and the working relationships that we have, not necessarily any need—and there was not, as far as I was concerned—for the environmental health officers to know or need to know about those other matters. I did not go out of my way, necessarily, to say, ‘Hey, I’m on the board of Community Chef, so please keep me out of those things’. The responsible director and the responsible manager were aware of those separational issues, and the focus for environmental health officers was to stick to the task, stick to the job that they had, and to do what they did without fear or favour or without any distraction about any other things. It was for me and always has been for me to manage any conflict that might arise, and I believe—again, I have stated consistently, and I hope I have satisfied you enough—that I did that.

Ms WATT: Just going to the environmental health officers, beyond the portfolio rotations what other systems does the City of Greater Dandenong have in place to monitor potential bias that may exist with the environmental health officers and ensure the inspections are done in a way that is objective and rigorous?

Mr BENNIE: Well, fundamentally their professionalism and their commitment to doing the job that they have undertaken to do. We have for all declared officers a requirement for them to complete annual conflicts of interest, so that we are aware if they or any of their family or partners—you would be well aware of all of those sorts of processes; they exist for designated officers of council. But it is otherwise—you might have just referred to it; forgive me if you did not—the rotation of officers. We have now confirmed that as one of the outcomes of the numerous recommendations and findings from this committee. That has now been inculcated in what we do going forward, and that in itself is a way of ensuring we achieve the outcome that you are alluding to.

The CHAIR: Thank you. Mr Ondarchie.

Mr ONDARCHIE: Mr Bennie, just referring to your opening statement, particularly relating to Mr Christy’s evidence before the committee last week, you made the point that the closure of I Cook Foods had nothing to do, necessarily, with Knox Private Hospital but more about your own investigations, yet Dr Sutton in his media commitment the day following the closure directly connected Knox Private Hospital and the closure of I Cook Foods. Can you explain that?

Mr BENNIE: No. I think that is a matter for Professor Sutton to explain, frankly.

Mr ONDARCHIE: In relation to your opening statement, were you there when Ms Johnson and Ms Garlick were looking at the photos?

Mr BENNIE: No, I was not.

Mr ONDARCHIE: Thank you. And did you visit I Cook and witness the site yourself?

Mr BENNIE: No, I did not.

Mr ONDARCHIE: I have no further questions, Chair.

The CHAIR: Thank you, Mr Ondarchie. Just following on from Ms Watt and your comments around the learnings from the previous inquiry, we did have a number of findings and we did make a number of recommendations. I would be interested to hear whether those recommendations have been adopted by the council and whether there has been any progress.

Mr BENNIE: Yes. There were, as I recall, six recommendations and eight findings. All of those have been implemented. Two of them have an ongoing role, and they relate to the ongoing training in record keeping and the rotation of officers. So all of those that were determined by your committee have been implemented and are implemented in an ongoing way. You will also recall that council conducted its own internal audit. That in itself identified 27 outcomes: 17 of those have been completed and 10 continue and continue primarily because they are rolling and ongoing and work in progress.

The CHAIR: Thank you. I am not sure whether you clarified it earlier, but there has been some confusion as to whether all of the body camera footage was provided, and certainly I think there was a VCAT order, and it was also a recommendation from the Victorian information commissioner. Can I confirm that all body camera footage that has been requested has been provided?

Mr BENNIE: Well, as far as I am concerned it now has, yes. And just to clarify, I referred in my opening statement to body camera footage that was summonsed from council by I Cook Foods in relation to their matter; that certainly was, in totality. The VCAT order relating to a freedom of information request was a matter that ended up in VCAT. We received a direction from VCAT, and that direction has been satisfied as far as I am aware.

The CHAIR: Thank you, Mr Bennie. Ms Watt.

Ms WATT: Thank you again. I just wanted to go to Community Chef again. How did the establishment of Community Chef in 2006 assist council in providing Meals on Wheels services? And I did have a follow-up question after that, Mr Bennie.

Mr BENNIE: Yes. Again, Ms Watt, thank you for that. I will be as brief as I can, because I think in the first committee hearing I went into some detail about that. But to be very quick, Meals on Wheels services are a traditional local government service delivery model. Most councils would have had Meals on Wheels kitchens, and we did in Greater Dandenong. In 2006, when I joined the council, our kitchen was outdated. It needed \$1 million to be invested to bring it up to the appropriate standards, and that coincided with a number of other local government authorities coming to the same consideration and conclusion. We therefore, I guess, came together and wondered whether a shared service or a cooperative or a mutual approach could be the better way to go. And to cut a long story short, that is the way we determined to continue to have the greatest control over our own destiny, greater control over supply of food that we knew—through the expert positions of our staff who were working in that area about the form of food and the menus—would be required. It was something that we were able to do through that company.

Ms WATT: Time for another question, Chair?

The CHAIR: A quick one.

Ms WATT: Just about the impact of the changes of NDIS and HACC packages and what that has meant for council, in particular with the provision food, do you have any comments on that and what that has meant for council?

Mr BENNIE: Well, if we are talking about right here and now—

Ms WATT: Yes.

Mr BENNIE: I am not hearing that there are unfavourable implications. We now, as Community Chef would have realised, are finding ways of satisfying our community, our clients' needs, in a whole lot of ways. Through continuing with Community Chef's services, and we continue to buy meals from Community Chef, we know other families—and I think many of us can probably speak for ourselves in terms of our own family experiences—have the ability to purchase meals for parents through a whole lot of other more convenient and reliable sources. So the market is now more open than it ever was, and I think they are—

The CHAIR: Thank you, Mr Bennie. Dr Bach.

Dr BACH: Thanks very much, Chair, and thanks for being with us, Mr Bennie. Can I take you to the matter of the charges against I Cook Foods brought by the council, which we were told by council officers when we last met were dropped out of prudence. The exact language was that the council decided that it would not be a 'prudent use of the public purse'—that is a direct quote—to spend 'up to \$1.2 million' on legal proceedings. That is despite the fact that—again, the council told us—I Cook Foods was, quote, 'a food manufacturing business which had put public health at risk over a period of time'. So I did a few checks into some of the things that the council has recently spent money on. Under your leadership as CEO, Mr Bennie, the council has spent more than \$62 million on consultants and millions of dollars on furniture, overseas junkets and luxury accommodation. Just recently a cheque was signed for almost \$600 000 for a water feature. You say you could not spend \$1.2 million on public health. You have just spent exactly that on a piece of cuboid art in Vanity Lane.

The CHAIR: Dr Bach.

Dr BACH: Yes, Chair?

The CHAIR: Please try and keep your questions as civil as possible for Mr Bennie.

Dr BACH: Of course. Mr Bennie, you did not drop the charges against I Cook because of cost. You dropped them because they were trumped up, weren't they?

Mr BENNIE: Well, first and foremost it was Mr Bosman who led with that evidence last time. Mr Bosman was acting CEO at that—

Dr BACH: Is it incorrect?

Mr BENNIE: Mr Bosman was acting CEO at the time and pursued that matter and explained to the committee on the first occasion his reasons for doing that, and I support the reasons that he took in the role of acting CEO at the time. You made one reference that I could pick up to a feature in Vanity Lane. Vanity Lane has not been constructed, so there has been no expense in Vanity Lane.

Dr BACH: Fine. All right. Thank you, Chair.

The CHAIR: Thank you. Dr Kieu.

Dr KIEU: Thank you, Chair. You just mentioned that all of the recommendations from the last inquiry by this committee have been acted upon or are being acted upon. I would like to hear from you about your responses to some of the findings, one of which was about the balance between the public sector and public expenditure—the reason the City of Greater Dandenong came to the conclusion to drop the charge. Another finding was also about why in the past the council had had evidence of non-compliance about food safety at I Cook but did not effectively manage that. So what are your responses to those findings?

Mr BENNIE: Well, to start with the last one first, I guess that is part of 13 previous complaints that had been submitted that we also submitted to you as evidence at the last inquiry. It probably also goes, I think it was, to Ms Watt's question—I could be wrong; I am sorry, I forget who it was—to the matter of opinions about how matters are resolved. Ms Rogerson was the environmental health officer. She made the determination for many of those things—that they met her requirements and were resolved in the way that they were. So that, I hope, answers the issue around the history of dealing with previous complaints—from memory 13 complaints from 2016 through to 2018 or 2019. Again the issues that we are dealing with on this most recent occasion are 48 breaches that were identified in the specific inspections from 18 through 21 February, and again I say those breaches were confirmed by officers of the Department of Health and Human Services. Your first question—

Mr ONDARCHIE: That is not what Brett Sutton said. Brett Sutton did not say that—

The CHAIR: Mr Ondarchie, please do not interrupt. Mr Bennie, please go ahead.

Mr BENNIE: Yes. Your first question I think is not perhaps dissimilar to Dr Bach's question, and that is that generally speaking council would not seek to compromise whether it be the planning scheme, the *Food Act* or any piece of legislation and will prosecute for all of the reasons that we believe we should to uphold the highest standards of compliance. In this case I say again: the decision of the delegate was to go down this path, and even though he led at the last inquiry, I believe he may have also added—and certainly briefed council at the time—that by the time the matter was ready to proceed to the Magistrates Court there had been compliance with all of the matters raised, or satisfaction or compliance with all of the—

The CHAIR: Thank you, Mr Bennie. Mr Limbrick.

Mr LIMBRICK: Thank you, Chair. One thing I would like to ask about is the involvement of DHHS in this. Was there any pressure from Professor Sutton or the department to close I Cook Foods?

Mr BENNIE: I am not sure what you mean by 'pressure'. Again, let me state very clearly: my only involvement was a conversation with Dr Sutton on Thursday, 21 February, at about 9.00 pm, when Dr Sutton indicated that based on further work that his officers had done, which I think I have alluded to and others have alluded to, the department was of a mind to issue a closure order. The conversation with me was only about who should issue that closure order. There was no sign or sense of any pressure whatsoever.

Mr LIMBRICK: Thank you. In Mr Christy's testimony he spoke about the information that he got regarding the Listeria death. It was less than he would normally be provided and was provided in such a way that made it impossible for him to investigate properly. What sort of information was provided to the council by DHHS in this regard?

Mr BENNIE: Well again, Mr Limbrick, I do not know the answer to that question. Ms Johnson might, but I think my understanding is we made a very public statement that we are not in possession, nor have we ever been in possession, of any report from Mr Christy about that matter. So I am not aware that we have much information at all, unless Ms Johnson can elaborate or clarify that matter.

Mr LIMBRICK: Thank you.

The CHAIR: Thank you. Ms Vaghela.

Ms VAGHELA: Thanks, Chair. Mr Bennie, based on the evidence presented in the inquiry last year, the committee concluded that the closure order issued to I Cook Foods was prepared and sought on valid grounds and for a proper purpose. So thinking back to previous occasions where you have signed closure orders for other food businesses, what do you consider to be valid grounds and a proper purpose for the issuing of a closure order?

Mr BENNIE: Well, in the cases that I would review—and they go from the very minor to certainly nothing as significant as what we have been talking about and dealing with in this particular case—it is satisfactory evidence. I am looking for statements from the proponent of the business, from any witnesses, from our environmental health officers, an indication from other officers—that is, the manager, the director, others who are more familiar with the legislation and the procedures—that they have been through and ticked off on all of those matters that an environmental officer would sign off on. I always find photographs extremely graphic and extremely compelling. If I look through and identify that all of those matters are evident and exist, then I sign off, invariably, on the prosecution, and that is all it is at that stage—a prosecution. It is then up to others, of course, to advance and respond and determine.

Ms VAGHELA: So based on the information you were provided by council staff and the department of health, what was your assessment of the public health risk of council continuing to allow I Cook Foods to supply meals to health and aged-care customers?

Mr BENNIE: Well, I did not make that assessment; Professor Sutton made that assessment.

Ms VAGHELA: Any more time I have?

The CHAIR: You have a few seconds.

Ms VAGHELA: How did the presence of scientific laboratory evidence showing a strong link between the I Cook Foods premises and a deceased patient impact on your judgement of this issue?

Mr BENNIE: I made no judgement on the issue.

Ms VAGHELA: Thanks, Chair. Thanks, Mr Bennie.

The CHAIR: Thank you. That concludes—

Ms CROZIER: Can I have some clarity, please, Chair?

The CHAIR: Yes, Ms Crozier.

Ms CROZIER: Mr Bennie, I think you said that Professor Sutton had the authority to issue the closure order. That is not correct under the *Food Act*, is it? Could you provide the committee some clarity around that, or are you saying he does have the authority?

Mr BENNIE: I believe he does. I believe it is—

Ms CROZIER: Which section of the *Food Act*?

Mr BENNIE: I think it is section 19—and section 19 of the Act has about four or five parts—and it could be 19D. I would have to refer to my notes. I believe we led with that advice at the first inquiry, and fundamentally the reference is that either the CEO of the responsible authority—that is, the local council—or the Chief Health Officer are the only two people who have that authority, and under section 56 it cannot be delegated to another person.

The CHAIR: Thank you. Thanks for that clarification. Thank you, Mr Bennie, for appearing today. As I mentioned at the outset, you will receive a copy of this transcript. If you could please have a look at it and make sure that we have recorded you correctly.

Mr BENNIE: Okay.

Witness withdrew.

WITNESS (*via videoconference*)

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

The CHAIR: Thank you, everyone. And thank you to Ms Leanne Johnson, who is the Coordinator of Public Health at the City of Greater Dandenong. We appreciate you joining us today.

I will just do a quick whip around. I am Fiona Patten, the Chair. We have Tien Kieu, the Deputy Chair; Ms Sheena Watt; Mr David Limbrick; Ms Kaushaliya Vaghela; Ms Georgie Crozier; Mr Craig Ondarchie; Ms Wendy Lovell; and Dr Matthew Bach.

Before we get going, if I could just let you know that all evidence is protected by parliamentary privilege as provided by our *Constitution Act* but also the standing orders of our Legislative Council. This means that any information that you provide to us today is protected by law. You are protected against any action for what you say during this hearing, but if you were to go elsewhere and repeat those same statements, you may not have the same protection. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

All evidence is being recorded. As per the previous time, you will be supplied with a transcript of today, and I would encourage you to have a good look at that because ultimately it will form part of the report and be made public on the committee's website.

Again, Ms Johnson, thank you very much for making the time to meet with us again today. If I could start. As you know, we heard from Mr Christy last week, and Mr Christy said that he had met with you, I think in March, and with Mr Spicer. I believe he provided his reports to you. Had you seen Mr Christy's reports prior to that, and when you did see them—they really said the patient did not eat any food by I Cook Foods—were you surprised or did they change any opinions?

Ms JOHNSON: I received emails from Mr Christy. I did not receive any formal reports.

The CHAIR: Right.

Ms JOHNSON: And the email that I did see made mention to a soft food diet, but there was no elaboration to that—what that meant.

The CHAIR: When you met with Mr Christy some time later, what was the purpose of that?

Ms JOHNSON: The purpose was to try and organise a meeting with the hospital to further investigate the matter of the food being sold to the hospital.

The CHAIR: Thank you. Again, I suppose I am trying to understand why you were in charge of this investigation and not Knox council—if you could explain that for me quickly.

Ms JOHNSON: My role in this was to inspect I Cook Foods. That was our role. When it was alleged that food had been sold to the hospital and that it had potentially caused listeriosis, as part of our investigation it was normal practice for us to pursue that path.

The CHAIR: Great. Thank you. Ms Rogerson was very clear that she had maintained a chain of custody with the testing that she did. In your previous evidence you were not confident of that chain of custody. You said it had not been maintained. Yet it seemed that the Listeria reports that came from those samples being taken were used as evidence. I am just wondering if you can clarify that for me.

Ms JOHNSON: The samples obtained by Kim Rogerson did not form any part of the prosecution brief. There were no charges laid on those samples.

The CHAIR: Okay. Thank you. Dr Kieu.

Dr KIEU: Thank you, Chair. Thank you, Ms Johnson. I appreciate your appearance here today and also the pressure that you and your colleagues are under due to all the publicity. I have a question with two parts. The

first one: could you please explain to us the responsibility that you have and also the process that you would take when you are given a report about some of the food safety in your local area?

Ms JOHNSON: Yes. Our role as the regulator is to assess that food premise for compliance with the *Food Act* and the food standards code.

Dr KIEU: Okay. So did you have any pressure in this particular case with regard to I Cook Foods in order to change any of the processes you normally take, or did you exert any pressure on the other people in the chain of command?

Ms JOHNSON: No. There was no pressure and there was no pressure exerted.

Dr KIEU: Thank you. And when you served I Cook Foods with the concerns and the breaches, what normally would other owners do—and in this particular case what did I Cook Foods do—to address the concerns and the breaches that you had in evidence?

Ms JOHNSON: The *Food Act* order was served, giving direction to rectify non-compliances, and under normal circumstances you would see a business respond very quickly in rectifying those matters.

Dr KIEU: And what about I Cook Foods? Did they cooperate and respond the way that you expected them to?

Ms JOHNSON: No, not in my opinion. We had given them multiple opportunities to rectify their matters, and I was not seeing a response I would normally expect.

The CHAIR: Thank you, Dr Kieu. Ms Crozier.

Ms CROZIER: Thank you very much, Ms Johnson, for appearing before the committee again. I mean, the charges that were brought against Ian Cook and I Cook Foods were very significant. It would have meant time in jail and millions of dollars in fines. Why did council fight VCAT to have the video that you assisted Ms Garlick in editing some of the information out of—why did council fight that to be released in VCAT?

Ms JOHNSON: I was not part of any of that.

Ms CROZIER: Okay. So you know, don't you, that the sandwich that supposedly caused Mrs Painter's death—that no sandwiches were made in Knox Private Hospital, that for any person on a soft diet any sandwich would be made in house. You are aware of that, aren't you?

Ms JOHNSON: No. I was not until I saw the information last Wednesday from Mr Ray Christy alleging that.

Ms CROZIER: Well, I have got a copy of an FOI document from you with your handwritten notes, Ms Johnson, that actually states, on the 8th of the 3rd of 2019:

Knox manufactures their own sandwiches for people with soft meals.
Are they not your notes? Have I—

Ms JOHNSON: They are my notes. However, as we never had a conversation with the hospital I never confirmed what the patient consumed or what type of diet they were on.

Ms CROZIER: Okay. But the charges that were put against the Cooks were very significant—96 charges. Mr Cook could have gone to jail. Over 40 people lost their jobs. These are significant issues. When you met with Mr Christy, what did he say to you in terms of the information he was giving to you about his findings as an environmental health officer?

Ms JOHNSON: He was concerned of the information that was provided from the Department of Health and Human Services to Knox City Council for the investigation.

Ms CROZIER: What information? What was he concerned about? What did he say?

Ms JOHNSON: They were concerned of just the lack of detail, not being given a person's name so that they could conduct a thorough investigation at the hospital.

Ms CROZIER: Yes, he said that last week. It was an unusual process. Would you agree with that, that DHS had given an unusual process to Knox to conduct such a significant inquiry?

Ms JOHNSON: Not when they are coordinating it in this space. When we are responding—

Ms CROZIER: What does that mean?

Ms JOHNSON: When we are—

The CHAIR: I am sorry, Ms Crozier. Time has beaten you. Mr Limbrick.

Mr LIMBRICK: Thank you, Chair. And thank you, Ms Johnson, for appearing again. Again, I might ask this question to you about the information about the investigation into the listeriosis. Last Wednesday Mr Christy said that it was less than he would normally get in a referral. What information was actually sent to the council in this regard from DHHS?

Ms JOHNSON: We had been notified by phone call that there was *Listeria* tested positive in the samples that were obtained on 1 February.

Mr LIMBRICK: Right. But how about the links and things like that, because he was talking about genomics and things like this? Was there any of that sort of information provided to the council, or was it just saying that there was a positive test?

Ms JOHNSON: During the investigation our role was to only focus on the food premise and the listeriosis investigation was being handled by state health. We were not responsible or involved in that.

Mr LIMBRICK: And so ultimately the decision to shut down the business was made by Mr Sutton based on whatever information they had or they thought of, not the council; right?

Ms JOHNSON: That is correct.

The CHAIR: Thank you. Ms Vaghela.

Ms VAGHELA: Thanks, Chair. Thanks, Ms Johnson, for your time today and for appearing. The City of Greater Dandenong previously provided the committee with a list of 13 different food safety notifications you had received from other councils about I Cook Foods between 2016 and 2018. This list included notifications of foreign objects in food items and three separate notifications of samples testing positive for both *Listeria* and *Listeria mono*. What actions would I Cook Foods need to have taken to give your council confidence that these food safety issues had been appropriately addressed at that time?

Ms JOHNSON: I was not the coordinator. I came in at May 2018. But for council to be satisfied that their issues had been rectified we would want to know that there had been a full clean-up in accordance with the *Listeria* guidelines. We would have conversations, and you would expect the company to explain what processes they had taken and what steps to mitigate that risk so it hopefully would not return in the future.

Ms VAGHELA: So how did I Cook Foods respond differently to the investigation in February 2019?

Ms JOHNSON: I found there was just a lack of response. I can only go from what I observed during that investigation because I was not involved in any of the previous ones.

Ms VAGHELA: Why do you think the owners of I Cook Foods have claimed that the investigation of their premises in February 2019 was unfair?

Ms JOHNSON: I do not understand why they would think it was unfair. There was a case of listeriosis, and during the investigation that resulted in a death.

Ms VAGHELA: Thanks, Chair.

The CHAIR: Thank you. Ms Lovell.

Ms LOVELL: Thank you very much, Chair. Ms Johnson, serious allegations have been made about Dandenong council's handling or mishandling of the inspections and evidence that led to the closure of I Cook Foods. What internal investigations has the CEO undertaken to satisfy himself that neither you nor Elizabeth Garlick participated in any questionable behaviour and to enable you to clear your names?

Ms JOHNSON: I am not authorised to speak on what actions the council has taken. I believe that would sit with the CEO.

Ms LOVELL: Have there been any internal investigations?

Ms JOHNSON: There was an initial internal investigation at the beginning that I believe was discussed at last year's inquiry.

Ms LOVELL: Thank you. Why were you and Elizabeth Garlick witnessed doctoring the photo of the slug and also editing the body camera vision that was to be submitted as evidence in a criminal case against Ian Cook and I Cook Foods?

Ms JOHNSON: I did not alter the photo. I did not observe officer Garlick altering the photo nor did I give her instruction to alter the photo. With the body camera footage it was based on legal advice we had sought in response to a witness summons and that we had redacted the private conversations.

Ms LOVELL: Thank you. And whose idea was it to plant the slug?

Ms JOHNSON: There was no planting of any slug.

Ms LOVELL: Thank you.

The CHAIR: Thank you. Ms Watt.

Ms WATT: Thank you. Thanks, Ms Johnson. In the initial hearing it was said that you concluded that Michael Cook did not possess the necessary qualifications, skills and knowledge to be the nominated food safety supervisor at I Cook Foods. Could you just speak to us about why that was indeed your conclusion?

Ms JOHNSON: During my inspection on the Wednesday with Mr Michael Cook I had asked him a series of questions on how he ensured equipment was clean and he was able to not provide a clear direction. He later admitted that when he took apart a piece of machinery for maintenance he would find food residue in it. And then during the inspection of Thursday, when the premises was in production, I was observing non-compliance, including obstructed handbasins, and when I brought this to his attention he failed to rectify the matter.

Ms WATT: Okay. That is plenty with that one. I just wanted to also ask if you can explain why Mr Cook and Ms Rogerson provided responses to this committee last week that contradict what you and Ms Garlick have told us about the food safety processes and operations at I Cook Foods.

Ms JOHNSON: I cannot speak to what they have tabled before the committee. I can only comment on what I observed during my inspections.

Ms WATT: Okay. No, that is fine. Thank you. I will come back with a further question. Thanks, Chair.

The CHAIR: Thank you. Ms Vaghela.

Ms VAGHELA: Thanks, Chair. Ms Johnson, this situation has clearly shown that environmental health officers play a really important role in protecting public health and you are required to often have very difficult conversations with stakeholders who are putting our public health at risk. I am interested to hear what your personal motivations are for working as an environmental health officer now. Have you made any changes to the way you do your work as a result of having to go through what I can only imagine has been a difficult time for you and other colleagues?

Ms JOHNSON: My motivation is to protect the public health. I absolutely love my job. The changes that have been embedded since 19 February have included having professional development embedded within the

team. That has included the team attending the Department of Health and Human Services food safety risk assessment training. We now have peer reviews. As you heard, last year there was a rotation of areas. We are routinely reviewing all our procedures and documentation, and we have embedded that into our culture.

Ms VAGHELA: So how do you think the media coverage of this investigation will impact on the willingness of future public health and environmental health graduates to pursue careers as environmental health officers?

Ms JOHNSON: I would like to think it is actually reminding environmental health officers of the important role that we play within our community and getting back to protecting the public health.

Ms VAGHELA: Thank you. Thanks, Chair.

The CHAIR: Thank you. Mr Ondarchie.

Mr ONDARCHIE: Thank you. Ms Johnson, in your discussions with Ray Christy prior to the closure order what did you conclude, in relation to Knox Private Hospital, that helped you with your recommendations around the closure of I Cook?

Ms JOHNSON: I had no contact with Mr Ray Christy prior to the closure order.

Mr ONDARCHIE: Did you have any knowledge of what was going on at Knox Private Hospital prior to the closure order?

Ms JOHNSON: No, I had no knowledge.

Mr ONDARCHIE: It is interesting, Ms Johnson, that you say that, because I refer to the notes that Ms Crozier referred to earlier—notes dated 20 February. Those notes, in your handwriting, as you suggest, talk about I Cook Foods and the soft diet. How could that be?

Ms JOHNSON: I think those notes were taken in March, after the closure order was issued.

Mr ONDARCHIE: Well, I am reading '20 February' at the top of the page.

Ms JOHNSON: I had no contact with Ray Christy until March.

Mr ONDARCHIE: Thanks, Chair.

The CHAIR: Thank you. Just following on from Mr Ondarchie, it would appear that Mr Christy was asked to investigate Knox hospital on or around 21 or 22 February. When did you become aware that Mr Christy had been asked to investigate Knox hospital, and when did you see the emails and reports that he made to the department?

Ms JOHNSON: I had contact with Mr Ray Christy on or around 13 March, and it was a similar time that the emails had been provided to me.

The CHAIR: Do you have an opinion on whether I Cook Foods did supply the sandwiches to the patient?

Ms JOHNSON: I do not have any opinion.

The CHAIR: Thank you. In your role as an expert in this area, why would Mr Christy be asked to investigate the hospital so late in the piece? I mean, the patient became very ill at the beginning of February, and it was not until late February that there was an investigation into the Knox hospital.

Ms JOHNSON: The Department of Health and Human Services were the lead agency on this matter, and they were responsible for coordinating as they received information. I cannot speak to their processes.

The CHAIR: And just to confirm with you that the closure of I Cook Foods had absolutely nothing to do with those Listeria samples that were taken on 1 February? I believe you said that to me earlier—that the closure was due to the other significant concerns you had about the cleanliness and operations of I Cook Foods.

Ms JOHNSON: You would need to ask the department of health and human services, as they issued the closure order.

The CHAIR: But I believe that you said that the samples played no role in that closure—to me earlier.

Ms JOHNSON: No, in the prosecution brief, with the charges issued.

The CHAIR: Thank you. Ms Watt.

Ms WATT: Thank you. Can you please explain how the two *Food Act* orders issued to I Cook Foods on 19 Feb differed to the serving of the closure order two days later on the 21st?

Ms JOHNSON: The *Food Act* orders issued, one was in regard to training of staff for food handling practices and the second order was in response to the standards observed at the premise, and that related to the food standards code.

Ms WATT: Okay. My understanding is that there were 37 items for corrective action in the initial two *Food Act* orders. Could you provide us with a quick summary from your perspective of the types of things covered by these 37 items?

Ms JOHNSON: Ms Garlick had developed that *Food Act* order and issued it. From memory—I have not got it with me, I am sorry. I would only be making assumptions.

Ms WATT: I can ask Ms Garlick.

Ms JOHNSON: Yes, please. Thank you.

Ms WATT: That is all right. Is there any action that I Cook Foods could have taken to avoid it being served a closure order?

Ms JOHNSON: I believe that they could have engaged a consultant to undertake an audit or to have expertise brought in to help them rectify the matters which we were seeing.

Ms WATT: Lovely. Thank you.

The CHAIR: Thank you. Dr Bach.

Dr BACH: Thank you very much, Chair. And thanks, Ms Johnson, for being with us. Can I revisit the issue of the soft diet and when you became aware of some of these specifics. You said earlier—and I confess I nearly fell off my chair—that you only found out about the fact that I Cook Foods did not provide sandwiches for the soft diet last Wednesday. You said that in response to a question from Ms Crozier, and yet a secret document in your hand that I have a copy of that has been provided under freedom of information makes it absolutely plain that in March of 2019 you were aware that Knox manufactured its own sandwiches for the soft diet, and in that same document—in your hand, Ms Johnson—you talked about the need to ensure that there was a very clear food history. That is a quotation from you. You have also said that you had emails from Mr Christy.

Now, it is not difficult to get your hands on the soft diet from Knox hospital. I have got one right here, and it is very plain that I Cook Foods does not provide the sandwiches—did not provide the sandwiches—under the soft diet. When you appeared here before us last year, you discussed the fact that I Cook Foods provided the sandwiches which ultimately killed this poor woman. In fact you discussed the fact that I Cook provided all the foods to the hospital, and yet that was not true, Ms Johnson. You knew that the poor lady who died never ate a sandwich from I Cook Foods, yet you blamed I Cook Foods and you lied to our committee. I want to know why.

Ms JOHNSON: That is untrue. The investigation with the hospital was intended to go ahead. I was planning to meet with them, and as you heard last week with Ray Christy, the hospital chose not to go ahead with that meeting. Therefore the information and the investigation was never pursued.

Dr BACH: You, in your handwritten notes, Ms Johnson—

The CHAIR: Sorry, Dr Bach, your time has expired. Dr Kieu.

Dr KIEU: Thank you. As a matter of course during your responsibilities and also your work do you have constant normal contact with the Department of Health?

Ms JOHNSON: In our routine work, yes, we do.

Dr KIEU: Okay. In this case, could you explain to us whether you saw any unusual behaviour or unusual requests from the department?

Ms JOHNSON: It was just routine requests from the department of the investigation. I did not find any of what we had been directed or our engagement with the department unusual.

Dr KIEU: Okay. Thank you. That is all I have. Thanks.

The CHAIR: Thank you. Mr Limbrick.

Mr LIMBRICK: Thank you, Chair. Mr Christy last week spoke about the high level of evidence required for prosecutions—‘beyond reasonable doubt’ I think was the term he used—and yet Mr Bennie before was saying that this was not an exact science. We also have a situation where the health officers in this case are in disagreement. Ms Rogerson was of the opinion that I Cook Foods had satisfactorily met its obligations, so there is disagreement. How can the concept of beyond reasonable doubt before these prosecutions be laid reconcile with the fact that there was disagreement between the health officers? How does one of these opinions become not relevant to the prosecution?

Ms JOHNSON: The breaches brought in the prosecution were based on evidence of the inspections conducted in the week of 18 February plus two charges were brought with the City of Whitehorse council food that was sold to them. Can you please explain the officer differences? I think I have missed a piece of information.

Mr LIMBRICK: Ms Rogerson seemed to be of the opinion that I Cook Foods was satisfactorily meeting its obligations and yet there is a difference of opinion between what the council ultimately decided. It seems to me that there is doubt there as to whether the prosecution should go ahead or not, isn't there?

Ms JOHNSON: No, the breaches are based on the food standards code, primarily what was brought on them, and it is making sure that the business was compliant with the food standards code.

Mr LIMBRICK: Okay. Thank you.

The CHAIR: Thank you very much, Ms Johnson, for your time today. As I mentioned, we will provide you with a transcript of today. Please have a good look at it and make sure that we have not misheard or misrepresented you in any way. The committee will have a short reset for the next witness.

Ms JOHNSON: Thank you.

Witness withdrew.

WITNESS (*via videoconference*)

Ms Elizabeth Garlick, Environmental Health Officer, Greater Dandenong City Council.

The CHAIR: Thank you, everyone. Welcome back. We are pleased to be joined by Ms Elizabeth Garlick, who is the Environment Health Officer at the City of Greater Dandenong.

Ms Garlick, just to let you know, all evidence taken is protected by parliamentary privilege as provided by the *Constitution Act* but also the standing orders of the Legislative Council. Therefore any information that you provide during this hearing is protected by law. You are protected against any action for what you say during this hearing, but if you go elsewhere and repeat the same things, you may not have the same protection. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

As I mentioned, all evidence is being recorded. Hansard is listening in, and you will be provided with a transcript, which I encourage you to have a look at. Ultimately it will form part of the committee's report and will be made public on our website.

If I could open the questions, Ms Garlick, we heard from Ms Rogerson last week. Ms Rogerson seemed to be of the opinion that I Cook Foods over the many years was a well-run business—that it operated within the code, it operated well within the *Food Act* and in fact it was a well-run business. It would appear that you would disagree with that, and I wonder why Ms Rogerson thought that the business was well run but you found it to be obviously so badly run that it needed to be closed.

Ms GARLICK: I can certainly only speak of my experience and observations at the time that I attended. The very first time I attended the premises was on 18 February 2019. My observations of the premises were such that there was cause for concern in relation to food safety, and those were reported to my immediate supervisor.

The CHAIR: One of the points that you made—and in photographs—in your reporting back was around the water pooling. Now, my understanding—and certainly this was from Mr Cook's evidence—was that those photos were taken straight after cleaning, so of course there would be some water there. Is that your understanding of when those photos were taken?

Ms GARLICK: There were a number of times that photos of pooling water were taken. There were a number of occasions where there was cleaning happening or, in certain areas, where cleaning may have happened. But with regard to structural requirements of food businesses, they are meant to have floors that are graded such that water does not pool even after cleaning. So you would not expect to see pooling water sitting about the premises.

The CHAIR: In the few seconds I have got, Mr Cook also confirmed that once a year they resurface and redo their floors and that was going to happen, I think, in Easter—less than four weeks from your inspection. Were you aware of that?

Ms GARLICK: Not that I recall.

The CHAIR: Thank you. Dr Kieu.

Dr KIEU: Thank you, Chair. Thank you, Ms Garlick, for appearing again today. Could you take us through your obligations as an environmental health officer when you inspect and also what steps you should have or you have taken to make sure that you were objective and rigorous in your investigation?

Ms GARLICK: Yes, certainly. As part of our role we are required to inspect premises for a number of reasons. They may be routine inspections, or they may be ones where we have received a complaint or a concern from either a member of the public or the department of health and human services. In order to be fair, I attend the premises generally without making an appointment to observe the premises how it would normally operate on any given day. During the inspections I take the time to speak with the proprietors, gain an understanding of what is occurring and what type of food-handling activities occur on the premises, have discussions in relation to any concerns that I observe at the time and generally work through some ideas with them on how they could perhaps be rectified.

Dr KIEU: Can you confirm, because of some of the other evidence and allegations, that the slug was not planted and the photo was not doctored?

Ms GARLICK: No. The slug was not planted and the photo was definitely not altered in any way, and I believe I have provided evidence and information previously in relation to that matter.

The CHAIR: Thank you. Ms Crozier.

Ms CROZIER: Thank you very much, Chair. And thank you, Ms Garlick. So you are telling the committee that the evidence provided by you, in terms of the video, was not doctored in any way?

Ms GARLICK: Correct.

Ms CROZIER: And you did not plant the slug?

Ms GARLICK: No.

Ms CROZIER: Right. Have you ever attended I Cook's through production to see when they are operating, when they are producing food? Have you ever attended the facility?

Ms GARLICK: Yes.

Ms CROZIER: But you said the first time you went was on 18 February 2019.

Ms GARLICK: That is correct. I observed food production on 21 February—that same week.

Ms CROZIER: Right—the day that they were closed down.

Ms GARLICK: The morning of.

Ms CROZIER: Right. Okay. Now, can I just go to the point again that you are saying that the photo that you gave to the Cooks or the council gave to the Cooks for the criminal trial was not doctored in any way. I just need to get that confirmed.

Ms GARLICK: You can certainly have that confirmed. That photograph was not doctored in any way, and I think I have been fairly clear on that point.

Ms CROZIER: But there was tissue in one part of some vision, and then it was gone. So where did that tissue go?

Ms GARLICK: I honestly cannot tell you. There is debris in the photos I took, and there was no debris removed by me or by anyone else that I am aware of.

Ms CROZIER: So there is debris in one photo that you are saying existed and then no debris in another photo, and you do not know how that happened, except people saw you—we have been given evidence—looking at the video and altering it.

Ms GARLICK: There are two points you have raised there. Are you talking about photograph or video? I just need to clarify.

Ms CROZIER: Well, I want to know both. I want to know if you have doctored any videos or any photographs.

Ms GARLICK: Well, that is no on both counts. So I do not know what you are referring to in relation to the evidence you have been provided, but I can be very clear there was no doctored evidence. And if you are speaking in relation to the photo, the physical photo, that was provided to I Cook as part of the prosecution brief initially, that was a photocopy or a printed copy of the photograph, which I do not believe reflected the digital copy in its resolution.

The CHAIR: Thank you. Mr Limbrick.

Mr LIMBRICK: Thank you, Chair. And thank you, Ms Garlick, for appearing again. You mentioned you went to I Cook Foods on the morning that they were closed down and food production was happening that morning that you observed. Had you been notified by DHHS that they were going to be closed down that day, or was that something that was happening independently of you and you were not aware of what was going on with that?

Ms GARLICK: That was independent of me, and I certainly had not heard anything in relation to that.

Mr LIMBRICK: So that announcement by Professor Sutton in the afternoon was something that had not been communicated to the council and was a surprise, I suppose, in that case?

Ms GARLICK: I cannot speak for the wider council, but I certainly did not know about it.

Mr LIMBRICK: Right. Okay. This announcement that came out, where they were talking about the connection to the patient that passed away—was it a surprise to you that that connection was made?

Ms GARLICK: I did not have an opinion either way.

Mr LIMBRICK: Okay. All right. Thank you.

The CHAIR: Thank you. Ms Vaghela.

Ms VAGHELA: Thanks, Chair. Thanks, Ms Garlick, for your time today. Usually what actions are taken by your council when the Department of Health notifies you of a case of Listeria in the community?

Ms GARLICK: Normally we would do an inspection. We would be asked to follow up and investigate what is occurring at the premises. We would also be instructed to advise the premises and the proprietor to conduct a Listeria clean-up of their premises and to observe whether there is any potential cause or source of the Listeria.

Ms VAGHELA: How is your assessment of public health risk influenced by the presence of genomic evidence such as, in this case, where the Listeria isolated from the deceased was highly related to the strain found in four food items at I Cook Foods?

Ms GARLICK: I cannot speak as to the genomic sequencing, but our primary role is to look for risks at the food premises and potential sources of contamination to the food products. So that is what I was looking for when I inspected.

Ms VAGHELA: So if that is the case, then do you think it would have been an acceptable risk for your council to allow I Cook Foods to continue producing food for vulnerable people in health and aged-care settings when there was knowledge of food safety compliance issues and there were positive detections of Listeria at the premises?

Ms GARLICK: I certainly cannot speak as to the premises' performance in the past, but in terms of what I was observing I observed significant risks that I felt compelled to report to my senior officer.

Ms VAGHELA: Now your council referred Kim Rogerson's allegations about misconduct and fabrication of evidence to the IBAC in May 2019. Are you aware of what the outcome was of that investigation and what evidence was considered as part of the Victorian Ombudsman inquiry?

Ms GARLICK: No, I am not aware.

Ms VAGHELA: Just a quick one, Chair, if there is time?

The CHAIR: No, sorry.

Ms VAGHELA: I will come back. Thank you.

The CHAIR: Thank you. Ms Lovell.

Ms LOVELL: Thanks, Chair, and thank you, Ms Garlick. Ms Garlick, obviously it is very distressing for you to have your character questioned in this way. I am just wondering what support has been offered to you. Have council provided you with any media training or legal services advice to enable you to prepare to present to the committee?

Ms GARLICK: No, other than what legal advice we had received from the prosecution.

Ms LOVELL: Can you just expand on that, what legal advice you got from the prosecution?

Ms GARLICK: Well, generally as to what to prepare for for a prosecution that occurs through the courts.

Ms LOVELL: Okay. So this was when it was going to court; you were provided with legal counsel on how to present yourself in court?

Ms GARLICK: And for the Supreme Court matter next year.

Ms LOVELL: Right. Terrific. Thank you very much. In the last inquiry we heard evidence that when you arrived at I Cook on the day you had tissues protruding from your pockets, and I think we saw some security camera footage that confirmed that, which seemed to me a little bit strange for an environmental health officer because it did not seem very hygienic to have all of those tissues protruding from your pockets. Is that a normal practice for you when you go out to inspect food premises? And why were those tissues in your pocket that day?

Ms GARLICK: No, it would not be a normal practice, and I certainly do not recall having tissues in my pocket that day because it would not be normal for me to do so.

Ms LOVELL: Right. Okay. We also heard evidence last time that you believed you had been given the job, or put onto I Cook as their inspector, because council wanted—and I cannot remember whether it was evidence of their premises not being up to standard or whether it was charges to be laid, or something like that. Why did you get that feeling that you had been given the job in order to run a case against the I Cook company?

Ms GARLICK: I do not recall any such conversation, and I certainly did not feel like I had been sent to I Cook for any other reason than to investigate a Listeria concern.

The CHAIR: Thank you. Ms Watt.

Ms WATT: Thanks, Ms Garlick. I just have a question about your day-to-day activities in your role and ask of you: have you witnessed the department working together with your council to administer the *Food Act 1984* and the Australia New Zealand Food Standards Code? Then I have got some follow-ups relating to your answer to that.

Ms GARLICK: Yes, certainly. So part of our day-to-day role would be to inspect food premises. If we have any questions or there are specific situations that we are not particularly sure about, we do have the ability to contact the food safety unit at the Department of Health to seek clarification on particular matters.

Ms WATT: Right. And do you think that there is a need for businesses that supply food to vulnerable cohorts, such as immunocompromised people, people in hospital settings, aged care et cetera, to be held to a higher standard when it comes to the conditions of the manufacturing of that food?

Ms GARLICK: I certainly do not have an opinion that is valid. However, the *Food Act* does have a higher level of responsibility for premises that do provide food to vulnerable people.

Ms WATT: All right. Do you want to speak to that at all, about that higher standard?

Ms GARLICK: Yes, certainly. That higher standard is that there is a lot more documentation required in relation to the food processes that are occurring on site. Premises are required to document their food handling procedures quite clearly and are required to be audited by a third-party auditor that is independent of council and to make sure that the processes that are occurring on site are ultimately producing safe and suitable food.

Ms WATT: Lovely. Thank you.

The CHAIR: Thank you. Ms Vaghela.

Ms VAGHELA: Thanks, Chair. Ms Garlick, why were formal legal directions issued to I Cook Foods on 19 February instructing them to improve the state of their premises, ensure their foods were safe and suitable for human consumption and that all food handlers complete food safety training?

Ms GARLICK: Why were those served—they were based on my observations from 18 February, and there were quite a few that specifically related to the premises and concerns around the knowledge of safe food handling practices for staff as well as cleaning practices. There were some significant concerns in relation to the availability of handwash for the staff while they were preparing food. One particular basin in the high-risk area was not functional. So that section 19 order was specifically to identify to I Cook the items that needed to be addressed. Other such items included the cleaning practices that were occurring on site, because I observed some of those at the time of the inspection and I observed the cleaning practices to be contaminating previously cleaned equipment and those, in terms of a Listeria notification, were of a significant concern.

Ms VAGHELA: So what evidence led you to reporting to your supervisor Ms Johnson that you did not think that the Listeria clean-up had been conducted to a satisfactory standard?

Ms GARLICK: That would have been on the morning of Wednesday, 20 February, when I re-attended the premises and found that there were still issues occurring on site in terms of the hand-wash basin was still not functional in the sandwich production area, the cleaning practices were still being observed where staff were hosing down equipment in a way that sprayed water and debris onto nearby equipment, there were pieces of equipment that were in the food handling area that were of concern in terms of their structural integrity—also in the wash-up area—and again the knowledge—

Ms VAGHELA: Thank you, Ms Garlick.

The CHAIR: Thank you, Ms Garlick. Mr Ondarchie.

Mr ONDARCHIE: Thank you. Ms Garlick, why again was it you were carrying tissues when you went into the premises?

Ms GARLICK: I did not say I was, and I certainly would not have been.

Mr ONDARCHIE: I thought you said to Ms Lovell that you did not recall.

Ms GARLICK: No, I do not recall, but it would not be my standard practice to.

Mr ONDARCHIE: ‘Can’t recall’ is an often-used phrase in this state at the moment. People observed you and Ms Johnson looking at a computer screen with some photos on there. Now, there have been some allegations about that. What were you doing?

Ms GARLICK: If it was the time that was mentioned earlier, it would have been talking about video footage and the request from the media and communications department that they would not be able to get the footage—private conversations—removed as a response to the request that was mentioned earlier by Mr Bennie, and the request came to me from Ms Johnson to assist with that process, if I was able to, from media and comms.

Mr ONDARCHIE: Did anybody photoshop the slug into a photo?

Ms GARLICK: No.

Mr ONDARCHIE: No questions, thanks.

The CHAIR: Thank you. Ms Garlick, the slug seems to be the main character in this investigation. Just further to those questions, last year when we were hearing evidence we heard that the pest inspector and expert in all things slug, I suppose, said that this would have been a very unusual sighting of such a specimen—that it was a nocturnal specimen, that it was not normally found at that time of year and also, when he checked the tracks around the facility, that those tracks had been clear. Do you have any understanding of how it would have got there? In your experience, does that seem unusual?

Ms GARLICK: Firstly, I would like to make the point exceptionally clear that the slug was very low on my priorities list when I noticed it. I do have some thoughts as to where it possibly came from, the primary one being: in the photographs that were taken of that area, immediately to the left of that slug was a stack of wet food storage containers that were dripping. Based on that, I believe that the slug may have fallen off those, because in my further investigations and from talking with Mr Michael Cook at the time he had shown me that there was an area outside in the parking area of I Cook where they were washing down containers and food equipment. When I observed that area, I did see evidence of that. There was also a ladle that was out lying in that area, which is bare concrete, and there was a hose present. From that I concluded that it may have fallen off those containers. I had also observed exactly the same sort of containers outside with debris in them—immediately outside the door, next to where the slug was found.

The CHAIR: Thank you. Ms Watt.

Ms WATT: Again, Ms Garlick, I just have a follow-up question regarding last week. There were some claims made by Mr Cook that all his staff had appropriate training, yet you seem to have observed otherwise. Were you provided with formal training records for staff?

Ms GARLICK: I do believe that was provided later. We did have a food safety supervisor certificate provided to us, but that knowledge was not being demonstrated when I was present on site. I was not observing that knowledge, and that led to significant concerns.

Ms WATT: Okay. From what you had observed at I Cook, is that of the standard you would expect of a company involved in the manufacturing of food for people with potentially compromised immune systems in health and aged-care settings?

Ms GARLICK: No.

Ms WATT: No? Anything more that you want to kind of add to that about the standards that you saw?

Ms GARLICK: Certainly I would expect to see an emphasis on proper cleaning practices, and I would expect to see staff demonstrating those cleaning practices. The level of cross-contamination that was occurring between areas when I observed them handling food on site was fairly significant—staff walking from one area to another to wash their hands, staff spraying a chopping board without having washed it. They were using it on some food, then in order to clean it they would spray it with sanitiser, give it one wipe down and then go and use it on a different food, and that was in the sandwich production area. There was, on one occasion, an ad hoc piece of equipment that had been made. I never fully found out what it was for, other than it being described as a ‘scoop’. It had been made by cutting a plastic bucket into pieces, which had peeling plastic, and I thought that was quite strange for it to be in such a facility that was preparing high-risk food.

The CHAIR: Thank you. Dr Bach.

Dr BACH: Thanks very much, Chair. And thank you very much, Ms Garlick, for appearing before us. I have been interested by a range of different elements of your testimony, certainly by your new slug theory. With due respect, the idea that the slug might have slithered in from the crates outside along the concrete in the middle of the day seems about as likely as a short, sharp lockdown for a week in Victoria lasting less than a month. However, I will take that as read, and we will talk to some slug experts about whether that was likely.

We all have our breaking point, Ms Garlick, and this committee has heard sworn testimony about a culture of bullying and harassment at Dandenong council. We have heard from one former employee in particular who very bravely has gone on the record about that. I certainly want you to know that, from a personal perspective, if you were willing to talk to us about some of the pressure that you were placed under, certainly my view—and I do not doubt that I speak for other members of the committee—would be that any recommendation that we make or any finding that we make should deal with you with the utmost leniency, given the very strong and credible allegations that there are senior figures at Dandenong council who are as crooked as a coathanger. So I ask you, Ms Garlick, did anybody place pressure on you to plant that slug?

Ms GARLICK: No.

Dr BACH: All right. Well, thank you for being here with us today.

Ms GARLICK: Thank you.

The CHAIR: Thank you. Dr Kieu.

Dr KIEU: Thank you. Having had to go through what must have been a very difficult and challenging time for you, with all of the publicity and allegations—for you and your colleagues—have you made any changes about the way you work as an inspector from those past experiences?

Ms GARLICK: That is an interesting question. I have certainly done training in relation to risk assessment. I have always strived for continual improvement in my job. I do not believe that anything I did in relation to I Cook was any different to what I would have done for any other premises, and that is probably what I have got to say on that.

Dr KIEU: Okay. So back to your past experiences, what would be the typical or normal steps taken by the owners of a business being served with some of the notifications to be addressed in comparison with what I Cook did? And what is a typical time frame for a business to reopen?

Ms GARLICK: Okay. I will address section 19. In regard to section 19, I have issued those on a number of occasions prior. In most of those circumstances we have seen immediate response to the items; the proprietors have been proactive in talking to council about different options as to how they can rectify the issues, different approaches. With regard to the response from I Cook, they were not responsive. When I say they were not responsive, they spoke about being responsive but the actions did not eventuate. On the Thursday morning when I went back, that handwash basin was still not functional and there were still cleanliness concerns present.

The CHAIR: Thank you, Ms Garlick. Mr Limbrick.

Mr LIMBRICK: Thank you, Chair. I want to go back, Ms Garlick, to the day that the order was given by Professor Sutton to shut down I Cook Foods. You said that you went in that morning and you inspected and you had some concerns. Was any of that transmitted to DHHS, or would they not have been aware of any of that? What I am trying to get at is: anything that you saw there—would that have been taken into consideration by DHHS in their closure? Would there have been possible time for that to happen? I guess you would have to write reports and things, right?

Ms GARLICK: It is possible. I would not be able to speak to that in particular. I believe Officer Johnson would be able to shed more light on that, but I was aware that she had received and made phone calls to the department of health while I was on site.

Mr LIMBRICK: While you were on site.

Ms GARLICK: Yes, because of the concerns that were being observed.

Mr LIMBRICK: Okay, so you are unsure whether that was communicated and taken into account when the closure notice actually happened—by Professor Sutton.

Ms GARLICK: I could not speak as to what he took into account, I am afraid.

Mr LIMBRICK: Okay. Thank you.

The CHAIR: Thank you very much. Thank you, Ms Garlick, for your appearance here today. As I mentioned, we will provide you with a transcript of this hearing. Please have a look at it carefully. Make sure that you have not been misheard or misrepresented. Thank you to all the committee members for attending today. This ends this public hearing, and we will have another one tomorrow. Thank you.

Committee adjourned.