

PARLIAMENT OF VICTORIA

LEGISLATIVE COUNCIL

Legal and Social Issues Committee



Inquiry into the closure of I Cook Foods Pty Ltd

Second report

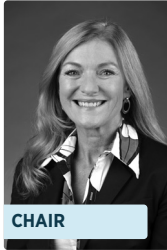
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About the Committee

Functions

The functions of the Legal and Social Issues Committee are to inquire into and report on any proposal, matter or thing concerned with community services, education, gaming, health, and law and justice.

The Legal and Social Issues Committee may inquire into, hold public hearings, consider and report on any matter, including on any Bills or draft Bills, annual reports, estimates of expenditure or other documents laid before the Legislative Council in accordance with an Act, provided these are relevant to its functions.

Government Departments allocated for oversight:

- Department of Families, Fairness and Housing
- Department of Health
- Department of Justice and Community Safety.

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This report is available on the Committee's website.

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Terms of reference

Inquiry into I Cook Foods Pty Ltd

Second Terms of Reference

Self-referenced by the Committee on 24 June 2021

That due to:

- (a) the new evidence that was made public in relation to the inappropriate closure of I Cook Foods; and
- (b) that this new evidence contradicts the testimony provided by senior officials in the Victorian Government and City of Greater Dandenong;

the Legal and Social Issues Committee re-open the Inquiry into the closure of I Cook Foods Pty Ltd and report by 14 October 2021.

Initial Terms of Reference

Self-referenced by the Committee on 3 June 2020

That the Legal and Social Issues Standing Committee Inquire into, consider and report, by 30 July 2020, on the forced closure in February 2019 of I Cook Foods Pty Ltd, including –

- (1) actions undertaken by Department of Health and Human Services and the City of Greater Dandenong, its Chief Executive Officer and Council officers, for decisions made which led to the forced closure of I Cook Foods Pty Ltd;
- (2) whether any breaches of law and regulation by, or shortcomings of, government officials led to the forced closure of I Cook Foods Pty Ltd;
- (3) whether any conflict of interest arose during the City of Greater Dandenong's investigation, reporting and subsequent closure of I Cook Foods Pty Ltd;
- (4) the administration and management of Community Chef since January 2015, including the plans for the City of Greater Dandenong to sell its share of Community Chef and the plans for the Victorian Department of Health and Human Services to purchase a greater share of Community Chef; and
- (5) any other matters relating to the forced closure of I Cook Foods Pty Ltd.

Chair's foreword

This is the second report tabled for the Committee's Inquiry into the closure of I Cook Foods Pty Ltd. The Committee resolved to re-open the Inquiry when new allegations were published in the media which conflicted with the evidence received during the Inquiry's initial investigations.

The media reports related to findings of inspections at Knox Private Hospital conducted by Mr Ray Christy, who at the time was an environmental health officer at Knox City Council. The findings of the inspections, namely that Ms Jean Painter was on a 'soft diet' during her admission at Knox Private Hospital, conflicted with evidence that was provided to the Committee by senior officers of the Department of Health. This was of great concern and the Committee felt it necessary to re-examine evidence and witnesses.

Other media reports included allegations by Ms Kim Rogerson about the conduct of officers at the City of Greater Dandenong and the organisational culture of the council more broadly.

The purpose of re-opening the Inquiry was to hear from new witnesses as well as from previous witnesses who gave evidence used in the first report. This was important to hear all parties' information relating to the new evidence and determine why there were contradictions in the evidence previously provided.

The Committee also heard from Ms Painter's daughters, Mrs Jo Woodstock and Ms Fiona Wharry, who clarified some events that occurred in the lead up to their mother's death. I sincerely thank them for their contribution to the Inquiry and offer our sincere condolences for their loss.

In examining the new evidence presented, the Committee also considered whether this directly conflicted with the findings and recommendations made in the previous report. After considering all the information provided, it is clear the previous findings and recommendations have not been invalidated or otherwise compromised.

However, the new evidence did raise further issues with the processes used by the Department of Health during its investigation into the Listeriosis case at Knox Private Hospital. This report has made further recommendations to improve those processes and the Committee has reiterated the importance for the Victorian Government to implement a number of key recommendations from the first report.

Providing misleading evidence to a parliamentary committee is a considerable offence and may constitute a contempt of Parliament. The Committee's investigations found that there was no reason to believe that evidence from Department of Health officials deliberately intended to obstruct the Inquiry. However, their omissions of evidence that was later published in the media led to considerable confusion and instigated the re-opening of this Inquiry.

Chair's foreword

This Inquiry is a timely reminder that witnesses—particularly officers of government departments—should be properly prepared when giving evidence to a parliamentary inquiry and to ensure that committees are made aware as soon as possible when new information comes to light.

There has been considerable media coverage surrounding the closure of I Cook Foods and serious allegations made by key Inquiry stakeholders that amount to tampering with evidence and allegations of systemic workplace culture issues. Examining these allegations is outside the Committee's remit as a parliamentary inquiry is not the appropriate forum for their consideration. Victoria Police and other relevant corruption and oversight agencies are better placed to conduct investigations in allegations of this nature.

I thank my colleagues on the Committee for their contributions to this Inquiry in a short timeframe. I also thank the secretariat, and in particular the research team of Samantha Leahy and Anique Owen led by Caitlin Connally, with administrative support from Sylvette Bassy and Justine Donohue and managed by Matt Newington. Their hard work on this Inquiry in addition to the ongoing work of the Standing Committees has helped us prepare this comprehensive report in such a short timeframe.

I commend this report to the House.

A handwritten signature in black ink, appearing to read 'Fiona Patten', written in a cursive style.

Ms Fiona Patten MLC
Chair

Findings and recommendations

2 Listeriosis investigation and outbreak management process

FINDING 1: The Department of Health did not immediately undertake any inspections, food sampling or environmental swabbing at Knox Private Hospital following the notification of a positive case of Listeria. These should have been requested as part of the initial assessment into the source of Listeria. 27

FINDING 2: The lack of written instructions provided by the Department of Health meant that Knox City Council was not sufficiently clear on the scope and focus of the investigation. This led to some confusion about the appropriate investigation process. 27

RECOMMENDATION 1: That the Department of Health modifies its request protocols for food safety investigations so that all investigating agencies are provided written instructions clearly outlining the scope, focus and process for investigating a food safety issue. 27

RECOMMENDATION 2: That the Victorian Auditor-General's Office undertakes the proposed audit of food safety regulation in local councils as part of its 2023–24 forward work plan. This audit should examine:

- the guidance resources, training and advice provided by the Department of Health to councils to promote the consistent administration of the *Food Act 1984* (Vic)
- whether the investigation of food safety incidents by local councils and the Department of Health is consistent, provides procedural fairness to food businesses and protects public safety and wellbeing
- whether local councils are consistently complying with their legislative responsibilities to support good food safety and public health outcomes. 30

FINDING 3: Ms Painter was on a full ward diet between 13 and 23 January 2019 during the suspected incubation period and a soft diet after 25 January 2019. The Committee notes that prior to 25 January 2019, Ms Painter underwent some medical procedures which required fasting. 36

FINDING 4: I Cook Foods was not the sole food caterer to Knox Private Hospital as was asserted by Department of Health officials at a public hearing on 24 June 2020. 36

RECOMMENDATION 3: That the Department of Health amends its *Protocol for the investigation of cases of Listeriosis* so that food and environmental testing is automatically undertaken at the location where a case of Listeria has been detected in a healthcare setting or in other settings dealing with vulnerable cohorts. **36**

FINDING 5: Inquiry stakeholders raised a number of serious allegations that could constitute criminal conduct or corruption. For allegations of this nature, Victoria Police are better placed to conduct an investigation. **40**

FINDING 6: There is no specific guidance for environmental health officers on the use of body-worn cameras during inspections or guidelines for the use and retention of material captured. **40**

RECOMMENDATION 4: That the Department of Health establishes a uniform protocol for relevant authorities for the use of body-worn cameras during food safety inspections, including provisions on how captured material is to be retained. **40**

FINDING 7: Under the instrument of delegation signed by the Secretary of the Department of Health and Human Services in 2017, the Acting Chief Health Officer had the appropriate delegated authority to issue a closure order to I Cook Foods. The instrument authorised the Chief Health Officer to exercise powers under section 19 of the *Food Act 1984* (Vic). **49**

FINDING 8: The findings of Knox City Council’s investigation into the Listeria infection and food safety processes and procedures at Knox Private Hospital did not affect the Department of Health’s decision to close I Cook Foods because:

- the findings were not received until after the closure order was issued to I Cook Foods
- the decision to close I Cook Foods was not solely based on the Listeria infection at Knox Private Hospital.

54

FINDING 9: A relevant authority with powers under the *Food Act 1984* (Vic) to close a food business is required to follow the ‘precautionary principle’ when a serious public health risk has been identified. Whilst the principle prescribes that scientific certainty is not necessary, a relevant authority should take every step practicable to ensure the evidence shows clear indication of serious risk before a closure order is issued. **54**

FINDING 10: The Department of Health’s decision to not request that Knox City Council investigate the Listeria infection at Knox Private Hospital until 21 February 2019 meant the Council’s findings could not support the broader investigation or inform the decision on whether closing I Cook Foods was necessary. **54**

RECOMMENDATION 5: That the Victorian Government introduces amendments to the *Food Act 1984* (Vic) to require a relevant authority to provide an evidence report to a food business when it issues a closure order. The preparation of any evidence report should keep in mind the need to respond quickly to any potential public health risks. **54**

3 Contradictions in evidence provided to the Committee

FINDING 11: The Department of Health’s omission of providing emails from Knox City Council regarding Ms Painter’s diet during her time at Knox Private Hospital led to contradictions and confusion which instigated the re-opening of the Inquiry. **58**

FINDING 12: Evidence provided to the Committee indicates that officers of the Department of Health did not adequately communicate key evidence in relation to the investigation into the source of Listeria to Dr Angie Bone. **61**

FINDING 13: The assertion by representatives of the Department of Health that I Cook Foods was the ‘sole caterer’ of Knox Private Hospital was wrong. Representatives of the Department of Health provided an explanation to correct the misleading information. **61**

FINDING 14: In evidence initially provided to the Inquiry, Chief Health Officer Professor Brett Sutton and Deputy Chief Health Officer Dr Angie Bone failed to provide complete information that explained why only some suppliers were investigated as a part of the Listeriosis investigation. The Committee does not have sufficient reason to find this information was omitted for the purpose of deliberately misleading the Committee and takes no further action. **62**

What happens next?

There are several stages to a parliamentary inquiry.

The Committee conducts the Inquiry

This second report on the Inquiry into closure of I Cook Foods Pty Ltd is the result of extensive research and stakeholder consultation by the Legislative Council Legal and Social Issues Committee at the Parliament of Victoria.

We spoke with people at public hearings, reviewed research evidence, summonsed key evidence and deliberated over a number of meetings.

A parliamentary committee is not part of the Government. Our Committee is a group of members of different political parties. Parliament has asked us to look closely at an issue and report back. This process helps Parliament do its work by encouraging public debate and involvement on issues. We also examine government policies and the actions of the public service.

This report is presented to Parliament

This report was presented to Parliament and can be found on the Committee's website: <https://parliament.vic.gov.au/lsc-lc/inquiries/article/4516>.

A response from the Government

The Government has 6 months to respond in writing to any recommendations we have made. Other agencies are also required to respond to any recommendations directed towards them. The response is public and put on the inquiry page of Parliament's website when it is received: <https://parliament.vic.gov.au/lsc-lc/inquiries/article/4517>.

In its response, the Government indicates whether it supports the Committee's recommendations. It can also outline actions it may take.

1.1 Introduction

On 4 August 2020, the Committee tabled its first report on the Inquiry into the closure of I Cook Foods. Nearly 12 months later, the Committee resolved to reopen the Inquiry following new information and key documents becoming available which called into question the accuracy of the evidence provided during the Committee's initial investigation.

There has been ongoing public and media interest in the events surrounding the closure of I Cook Foods in 2019. Serious allegations and counter-allegations have been levelled against various stakeholders involved in the events, including senior officials in the Department of Health and the City of Greater Dandenong.

Mr Ian Cook, Director of I Cook Foods, has maintained his allegations that he was denied a fair and proper process throughout the Listeriosis investigation into his business.

Ms Kim Rogerson, a former Environmental Health Officer for the City of Greater Dandenong, has also continued to raise concerns about the conduct and culture at the City of Greater Dandenong.

It is these key documents and allegations which were the impetus for the Committee's resolution to reopen the Inquiry. This is discussed further in Section 1.3.

1.2 Background of the Inquiry

In February 2019, Ms Jean Painter, an 86-year-old patient at Knox Private Hospital, died with Listeria recorded as a contributing factor to her death.

Ms Painter was initially admitted on 13 January 2019 with gastritis and colitis. She was briefly discharged from the hospital on 23 January 2019. However, was readmitted the same day as her condition deteriorated. It was suspected that she may have contracted Listeriosis, which was confirmed following a blood culture test.

Following the statutory notification¹ of Ms Painter's Listeriosis infection on 25 January 2019, the Department of Health² undertook an immediate investigation into the source of the infection. This investigation indicated that food supplied by I Cook Foods was the likely source of the infection. Following this the Department of Health, with the assistance of the City of Greater Dandenong, directed its investigations

¹ Listeriosis is an urgent notifiable condition under the *Public Health and Wellbeing Act 2008*.

² In February 2021, the Department of Health and Human Services was split into two separate departments, the Department of Health and the Department of Families, Fairness and Housing. This report will refer to the department as the Department of Health throughout for clarity.

1 towards I Cook Foods. No other suppliers to Knox Private Hospital were investigated at the time.

On 4 February 2019, Ms Painter died of acute pulmonary oedema, ischaemic heart disease and *Listeria meningoenzephalitis* listed as contributing factors to her death.

The subsequent investigation into I Cook Foods resulted in the temporary closure of I Cook Foods.

A timeline of key events is provided in Chapter 2 and a comprehensive description of events relating to the investigation and closure of I Cook Foods is detailed in Appendix C.

The Committee sincerely thanks Mrs Jo Woodstock and Ms Fiona Wharry, the daughters of Jean Painter, for reaching out to the Committee and volunteering to contribute to this Inquiry. It acknowledges that this Inquiry, as well as the broader public interest, is extremely difficult for the family and friends of Ms Painter. By speaking to the Committee, Mrs Woodstock and Ms Wharry have not only given their mother a voice but offered insight into the days leading up to her passing. The Committee offers its condolences and appreciation to them.

The Committee also thanks all of other witnesses who gave evidence to this Inquiry—Mr Ray Christy, Ms Kim Rogerson, Mr Ian Cook, Mr Paul Brady, Ms Jenny Mikakos and representatives from the Department of Health and City of Greater Dandenong.

1.3 New evidence and allegations published in the media

The events surrounding the closure of I Cook Foods, particularly the alleged conduct of the Department of Health and City of Greater Dandenong officials involved, has attracted considerable public interest. Following the tabling of the first report, the closure of I Cook Foods has remained the subject of extensive media interest and reporting. This includes podcasts, social media and a series of articles published by several media outlets.³

The Committee was made aware of new evidence and allegations that were not considered in the first report, specifically:

- media reports that a report from Knox City Council showed that Ms Painter was on a soft diet and did not eat a sandwich from I Cook Foods

3 For example: Richard Willingham and Tim Callanan, 'Victoria police to probe corruption claims over slug saga that closed catering company', *ABC News*, 23 April 2021, <<https://www.abc.net.au/news/2021-04-23/victoria-police-probe-corruption-claims-over-slug-i-cook-foods/100089548>> accessed 17 September 2021; Mark Buttler and Anthony Dowsley, 'No evidence' sandwich caused woman's death', *Herald Sun*, 11 June 2021, <<https://www.heraldsun.com.au/news/victoria/no-evidence-sandwich-caused-womans-death/news-story/c931e70666c2deafb3eae0bad0efa796>> accessed 17 September 2021; Mark Buttler and Anthony Dowsley, 'Report received before iCook Foods shut down clears company of connection to woman's death', *Herald Sun*, 21 June 2021, <<https://www.heraldsun.com.au/news/victoria/report-received-before-icook-foods-shut-down-clears-company-of-connection-to-womans-death/news-story/7fea142094e289379414462c4d1b481e>> accessed 17 September 2021.

- a leaked Victoria Police brief which recommended further police investigation be taken into alleged corruption by officials involved in the closure of I Cook Foods
- Ms Rogerson publicly accusing the City of Greater Dandenong of falsifying evidence, corruption and bullying.

Due to the Committee's concerns that evidence had been omitted during its initial investigations, it resolved to reopen the Inquiry to examine these matters.

1.3.1 The Knox Report

In June 2021, a series of emails described as a 'report' by Mr Ray Christy, who is a former Environmental Health Officer with Knox City Council, was reported by several media outlets. The report detailed Mr Christy's findings from inspections he undertook at Knox Private Hospital in relation to Ms Painter's Listeriosis and the I Cook Foods investigation.

On 21 February 2019, the Department of Health requested Knox City Council to inspect Knox Private Hospital. Mr Christy undertook the inspection, and he emailed the findings of his inspection on 22 February 2019 after I Cook Foods had been served a closure order. Chapter 2 and Appendix C provide further information on Knox City Council's inspection at the hospital. Throughout this report, the Committee has referred to the inspection report and related emails as the 'Knox Report'.

The Knox Report stated that:

- Ms Painter was on a 'soft diet' during her stay at Knox Private Hospital
- soft diet sandwiches were made in-house by hospital catering staff rather than by an external food caterer, such as I Cook Foods.

It was also reported in the media that the Department of Health received a copy of the report hours before the closure order was issued to I Cook Foods.

The Knox Report was a key reason the Committee decided to reopen its Inquiry and was a focus throughout the Committee's evidence gathering process. In reopening the Inquiry, the Committee sought to understand:

- why Knox City Council's Listeriosis investigation at Knox Private Hospital and the subsequent Knox Report was not raised with the Committee
- whether the Knox Report, as well as other new evidence, contradicted evidence provided by the Department of Health and City of Greater Dandenong
- what impact did, or should have, the Knox Report had on the decision to close I Cook Foods.

The Committee summonsed a copy of the Knox Report from Knox City Council. This is provided in Appendix E.

1.3.2 Allegations published in the media

Media coverage has continued to focus on accusations that evidence used to justify the closure of I Cook Foods was planted, tampered with or falsified. These claims have been made alongside, or to support, allegations that the decision to close I Cook Foods was made unfairly and to ultimately serve commercial interests in rival food catering company Community Chef. The Committee's first report considers this allegation in greater detail. This report has sought to further understand how the Department's and Dandenong council's conflict of interests were managed.

Further allegations of corruption and bullying at the City of Greater Dandenong were made by Ms Kim Rogerson.

Ms Rogerson also made assertions that she witnessed Dandenong council officials tamper with evidence related to the I Cook Foods investigation. This included allegedly editing photos and body-worn camera footage captured during site visits at the I Cook Foods premises.⁴

1.3.3 Victoria Police investigation into corruption claims

As well as renewed allegations about the conduct of officials involved in the closure of I Cook Foods, leaked documents related to the events of a police investigation were reported on by the media. In April 2021, a police brief from June 2020 which investigated corruption claims linked to the investigation of I Cook Foods was published online. The brief noted significant corruption concerns with the conduct of officials from the City of Greater Dandenong and the Department of Health involved in investigating I Cook Foods. It recommended further investigation by Victoria Police to 'identify any alleged corruption or misuse of office'.⁵ However, at the time of the brief, Victoria Police did not pursue the investigation further.

The concerns probed in the police brief are serious allegations which should be fully investigated. As stated in the first report, allegations of this nature call into question the integrity of Victoria's food safety framework and the processes undertaken by regulatory authorities.

At the time of writing, Victoria Police had reopened its investigations into the claims outlined in the brief. The Committee notes that the police brief was only briefly considered during this Inquiry, largely due to the fact that a Victoria Police investigation has been reopened and at the time of writing was still in progress. In the Committee's view, Victoria Police is the appropriate authority to investigate these claims and that an investigation on these matters is out of the remit and capability of this Committee.

⁴ Ms Kim Rogerson, Public hearing, Melbourne, 25 August 2021, *Transcript of evidence*, p. 17.

⁵ Victoria Police, *Briefing note: alleged corruption by Greater Dandenong Council and DHHS*, 22 June 2020, <https://parliament.vic.gov.au/images/stories/committees/SCLSI/Closure_of_I_Cook_Foods/Other_documents/20200622_-_Victoria_Police_briefing_note.pdf>.

1.4 Focus of the Committee's first report

On 4 August 2020, the Committee tabled its first report for this Inquiry. The focus of the first report was to determine whether I Cook Foods was subject to proper process and fair treatment in the handling of the food safety investigation and subsequent closure order.

The initial Terms of Reference for the Inquiry directed the Committee to consider:

- the actions and decisions taken by the Department of Health⁶ and City of Greater Dandenong in closing I Cook Foods
- whether there was any improper conduct related to the closure of I Cook Foods which was related to:
 - the City of Greater Dandenong's conflict of interest due to its commercial interest in rival company Community Chef
 - the then pending sale of Community Chef to the Victorian Government
- whether any breaches of law or regulations by officials in the City of Greater Dandenong or the Department of Health led to the closure of I Cook Foods.

The Committee's first report specifically considered the frameworks and processes that were in place and followed during the investigation and closure of I Cook Foods. The report did not focus on specific food safety issues informing the closure order or whether I Cook Foods complied with food safety requirements.

The Committee ultimately determined that 'I Cook Foods was neither served well by the City of Greater Dandenong nor the food safety regulatory framework'.⁷ However, it also found that the closure order made by the Department of Health on behalf of the City of Greater Dandenong was legally valid.

The Committee's first report for the Inquiry into the closure of I Cook Foods is available on the Committee's website at: <https://parliament.vic.gov.au/isic-lc/article/4516>.

Where appropriate, the Committee has incorporated evidence and conclusions from the first report to support the findings and recommendations made in this report.

1.4.1 Findings and recommendations in the first report

In its first report for this Inquiry, the Committee made 16 findings and 13 recommendations. As stated above, these focused on determining whether I Cook Foods was subject to fair and proper treatment and to identify any issues or gaps in the investigation process which may have contributed to any unfair treatment.

⁶ Then Department of Health and Human Services.

⁷ Parliament of Victoria, Legislative Council Legal and Social Issues Committee, *Inquiry into the closure of I Cook Foods Pty Ltd*, August 2020, p. 4.

Broadly, the Committee made findings on:

- the validity of the closure order issued to I Cook Foods
- the processes and practices of the City of Greater Dandenong in its role as a food safety regulator
- issues arising from the City of Greater Dandenong's conflict of interest stemming from its commercial interest in Community Chef.

The Committee's recommendations focused on improvements to Victoria's food regulatory framework. These included:

- establishing a uniform process for identifying, reporting and managing non-compliance issues
- expanding the oversight and regulatory powers of the Department of Health in overseeing food safety investigations
- the need to review Victoria's food safety regulatory framework
- corrective actions that should be taken by the City of Greater Dandenong or more broadly by local councils to improve their approach to food safety regulation
- the need to amend the *Food Safety Act 1984* (Vic) to modernise it and better align the Act with developments in food safety regulation.

On 4 February 2021, the Victorian Government tabled its response to the Committee's first report for the Inquiry. The Government's response acknowledged that the findings and recommendations of the first report:

provides an ideal platform for a review of Victoria's food regulatory framework for food safety management. The Committee's Report and Recommendations provides a valuable and timely opportunity to make some immediate changes but then to focus efforts on a more substantial systemwide review of food safety management in Victoria including exploring whether the assigned roles prescribed in the *Food Act 1984* for the Department of Health and Victoria's 79 local councils remain fit for purpose.⁸

The response indicated that a Terms of Reference for a review into the food regulatory framework would be made public in the first half of 2021. However, at the time of writing this has not occurred.

Of the 11 recommendations relevant to the Victorian Government, 5 were supported in full and 6 were supported in principle. The Victorian Government's response to the first report is available on the Committee's website: <https://parliament.vic.gov.au/lsc-lc/article/4517>.

In the first report, two recommendations were directed to the City of Greater Dandenong. At a public hearing Mr John Bennie, Chief Executive Officer at the City of

⁸ Government of Victoria, *Response to the Parliament of Victoria, Legislative Council Legal and Social Issues Committee: Inquiry into the closure of I Cook Foods*, 4 February 2021, p. 2.

Greater Dandenong noted that the Council had implemented all recommendations from the report:

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.⁹

Some of the relevant findings and recommendations from the first report are discussed in this report where appropriate.

1.5 Focus of this report

As stated in Section 1.3, the impetus for reopening the Inquiry was based on new allegations and documents published in the media that were not raised in the Inquiry's initial evidence. The second Terms of Reference directed the Committee to reopen its Inquiry to consider:

- new evidence that was made public in the media following the conclusion of the first Inquiry in August 2020
- whether the new evidence contradicted evidence provided by officials from the Department of Health and City of Greater Dandenong.

Like the first report, it is outside the scope of this report to determine whether food safety or related issues identified during the Listeriosis investigation undertaken into I Cook Foods was sufficient to warrant issuing a closure order. It is the Committee's view, that this is out of the remit of the Inquiry as well as the expertise of the Committee.

The focus of this report is to determine whether the framework and process followed during the investigation into the source of the Listeria infection was sufficient.

The first report focused on the validity and handling of the closure order issued to I Cook Foods following food safety investigations. The Committee further considered the validity of the closure order in the context of new evidence, in particular whether the Acting Chief Health Officer had the appropriate authority to sign the closure order. The Committee received a copy of a signed instrument of delegation from the Secretary of the Department of Health, which indicated the Acting Chief Health Officer did have the appropriate authority. The instrument of delegation was provided under s 19 of the *Public Health and Wellbeing Act 2008* (Vic) and gave the Acting Chief Health Officer authority to issue a closure order under s 19 of the *Food Act 1984* (Vic). A copy of the instrument of delegation is provided in Appendix D.

⁹ Mr John Bennie, Chief Executive Officer, City of Greater Dandenong, Public hearing, Melbourne, 1 September 2021, *Transcript of evidence*, p. 6.

In reopening the Inquiry, the Committee has also examined:

- the notification and immediate assessment of the Listeriosis infection at Knox Private Hospital, including preliminary investigations (or lack thereof) into other potential sources of the infection
- the listeriosis investigation undertaken by the Department of Health and the City of Greater Dandenong, which led to the closure of I Cook Foods.

The Committee found that there were several significant shortcomings in the Department's handling of the Listeriosis investigation which led to the closure of I Cook Foods, including:

- the lack of written instructions provided to Knox City Council regarding its inspection at Knox Private Hospital which led to some confusion and meant the Council was not sufficiently briefed
- the time elapsed between the notification of Listeria at Knox Private Hospital and the Department's request to Knox City Council to inspect the hospital meant important evidence was no longer available
 - the findings of the Knox Report also could not be factored into the decision to close I Cook Foods.

The Committee also examined whether the initial evidence provided to the Committee had been contradicted or indicated that the Committee was misled. The Committee questioned the accuracy of evidence provided by previous witnesses to determine the extent and implications of any contradictions.

The Committee found that:

- The Department of Health's omission in providing the Committee a copy of the Knox Report led to confusion around Ms Painter's diet and why the investigation focused on I Cook Foods.
- The Department of Health's assertion that I Cook Foods was the 'sole caterer' to Knox Private Hospital during their initial evidence was not the case.
 - Senior departmental officials acknowledged that the contents of the Knox Report contradicted the evidence they provided to the Committee on 24 June 2020.
- During their initial evidence, Chief Health Officer Professor Brett Sutton and Deputy Chief Health Officer Dr Angie Bone did not provide sufficient information to explain why only some suppliers were investigated as part of the Department's investigation into the source of Listeria.

The Committee also considered whether any of the evidence provided or omitted from its initial investigations constituted a possible contempt of Parliament. However, after examining the new evidence provided during this report and explanations by representatives from the Department of Health, the Committee does not consider any actions meet the threshold of contempt and takes no further action at this stage.

Chapter 3 discusses the contradictory evidence in detail.

The Committee notes that contradictory or misleading evidence undermines the integrity of a parliamentary inquiry and its determinations and may be considered a contempt of Parliament warranting further action by the Legislative Council. Parliamentary committees rely on accurate evidence to make their findings and recommendations, and any misunderstandings in evidence provided by witnesses needs to be corrected in a timely matter.

2.1 Introduction

In reopening the Inquiry, the Committee has re-examined the processes undertaken by the Department of Health and the City of Greater Dandenong which led to the closure of I Cook Foods. It has examined the investigation into the source of Listeriosis led by the Department in the context of new evidence which became available after the Committee tabled its first report in August 2020. The new evidence included:

- findings from food safety inspections conducted by Knox City Council at Knox Private Hospital between 21–22 February 2019
- further allegations that the City of Greater Dandenong had falsified evidence used to justify the closure of I Cook Foods.

The Committee found that the closure order issued to I Cook Foods on 22 February 2019 was issued validly by then Acting Chief Health Officer Professor Brett Sutton. In 2017, the Secretary of the Department signed an instrument of delegation which allowed the Chief Health Officer to exercise powers under s 19 of the *Food Act 1984* (Vic), among other powers. This was provided under s 19 of the *Public Health and Wellbeing Act 2008* (Vic) which prescribes that the Secretary can delegate any powers under any Act where the Secretary has powers or responsibilities. A copy of the instrument of delegation is provided in Appendix D.

However, there were several significant shortcomings in the process used by the Department to investigate the source of Listeria at Knox Private Hospital and I Cook Foods. The Committee's findings and recommendations aim to improve the process for food safety investigations, particularly Listeriosis investigations. The Committee found shortcomings in:

- the communication protocols used by the Department of Health
- the thoroughness of the investigation undertaken by the Department.

In particular, the Committee believes that the decision to not request an inspection of Knox Private Hospital immediately following the notification of Listeria was a shortcoming of the Department's process. The time elapsed between the Listeria notification and the first inspection on 21 February 2019 meant that important evidence was no longer available and that the findings of the inspection could not be factored in before the closure order was issued to I Cook Foods.

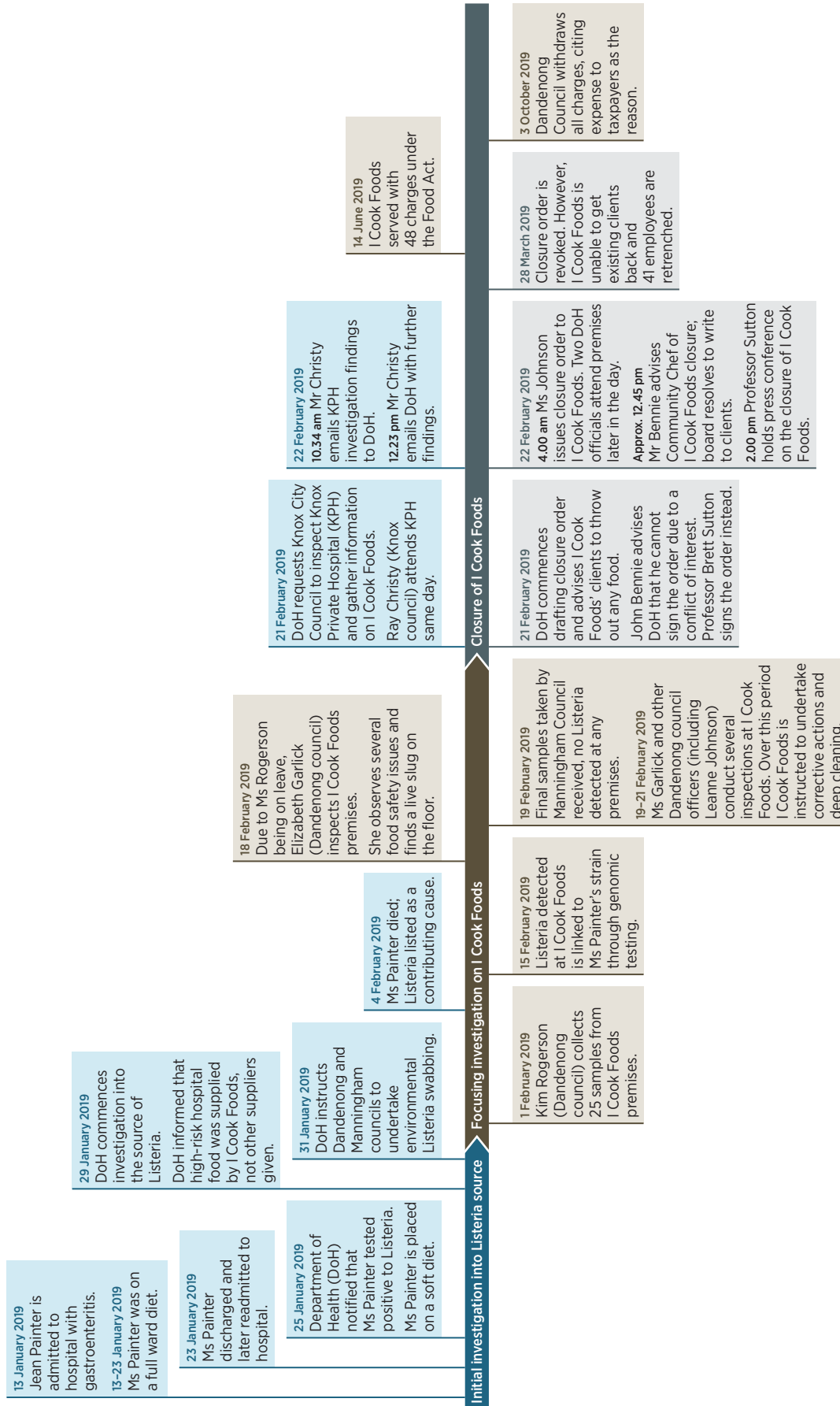
The Committee also found that some of the evidence initially provided by the Department of Health was contradicted by new evidence made available after the first report was tabled. Contradictions in the evidence provided to the Committee are addressed in Chapter 3.

2.2 Timeline of events

Like the first report, the Committee has provided an overview of key events related to the closure of I Cook Foods based on evidence provided by witnesses. Figure 2.1 below is a timeline of events related to the investigation and closure of I Cook Foods. The Committee has identified three key stages to the investigation—the notification and immediate assessment, the investigation and the closure—which are outlined in the timeline and has informed the structure of this Chapter.

A more detailed timeline of events is also provided in Appendix C and includes information about events which occurred after the closure of I Cook Foods, including the Committee's Inquiry.

Figure 2.1 Timeline of the closure of I Cook Foods



Source: Legislative Council Legal and Social Issues Committee.

2.3 Victoria's food regulation framework

In Australia, food regulation is managed through a bi-national regulatory system where Australia and New Zealand have co-designed a framework to ensure that there are consistent standards and regulations across both countries.¹ As part of this system, Victoria has developed its own regulatory approach to managing and enforcing food safety.

Victoria's food safety framework is managed by a variety of regulators, including government departments and local councils, and several legislative instruments. Key elements of the framework are discussed in detail in the sections below and include:

- *Food Act 1984 (Vic)*
- *Public Health and Wellbeing Act 2008 (Vic)*
- *Australia New Zealand Food Standards Code*
- Victorian food regulators' Memorandum of Understanding.

2.3.1 *Food Act 1984 (Vic)*

The *Food Act 1984 (Vic)* is the primary legislation regulating the sale of food in Victoria. It requires individuals and organisations who own food businesses to ensure that the food that they prepare and/or sell to customers is safe and suitable for human consumption. The Food Act achieves this by:

- establishing offences, penalties and defences for breaches of food law
- providing the means through which the *Australia New Zealand Food Standards Code* is applied as the law in Victoria
- establishing a food premises classification system and enforcement powers, including emergency powers, to deal with immediate threats to public health
- empowering local councils and other regulators to register and monitor food businesses as defined by the Act.²

1 Department of Health, *Food regulation: A bi-national food regulatory system*, <<https://www2.health.vic.gov.au/public-health/food-safety/food-safety-laws-local-government-and-auditors/food-safety-laws-and-regulations/victorian-food-agencies>> accessed 20 September 2021.

2 Department of Health, *The Food Act 1984*, <<https://www2.health.vic.gov.au/public-health/food-safety/food-safety-laws-local-government-and-auditors/food-safety-laws-and-regulations/food-act-1984>> accessed 2 September 2021.

2.3.2 **Public Health and Wellbeing Act 2008 (Vic)**

The operation of the Food Act is complemented by the *Public Health and Wellbeing Act 2008* (Vic). The Public Health and Wellbeing Act aims to promote and protect public health and wellbeing in Victoria by providing a role for the state in:

- promoting healthy conditions
- protecting the public
- reducing inequalities
- responding to public health concerns.³

Part 8, div 3 of the Public Health and Wellbeing Act enables the Governor in Council to declare infectious diseases and microorganisms in Victoria to be notifiable. Under this division, medical practitioners must notify the Department of Health if they suspect or have confirmed that a patient has, or has died with, a notifiable condition. Pathology services and laboratory services are under the same obligation if they detect a notifiable disease or microorganism in a sample.

2.3.3 **Australia New Zealand Food Standards Code**

The *Australia New Zealand Food Standards Code* was developed by Australian state and territory governments in conjunction with the Government of New Zealand. It came into effect in 2000 and established legal requirements or standards for the 'labelling, composition, safety, handling, and primary production and processing of food'. The standards seek to:

- ensure that food is safe and suitable for human consumption
- prevent misleading conduct associated with the sale of food
- provide adequate information to enable consumers to make an informed choice
- provide an effective regulatory framework within which the food industry can efficiently operate.⁴

The Code applies to any business or activity that incorporates the preparation of food for sale or the sale of food in Victoria. It is a criminal offence under the Food Act to prepare or sell food that fails to comply with the standards established by the Code.

³ *Public Health and Wellbeing Act 2008* (Vic) pt 1 s 1, pt 2.

⁴ Department of Health, *Australia New Zealand Food Standards Code*, <<https://www2.health.vic.gov.au/public-health/food-safety/food-businesses/food-standards-code>> accessed 2 September 2021.

Section 4I of the Food Act allows the Minister to specify declared authorities to enforce the Code. This is primarily the responsibility of local councils which register food businesses operating within their municipal district. However, statewide organisations such as the Department of Health, PrimeSafe and Dairy Food Safety Victoria also have enforcement powers.⁵

2.3.4 Victorian food regulators' Memorandum of Understanding

The Victorian food regulators' Memorandum of Understanding⁶ aims to manage food safety risks by food businesses using 'relevant legislation, standards, licensing or registration, compliance monitoring and enforcement'.⁷ The objectives of the memorandum of understanding specifically include:

- protecting public health and safety through integrated administration of food safety regulation
- providing clarity on the roles and responsibilities across the food regulatory system, including during a food safety incident
- supporting consistent application of the *Australia New Zealand Food Standards Code*
- facilitating clear and accurate communication between regulators.⁸

Schedule 1 of the memorandum broadly outlines the food safety investigation process the parties to the agreement need to follow, including for single or outbreak incidents of foodborne illnesses. The memorandum outlines in which circumstances a relevant authority has jurisdiction (and to what extent) over a food safety investigation. Local councils have jurisdiction over an investigation:

- where there has been a single incident of a foodborne illness, unless a business identified is the responsibility of a food regulator (e.g. PrimeSafe)
- where an outbreak of foodborne illness has occurred within their local government area, although outbreaks that cross multiple local government areas are the responsibility of the Department of Health
- where a food complaint has been made about a food premises or food manufactured, sold or imported by a premise where the local council is the registering authority.⁹

⁵ Ibid.

⁶ The following organisations are parties to the Memorandum of Understanding: Dairy Food Safety Victoria, the Department of Jobs, Precincts and Regions, the Department of Health, the Municipal Association of Victoria and PrimeSafe.

⁷ Agriculture Victoria, *Victorian food regulators' Memorandum of Understanding*, <<https://agriculture.vic.gov.au/biosecurity/food-safety/victorian-food-regulators-forum/victorian-food-regulators-memorandum-of-understanding>> accessed 3 September 2021.

⁸ Ibid.

⁹ Ibid.

Section 1.6 of the memorandum notes that it is not legally binding but describes a commitment by each party to ‘administer food regulation in Victoria in accordance with the agreed schedules attached’.¹⁰

2.4 Overview of the process for investigating cases of Listeriosis

The Department of Health provided a copy of its internal *Protocol for the investigation of cases of Listeriosis* which outlines its approach to Listeriosis investigations. A copy of the Protocol can be found in Appendix G.

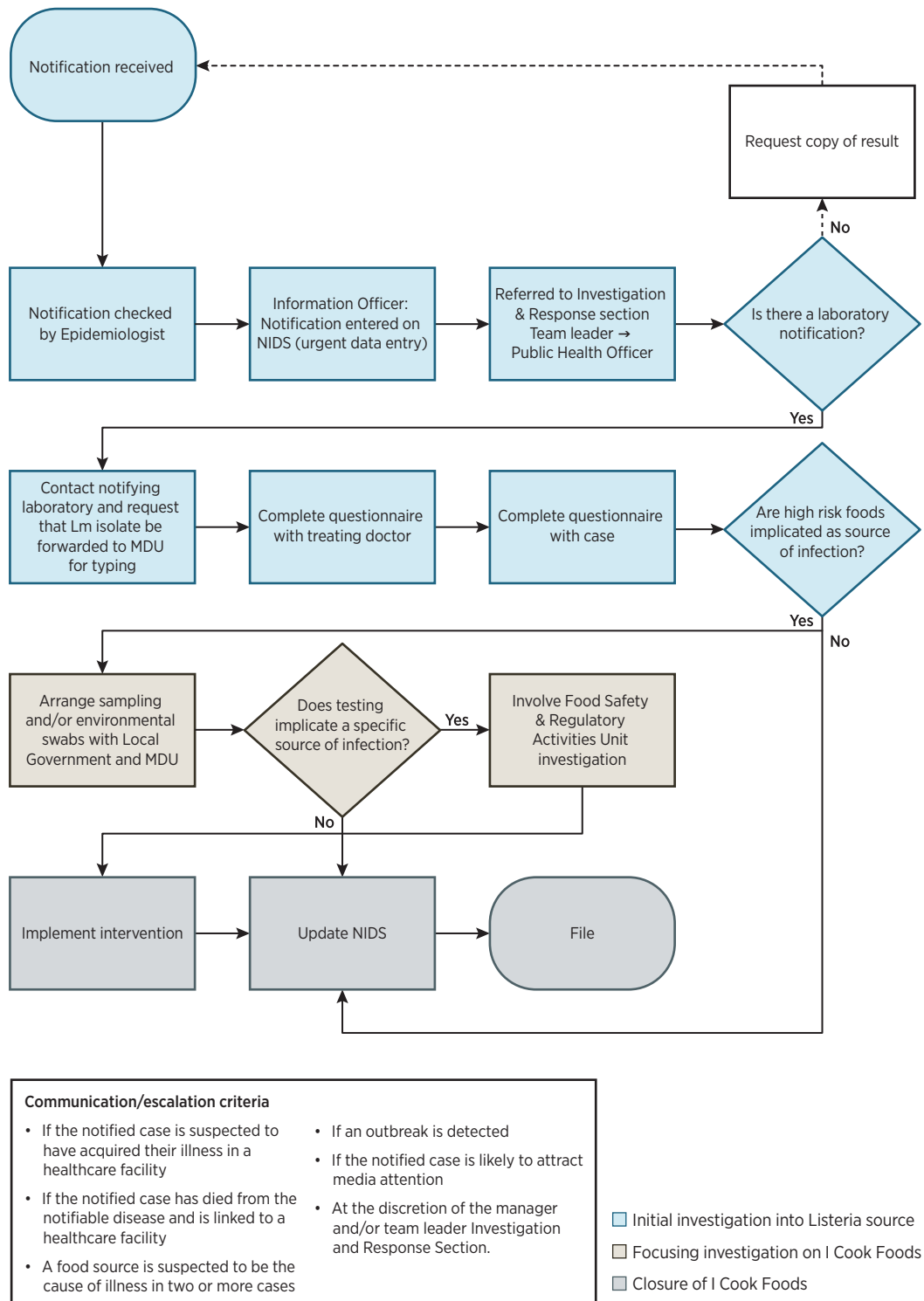
A key focus of this report is establishing the investigation process undertaken by the Department of Health into I Cook Foods and the case of Listeria at Knox Private Hospital. The Committee has broken down the process into three key stages which broadly follow the process for investigating Listeriosis:

- notification and immediate assessment
- investigation
- closure (or outcome).

Figure 2.2 below taken from the Protocol shows the Listeriosis investigation process.

¹⁰ Ibid.

Figure 2.2 Listeriosis investigation flowchart



Source: Department of Health, *Protocol for the investigation of cases of Listeriosis*, 2017, p. 4.

2.5 Notification and immediate assessment

The Victorian food regulators' Memorandum of Understanding defines a food incident as 'any event related to the supply of food where an actual or suspected threat to the safety of food requires investigation to protect public health'.¹¹ Food safety incident investigations can be triggered by the notification of a foodborne illness or complaints against a food business.

The Public Health and Wellbeing Act provides for the declaration of notifiable infectious diseases and microorganisms in Victoria. The declaration of a disease or microorganism under this division compels medical practitioners to notify the Department of Health within the specified time period if they suspect or have confirmed that a patient has, or has died, with a notifiable condition.¹²

Likewise, if a pathology service identifies a notifiable disease or microorganism in a sample from a Victorian individual, or a laboratory service identifies a notifiable microorganism in a food sample, they must notify the Department.¹³

Listeriosis is an 'urgent notifiable condition'. Medical practitioners, pathology services and laboratory services which detect Listeriosis (either suspected or confirmed) must notify the Department of Health immediately by phone upon initial diagnosis. Pathology services must follow up with written notification within 5 days.¹⁴

Two or more related cases of foodborne illness are also notifiable, regardless of the disease or microorganism, which is usually unknown at the time of the first notification.¹⁵

Local councils may receive and investigate general food-related complaints made by members of the public against a food business in their municipal district. Local councils may work with or refer an investigation to PrimeSafe or Dairy Food Safety Victoria if a food incident involves food businesses regulated by these bodies.¹⁶

2.6 The Department of Health's decision to focus the investigation on I Cook Foods

The purpose of the Committee re-opening the Inquiry was to re-examine the investigation process undertaken by the Department of Health which led to the closure of I Cook Foods. This was in light of new evidence raised in the media after the first report was tabled.

¹¹ Ibid.

¹² *Public Health and Wellbeing Act 2008* (Vic) s 127.

¹³ Ibid., s 128 and s 130.

¹⁴ Department of Health, *Listeriosis*, <<https://www2.health.vic.gov.au/public-health/infectious-diseases/disease-information-advice/listeriosis>> accessed 6 September 2021.

¹⁵ Department of Health and Human Services, *Guidelines for the investigation of gastroenteritis*, 2010.

¹⁶ Agriculture Victoria, *Victorian food regulators' Memorandum of Understanding*.

The Committee found that there was inconsistent understanding amongst Inquiry stakeholders on the proper process for immediately investigating and focusing an investigation into Listeria. In the Committee's view, this is a consequence of inadequate guidelines and processes which has resulted in relevant authorities having misunderstandings of how to undertake food safety investigations.

At a public hearing on 24 June 2020, Professor Brett Sutton, Chief Health Officer at the Department of Health explained the factors which led the Department to focus its investigation on I Cook Foods. These factors were:

- information provided by Knox Private Hospital that I Cook Foods was the 'sole' food supplier
- food history provided by Ms Painter's treating doctor at Knox Private Hospital and her next of kin which indicated that as an inpatient she only consumed food from the hospital
- that several food samples taken from I Cook Foods tested positive for *Listeria monocytogenes* including:
 - four I Cook Foods food samples which tested positive for *Listeria monocytogenes* and had the same molecular serotype and binary type as the Listeria detected in human isolates from Ms Painter's blood culture
 - other food samples from I Cook Foods that tested that positive for Listeria but were different strains
- that I Cook Foods was the only premises where Listeria was detected
- that the strain of Listeria detected in I Cook Foods' samples linked to Ms Painter's Listeria had not been matched to any other isolates in Australia before or after.¹⁷

The Committees notes that the initial investigation into Listeria did not include an immediate investigation into Knox Private Hospital and its food safety protocols. The Environmental Health Unit at Knox City Council was not asked to investigate the matter until 21 February 2019, the day before the closure order for I Cook Foods was issued.

Throughout the Inquiry the Committee has sought to understand why this was the case. Moreover, the Committee wanted to understand what evidence the Department used to focus its investigation on I Cook Foods and to determine if this process was sufficient.

In supplementary evidence, Dr Angie Bone, Deputy Chief Health Officer at the Department of Health, described the evidence-gathering process which led the Department to focus its investigation on I Cook Foods. The Committee has summarised the steps taken by the Department in Box 2.1 below.

¹⁷ Professor Brett Sutton, Chief Health Officer, Department of Health and Human Services, Public hearing, Melbourne, 24 June 2020, *Transcript of evidence*, pp. 64–65.

BOX 2.1: Department of Health's immediate assessment of Ms Jean Painter's Listeriosis

The following steps were taken by the Department of Health which led it to focusing its investigation on I Cook Foods:

1. Initial notification from Dorevitch Pathology of a positive Listeria case on 25 January 2019.
2. Dorevitch pathology sent the Microbiological Diagnostic Unit Public Health Laboratory the Listeria isolate detected in a human sample for further typing and genomic sequencing.
3. The Department of Health spoke to Ms Painter's treating doctor at Knox Private Hospital to get a background history. The Department was informed:
 - a. Ms Painter entered hospital for abdominal symptoms on 13 January 2019.
 - b. Gastroenteritis from a foodborne source was excluded through a stool culture.
 - c. Medical information did not indicate that Ms Painter had Listeriosis on admission on 13 January.
4. The Department sought a four-week food history for Ms Painter. However, the Department was unable to interview Ms Painter personal due to her weakened condition. Instead, the Department obtained details through next-of-kin interviews with her daughter on 29 January 2019. Ms Painter's daughter provided a food history.
5. The Department contacted the Infection Control Nurse at Knox Private Hospital via phone. During the call, the Department was informed that:
 - a. Ms Painter was on a full ward diet from 13 to 23 January 2019.
 - b. There were no formal records of what Ms Painter ordered but that the hospital's Menu Monitor was personally familiar with her ordering preferences. The Menu Monitor indicated that Ms Painter preferred cooked meals or ham and cheese or assorted sandwiches.
 - c. The sandwiches were prepared by I Cook Foods.
 - d. Knox Private Hospital's kitchen did not do anything with the food received from I Cook Foods other than serve it to patients, except for re-heating on occasion.

Continued

BOX 2.1: Continued

6. Based on its initial assessment at Knox Private Hospital, the Department asked Manningham City Council and the City of Greater Dandenong to take food samples and environmental swabs from several sources in order to find the source of the *Listeria*. Sources included:
 - a. I Cook Foods (Dandenong)
 - b. Aveo Domainé retirement village (Manningham)
 - c. Coles (Manningham)
 - d. Woolworths (Manningham)
 - e. Mirabella Bros grocer (Manningham).

Source: Dr Angie Bone, Deputy Chief Health Officer, Department of Health, *Opening Statement to the Committee*, supplementary evidence received 2 September 2021, pp. 2–4.

Dr Bone told the Committee that:

Of all of the samples taken by the respective local councils at each of these sites, no *Listeria* was detected in any of the samples taken - except for the food sampling which indicated *Listeria monocytogenes* in food from I Cook Foods. There had been suggestions that I Cook was unfairly targeted in the Department's investigation and this is plainly untrue. Several potential sources of *Listeria* were identified from both during and prior to the hospitalisation of the patient. We follow the evidence and each of these sources were investigated. It was only once I Cook returned positive results for *Listeria* that the focus turned to I Cook.¹⁸

At a public hearing on 2 September 2021, Professor Brett Sutton¹⁹ explained to the Committee why initial testing results led the Department to focus its investigation on I Cook Foods:

The results for food and environmental samples from Coles, Woolworths, Mirabella Bros and Aveo Domaine retirement village were all negative for *Listeria*. However, at the time of issuing the closure order *Listeria* species had been detected in seven food samples at I Cook Foods premises. Six of these had grown *Listeria monocytogenes*, the organism responsible for invasive listeriosis, and four of these had grown *Listeria monocytogenes* that had the same molecular serotype and the same binary type as that found in the patient. It was later shown that *Listeria* isolated from these four foods had exactly the same genetic sequence—or fingerprint if you like—as each other and that it was a very close match to the strain found in the patient, providing strong evidence of a link between I Cook Foods and the patient. Indeed this strain of *Listeria* with this particular genetic sequence has not been matched to any other isolates in Australia before or

¹⁸ Dr Angie Bone, Deputy Chief Health Officer, Department of Health, *Opening Statement to the Committee*, supplementary evidence received 2 September 2021, p. 4.

¹⁹ At the time of the investigation and closure of I Cook Foods in February 2019 Professor Sutton was Acting Chief Health Officer.

after this event, so there is really no other reasonable explanation that the source of the patient's infection was anything other than I Cook Foods.²⁰

2.6.1 Knox City Council's inspection at Knox Private Hospital

The Committee acknowledges that the decision to focus the investigation on I Cook Foods was based on the results of Listeria testing undertaken at food premises attended by Ms Painter. However, it believes that the decision to not request that an Environmental Health Officer inspect Knox Private Hospital until the end of the investigation period into I Cook Foods was a considerable shortcoming in the process.

Mr Ian Cook, Director of I Cook Foods, queried the decision to not investigate the hospital straight away. He believed that the hospital should have been investigated early on, especially given that it has its own food service and kitchen:

That is a very good question: why did they come directly to us? Why did they never inspect the hospital straightaway? It was known that the hospital had its own food service and produced its own products as well from ingredients it purchased in elsewhere. It seems very strange to me that they would home in on just us.²¹

Dr Angie Bone from the Department of Health explained that the request for Knox City Council to investigate the hospital on 21 February 2019 was done for 'completeness'. She told the Committee that:

[The Department] were focusing down on I Cook Foods because we were following the evidence, but we wanted to contact Knox city hospital to just also understand how they were handling I Cook Foods once it had arrived, because we wanted to ensure that they were not mishandling, for example, the food once it had arrived and we wanted to understand more about which patients received what foods. So that was really why we made contact with Knox City Council. We wanted to look at the food safety program and food safety audit as well for completeness there. That was the reason. But it was not something that we needed to do right at the very beginning. I know there was talk about this delay, and I think that was because there was confusion about whether this was a single case of gastroenteritis procedure or a listeriosis procedure.²²

Mr Ray Christy, a former Environmental Health Officer for Knox City Council, was the officer responsible for visiting the hospital and conducting a food safety assessment. At a public hearing, he explained the instructions Knox City Council received from the Department. He described the communication and instruction from the Department as follows:

- Mr Christy's coordinator received a phone call from the Food Safety Unit at the Department of Health.

²⁰ Professor Brett Sutton, Chief Health Officer, Department of Health, Public hearing, Melbourne, 2 September 2021, *Transcript of evidence*, p. 11.

²¹ Mr Ian Cook, Director, I Cook Foods, Public hearing, Melbourne, 25 August 2021, *Transcript of evidence*, p. 32.

²² Dr Angie Bone, Deputy Chief Health Officer, Department of Health, Public hearing, Melbourne, 2 September 2021, *Transcript of evidence*, p. 23.

- The coordinator was provided verbal instructions to:
 - inspect Knox Private Hospital’s kitchen
 - gather information on I Cook Foods
 - gather information on the hospital’s food processes and procedures.
- Mr Christy’s coordinator provided him a one-page handwritten document based on the phone conversation with the Department and instructed him to visit the hospital.²³

Mr Christy stated that neither he nor his coordinator received formal written instructions from the Department of Health. This meant that he and Knox City Council relied on notes taken from a phone conversation to undertake an inspection of Knox Private Hospital. The Committee has found that this led to considerable confusion about the scope and proper process for the investigation.

Food safety investigations can vary in process depending on the scope and type of issue being investigated. Variations can include which regulatory authority has jurisdiction, the process undertaken, and the information required to make a determination. Food safety issues can cause significant risks to public health, so investigations need to be conducted thoroughly and efficiently to identify the appropriate course of action needed to investigate and mitigate risks.

The Committee is concerned that communication breakdowns and a lack of formalised reporting processes led to confusion amongst officers involved in investigating the source of Listeria detected at Knox Private Hospital. This was reflected in the conflicting evidence the Committee received about what the appropriate investigation process is for Listeriosis.

The evidence provided by Mr Christy discussed the process involved for investigating cases of gastroenteritis which differs slightly from a Listeriosis investigation. Local councils have a responsibility to undertake or assist in investigating foodborne illnesses when it is detected in their jurisdiction. A council is responsible for undertaking investigations for single incidents and outbreaks of gastroenteritis, with the support of the Department of Health and other relevant agencies.²⁴

The Department of Health’s request for Knox City Council to undertake an inspection at Knox Private Hospital was solely related to the investigation into the source of the Listeria infection. Listeriosis investigations are coordinated by the Department of Health which may request assistance from local councils.²⁵

²³ Ray Christy, Public hearing, Melbourne, 25 August 2021, *Transcript of evidence*, p. 2.

²⁴ Department of Health and Human Services, *Guidelines for the investigation of gastroenteritis*.

²⁵ *Ibid.*, p. 19.

Mr Christy explained that for single incident gastroenteritis cases the Department of Health usually forwards a referral in writing for investigation to the relevant local council:

This is done on a specific prefilled referral form and is usually sent to the relevant council via email by the regional public health officer—in the case of Knox City Council, from the north-east Hume region based in Box Hill. The referral is usually sent to the council where the case lives, so the person who was diagnosed with the gastro. Communicable diseases prevention and control at the Department of Health will also occasionally contact council directly in relation to outbreaks in single-case gastro incidents.²⁶

Under the *Guidelines for the investigation of gastroenteritis* developed by the Department of Health, all cases of food or water borne illnesses are referred to the relevant local council for investigation.²⁷ The Committee notes that on 16 January 2019, Ms Jean Painter was diagnosed with gastroenteritis. However, Ms Painter’s case of gastroenteritis was never referred for investigation because a foodborne source was excluded.²⁸

Mr Christy believed that it was insufficient for the Department of Health to request an inspection from Knox City Council until four weeks after the Listeria notification. The time elapsed between the initial notification and the Council inspecting the hospital meant important evidence was no longer available, such as food samples or the patient’s four-day food history. He recommended to the Committee that the referral process could be improved so that local councils are asked to investigate in a more timely fashion after a food safety incident.²⁹

Mr Christy also told the Committee that the lack of detail from the Department was a barrier to his investigation:

I was given the impression at the time that she had died from listeriosis. I was also provided very limited information on the patient. The only information I had was her age and the date of the positive diagnosis for Listeria, being 25 January 2019. I did not have her name, address, treating doctor or any other identifying information that is usually provided if there was a regular formal referral, as I mentioned earlier. At the time I thought this was a bit unusual, knowing that the department of health and councils are permitted to collaborate and cooperate with each other while keeping sensitive information confidential. I found the lack of detail in the request an obstacle for a proper investigation, as this information assists in acquiring the necessary evidence for the preparation of a report to determine a cause of the gastroenteritis.³⁰

At a public hearing, Dr Bone explained that the information provided to local council differs between gastroenteritis and Listeriosis investigations:

²⁶ Ray Christy, *Transcript of evidence*, p. 2.

²⁷ Department of Health and Human Services, *Guidelines for the investigation of gastroenteritis*, p. 20.

²⁸ Dr Angie Bone, *Transcript of evidence*, p. 2.

²⁹ Ray Christy, *Transcript of evidence*, p. 4.

³⁰ *Ibid.*, p. 2.

Gastroenteritis cases are about 100 times more common—probably more—than listeriosis, and the investigation of a single gastroenteritis case is usually much more straightforward. There is a shorter incubation period for pathogens, and it is much easier to get a food history in that situation. As such, single cases of gastroenteritis are usually referred by the department to council to interview the patient in question and follow up any risk factors. In order to do that councils are provided with the case’s personal details. However, in cases of listeriosis, such as this one, the patient and their next of kin are interviewed by the department, and it would not be usual for us to pass details on to the council.³¹

In the Committee’s view, the Department of Health should have requested Knox City Council’s assistance with its investigation earlier in the process. The Council was not asked to inspect Knox Private Hospital until 21 February 2019. At this stage, the closure order was already being drafted and due to be issued the following day. This allowed no time for the findings of the Knox Private Hospital inspection to be properly considered by the Department. The findings of the Knox Report are discussed further in Section 2.8.2 below.

Further, the four-week time lapse between the initial notification of Listeria and the request for an inspection at the hospital meant some evidence was not available to Knox City Council and could not be considered in its findings. In particular, Knox City Council was unable to undertake any food sampling or obtain a four-day food history of Ms Painter. Given the significant public health risk Listeria can pose, it is important that investigations gather as much evidence as possible to allow for proper risk mitigation.

The Committee also found that poor communication protocols led to some confusion about the scope and focus of the investigation. In its first report, the Committee similarly noted a lack of clear processes in the Department of Health’s communications with the City of Greater Dandenong and I Cook Foods. The Committee believes this was also the case with Knox City Council.

The Committee reiterates a relevant Finding and Recommendation it made in the first report:

Finding 9: Robust and uniform communication processes are necessary in the area of food safety given the crucial and sometimes urgent need to protect public safety.

Recommendation 13: That the Food Act 1984 be amended to reflect the modernisation of communication and reporting to support the timely completion of reporting.

Source: Parliament of Victoria, Legislative Council Legal and Social Issues Committee, *Inquiry into the closure of I Cook Foods*, August 2020, pp. 28, 40.

³¹ Dr Angie Bone, *Transcript of evidence*, p. 12.

FINDING 1: The Department of Health did not immediately undertake any inspections, food sampling or environmental swabbing at Knox Private Hospital following the notification of a positive case of Listeria. These should have been requested as part of the initial assessment into the source of Listeria.

FINDING 2: The lack of written instructions provided by the Department of Health meant that Knox City Council was not sufficiently clear on the scope and focus of the investigation. This led to some confusion about the appropriate investigation process.

RECOMMENDATION 1: That the Department of Health modifies its request protocols for food safety investigations so that all investigating agencies are provided written instructions clearly outlining the scope, focus and process for investigating a food safety issue.

2.7 Investigation

Cases of notifiable diseases and microorganisms such as Listeriosis are always investigated by the Department of Health, regardless of relevant local council or regulatory authority.³² During the investigation of these diseases and microorganisms, the Department of Health may seek the assistance of the relevant local council's environmental health officers to:

- conduct food sampling
- conduct environmental site inspections
- undertake risk assessments of food businesses
- supervise cleaning operations.³³

2.7.1 Role of the Department of Health in Listeriosis investigations

The investigation of cases or outbreaks of Listeriosis are coordinated by the Department of Health, with assistance from local councils if required. As such there are no publicly available guidance documents describing the investigation process as there are for investigations handled by environmental health officers.³⁴

³² Department of Health and Human Services, *Guidelines for the investigation of gastroenteritis*, p. 15.

³³ Department of Health, *Protocol for the investigation of cases of Listeriosis*, 2017; Department of Health and Human Services, *Guidelines for the investigation of gastroenteritis*.

³⁴ As part of its statutory responsibility to promote the consistent application of the Food Act, the Department of Health publishes a range of guidance documents for use by Environmental Health Officers investigating possible breaches of the Food Act. For example, Department of Health, *The Guidelines for the investigation of gastroenteritis for Environmental Health Officers*, 2018, <<https://www2.health.vic.gov.au/about/publications/researchandreports/guidelines-for-investigation-gastroenteritis-for-environmental-health-officers>> accessed 5 September 2021.

However, the Committee received a copy of the Department's internal Listeriosis Protocol which outlined the process for investigating cases of Listeria. The Protocol provided an overview of investigation measures for Listeriosis. These include:

- interviewing the notifying doctor to obtain a medical history
- interviewing the patient or next of kin to obtain a food history or confirm any other details not provided by the notifying doctor
- if the case is a resident in an aged care facility or inpatient at hospital:
 - assessing if other residents or inpatients are showing symptoms of Listeriosis
 - reviewing the patient's food history to identify any high-risk foods for Listeriosis
 - if *Listeria monocytogenes* is detected in food prepared or served at the facility, the local council should supervise discarding of the food and a Listeriosis clean-up
- if high risk foods are identified, testing any available suspected foods from the implicated food premises and/or place of infection
- undertaking further sampling and/or environmental swabbing if *Listeria monocytogenes* is detected in a food sample
- liaising with environmental health officers from the premises' local government area to inspect implicated premises, including food businesses, patient's residence or aged-care facility (however, if the patient contracted Listeria in a healthcare facility the infection control consultant will generally undertake any inspection)
- assessing the possibility of common-source outbreaks if there is a cluster of cases
- if a food product or premises tests positive for Listeria, food may be recalled and/or the premises will be requested to undertake any necessary clean-up.³⁵

2.7.2 Role of local councils and environmental health officers

Under the Food Act, local councils are responsible for the day-to-day regulation of all food businesses that are located in their municipal district. This excludes those licensed by PrimeSafe (which regulates meat, poultry and seafood businesses) or Dairy Food Safety Victoria (which regulates dairy businesses).³⁶ For temporary or mobile food premises³⁷ and food vending machines, the registration authority is the local council of the municipal district where the principal premises of the food business is operating, rather than where the vending machine or mobile premises is located.³⁸

³⁵ Department of Health, *Protocol for the investigation of cases of Listeriosis*.

³⁶ Agriculture Victoria, *Victoria's Food Safety Regulatory Framework*, <<https://agriculture.vic.gov.au/biosecurity/food-safety/victorias-food-safety-regulatory-framework>> accessed 3 September 2021; *Food Act 1984* (Vic) s 35.

³⁷ For example, a food truck.

³⁸ *Food Act 1984* (Vic) s 35(2).

Under s 58A of the Food Act, local council staff may be delegated the following powers and discretions:

- the power to issue an order³⁹ (other than power to close a business,⁴⁰ preventing a business from handling food,⁴¹ or preventing a business from using specific equipment in relation to food preparation or sale⁴²)
- the power to classify food premises⁴³
- the power to register food businesses⁴⁴
- the power to cause legal proceedings to commence against an appropriate individual.⁴⁵

Local councils employ environmental health officers to undertake functions under the Food Act and monitor food safety. They are authorised to:

- enter a food premises at any time without permission
- request evidence that correct food safety training has been performed
- take samples for any area of a food premises
- issue infringement notices and fines.⁴⁶

Although the Department of Health promotes consistency in food regulation, each local council determines its own processes and resourcing levels for food regulatory activities. As such, approaches to food safety may vary from council to council.

This has led the Victorian Auditor-General's Office to propose a possible audit of food safety regulation in local government as part of its 2023–24 forward work plan. This audit proposes to examine the Department of Health and a select group of local councils to assess whether local councils are effectively fulfilling their legislated roles as food safety regulators.⁴⁷

The Committee believes this audit should be undertaken to clarify the roles of relevant authorities in food safety investigations and to analyse whether local councils are fulfilling their duties under the Food Act.

³⁹ Ibid., pt 3.

⁴⁰ Ibid., s 19 (3).

⁴¹ Ibid., s 19AA(4)a.

⁴² Ibid., s 19AA(4)b.

⁴³ Ibid., pt 3B.

⁴⁴ Ibid., pt 6.

⁴⁵ Ibid., s 46(5).

⁴⁶ Australian Institute of Food Safety, *Food Safety Laws & Legislation Victoria*, <<https://www.foodsafety.com.au/laws-requirements/location/victoria>> accessed 3 September 2021.

⁴⁷ Victorian Auditor-General's Office, *Food Safety regulation in local government*, <<https://www.audit.vic.gov.au/report/food-safety-regulation-local-government>> accessed 3 September 2021; Victorian Auditor-General's Office, *Annual Plan 2021–22*, <<https://www.audit.vic.gov.au/report/annual-plan-2021-22>> accessed 3 September 2021.

RECOMMENDATION 2: That the Victorian Auditor-General's Office undertakes the proposed audit of food safety regulation in local councils as part of its 2023–24 forward work plan. This audit should examine:

- the guidance resources, training and advice provided by the Department of Health to councils to promote the consistent administration of the *Food Act 1984* (Vic)
- whether the investigation of food safety incidents by local councils and the Department of Health is consistent, provides procedural fairness to food businesses and protects public safety and wellbeing
- whether local councils are consistently complying with their legislative responsibilities to support good food safety and public health outcomes.

2.8 Investigation into the source of *Listeria monocytogenes*

As discussed in the first report, the basis for focusing the investigation into I Cook Foods was due to *Listeria monocytogenes* strains detected in four food samples taken from the caterer which were 'possibly related' to the human sample. This is consistent with the requirements of the Public Health and Wellbeing Act, as discussed previously in Section 2.3.2.

Appendix C provides a detailed timeline of events for the entire investigation into I Cook Foods. It includes details about the inspections and actions undertaken by the Department of Health and the City of Greater Dandenong.

In its first report, the Committee found that the investigative process undertaken by the Department and City of Greater Dandenong did not serve I Cook Foods well and identified several areas where the food safety framework should be improved.

Regarding the Department of Health's handling of the I Cook Foods investigation, the first report found:

- a need for uniform processes for the early identification of health risks, particularly for *Listeria*
- that the regulatory framework for food safety management needed to be reviewed by the Victorian Government
- shortcomings in the Department of Health's notification processes which resulted in I Cook Foods clients being notified of the closure order before it was issued to the business
- that the Department of Health needed to update its processes for communication and reporting so that it is modernised and formalised.⁴⁸

⁴⁸ Parliament of Victoria, Legislative Council Legal and Social Issues Committee, *Inquiry into the closure of I Cook Foods Pty Ltd*, August 2020.

The Committee notes that the Department's investigation into the source of Listeria commenced on 29 January 2019. However, it was not until 18 February 2019 that the Department directed the City of Greater Dandenong to inspect the I Cook Foods premises due to the positive detection of Listeria in environmental swabs taken on 1 February 2019.

At a public hearing, Professor Sutton stated that the Department was informed that I Cook Foods prepared approximately 7,000 meals per week.⁴⁹ The Committee notes that I Cook Foods continued production up until the closure order was issued on 22 February 2019.

2.8.1 Treatment of I Cook Foods

The Committee heard concerns that the treatment of the I Cook Foods investigation differed from the Department of Health's handling of other Listeria investigations.

At a public hearing, Mr Ian Cook discussed a Listeria investigation undertaken around July 2021. He noted the Department handled it differently compared to the investigation into I Cook Foods. Mr Cook explained that the business was not issued a closure order despite being linked to the Listeriosis-related death of an elderly man.

At a public hearing on 25 August 2021, he discussed the differences in the Department of Health's approach to the recent investigation compared to his in 2019:

A total of five swabs tested positive for Listeria mono, with at least two different genome sequences. So what happened? Did Dr Brett Sutton do a press conference naming and destroying this business? Were 96 false charges laid against this business and its owner? Did the state government spend the next two years lying about this business? No, none of these things happened to the second business. Instead, the owner of this second business was recently contacted by their local environmental health officer and told, 'Case closed. No more investigation'. Now, the business did actually provide a meal to the elderly man that contained Listeria.

...

if you have a look at what happened in this most recent case that I outlined before for you, that is the way it should be handled. As your two other witnesses this morning have both told you: 24 hours, do a Listeria clean-down, everything is fine. You can do it over the weekend; you do not even need to shut someone.⁵⁰

When questioned about why the 2021 case was handled differently to the I Cook Foods investigation, Deputy Chief Health Officer Dr Angie Bone stated:

There was a different genetic sequence of the Listeria in the case to those isolates from the company, so that means that there was another source. The second thing is that

⁴⁹ Professor Brett Sutton, *Transcript of evidence*, p. 11.

⁵⁰ Mr Ian Cook, *Transcript of evidence*, pp. 31, 40.

whilst there were some minor shortcomings in this company, just like there always are, they were nothing to the scale of the shortcomings from I Cook Foods.⁵¹

The Committee does not have enough information about the circumstances of the investigation undertaken by the Department into the other case of Listeria to make any determinations. Furthermore, it believes that this issue is outside the scope and remit of this Inquiry. However, the Committee believes that it is incumbent on all relevant authorities to ensure that they are conducting food safety investigations in a fair and consistent manner.

2.8.2 The inspection at Knox Private Hospital

As stated in Section 2.6, the Department of Health requested that Knox City Council conduct an inspection and food safety assessment at Knox Private Hospital on 21 February 2019. This request was made over four weeks after the Department received the Listeria notification from the hospital and commenced its investigations. According to the Department's instructions, the purpose of the inspection was to:

- inspect Knox Private Hospital's kitchen and food safety processes
- gather information on the hospital's processes around receiving and handling food from I Cook Foods.

Mr Christy was the environmental health officer responsible for conducting the inspection on behalf of the Council. He attended Knox Private Hospital at 2.30 pm on 21 February 2019.

The Committee heard that no food sampling or environmental swabbing was taken from Knox Private Hospital in the immediate aftermath of the Listeria notification. Knox City Council's investigation—four weeks after the initial notification—was the first time the hospital was investigated by the Council in relation to Ms Painter's Listeriosis.

At a public hearing on 17 June 2020, Mr Cook noted the lack of sampling or swabbing at the hospital, stating:

Knox Private Hospital was not investigated, and there was no sampling or swabbing even though the hospital produces sandwiches for the patients in house with the same ingredients that I Cook Foods uses. Healthscope, who run the hospital, have written a letter to I Cook Foods stating categorically, and I quote:

... there is no evidence of what food products the patient ate at our client's facility, if any. It is also unclear at what location the patient may have consumed any food products which contained Listeria.⁵²

At a public hearing on 25 August 2021, Mr Cook reiterated he still did not understand the Department's decision not to inspect the hospital at the beginning of its

⁵¹ Dr Angie Bone, *Transcript of evidence*, p. 19.

⁵² Mr Ian Cook, Director, I Cook Foods, Public hearing, Melbourne, 17 June 2020, *Transcript of evidence*, p. 3.

investigation. In particular he noted that Knox Private Hospital has its own kitchen and food service.⁵³

Ms Sally Atkinson from the Department of Health explained that the Department did not request swabs or samples from Knox Private Hospital because it believed there was minimal risk of contamination. She said:

[the Department] had been indicated that the foods that were brought in from I Cook came in sealed, and so the risk of contamination at Knox Private was pretty minimal because they already came in presealed and ready to serve—things like that. So in a normal investigation where food is already sealed and just served straight to the patient, in this instance we then go straight to the manufacturer of the food because there has been no ability to cross contaminate or anything with that food at that time.⁵⁴

The Committee notes that on 26 February 2019—4 days after the closure order was issued—environmental samples were taken at Knox Private Hospital.

The Department of Health provided the Committee a table outlining the results of food sampling and environmental swabbing undertaken as part of its Listeriosis investigation. The table indicated that 14 environmental samples were taken from the hospital and results were received on 5 March 2019. No *Listeria* was detected in any of the environmental samples. Appendix H provides a copy of the table of results of food sampling and environmental swabbing.

At 10.34 am on 22 February 2019, Mr Christy emailed his report and findings to the Department of Health. On the same day, I Cook Foods was served with a closure order under the Food Act by City of Greater Dandenong officers. The closure order was signed by then Acting Chief Health Officer Professor Brett Sutton at 4.00 am on 21 February 2019.

The Knox Report⁵⁵ found that:

- Ms Jean Painter was on a soft diet during her stay at Knox Private Hospital
- sandwiches for soft diets are prepared in-house at Knox Private Hospital, not supplied by I Cook Foods
- soft diet desserts were prepared by other food providers, not I Cook Foods
- soft diet soups were prepared by I Cook Foods.⁵⁶

The findings of the Knox Report contradicted other evidence that Ms Painter consumed the ham and corned beef sandwiches supplied by I Cook Foods which were found to contain *Listeria monocytogenes*. The Committee sought to clarify this and if it compromised the findings of the first report.

⁵³ Mr Ian Cook, *Transcript of evidence*, p. 32.

⁵⁴ Ms Sally Atkinson, Department of Health, Public hearing, Melbourne, 2 September 2021, *Transcript of evidence*, p. 23.

⁵⁵ Knox City Council, *Emails provided by Knox City Council (Knox Report)*, supplementary evidence received 11 August 2021.

⁵⁶ *Ibid.*

The daughters of Ms Painter, Mrs Jo Woodstock and Ms Fiona Wharry, spoke to the Committee about what they witnessed during their mother's stay at Knox Private Hospital. Mrs Woodstock told the Committee she had observed her mother eating sandwiches up until her diagnosis with Listeria, after which she was placed on a soft diet:

From her admission date up until her deterioration on or about 24 January, she was conscious and ate normal hospital food, including sandwiches on several occasions, which she both enjoyed and on one occasion did not. As previously stated, her consumption of these sandwiches was witnessed by me, my sister Fiona and my eldest son, and at no stage between these dates was she placed on a soft-food diet. The soft-food diet did not commence until she had been diagnosed with Listeria, which was on or about 25 January. The diet was given because her state of consciousness became a thing of change from that date, and the fear of her choking became the driving force for this diet change.⁵⁷

The Department of Health acknowledged that the findings of the Knox Report contradicted advice they initially received from Knox Private Hospital. At a public hearing on 2 September 2021, Professor Sutton stated:

The information supplied by Mr Christy that the patient was on a soft diet contradicted the advice obtained by the department directly from a member of the infection control team at Knox Private Hospital with respect to that first admission after conferring with the ward's menu monitor, who confirmed the patient was on a full ward diet for the period 13 January to 23 January 2019. That is just prior to her being diagnosed with listeriosis. Even if the patient may have been on a soft diet for one or more days in that time, the overwhelming evidence of the presence of Listeria in I Cook Foods samples being so closely related to that from the patient would suggest that she had come into contact with food originating from I Cook Foods regardless of other potential diets during her days in hospital.⁵⁸

Dr Bone explained that the Department reached out to Knox Private Hospital directly to clarify the contradictions, she explained:

there was a suggestion of a soft diet and that some of the soft diet items were made in the hospital. When we followed that up we were told again that it was a full diet, and I had understood from the team—and that may be my misunderstanding—that it had also been discounted, that not only was she not on a soft diet but that the food was not supplied by the hospital.⁵⁹

The Committee notes that the Knox Report does confirm that Ms Painter was on a soft diet, however it does not specify any dates or timeframes. In the initial email to the Department sent at 10.34 am, the Report states that 'the patient in question was more than likely on the hospital's soft diet'.⁶⁰ This was confirmed by Mr Christy in an

⁵⁷ Mrs Jo Woodstock, Public hearing, Melbourne, 2 September 2021, *Transcript of evidence*, p. 2.

⁵⁸ Professor Brett Sutton, *Transcript of evidence*, p. 12.

⁵⁹ Dr Angie Bone, *Transcript of evidence*, p. 25.

⁶⁰ Knox City Council, *Emails provided by Knox City Council (Knox Report)*.

email sent to the Department at 12.42 pm following a second visit to the hospital at the request of the Department.⁶¹ The second visit occurred on 22 February 2019 after the closure order was issued to I Cook Foods.

During the Committee's initial investigations, it received a copy of an email from Healthcare Infection Control Management Resources, an Australian provider of infection prevention and control services. The email was sent to the Department of Health on 29 January 2019 and based on consultation with Knox Private Hospital indicated that:

- I Cook Foods was the sole food provider for Knox Private Hospital
- Ms Painter ate sandwiches and that I Cook Foods supplied the hospital's sandwiches
- any food that had a 'potentially high risk' for Listeria was provided by I Cook Foods.⁶²

On 31 January 2019, the Department of Health directed the City of Greater Dandenong to undertake environmental swabbing at the I Cook Foods premises. The Committee notes that Manningham City Council was also directed to undertake environmental swabbing at several locations, including:

- Aveo Domainé Retirement Village
- Turnstall Square Coles
- The Pines Woolworths
- Mirabella Bros grocer.

Appendix C provides a timeline of events.

The assertion that I Cook Foods was the sole caterer for Knox Private Hospital was contradicted in the Knox Report. As noted above, the Knox Report noted there were several companies which supplied food to Knox Private Hospital, in addition to I Cook Foods. This contradicted initial evidence from Department of Health officials who stated that I Cook Foods was the sole caterer for the hospital. Chapter 3 considers the implications of this contradiction and whether the Committee was misled.

No other food suppliers to Knox Private Hospital were investigated in relation to the Listeriosis investigation nor were any food samples taken from Knox Private Hospital. In the Committee's view, the investigation should have included an inspection of Knox Private Hospital by an environmental health officer at the time of the initial notification.

This would have ensured a more thorough approach to the investigation. It also would have allowed for additional precautionary measures—such as more extensive Listeria testing—to be undertaken to better protect public health risks and mitigate them more efficiently.

⁶¹ Ibid.

⁶² Department of Health, *Emails provided by the Department of Health*, supplementary evidence received 2 September 2021.

FINDING 3: Ms Painter was on a full ward diet between 13 and 23 January 2019 during the suspected incubation period and a soft diet after 25 January 2019. The Committee notes that prior to 25 January 2019, Ms Painter underwent some medical procedures which required fasting.

FINDING 4: I Cook Foods was not the sole food caterer to Knox Private Hospital as was asserted by Department of Health officials at a public hearing on 24 June 2020.

RECOMMENDATION 3: That the Department of Health amends its *Protocol for the investigation of cases of Listeriosis* so that food and environmental testing is automatically undertaken at the location where a case of Listeria has been detected in a healthcare setting or in other settings dealing with vulnerable cohorts.

2.8.3 City of Greater Dandenong's handling of its investigation into I Cook Foods

As explained in Section 2.7.2, the Department of Health is ultimately responsible for investigating cases of Listeriosis. Local councils, or other regulatory authorities, can be asked by the Department to assist in its investigation.

During the investigation into I Cook Foods, the Environmental Health Unit at the City of Greater Dandenong undertook several activities on direction of the Department, including:

- collecting food and environmental samples for testing
- conducting inspections at the I Cook Foods premises
- attending the I Cook Foods premises to verify if corrective actions were being taken on the advice as requested
- issuing the closure order to I Cook Foods.

A timeline of events outlining the inspections conducted by the City of Greater Dandenong at I Cook Foods is provided in Appendix C.

The Committee's first report examined the City of Greater Dandenong's handling of the I Cook Foods investigation in detail. It made a number of findings and recommendations to address the shortcomings identified.

Regarding the City of Greater Dandenong's approach to investigating I Cook Foods, the Committee found:

- inconsistent and ad hoc approaches to reporting, monitoring and following up of food safety matters
- inappropriate reporting practices and an absence of formal record keeping for inspections, incidents and findings

- the Council did not adequately fulfil its role as a responsible food safety regulator in respect to its management of I Cook Foods
- the Council did not ensure that prior food safety issues identified at I Cook Foods were properly addressed in line with food safety management processes and did not adequately communicate issues to the business as they arose
- the abrupt escalation of food safety issues identified at I Cook Foods indicated deficiencies in the process and access to procedural fairness.⁶³

In this report, the Committee does not re-address all the issues raised related to the City of Greater Dandenong's handling of the I Cook Foods investigation. Instead, it has focused on allegations of planted evidence and allegations of bullying and corruption.

The Committee has also examined the management of the conflict of interest arising from the Council's and the Department's commercial interest in rival food caterer Community Chef.

Allegations of planted, falsified and tampered evidence

Throughout the Committee's Inquiry, it has heard allegations that evidence used to support the closure order was planted, tampered with or falsified. In his initial evidence to the Committee, Mr Ian Cook alleged that a slug found at I Cook Foods during an inspection conducted on 18 February 2019 was planted. He accused Ms Elizabeth Garlick, the Environmental Health Officer from City of Greater Dandenong who found the slug, of planting it. During his first appearance before the Committee, Mr Cook alleged:

The slug was not the worst example of the damaging criminal behaviour which occurred, but it seems to have been the easiest for people to remember—so let us start there. For safety reasons, I Cook Foods has a number of security cameras around our premises. These cameras were filming when City of Greater Dandenong inspector Elizabeth Garlick first came to our business. It seems Inspector Garlick was not aware that these cameras were on or that they were recording. These cameras, including her own body camera, recorded Inspector Garlick repeatedly planting and falsifying evidence. In one part of the recording she can be seen walking into the back left-hand corner of the I Cook Foods premises and spending 17 seconds hunched in that corner. Throughout the day, video shows that that area had been walked through by various staff 64 different times. No-one saw a slug. After 17 seconds crouched in the corner, Inspector Garlick rose to her feet and declared that she had found a slug at I Cook Foods. If this was true, I would have been the first to admit this and apologise. But it was not true.⁶⁴

Following the tabling of the first report, Ms Kim Rogerson, a former Environmental Health Officer with the City of Greater Dandenong, also publicly accused Ms Garlick and other City of Greater Dandenong officers of planting the slug and tampering with other evidence.

⁶³ Parliament of Victoria, Legislative Council Legal and Social Issues Committee, *Inquiry into the closure of I Cook Foods Pty Ltd*, August 2020.

⁶⁴ Mr Ian Cook, *Transcript of evidence*, p. 2.

Ms Rogerson spoke to the Committee about her allegations and explained events she witnessed which led her to believe that evidence from the I Cook Foods investigation was tampered with. When asked if officers of the City of Greater Dandenong planted the slug at I Cook Foods, she responded 'Yes'.⁶⁵

In light of further allegations of planted evidence, the Committee again asked Ms Garlick whether she planted the slug, to which she responded 'No'.⁶⁶

Both Mr John Bennie, Chief Executive Officer and Ms Leanne Johnson, Coordinator of Public Health at the City of Greater Dandenong also denied that the slug was planted.⁶⁷

Ms Rogerson further alleged that Ms Garlick and Ms Johnson edited the photo of the slug so that a small piece of tissue purportedly in Ms Garlick's pocket was removed. She said:

In approximately mid-March to early April I was standing at my desk. The office is open plan to allow people to look across the entire floor. Garlick's desk was directly behind mine and only approximately 2 metres away. I heard Garlick and Johnson speaking softly behind me. This was unusual and appeared sneaky. I found this suspicious and began looking over at them. I heard Johnson say something along the lines of, 'Why is there a hold-up? Why is media and comms taking their time? Would you be able to do this?'. That was a question to Elizabeth Garlick. Garlick responded, 'Yes, I would'. Johnson said, 'Well, go and get it'. She was referring to a thumb drive. I saw Garlick's computer screen, which had the image of a slug on the concrete flooring. In the lower left-hand side of the image were the remains of a white tissue. However, I could clearly distinguish the slug, tissue and floor. The slug would have been approximately 2 centimetres in length and the tissue evidence approximately 4 to 5 millimetres in length. There was only one individual piece of tissue. I know this picture was taken by Garlick on approximately 18 February 2019 from an inspection she undertook of I Cook ... I The photo was open on her screen and I saw Garlick with a little red circle on the screen, which I believed to be some kind of cropping tool in the program. The red circle was around the tissue remnant like it was going to be removed from the picture. I asked Garlick and Johnson what they were doing. Johnson said, 'Just cleaning it up and removing personal conversations', which was the photos and video. I turned back to my desk and continued working.⁶⁸

In respect to the allegations that images were edited, both Ms Johnson and Ms Garlick denied this occurred in the manner proposed by Ms Rogerson.

At a public hearing, Mr Bennie also denied that the photo of a slug taken during an inspection at I Cook Foods was doctored. He stated:

⁶⁵ Ms Kim Rogerson, Public hearing, Melbourne, 25 August 2021, *Transcript of evidence*, p. 27.

⁶⁶ Ms Elizabeth Garlick, Environmental Health Officer, City of Greater Dandenong, Public hearing, Melbourne, 1 September 2021, *Transcript of evidence*, p. 19.

⁶⁷ Mr John Bennie, Chief Executive Officer, City of Greater Dandenong, Public hearing, Melbourne, 1 September 2021, *Transcript of evidence*, p. 2; Ms Leanne Johnson, Coordinator, Public Health, City of Greater Dandenong, Public hearing, Melbourne, 1 September 2021, *Transcript of evidence*, p. 14.

⁶⁸ Ms Kim Rogerson, *Transcript of evidence*, p. 26.

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.⁶⁹

Ms Rogerson also asserted that statements signed by her relating to the I Cook Foods investigation were actually written and edited by her superiors:

There were things I refused to have included in my statement, like the conversation at the meeting that I had with Ben that never took place. I never had a meeting with Ben Cook after I collected my samples. In the end I did sign a statement that others had contributed to, as I was scared I was going to be sacked and I felt I had no choice. Leanne knew of this, and she asked me to change some of the wording of that statement into my own words because Greg had written it in a different format.

...

So my statement was actually changed. There were four versions of it, and I have, I believe, three versions of it but I do not have the original first one. The Dandenong council would not give that to me after I left, so I only have the last three. As to whether the statements were changed because of influence from the CEO, I cannot answer that because the only people that had influence on my statement were Leanne Johnson and Greg Spicer at that time.⁷⁰

Mr Bennie denied that any statements were altered or that Ms Rogerson was asked to lie in any statement. He further noted that:

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.⁷¹

The allegations levelled against officials at the City of Greater Dandenong are very serious, amounting to claims of criminal conduct. As noted in the first report, the Committee is not in a position or equipped with the appropriate expertise to make any determinations regarding whether evidence has been planted, tampered with or falsified.

⁶⁹ Mr John Bennie, *Transcript of evidence*, p. 2.

⁷⁰ Ms Kim Rogerson, *Transcript of evidence*, pp. 17, 24.

⁷¹ Mr John Bennie, *Transcript of evidence*, p. 2.

The Committee believes that for allegations of this nature, Victoria Police or other integrity bodies are better placed to conduct an investigation. At the time of writing, Victoria Police was investigating potential corruption or criminal conduct connected to the events surrounding the closure of I Cook Foods.⁷²

FINDING 5: Inquiry stakeholders raised a number of serious allegations that could constitute criminal conduct or corruption. For allegations of this nature, Victoria Police are better placed to conduct an investigation.

FINDING 6: There is no specific guidance for environmental health officers on the use of body-worn cameras during inspections or guidelines for the use and retention of material captured.

RECOMMENDATION 4: That the Department of Health establishes a uniform protocol for relevant authorities for the use of body-worn cameras during food safety inspections, including provisions on how captured material is to be retained.

Allegations of corruption and bullying

The Committee has also heard accusations of serious systemic cultural issues at the City of Greater Dandenong, broader than that which occurred in relation to I Cook Foods. At a public hearing on 25 August 2021, Ms Rogerson told the Committee:

I have been away from the City of Greater Dandenong for over two years now, and only now do I feel safe to say that Dandenong council operates under a culture of corruption and bullying.⁷³

In its first report, the Committee noted that allegations of wrongdoing made by Ms Rogerson were referred to the Independent Broad-Based Anti-Corruption Commission (IBAC) on 9 May 2019. IBAC then referred the matter to the Victorian Ombudsman because the allegations did not fall within the meaning of a protected disclosure complaint.⁷⁴ The referral to the Victorian Ombudsman asked them to consider the following three concerns raised by Ms Rogerson:

- officers from the City of Greater Dandenong pressured Ms Rogerson to falsify statements to ‘frame’ I Cook Foods
- when Ms Rogerson refused to falsify her statements, she was taken off normal duties

⁷² Richard Willingham and Tim Callanan, ‘Victoria police to probe corruption claims over slug saga that closed catering company’, *ABC News*, 23 April 2021, <<https://www.abc.net.au/news/2021-04-23/victoria-police-probe-corruption-claims-over-slug-i-cook-foods/100089548>> accessed 17 September 2021.

⁷³ Ms Kim Rogerson, *Transcript of evidence*, p. 17.

⁷⁴ Parliament of Victoria, Legislative Council Legal and Social Issues Committee, *Inquiry into the closure of I Cook Foods Pty Ltd, August 2020*, p. 37.

- the council's Chief Executive Officer, Mr John Bennie, had a conflict of interest due to his board position with Community Chef.⁷⁵

As part of its initial investigations, the Committee was provided correspondence between the Ombudsman and Ms Rogerson. The correspondence stated that the Ombudsman did not proceed with an investigation due to a lack of substantial evidence.⁷⁶ The Committee found that:

Finding 15: The Ombudsman did not conduct an investigation into Ms Rogerson's allegations on the basis that there was insufficient evidence to do so. This does not mean the Ombudsman was satisfied there was no wrongdoing by the City of Greater Dandenong.

Source: Parliament of Victoria, Legislative Council Legal and Social Issues Committee, *Inquiry into the closure of I Cook Foods Pty Ltd*, August 2020, p. 38.

In her evidence to the Committee, Ms Rogerson also accused the City of Greater Dandenong of operating under a 'culture of corruption and bullying'. When describing her relationship with the City of Greater Dandenong, she told the Committee that:

My relationship at the time with Dandenong when this all came out in the open was tenuous, because there was some bullying, some definite gaslighting. There were conversations and things that I was told that were not very nice in nature, to the end of which, after I had completed an investigation they wanted me to do, they then took me off my work.⁷⁷

To support her accusations, Ms Rogerson accused the council of:

- exerting pressure on her to falsify statements
- in other instances, making other council officers alter statements
- falsifying, tampering and editing evidence.⁷⁸

In response to Ms Rogerson's allegations, Mr Bennie denied that there are systemic issues with corruption or bullying at the council. He refuted all the accusations by Ms Rogerson, both those generally and those specific to the I Cook Foods investigation:

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

⁷⁵ Ibid., p. 185.

⁷⁶ Ibid., p. 186.

⁷⁷ Ms Kim Rogerson, *Transcript of evidence*, p. 25.

⁷⁸ Ibid.

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.

...

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.⁷⁹

Mr Bennie also reiterated the outcome of the Ombudsman investigation. However, the Committee reaffirms that the Ombudsman's decision not to investigate the matter does not mean the Ombudsman was satisfied there was no wrongdoing.

The allegations levelled at the City of Greater Dandenong, both in relation to I Cook Foods and more broadly, are very serious in nature. However, as was the case in the first report, the Committee is not in a position to make any findings of wrongdoing against the Council or specific officers in relation to these allegations.

2.8.4 Managing conflicts of interest

During the Committee's initial investigations, it considered the issue of Mr Bennie's conflict of interest in issuing a closure order to I Cook Foods due to his involvement in rival food catering company Community Chef. The Committee was told that Mr Bennie's conflict of interest prevented him from signing the closure order. As a result, Professor Brett Sutton who was then Acting Chief Health Officer signed the order instead.

The Committee made the following Findings:

Finding 11: It is problematic for the chief executive officer of a local council to have conflicting interests within the same industry they are empowered to regulate.

Finding 12: While Community Chef did gain additional business following the closure of I Cook Foods Pty Ltd, the Committee could not determine if this was directly due to the position held by the Chief Executive Officer (CEO) of the City of Greater Dandenong on the Community Chef Board, or any untoward behaviour by the CEO or the City of Greater Dandenong, Community Chef or the Department of Health and Human Services.

Source: Parliament of Victoria, Legislative Council Legal and Social Issues Committee, *Inquiry into the closure of I Cook Foods Pty Ltd*, August 2020, pp. 33, 35.

⁷⁹ Ibid., pp. 2-3.

In reopening the Inquiry, the Committee received further evidence about how the City of Greater Dandenong and its officers handled the conflict of interest more broadly. At a public hearing on 1 September 2021, Mr Bennie told the Committee that Ms Leanne Johnson and Ms Elizabeth Garlick ‘knew next to nothing about Community Chef at the time they carried out their functions as environmental health officers’.⁸⁰

Mr Bennie also outlined what processes were in place to manage any actual or perceived conflicts of interest:

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.⁸¹

At the time of the Committee’s initial investigation, the Victorian Government had an in-principle agreement with all local councils with shares in Community Chef to acquire 100 per cent of their shares. The pending acquisition of Community Chef by the Victorian Government could be perceived as a conflict of interest in the closure of I Cook Foods.

At a public hearing on 2 September 2021, the Committee questioned representatives from the Department of Health on how it managed any potential conflicts arising from the Government’s interest in Community Chef throughout its investigation into I Cook Foods. Mr Greg Stenton, Deputy Secretary, Corporate Services at the Department of Health explained that the Department’s organisational structure separated its regulatory and policy and funding functions:

the organisation’s structure itself separates the regulatory functions of the department and the management of those from policy and funding decisions, so we have different divisions. There is a public health division which holds the regulatory functions. Policy decisions, particularly those around funding for Community Chef at the time, were in a separate division—an aged care branch in a separate division. The decision-making of those divisions in a policy sense, if we were taking a decision to provide funding to Community Chef or to acquire Community Chef, that would flow up through the management line to secretary or minister.

⁸⁰ Mr John Bennie, *Transcript of evidence*, p. 2.

⁸¹ *Ibid.*, p. 3.

The regulatory functions ... are statutory in nature and authorise [the Chief Health Officer] to take certain decisions and/or advise ministers and secretaries of risk-mitigation strategies, and they flow directly from the public health division.

So the two conversations never meet in terms of decision-making. They are separate and kept separate for that very reason—that the department is a funder of many services, some of which have regulatory intersections with public health.⁸²

Mr Stenton was also asked what type of relationship the office of the Chief Health Officer had with Community Chef, he responded:

None, other than in the same way that Community Chef as a commercial provider would be subject to food regulation rules and in the same way that I Cook have inspections from local government and where there is an issue such as this one would be subject to Chief Health Officer directions. Community Chef would be the same.⁸³

The Committee reiterates Recommendation 7 of the first report and calls on the Victorian Government to also review how departments manage any potential conflicts of interest between their regulatory and funding functions.

Recommendation 7: That the Government reviews the management of conflicts of interest where a local council is a shareholder in a business that it is authorised to regulate, and determines whether corresponding amendments to the *Food Act 1984* are required.

Source: Parliament of Victoria, Legislative Council Legal and Social Issues Committee, *Inquiry into the closure of I Cook Foods Pty Ltd*, August 2020, p. 33.

2.9 Closure of I Cook Foods

At 4.00 am on 22 February 2019, I Cook Foods was served a closure order signed by then Acting Chief Health Officer Professor Brett Sutton under his delegated authority under s 19 of the Food Act. The order stipulated that I Cook Foods was to immediately and temporarily cease production in order to rectify several food safety issues.

The order stipulated that I Cook Foods was required to meet several conditions before a revocation would be issued, including requirements to:

- destroy all short shelf-life or extended shelf-life food manufactured between 13 January 2019 to 22 February 2019
- provide the Food Safety Unit at the Department of Health with:
 - evidence to validate the clean down of the premises and equipment conducted on 20 February 2019 in line with Australian Standard 4.2.3—Guidelines for management of Listeria

⁸² Mr Greg Stenton, Deputy Secretary, Corporate Services, Department of Health, Public hearing, Melbourne, 2 September 2021, *Transcript of evidence*, p. 24.

⁸³ *Ibid.*

- a sampling plan in line with Australian Standard 4.2.3 and its application to the company's production processes
- evidence that the company has submitted all samples to an accredited laboratory for testing for the presence of *Listeria monocytogenes*
- evidence that any positive detections of *Listeria monocytogenes* isolates are sent to the Microbiological Diagnostic Unit Public Health Laboratory for genotyping
- a copy of an action plan on listeria management, including monitoring and relevant incorporations into the company's food safety program.

On 23 February 2019, the Acting Chief Health Officer signed a variation to the closure order requiring further steps to be undertaken by I Cook Foods. This sought to assist in enabling food products with a lower risk to recommence production and related to the production of all:

- extended shelf-life food products
- pasteurised food products
- texture modified products
- pasteurised formed food products
- modified atmospheric packaging food products.

The additional steps directed to be undertaken for each food type were to:

- have a food safety auditor conduct an initial gap audit within 72 hours of the variation order and provide written confirmation to the Department of Health's Food Safety Unit
- have a food safety auditor undertake a full food safety audit (post the initial gap audit) and provide written confirmation to the Food Safety Unit
- provide the Food Safety Unit with written confirmation that all staff and management of the company fully understand the revised production processes
- implement a microbiological test and hold program for each production batch before any product can be released
 - if *Listeria* was detected the product could not be released, an investigation was to be conducted and corrective actions taken
- provide written confirmation from an industrial cleaning service that a satisfactory clean and sanitisation process has occurred for the production line of each food product type.

As noted in the Committee's first report, the requirements under the closure order were routine measures that should have already been in place at I Cook Foods.⁸⁴

⁸⁴ Professor Brett Sutton, *Transcript of evidence*, p. 80.

A copy of the closure order and variation order are provided in the Committee's first report.⁸⁵

Section 19 of the Food Act provides that the Secretary of the Department of Health or a local council may make written orders relating to food premises. This includes directing that the food premises is cleaned and sanitised, or that specific steps are taken to ensure food handling is safe and sanitary if it is satisfied that:

- a food premises is unclean, unsanitary or in a state of disrepair
- food being prepared at a food premises is unsafe or unsuitable
- food is being handled at a food premises in a manner which makes it likely that the food is unsafe or unsuitable.

The Secretary of the Department of Health and local councils may also order that a food premises not keep, handle, or use food until it is cleaned and sanitised. This may involve the food business remaining closed until it has met the requirements of the order. A closure order may be made as part of a cleaning order or in a separate order, subsequent to an initial cleaning order.⁸⁶

An order takes effect as soon as it is provided to the proprietor of the food business and must be revoked when the Department or local council is satisfied that it has been complied with.⁸⁷

Local councils may also issue orders in relation to individual food handlers if they are satisfied that a person is contravening the Act. Part 3 s 19B of the Food Act provides that a local council may, by written order, direct a person employed by a food business to do the following:

- put themselves and their clothing into a clean and sanitary state
- improve their food handling skills
- cease handling food until they have been cleared by a medical practitioner of health conditions which may render their handling of food unsafe.⁸⁸

Any person aggrieved by an order may appeal to the Magistrates' Court within 21 days of an order having been made.⁸⁹

2.9.1 Delegated authority to issue a closure order

An ongoing point of contention amongst stakeholders was whether the Acting Chief Health Officer had the authority to issue a closure order under s 19 of the Food Act.

⁸⁵ Parliament of Victoria, Legislative Council Legal and Social Issues Committee, *Inquiry into the closure of I Cook Foods Pty Ltd*, August 2020, p. 49.

⁸⁶ *Food Act 1984 (Vic)* s 19(3).

⁸⁷ *Ibid.*, s 19(5)–(6).

⁸⁸ *Ibid.*, s 19B.

⁸⁹ *Ibid.*, s 19BA.

According to s 19 of the Food Act only a ‘relevant authority’ can issue a closure order to a food business. Prescribed relevant authorities under s 19 are:

- the Secretary of the Department of Health
- the local council which is the registration authority for the food business (the chief executive officer of the local council is listed specifically in s 19(9)(d))
- Dairy Food Safety Victoria and PrimeSafe for any premises where they are the licensing authority.⁹⁰

The lack of explicit authority for a Chief Health Officer under s 19(9) of the Food Act has led to some confusion about whether it was within the powers of the Acting Chief Health Officer to sign the closure order for I Cook Foods. At a public hearing on 17 June 2020, Mr Paul Brady, a former Detective Sergeant with Victoria Police who appeared alongside Mr Cook, believed that the:

[CHO] is also not a relevant authority. He has no power. He has acted without power. Under section 19(9) the only one that can close Mr Cook’s food place down is the CEO of Dandenong, the secretary of DHHS and the Dandenong council—only those three. It is a means definition; it is exhaustive. Mr Sutton has no authority to close down that premise.⁹¹

However, at the time the closure order was made the Acting Chief Health Officer had been authorised by the Secretary to issue orders under s 19 of the Food Act through delegation of powers under s 19 of the Public Health and Wellbeing Act.

Under the Public Health and Wellbeing Act, the Secretary of the Department of Health can delegate ‘any power, duty or function’ under any Act held by the Secretary to any person employed under the *Public Administration Act 2004* (Vic), including the Chief Health Officer. This includes delegation of powers under the Food Act, including to make closure orders under s 19.

Section 19 of the Public Health and Wellbeing Act prescribes that the Secretary may delegate ‘any power, duty or function of the Secretary under this or any other Act or under regulations ... other than this power of delegation’ to:

- any employee or class of employees employed subject to pt 3 of the Public Administration Act
- any public authority or chief executive officer of a public authority
- any council or officer of a council.⁹²

⁹⁰ Ibid., s 19(9).

⁹¹ Mr Paul Brady, former detective sergeant, Victoria Police, Public hearing, Melbourne, 17 June 2020, *Transcript of evidence*, p. 9.

⁹² *Public Health and Wellbeing Act 2008* (Vic), s 19.

This power enables the Secretary to delegate the power to ‘order’ a food business to undertake cleaning or close its operations under s 19 of the Food Act to the Chief Health Officer.⁹³

The Committee was provided a copy of the instrument of delegation signed by the Secretary which delegated s 19 powers under the Food Act to the Chief Health Officer. The instrument was signed on 6 May 2017 by then Department of Health and Human Services Secretary Kym Peake. It delegated a broad range of powers, functions and duties to the Chief Health Officer, including those prescribed in s 19 of the Food Act:

- the power to direct that premises be cleaned, or steps taken to ensure food is safe
- the power to direct the closure of food premises or restrict the purposes for which premises can be used
- the power to direct that a copy of an order be affixed to a premise, and/or published in a newspaper
- the duty to notify other registration authorities of an order made
- the duty to revoke an order if defects are remedied by the proprietor.⁹⁴

As noted in the instrument of delegation, these powers have also been delegated to several other persons who are not explicitly prescribed in s 19(9) of the Food Act.

The Chief Health Officer has also been delegated emergency powers under s 44 of the Food Act. However, these powers are rarely used:

The powers and functions of the [Chief Health Officer] CHO, as delegated by the Secretary, are many and varied and include emergency powers under s. 44 of the Act. These emergency powers exist to prevent or reduce the possibility of a serious danger to public health and include the power to issue an order to mandate a food recall.

The CHO’s powers are rarely invoked by the department as local councils, being the regulators of food premises in Victoria, have the regulatory role and powers to enforce the Act, such as premises closure, seizure and the authority to prosecute.⁹⁵

Under ss 189 and 190 of the Public Health and Wellbeing Act, the Chief Health Officer also has specific responsibilities in relation to risks to public health, which include outbreaks of foodborne illness. These powers include the closure of food businesses, requiring the provision of information and directing food business owners to take any action necessary to reduce the risk to public health.⁹⁶

The Committee was told that a local council is usually the relevant authority to issue a closure order for a food business. In addition, orders are typically signed by the council’s

⁹³ Kym Peake, *Food Act 1984: Instrument of delegation*, Department of Health and Human Services, 2017.

⁹⁴ Ibid.

⁹⁵ Department of Health, *Victorian food regulation system: our statutory role*, <<https://www2.health.vic.gov.au/public-health/food-safety/food-safety-laws-local-government-and-auditors/food-safety-laws-and-regulations/victorian-food-agencies/vic-food-regulation-system>> accessed 3 September 2021.

⁹⁶ Agriculture Victoria, *Victorian food regulators’ Memorandum of Understanding*.

Chief Executive Officer. However, due to Mr Bennie's conflict of interest arising from his board position on Community Chef, it was decided that it was more appropriate for the Acting Chief Health Officer to sign the order.

During his initial evidence to the Inquiry, Professor Brett Sutton who was Acting Chief Health Officer at the time explained the circumstances which led him to signing the closure order:

Under normal circumstances a closure order under section 19 of the Food Act would be issued by council as the regulator. On the evening of 21 February 2019 the Chief Executive Officer of the City of Greater Dandenong, Mr John Bennie, disclosed to me that he and council had a conflict of interest that prevented him from issuing the closure order. But in the interests of protecting vulnerable members of the community I therefore issued the order under the powers of the Food Act that have been delegated to me by the Secretary to the Department of Health and Human Services, an action permitted pursuant to section 19(9)(a) of the Food Act.⁹⁷

The Committee is satisfied that the Acting Chief Health Officer had the appropriate delegated authority to issue the closure order to I Cook Foods. The instrument of delegation signed by the Secretary of the Department of Health and Human Services on 6 May 2017 authorised the Chief Health Officer to exercise powers under s 19 of the Food Act as a relevant authority prescribed for under s 19(9)(a).

FINDING 7: Under the instrument of delegation signed by the Secretary of the Department of Health and Human Services in 2017, the Acting Chief Health Officer had the appropriate delegated authority to issue a closure order to I Cook Foods. The instrument authorised the Chief Health Officer to exercise powers under section 19 of the *Food Act 1984* (Vic).

2.9.2 Evidence relating to the closure order

As stated previously, a key reason the Committee resolved to reopen the Inquiry was to examine the Knox Report and how the Department of Health had considered that information in its investigations. The Committee sought to understand what relevance the findings of the Knox Report may have had on the closure of I Cook Foods, as well as question witnesses on why it was not raised during the Committee's initial investigations.

The Committee found that the Knox Report likely would not have affected the closure of I Cook Foods for two key reasons:

- The report, and all related emails, were received after the closure order was issued to I Cook Foods:
 - I Cook Foods was issued a closure order at 4.00 am on 22 February 2019; Mr Ray Christy began sending his findings to the Department of Health at

⁹⁷ Professor Brett Sutton, *Transcript of evidence*, p. 64.

around 10.30 am the same day. The Committee notes that the Department's request for the inspection occurred prior to the issuing of the closure order (see Appendix C for a detailed timeline of events).

- The decision to close I Cook Foods was not based solely on the Listeria infection detected at Knox Private Hospital but several food safety issues identified in the subsequent investigations, such as:
 - inadequate food handling and cleaning processes and practices
 - concerns about the food safety skills and knowledge of staff
 - damaged or deteriorated flooring and equipment
 - concerns about potential cross-contamination due to equipment not being cleaned thoroughly and the close proximity of cleaning and food preparation areas
 - water pooling on the floor in food preparation areas.

In his initial evidence to the Committee, Professor Sutton explained that he relied on the following four areas of information to determine if I Cook Foods should be issued a closure order:

- the investigation into the food eaten by Ms Jean Painter
- laboratory evidence of Listeria detected from food samples from I Cook Foods
- the condition of I Cook Foods premises and food safety processes
- general vulnerability of the community served by I Cook Foods.⁹⁸

Professor Sutton told the Committee that these four factors created a 'collective picture of public health risk' which led him to the decision to close I Cook Foods:

This information was provided to me by several authorised officers over a number of days and in different formats—verbal, oral, emailed—which led me to consider that the food being prepared, sold or otherwise handled at I Cook Foods was unsafe or unsuitable. No one single piece of information was used in isolation to come to that decision. Rather, it was the collective picture of public health risk that I believed I Cook Foods' continuing food production represented.⁹⁹

During his second appearance before the Committee on 2 September 2021, Professor Sutton discussed the Knox Report stating:

With respect to [the Knox report] I would like to address two primary points: firstly, these emails postdate the making of the closure order and were therefore clearly not something that I could have taken into account and obviously did not take into account in the making of the closure order; and secondly, even if these emails had been brought

⁹⁸ Ibid.

⁹⁹ Ibid.

to my attention at the time or shortly thereafter, they would not have changed my decision to issue the closure order.¹⁰⁰

The Committee notes that both Professor Sutton and Dr Angie Bone stated they were unaware of the specific contents of the Knox Report until after the Committee's first report had been tabled. This also contributed to the assertion from both witnesses in their initial evidence to the Inquiry that I Cook Foods was the sole caterer to Knox Private Hospital which contradicted the findings of the Knox Report. This issue is discussed further in Chapter 3.

However, Dr Bone was made aware of the Knox Report and its findings that Ms Painter was on a soft diet at some point during her hospital stay. In evidence to the Committee, she noted she was made aware of the emails on 22 February 2019 during an Incident Management Team meeting. Dr Bone summarised that these discussions led her and the team to believe that the Knox Report was not 'as credible' as the other information provided directly from Knox Private Hospital:

We discussed the Christy emails at our incident management team on 22 February, so the day after the very early morning when the closure order was issued. We considered them, but we also compared them with the other information that we had. We saw that he had said that it was more than likely first of all and then it was confirmed, but his information was not specific to the time period and did not say who had given him that information, and we had this whole host of other evidence from our discussions with the infection control nurse and from the discharge summary, all of which stated that the lady was on a full ward diet. And of course we had the information from the City of Greater Dandenong about concerns about food safety programs and practices, and we had the strongest evidence, which was the typing link and the genetic link between the Listeria in the case and the foods at I Cook Foods. So in the end we just decided that the information was not as credible as the other information that we had.¹⁰¹

Another issue raised during the Inquiry was the quality and breadth of evidence used to close I Cook Foods and whether it reached a sufficient standard to justify the closure. Mr Ray Christy, former Environmental Health Officer at Knox City Council, believed that before any serious actions are taken against a food business, an officer needs to prove 'beyond a reasonable doubt' that there is a risk. He told the Committee:

I can tell you now that when an environmental health officer investigates these types of matters, we must be absolutely certain and prove beyond a reasonable doubt before taking any serious action against the food business that there is evidence to actually confirm that that risk is present, and an appropriate course of action should be taken. In my experience as an environmental health officer, you would need several criteria and elements to be ticked off before you would be satisfied that you have a reasonable belief or belief beyond a reasonable doubt that that particular food business and that particular food has caused an illness in a person. What I am saying is that you cannot just rely on genome sequencing of the Listeria monocytogenes pathogen. An

¹⁰⁰ Professor Brett Sutton, *Transcript of evidence*, p. 10.

¹⁰¹ Dr Angie Bone, *Transcript of evidence*, p. 13.

officer would need to rely on evidence to suggest that the person actually ate the food allegedly given by that particular food company or food supplier. That is why I emphasised in my statement that you need a four-day food history and you need food samples and even environmental swabbing to further build your case of evidence, so you can prove it beyond a reasonable doubt. You cannot just have each individual criterion for obtaining evidence to paint an entire picture.¹⁰²

However, the Department of Health explained that a closure order does not need to rely on evidence that proves beyond reasonable doubt that a food business or its practices may cause risks to the public. Rather, the Public Health and Wellbeing Act requires that relevant authorities uphold the 'precautionary principle' which prescribes that 'full scientific certainty' is not a reason to delay public health measures where a risk poses a serious threat. Box 2.2 below outlines the precautionary principle.

BOX 2.2: Precautionary principle

If a public health risk poses a serious threat, lack of full scientific certainty should not be used as a reason for postponing measures to prevent or control the public health risk.

Source: *Public Health and Wellbeing Act 2008* (Vic) s 6.

When asked to explain what role the precautionary principle played in the decision to close I Cook Foods, Professor Sutton explained:

Obviously the lack of scientific certainty is one of those considerations against the potential severity of the public health risk. That includes the potential number of people who might be affected and indeed their risk of developing serious illness. And so those two factors were both at play here. There were 7000 meals produced and, as I said earlier, the overwhelming majority of those populations— patients in hospital, Meals on Wheels recipients and those in aged care settings—are particularly vulnerable to severe illness and a higher risk of dying, a higher risk of invasive listeriosis. And so it is the combination of those things that means that you should take action, because if you wait, for example, for a cluster of cases, then there might be several thousand individuals who have already been exposed to *Listeria* and their incubation period is yet to play out, and you cannot intervene to, for example, prevent them from becoming unwell if they have already consumed that food and if the incubation period is already playing through.¹⁰³

The Committee acknowledges that if the Department had received findings relating to Ms Painter's soft diet in the Knox Report before the closure order was issued, it would not have affected the decision to issue the order. This is because the Department of Health relied on several pieces of evidence and information in deciding to issue a closure order to I Cook Foods, not just the evidence related to the *Listeria* infection at Knox Private Hospital.

¹⁰² Ray Christy, *Transcript of evidence*, p. 7.

¹⁰³ Professor Brett Sutton, *Transcript of evidence*, p. 20.

The Committee heard evidence from Ms Jenny Mikakos, who was the Victorian Minister of Health at the time of the closure of I Cook Foods. She gave her view on the Department's decision to issue a closure order:

There are essentially two trains of evidence or allegations that have been made. One is about whether the decision was validly made, and then the other issue is around whether it was made for a proper purpose. And I have expressed an opinion around my view that I have no information to suggest that the decision was made for an improper purpose. I do not believe I can express a view around whether it was validly made if these facts are in contention now, and I think that is for the department to respond to those particular questions.¹⁰⁴

The Committee believes that the closure order signed by the Acting Chief Health Officer was made for proper purpose and issued validly. It reiterates Finding 1 from the first report:

Finding 1: The Closure Order, signed by the Acting Chief Health Officer, issued pursuant to section 19 of the *Food Act 1984* was prepared and served on valid grounds and for a proper purpose.

Source: Parliament of Victoria, Legislative Council Legal and Social Issues Committee, *Inquiry into the closure of I Cook Foods Pty Ltd*, August 2020, p. 14.

However, by not requesting Knox City Council to investigate the Listeria case at the hospital until 21 February 2019 the Department of Health did not give proper opportunity for any findings to be considered in the investigation. The Committee notes that during its initial evidence the Department of Health emphasised the need to make rapid decisions where there is a strong belief that public health is at risk.¹⁰⁵ However, given the personal and financial implications of closing a business, even temporarily, it is imperative to ensure a thorough investigation is undertaken.

In the Committee's view, the Department of Health should have requested that Knox City Council investigate the case of Listeria at Knox Private Hospital during the beginning of the investigation. This would have ensured that the Department had as much evidence as possible to inform its decision. It would also have made the Department aware that there were other food suppliers to Knox Private Hospital.

The Committee acknowledges the Department's assertion that the findings of the Knox Report would not have changed its decision. However, the Committee believes the findings would have provided a more complete picture for the investigation and better identified potential areas of risk to investigate sooner.

As noted in the first report, I Cook Foods was not provided a copy of the report which outlined the evidence supporting its closure. The first report discussed in detail the lack

¹⁰⁴ Ms Jenny Mikakos, individual capacity, public hearing, Melbourne, 2 September 2021, *Transcript of evidence*, pp. 32–33.

¹⁰⁵ Dr Angie Bone, Deputy Chief Health Officer, Department of Health and Human Services, Public hearing, Melbourne, 24 June 2020, *Transcript of evidence*, p. 87.

of formalised reporting requirements for investigations that may lead to a closure order. The Committee recommended that:

Recommendation 11: That the *Food Act 1984* be amended to consolidate reporting requirements to formalise an investigation that leads to the closure of a premises.

Source: Parliament of Victoria, Legislative Council Legal and Social Issues Committee, *Inquiry into the closure of I Cook Foods*, August 2020, p. 40.

The Committee reiterates the need for better reporting processes in investigations that may lead to a closure order. Further, it believes that an evidence report should be provided to a food proprietor where a closure order has been issued. This would provide greater transparency around the process used by relevant authorities when issuing food safety orders and provide more context to the closure and related requirements.

FINDING 8: The findings of Knox City Council’s investigation into the Listeria infection and food safety processes and procedures at Knox Private Hospital did not affect the Department of Health’s decision to close I Cook Foods because:

- the findings were not received until after the closure order was issued to I Cook Foods
- the decision to close I Cook Foods was not solely based on the Listeria infection at Knox Private Hospital.

FINDING 9: A relevant authority with powers under the *Food Act 1984* (Vic) to close a food business is required to follow the ‘precautionary principle’ when a serious public health risk has been identified. Whilst the principle prescribes that scientific certainty is not necessary, a relevant authority should take every step practicable to ensure the evidence shows clear indication of serious risk before a closure order is issued.

FINDING 10: The Department of Health’s decision to not request that Knox City Council investigate the Listeria infection at Knox Private Hospital until 21 February 2019 meant the Council’s findings could not support the broader investigation or inform the decision on whether closing I Cook Foods was necessary.

RECOMMENDATION 5: That the Victorian Government introduces amendments to the *Food Act 1984* (Vic) to require a relevant authority to provide an evidence report to a food business when it issues a closure order. The preparation of any evidence report should keep in mind the need to respond quickly to any potential public health risks.

3

Contradictions in evidence provided to the Committee

3.1 Overview

The Committee resolved to re-establish the Inquiry after becoming aware of information provided by Mr Ray Christy¹ on behalf of Knox City Council to the Department of Health on 22 February 2019. The content of Mr Christy's emails (referred to as the 'Knox Report') concerned the Committee as it contradicted key evidence provided by the Department of Health at public hearings.

Parliamentary committees rely on the integrity of the evidence presented to them. If the validity of the evidence is brought into question, the value of the inquiry process is compromised. Misleading evidence, whether intentional or not, has the potential to undermine the findings and recommendations of the Committee.

During the Committee's investigation into the contradictory evidence, representatives from the Department of Health made statements to clarify and corrected their initial statements. These are discussed in the Sections below.

The Committee considers that omitted and incomplete evidence provided by representatives of the Department of Health during its initial investigations was misleading and led to confusion about key processes that were investigated. However, the Committee does not have sufficient reason to believe it has been deliberately misled or provided with false evidence.

In addition, the Committee does not consider that the actions of the Departmental representatives constitute a possible contempt of Parliament.

However, the Committee is of the opinion that witnesses should be transparent and forthcoming with information deemed relevant to an inquiry. Further, when a witness has provided evidence to a Committee and later learns they have been incorrect in their understanding, they should undertake to correct the record as a matter of priority.

In investigating potentially misleading evidence, it is for the Committee to decide what matters it considers, whether it has been misled and any further actions it may take or recommend. During the Inquiry there were allegations of misleading statements made by witnesses against other witnesses and in relation to evidence provided to the Committee. In this report, the Committee has only considered matters that it determined may have mislead its investigations. Although the Committee acknowledges these other allegations, it does not consider that a parliamentary inquiry is the appropriate forum for consideration or determination on those matters.

¹ At the time the emails were sent, Mr Christy was an Environmental Health Officer at Knox City Council.

3.2 Key matters examined

The Committee examined four key matters to determine whether representatives of the Department of Health had provided misleading evidence to the Inquiry:

- the omission of the Knox Report during the Inquiry's initial investigations
- incomplete information relating to Ms Jean Painter's diet while at Knox Private Hospital
- assertions that I Cook Foods was the 'sole caterer' to Knox Private Hospital
- incomplete evidence relating to other suppliers investigated as part of the Listeria investigation.

3.2.1 Omission of findings of the 'Knox Report'

The Committee resolved to reopen the Inquiry as it was concerned that the findings of the Knox Report as described in the media contradicted evidence provided at public hearings. In particular, the evidence provided by Chief Health Officer Professor Brett Sutton and Deputy Chief Health Officer Dr Angie Bone from the Department of Health.

The Committee was not informed during its initial investigations of information provided to the Department of Health on 22 February 2019 by Mr Christy on behalf of Knox City Council. In August 2021, the Committee summonsed a copy of the information Mr Christy provided to the Department of Health. Knox City Council complied with the summons, and the documents are published in Appendix E.

The Knox Report outlined:

- Ms Painter was on a soft diet whilst at Knox Private Hospital
- all sandwiches provided to patients on a soft food diet were made by hospital staff in the hospital kitchen
- there were six other commercial suppliers that provided food to Knox Private Hospital.²

In his evidence, Mr Christy told the Committee that Knox City Council was directed by the Department of Health to gather additional information relating to:

- Ms Painter's diet
- the hospital's food handling practices and processes for receiving meals from I Cook Foods.³

² Ray Christy, Public hearing, Melbourne, 25 August 2021, *Transcript of evidence*, p. 2; Knox City Council, *Emails provided by Knox City Council (Knox Report)*, supplementary evidence received 11 August 2021.

³ Ray Christy, *Transcript of evidence*, p. 2.

The Committee was aware that Knox City Council was involved in the investigation into the source of *Listeria* and that environmental sampling was undertaken at Knox Private Hospital.⁴ However, further information relating to the timing or purpose of its involvement was not sought by the Committee as it was not informed of the issues raised in the Knox Report.

During initial evidence, the Department of Health provided general information about its investigation into the detected case of Listeriosis following the death of Ms Painter. The information noted the involvement of Knox City Council and that environmental testing had taken place at Knox Private Hospital in March 2019.

Professor Sutton told the Committee that Ms Painter's food history was provided by her treating doctor and next of kin, as Ms Painter was too unwell to be interviewed.⁵ He also stated that the food she consumed while admitted to Knox Private Hospital was provided by I Cook Foods.⁶ This led to the Department of Health's Incident Management Team focusing its investigation on I Cook Foods.⁷

At this stage of the investigation, the Department did investigate a number of other potential sources of *Listeria* (as listed in Appendix H). However, environmental swabs of some sandwiches prepared by I Cook Foods returned a positive detection of *Listeria monocytogenes* that were possibly related⁸ to the strain detected in Ms Painter's blood culture test. This led the Department to believe its focus was in the right place.⁹

Addressing the omission of the Knox Report in evidence provided previously, Professor Sutton stated that at the time Mr Christy's emails 'were considered and appropriately addressed by the relevant teams and therefore were never escalated to me'.¹⁰ He also stated that he had only become aware of the emails 'very recently'.¹¹

Dr Angie Bone noted that she was aware of the Knox Report on 22 February 2019, after the closure order was served on I Cook Foods. She stated that at a Departmental Incident Management meeting, the Food Safety Team raised the emails. However, the information provided from Knox Private Hospital was considered more credible as the Infection Control Nurse confirmed that Ms Painter was on a full ward diet.¹²

4 Professor Brett Sutton, Chief Health Officer, Department of Health and Human Services, Public hearing, Melbourne, 24 June 2020, *Transcript of evidence*, p. 65.

5 Ibid., p. 64.

6 Ibid.

7 Ibid., p. 65.

8 Professor Ben Howden, Director, Microbiological Diagnostic Unit Public Health Laboratory, Public hearing, Melbourne, 24 June 2020, *Transcript of evidence*, p. 42.

9 Dr Angie Bone, Deputy Chief Health Officer, Department of Health, Public hearing, Melbourne, 2 September 2021, *Transcript of evidence*, p. 16.

10 Professor Brett Sutton, Chief Health Officer, Department of Health, Public hearing, Melbourne, 2 September 2021, *Transcript of evidence*, p. 11.

11 Ibid., p. 13.

12 Dr Angie Bone, Deputy Chief Health Officer, Department of Health, *Opening Statement to the Committee*, supplementary evidence received 2 September 2021, pp. 4-5.

As discussed in Chapter 2, the Committee determined that information regarding Ms Painter being placed on a soft diet following her Listeriosis diagnosis had no bearing on the closure order served on I Cook Foods. As such, the Committee does not believe Chief Health Officer Professor Brett Sutton or the Department of Health deliberately obstructed or impeded the Committee's functions.

However, the Committee believes that the Department of Health should have been more transparent with information relating to the broader investigation into the source of Listeria. The failure to do so required the re-opening of the Inquiry to clarify these matters to maintain the integrity of the Committee's work.

FINDING 11: The Department of Health's omission of providing emails from Knox City Council regarding Ms Painter's diet during her time at Knox Private Hospital led to contradictions and confusion which instigated the re-opening of the Inquiry.

3.2.2 Ms Painter's diet during her time at Knox Private Hospital

During the Inquiry's initial investigations, the Committee was informed that Ms Painter was on a 'full ward diet' throughout her admission to Knox Private Hospital. This evidence was provided at a public hearing by Professor Brett Sutton and in email correspondence provided by the Department of Health (see Appendix F).¹³

As discussed previously, this was contradicted by the findings of the Knox Report which noted Ms Painter was on a soft diet.

In his initial evidence to the Committee, Professor Sutton explained that upon notification of the case of Listeria, a four-week food history was collated through conversations with Ms Painter's attending doctor, her next of kin and Knox Private Hospital's diet monitors.¹⁴ The timeline of events provided by the Department showed that this information was gathered in January 2019.¹⁵ This led to the identification of I Cook Foods as a potential source of further investigation.

At a public hearing, Mr Ray Christy detailed his inspections of Knox Private Hospital on 21 and 22 February 2019. Mr Christy noted that he spoke with three staff members, including a diet monitor who was familiar with Ms Painter's dietary preferences. He stated that they indicated Ms Painter was 'likely' on a soft food diet.¹⁶

The discrepancy in evidence was addressed by Ms Painter's two daughters, Mrs Jo Woodstock and Ms Fiona Wharry, at a public hearing. Mrs Woodstock stated she observed that Ms Painter was on a full ward diet when first admitted to Knox Private Hospital. However, she stated Ms Painter was placed on a soft diet after she was

¹³ Department of Health, *Emails provided by the Department of Health*, supplementary evidence received 2 September 2021.

¹⁴ Professor Brett Sutton, *Transcript of evidence*, p. 21.

¹⁵ Dr Angie Bone, *Opening Statement to the Committee*, pp. 2-3.

¹⁶ Ray Christy, *Transcript of evidence*, p. 2.

diagnosed with Listeria after her readmission to Knox Private Hospital following her condition deteriorating.¹⁷

The Committee also raised the contradictory evidence with Department of Health representatives.

Professor Sutton clarified the confusion surrounding the status of Ms Painter's diet, stating that it stemmed from her readmission to Knox Private Hospital on 23 January 2019. He highlighted that her condition requiring a soft diet was likely due to the beginning of meningoencephalitis:

The soft diet, as you have heard from Mrs Painter's next of kin, related to a subsequent readmission out of rehab, which was after her illness and was likely related to her confusion because of the beginning of her meningoencephalitis and a risk of aspiration should she be on a normal diet.¹⁸

The Department of Health provided evidence to the Committee to support its reasoning for only referring to Ms Painter as being on a full ward diet when first admitted to Knox Private Hospital. Further, the Department of Health clarified the confusion surrounding the status of Ms Painter's diet at a public hearing and explained its reasons for relying on the evidence it initially provided to the Committee.

3.2.3 **Assertions that I Cook Foods was the 'sole caterer' of Knox Private Hospital**

During the Inquiry's initial public hearings, I Cook Foods was referred to as the 'sole caterer' of foods to Knox Private Hospital. This was contradicted by information contained within the Knox Report sent to the Department of Health after the closure order was served on I Cook Foods.

Information provided in the Knox Report indicated there were six other food suppliers to Knox Private Hospital, not just I Cook Foods. The other suppliers were:

- Bidfood Australia (ham, cheese and margarines)
- S.A.J (vegetables and salad mix)
- Redi Milk (milk, cream and custard)
- Juice & Co (juices)
- GWF Tip Top Bakeries (bread)
- Mr Donut (tiramisu cakes).¹⁹

¹⁷ Mrs Jo Woodstock, Public hearing, Melbourne, 2 September 2021, *Transcript of evidence*, p. 2.

¹⁸ Professor Brett Sutton, *Transcript of evidence*, p. 27.

¹⁹ Ray Christy, *Transcript of evidence*, pp. 2-3.

At a public hearing held on 2 September 2021, Professor Sutton made a statement addressing the contradictory evidence provided to the Committee. He stated that at the time of his initial evidence, it was his understanding that I Cook Foods was the sole caterer, however he had since been corrected:

I would like at this juncture to point out that when I previously addressed the inquiry, I erroneously referred to I Cook being Knox Private Hospital's sole caterer. This is what was initially understood and had been told to me. I have since been informed that subsequent information provided by Mr Christy indicated that this was incorrect, and I do apologise for any confusion caused. Of relevance, items identified in the food history as being consumed by the patient while in hospital were sandwiches, and it was known that I Cook Foods provided the hospital with sandwiches for those on a full ward diet as well as providing a range of other foods. For the purposes of this investigation, nothing turned on whether I Cook Foods was or was not the sole caterer for the hospital.²⁰

The Committee also asked Deputy Chief Health Officer Dr Angie Bone why she did not correct Professor Sutton at the initial hearing when referring to I Cook Foods as the 'sole caterer'. Dr Bone informed the Committee that upon the re-opening of this Inquiry and the focus surrounding the Knox Report, she reflected on her notes. She stated and was reminded that the emails in question were raised during an incident management meeting and that she had not been provided a copy of the emails:

It was raised at the IMT, but I did not receive an email that said it was confirmed. That was sent to the staff, not me. I did not see that email. What was raised at the incident management team was that there was a suggestion. The incident management team was at 1.00 pm. The confirmatory email arrived at 12.41 pm. I am not even sure it had been read at that point, but regardless, what was raised was that there was a suggestion of a soft diet and that some of the soft diet items were made in the hospital. When we followed that up we were told again that it was a full diet, and I had understood from the team—and that may be my misunderstanding—that it had also been discounted, that not only was she not on a soft diet but that the food was not supplied by the hospital. So when we came to prepare statements last time, my own understanding had been that it had been concluded that they were the sole caterer. So when all of these emails were raised, having gone through back through all of the records and my own notes, I was reminded of this situation, and that is all that that situation was.²¹

In the Committee's view, the initial evidence provided by Professor Sutton and Dr Bone was misleading, regardless of whether it was done inadvertently or not. However, there is insufficient basis to believe that Professor Sutton or Dr Bone deliberately misled the Committee.

In addition, when placed in context to the broader Listeriosis investigation undertaken by the Department of Health the Committee believes that the incorrect reference did not materially affect the key findings and recommendations in the first report. Accordingly, the Committee does not seek to take further action.

²⁰ Professor Brett Sutton, *Transcript of evidence*, p. 11.

²¹ Dr Angie Bone, *Transcript of evidence*, p. 25.

The Committee emphasises that when a witness is made aware that information they have provided to an inquiry is incorrect, it is imperative they inform the committee as a matter of priority. Delays in providing clarifications or corrections to information has the potential to undermine the integrity of an inquiry and the work of parliamentary committees.

FINDING 12: Evidence provided to the Committee indicates that officers of the Department of Health did not adequately communicate key evidence in relation to the investigation into the source of Listeria to Dr Angie Bone.

FINDING 13: The assertion by representatives of the Department of Health that I Cook Foods was the 'sole caterer' of Knox Private Hospital was wrong. Representatives of the Department of Health provided an explanation to correct the misleading information.

3.2.4 The extent of Listeria testing for all potential sources

The Committee held concerns about a statement Professor Sutton made during his initial evidence that indicated that all potential sources of food were investigated for the presence of Listeria.²² New evidence provided to the Committee made it unclear whether testing was undertaken at the additional six suppliers of Knox Private Hospital to rule out whether they were the source of the Listeria.

The Committee questioned Professor Sutton on why the other suppliers were not investigated, despite them potentially providing food which may have been served to Ms Painter when she was on a soft food diet. He stated that this was due to the fact Ms Painter had already been diagnosed with Listeria and was presenting with symptoms before being provided with food items off the soft food menu:

we were following up a large number of different potential leads—so not only investigating I Cook Foods but also all of the food that the patient had eaten, that we understood they had eaten, and their suppliers. So the swabs were taken on 1 February.²³

Dr Bone provided the Committee with an overview of how the Department of Health undertakes Listeriosis investigations. She explained that the Department only investigates suppliers of high-risk foods for Listeria. Further, Dr Bone highlighted that the Department of Health was directly informed by Knox Private Hospital that any high-risk foods for Listeria were supplied by I Cook Foods:

I think it is important to know that we only investigate suppliers of high-risk foods for Listeria, just to try and focus our investigations. So the information that we were being provided by Knox Private Hospital through their infection control team, which is our normal procedure, was that any high-risk foods for Listeria were provided by I Cook

²² Professor Brett Sutton, *Transcript of evidence*, p. 82.

²³ *Ibid.*, p. 70.

[Foods], so that is why our attention went to I Cook [Foods]. It does not mean that that was our exclusive focus. As you have heard, we were investigating other areas. But we followed the evidence, and eventually the focus became clearer and clearer that I Cook [Foods] had to be the focus of our investigation because of everything that we were finding. I hope that answers your question.²⁴

While this explained the initial omission of suppliers being investigated, the Committee sought further clarification on why other high-risk suppliers were not investigated by the Department of Health. Dr Bone acknowledged there were other high-risk suppliers the Department were not initially aware of. However, she noted that by the time the Department had identified the suppliers, I Cook Foods had received positive test results for a type of Listeria that was considered to be genetically related.²⁵ As a result, the Department did not undertake testing of the other external suppliers to Knox Private Hospital. Dr Bone explained the Department's reasoning for this at a public hearing, she said:

Yes, it is correct that there were some other high-risk suppliers, but we only heard about those on 22 February after the closure order, and by then we had such a clear focus on concerns about an ongoing risk to public health that we focused on that as opposed to looking at those other suppliers. I think it is worth also noting that there were no further cases of Listeria after that point and there have been no further cases ever since with that particular genetic type. I think our focus was in the right place in I Cook.²⁶

In the Committee's view, the Department of Health did not clearly convey in its initial evidence the scope of testing undertaken as part of its Listeriosis investigation. This failure led to confusion as to why I Cook Foods was the only external supplier investigated.

This misinformation undermined the integrity of the Inquiry and required the Committee to re-open the matter in order to clarify the evidence provided. The Committee understands that the information the Department provided on 2 September 2021 was factually correct, however it is only clear when placed in context with the process of Listeriosis outbreak investigations.

Nonetheless, the Committee does not have sufficient reason to believe the initial evidence was omitted for the purpose of misleading or impeding the core functions of the Committee.

FINDING 14: In evidence initially provided to the Inquiry, Chief Health Officer Professor Brett Sutton and Deputy Chief Health Officer Dr Angie Bone failed to provide complete information that explained why only some suppliers were investigated as a part of the Listeriosis investigation. The Committee does not have sufficient reason to find this information was omitted for the purpose of deliberately misleading the Committee and takes no further action.

²⁴ Dr Angie Bone, *Transcript of evidence*, pp. 15–16.

²⁵ *Ibid.*

²⁶ *Ibid.*

3.3 Contempt of Parliament

Appearing before a Committee and deliberately providing inaccurate information is a serious matter. It not only impedes the ability of the Committee to carry out its core function but is also discourteous to the institution of Parliament as an open and transparent forum for public debate.

In reopening the Inquiry, the Committee sought to determine whether the initial evidence provided obstructed or impeded the Committee's core functions. Such a determination may be considered a contempt of Parliament.

In doing so, the Committee was guided by key principles, including:

- the powers and privileges afforded by the *Constitution Act 1975* (Vic)
- precedent set by previous examinations into matters of contempt by the Privileges Committees of the Legislative Council and Legislative Assembly
- the Australian Senate's criteria for dealing with witnesses providing false or misleading evidence in accordance with the Parliamentary privilege resolutions agreed to by the Senate on 25 February 1988.²⁷

It is not the role of this Committee to make findings of contempt—this is the role of the House upon investigation and consideration by the Privileges Committee. However, the Committee is empowered to make recommendations on these matters and report possible instances of contempt where it believes the threshold has been met.

3.3.1 Parliamentary Privilege

In Victoria, s 19 of the *Constitution Act 1975* (Vic) details the inherent powers and immunities held by both Houses of Parliament and their Committees, this is more commonly referred to as 'Parliamentary Privilege'. Specifically, s 19 provides for powers and immunities 'held[,] enjoyed and exercised by the House of Commons ... and by committees and members thereof' as at 21 July 1855,²⁸ including:

- the absolute right to freedom of speech which is entrenched through Article 9 of the Bill of Rights 1689
- the power to conduct inquiries, call witnesses and order documents.

Section 43 of the Constitution Act also empowers each House of Parliament to make rules and regulate its own proceedings free from interference or persecution.

If an action obstructs or impedes either House of Parliament or any Committee in the performance of its core functions, or any Member or officer of such House in the discharge of their duty, the action may constitute a contempt of Parliament.²⁹

²⁷ Parliament of Australia, *Odger's Australian Senate Practice: Appendix 2*, <https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Odgers_Australian_Senate_Practice/Appendices/Appendix_2> accessed 24 September 2021.

²⁸ *Constitution Act 1975* (Vic) Section 19(1).

²⁹ Malcolm Jack (ed.), *Erskine May: Parliamentary practice*, LexisNexis, United Kingdom, 2011, p. 251.

3.3.2 Dealing with false or misleading evidence and contempt

In establishing a contempt, the Legislative Council's Privileges Committee upholds the view that a person or persons must have acted deliberately to obstruct or impede the House or a Committee in the performance of its core functions. In considering this, a high civil standard of proof must be applied. This is assessed on the balance of probabilities and requires proof of a very high order.³⁰

Broadly speaking, the core functions of the Parliament are:

- for Members to fulfil their role as elected representatives free of interference or persecution
- to carry out the Parliament's role of holding government to account for its administration.³¹

In considering if the actions of representatives from the Department of Health constituted a contempt, the Committee has drawn on Legislative Council Standing Order 17.11(c). It prescribes that 'if it appears that any person has given evidence which they know to be false or misleading in any case before the Council or any Committee, such person may be declared guilty of contempt'.

As determined in the Findings in this Chapter, the Committee considers that some of the initial evidence provided or omitted by the Department of Health was misleading and caused confusion. However, the Committee's view is that the further evidence provided in the second stage of the Inquiry does not alter the findings of the first report, particularly that the closure order served on I Cook Foods was valid.

In the Committee's view, based on the evidence received none of the conduct of the officers of the Department of Health (or other witnesses) amounted to a possible contempt of Parliament. As such, the Committee seeks to take no further action at this stage.

The Committee notes that actions that do not amount to a contempt does not mean that an individual's actions were not wrong nor absolve them from any wrongdoing.

**Adopted by the Legislative Council Legal and Social Issues Committee
Parliament of Victoria, East Melbourne
6 October 2021**

30 Parliament of Victoria, Legislative Council Privileges Committee, *Inquiry into matters relating to the misuse of electorate office staffing entitlements*, August 2018, p. 15.

31 *Ibid.*, p. 21.

Appendix A

About the Inquiry

A.1 Public Hearings

Wednesday, 25 August 2021

Via Zoom

| Name | Title | Organisation |
|--------------|---|--------------|
| Ray Christy | | |
| Kim Rogerson | | |
| Ian Cook | Director | I Cook Foods |
| Paul Brady | Former Victoria Police Detective Sergeant | |

Wednesday, 1 September 2021

Via Zoom

| Name | Title | Organisation |
|-------------------|------------------------------|---------------------------|
| John Bennie | Chief Executive Officer | City of Greater Dandenong |
| Leanne Johnson | Coordinator, Public Health | City of Greater Dandenong |
| Elizabeth Garlick | Environmental Health Officer | City of Greater Dandenong |

Thursday, 2 September 2021

Via Zoom

| Name | Title | Organisation |
|------------------------|--------------------------------------|----------------------|
| Jo Woodstock | | |
| Fiona Wharry | | |
| Professor Brett Sutton | Chief Health Officer | Department of Health |
| Dr Angie Bone | Deputy Chief Health Officer | Department of Health |
| Greg Stenton | Deputy Secretary, Corporate Services | Department of Health |
| Paul Goldsmith | | Department of Health |
| Pauline Maloney | | Department of Health |
| Sally Atkinson | | Department of Health |
| Jenny Mikakos | | |

Appendix B

Transcripts of evidence

TRANSCRIPT

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into the Closure of I Cook Foods Pty Limited

Melbourne—Wednesday, 25 August 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 Ray Christy.

The CHAIR: Good morning, everyone. I declare open the Legislative Council's Legal and Social Issues Committee's public hearing for the Inquiry into the Closure of I Cook Foods.

May I first begin this hearing by respectfully acknowledging the Aboriginal peoples, the traditional custodians of the many and various lands that we are meeting on today, and pay my respects to their ancestors, elders and families. Obviously I particularly want to welcome any elders or community members who are joining us today online.

Ray Christy, welcome. Thank you for attending today.

My name is Fiona Patten, the Chair. I am joined by Mr Craig Ondarchie; Ms Sheena Watt; Ms Kaushaliya Vaghela; Ms Tania Maxwell; Dr Tien Kieu, the Deputy Chair of this committee; Mr David Limbrick; Ms Wendy Lovell; and Dr Matthew Bach.

If I could just let you know that all evidence that you give today is protected by parliamentary privilege, and that is delegated by our *Constitution Act* but also by the standing orders of the Legislative Council. Therefore any information that you provide during this hearing is protected by law and you are protected against any action for what you say during this hearing, but if you were to go elsewhere and repeat the same things, those comments may not be protected by this privilege. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

This hearing is being recorded by our Hansard team. A few days after today you will receive a copy of that transcript, and I would encourage you to have a look at that and make sure that we did not mishear you or misrepresent you in any way. Ultimately it will form part of our report.

Again, I appreciate you making the time for us today. If you would like to make some opening remarks, we will then open it up for committee discussion. Thank you.

Mr CHRISTY: Thank you, Madam Chair. I would like to start. I have a 5- to 10-minute presentation that I would like to give first.

The CHAIR: Terrific. Thank you.

Mr CHRISTY: I will go through this as quickly as possible so we can get onto the question time. Thank you, Madam Chair. I wish to confirm that my name is Ray Christy. I am a qualified environmental health officer with over 30 years experience. I have always worked in local government as an EHO, or environmental health officer. I have a bachelor degree in applied science from Swinburne University. Just to clarify, I was employed by Knox City Council from July 2015 until April 2021. My main role as an environmental health officer was to conduct food safety surveillance by enacting specific powers of an authorised officer under the *Food Act*. I was allocated a geographical area for the purpose of conducting food safety surveillance duties. In February 2019 the Knox Private Hospital was located in my allocated geographical area. Knox Private Hospital and in particular the food services provided by the operator of the hospital, which is Healthscope, were assessed by me on an annual basis. Food safety assessments are conducted on the food business provided by Healthscope to ensure they comply with the food standards code and the *Food Act*. The kitchen and food services at Knox Private Hospital are registered as class 1 food premises in accordance with the Victorian government's risk classification system, which means that class 1 food premises are defined as any business that provides food to vulnerable clients. One of the purposes of the food safety surveillance system is that all regulatory bodies in Victoria that have vested powers under the *Food Act* must collaborate with each other and cooperate with each other to ensure the objectives of the *Food Act* are met. This includes local councils cooperating with the Department of Health and councils cooperating with each other, so councils and the department are able to freely share information with each other, including sensitive information which relates to food safety or public health matters.

Now, I would like to point out that another role of an environmental health officer such as me is to investigate single-case gastroenteritis incidents, as well as gastro outbreaks, and there is a specific procedure for single-

case gastro outbreak events. Without going into too much detail, the Department of Health, once receiving notification of a single-case gastro case, will forward a formal gastroenteritis referral in writing for investigation to the local council. This is done on a specific prefilled referral form and is usually sent to the relevant council via email by the regional public health officer—in the case of Knox City Council, from the north-east Hume region based in Box Hill. The referral is usually sent to the council where the case lives, so the person who was diagnosed with the gastro. Communicable diseases prevention and control at the Department of Health will also occasionally contact council directly in relation to outbreaks in single-case gastro incidents.

Now I will just talk about my involvement with the I Cook Foods closure matter—so, how I became involved, which is part of today's inquiry. I will now outline my part in the investigation and action to the best of my recollection and knowledge to provide you with a picture of what happened. Apart from my inspection and investigation at Knox Private Hospital, which included the discussions with Healthscope, management and key personnel, there are also two reports I sent to the food safety unit at the department of health just hours before the I Cook Foods closure, email and telephone conversations with key food safety unit staff and conversations and meeting with the staff at Healthscope. As a result of my investigation, from what I can recall there were about 120 documents—mainly emails—that were generated, which were all saved in an electronic management system at Knox. There were emails and written contemporaneous notes saved electronically, including emails sent to and from the department of health and Knox Private Hospital. Every piece of information I collated in relation to my inspection was made available to the department of health to assist them in the investigation.

Now, my involvement in this case started on 21 February 2019. My coordinator at the time, Mr David Clarkson, received a telephone call from the food safety unit of the department of health. Mr Clarkson received an instruction from Ms Mira Antoniou of the food safety unit to inspect the Knox Private Hospital's kitchen and to gather information on the food supplier I Cook Foods and the hospital's food processes and procedures for handling food product. The instruction also required Knox City Council to report back to Mr Paul Goldsmith, who I knew as Ms Antoniou's colleague, with our findings. The request was received verbally; a formal written document or direction from the department was never made. I was handed a one-page handwritten document from Mr Clarkson with telephone instructions from the department of health and was asked to visit the hospital kitchen with the instructions in mind. The instructions from the department were as follows: I was to conduct a food safety assessment of the kitchen at Knox Private Hospital; obtain details of food supplied by Knox Private Hospital to its patients; obtain information on the food process workflow from the delivery receipt of food supplies, including the frequency, to storage conditions, stock rotation, reheating, plating and serving. I was also asked to confirm if I Cook Foods supplied ready-to-eat meal components to Knox Private Hospital and whether pre-made sandwiches were also supplied.

I was also advised by Mr Clarkson that the patient that was the subject of the investigation had contracted listeriosis and had passed away at Knox Private Hospital. I was given the impression at the time that she had died from listeriosis. I was also provided very limited information on the patient. The only information I had was her age and the date of the positive diagnosis for *Listeria*, being 25 January 2019. I did not have her name, address, treating doctor or any other identifying information that is usually provided if there was a regular formal referral, as I mentioned earlier. At the time I thought this was a bit unusual, knowing that the department of health and councils are permitted to collaborate and cooperate with each other while keeping sensitive information confidential. I found the lack of detail in the request an obstacle for a proper investigation, as this information assists in acquiring the necessary evidence for the preparation of a report to determine a cause of the gastroenteritis.

On the same day of receiving the instructions from the department, I visited Knox Private Hospital in the afternoon of 21 February. From my memory this was around 1.00 to 2.00 pm. Upon arriving at Knox Private Hospital, I met with the catering manager, Mr Bernard 'Ofamo'oni, and commenced a food safety assessment of the kitchen. I also reviewed the hospital's food safety records and their food processing procedures. I also obtained a list of the food suppliers who supplied food to Knox Private Hospital, and details of the menu were obtained for patients who were placed on a soft diet, or a modified diet. When I queried the supply of sandwiches with Mr 'Ofamo'oni, he advised the patient subject to this inquiry was likely to have been placed on a soft diet. Such food prepared for patients on a soft diet are prepared in the hospital's own kitchen. I was provided information on the food suppliers other than I Cook Foods by Mr 'Ofamo'oni. I made note of the suppliers being Bidfood Australia for the supply of ham, cheese and margarine; S.A.J. for the supply of vegetables and salad mix; Redi Milk for the supply of milk, cream and custard; Juice & Co for the supply of

juices; GWF Tip Top Bakeries for the supply of bread; and Mr Donut for the supply of tiramisu cakes. That I Cook Foods supplied ready-to-eat food and food components to hospital is what I confirmed. And I also confirmed I Cook Foods also provided the soups and desserts and cakes for the patients on a soft diet. Mr 'Ofamo'oni seemed certain in that—that the subject patient had eaten sandwiches prepared in the Knox Private Hospital kitchen and not sandwiches from I Cook Foods. During the inspection I also took photos of the kitchen while I conducted inspection—this was to assist in the assessment—and uploaded them to the records management system at Knox.

Okay, so the next morning, on 22 February, I prepared my report and findings for the department of health. You have all seen the email report that I prepared, and I sent that report via email to Mr Paul Goldsmith at 10.34 am. My coordinator, Mr Clarkson, and Mr Goldsmith's colleague Ms Antoniou were carbon copied into this email. As you can already see—you have a copy of the first report sent to the department—that email outlines the body of my report. The report was actually the body of the email. That is how I produced that to Mr Goldsmith.

Within a few minutes of sending the report I received a phone call from Ms Antoniou. Ms Antoniou gave me further instructions to go back to Knox Private Hospital and get further information. She instructed me to confirm that the patient who had passed away was on a soft diet, to obtain food temperature records for cold storage and reheating temperatures for the time period that the patient was in the hospital and to instruct the hospital staff to do a precautionary Listeria clean-up. She further asked me to clarify the suppliers of the food received by Knox Private Hospital. She wanted to know the supplier of the desserts, dairy products and soups.

So as requested, I returned to Knox Private Hospital unannounced and had an onsite meeting with three of the Healthscope staff on 22 February at around about 11.00. The staff members present were Mr John Sweeney, who is the support services manager; Mr Bernard 'Ofamo'oni, who I mentioned earlier, the catering manager, who I believe is no longer there; and a staff member from the infection control team, Ms Lauren Cullen. In an interview with the three staff members at the time of my visit I obtained the following information and gave further instructions. Ms Cullen confirmed that on the hospital's records the patient in question only ate sandwiches made in the hospital's kitchen. I am unequivocally certain that the subject patient did not eat sandwiches prepared by I Cook Foods.

The patient or the patient's family complete a daily menu choice each day. The hospital confirmed that the slip of green paper—you would have had a copy of this sent to you; it is in black and white, but it is actually a green document—with the patient's menu choices is discarded once the food is served. So no record of food consumed is kept by the hospital. And I must note that in relation to any gastro investigations it is imperative to obtain a four-day food history of the patient. In this matter it was impossible for me to obtain that four-day food history since the records of what that patient ate was destroyed.

I requested and reviewed cold storage and reheating temperatures for the period of 13 January to 23 January 2019 on Mr 'Ofamo'oni's computer screen. I asked for a copy and he requested that I put my request in writing, which I did later that morning. When I received that information—that is the temperature records—I immediately forwarded the information to the department of health. I requested that a precautionary Listeria clean-up be performed, which they undertook. They reported back to me several days later to verify its effectiveness as being completed. I do not recall the date I was informed because I do not have that information.

I confirmed that the desserts were supplied by a firm called Bidfood, the dairy was supplied by Redi Milk and the soup was supplied by I Cook Foods. I also later ascertained that both Knox Private Hospital and I Cook Foods received their ham and cheese supplies from Bidfood. I also noted that Knox did not have the last third-party audit report from the auditor named Victoria Bowen, and I requested as such to receive that third-party audit. I reviewed a copy of the report in Mr 'Ofamo'oni's office and noted there were still three non-conformances that had not been closed off. I cannot recall what they were as I do not have access to that document.

So when I returned to the office I prepared a second email report to Mr Goldsmith at 12.42 pm on 22 February 2019. That email was carbon copied to Ms Antoniou and Mr Clarkson. The copy of the second email has already been provided to the committee, so you can see in your copy of my emails there is a second report back to Mr Goldsmith with all that information I had obtained from Knox Private Hospital on my second visit.

So I must also note that during the inspections at Knox Private Hospital I was not given the opportunity to take any food samples or obtain a four-day food history of the patient, which I think I mentioned earlier. And I must say that it is imperative that during a gastro investigation food samples are obtained to confirm the presence of an alleged foodborne pathogen—or have a food history—to ascertain the probable cause of illness. Without these, it is impossible to reach a conclusion as to the cause of the gastro. In this particular case, even though the patient's pathology result was positive for *Listeria*, because key evidence was not available to confirm the cause of the infection, there is no way to prove beyond a reasonable doubt that the food consumed caused the illness.

So, Madam Chair, that concludes my presentation in relation to my involvement with the I Cook Foods matter investigation. So I would like to finish my presentation. Thank you very much.

The CHAIR: Thank you, Mr Christy, and I just realised I had not got a full screen in front of me. We also have Ms Georgie Crozier joining us, so I had missed one person.

To the committee members: question timing will be about 6 minutes. The committee will circulate the order, but the initial order will be me, the Deputy Chair, Ms Crozier, Ms Maxwell, Ms Vaghela, Ms Lovell, Ms Watt and then we will go on to the proportionality, and that will be texted to you shortly.

If I could start, I suppose in listening to you and talking about this, we know that the death of the patient occurred on 4 February. Why wasn't the council doing those inspections at that time? Obviously it became aware that *Listeria* was found. I just would have thought that the first place that we would have gone for an investigation would have been straight to the hospital kitchen.

Mr CHRISTY: Yes, Madam Chair. That is very good question. Look, the case with most gastro referral investigations is there is a time delay. From the time that the department is notified by the treating doctor to the time that the local council receives the referral sometimes can be four weeks, and in this case I believe it was probably about four weeks before Knox council was asked to be involved. So you did raise a very good question there. In my opinion this is one of the problems, or the issue, with the system of referral to local government. If one of the things that comes out of this inquiry is to make an improvement to that referral process so there is actually no delay—so if you get a notification of, say, in this case *Listeria*, local government should be informed practically straightaway so we can get onto it. And that is vital, because we need to obtain evidence. As time goes past, that evidence fades away; it does not become available.

The CHAIR: Yes. I mean, for you to go and inspect for *Listeria* in the hospital kitchen three to four weeks, three weeks, after the person had passed away—so to you that was unusual. In your experience, the normal course of events should have been, when that incident occurred, when that person was found to have had listeriosis in their system, that immediately it should have been referred to council—your council, not Dandenong—and you would have then investigated.

Mr CHRISTY: Yes, that is correct. And in most cases where the incident occurs, technically if there is a breach of the *Food Act* the jurisdiction would be the council where that incident occurred.

The CHAIR: Yes, precisely. Okay. I will pass on. Thank you very much for that. Dr Kieu.

Dr KIEU: Thank you, Chair. Thank you, Mr Christy, for appearing here today. One of the reasons for reopening the inquiry is due to the evidence you have been providing, which was also picked up by the media. I would like to ask first of all: the patient, the unfortunate lady, was first admitted to the hospital on 13 January and then discharged and then came back on the 23rd in that unfortunate incident. Are you sure that for the whole time that she was in and out of hospital she was entirely on a soft diet?

Mr CHRISTY: Thank you for that question, Dr Kieu. As you referred back to my presentation before, I was certain that she was on a soft diet for the entire time because I was actually told by the infection control team head Mrs Cullen. She was certain that in the hospital records she was on that diet that entire time she was admitted to hospital.

Dr KIEU: Yes. And you also mentioned that some of the desserts and the soup may be provided by I Cook, apart from other things provided by different providers. For a lay person like me, could a person get *Listeria* from soup and dessert?

Mr CHRISTY: Not normally, no; it would not happen. To put it into context, *Listeria* is generally found in salad items, vegetables, soft cheese and delicatessen or ham items. This particular pathogen can grow in refrigerated temperatures. In relation to products like soups, where they are reheated and cooked to a core temperature of over 75 degrees, all the pathogens are actually killed, so it is unlikely that you would find *Listeria* in soup or desserts.

Dr KIEU: So how do you explain that? Because of that death there was an investigation and a swab taken at I Cook, and they found four strains, one of which is, according to the technical term, a close match in the database, and it is a rare strain. So how do you explain that connection between the strain found and the one found in her body at death?

Mr CHRISTY: I appreciate you actually putting that question to me. To be honest, I actually do not know the circumstances behind the *Listeria* that was picked up at I Cook Foods and in the patient. I was not made privy to that information nor was I part of that investigation. So that information was never given to me. I am pretty sure there would be an explanation, but I do not believe I am the person who could give you that answer.

Dr KIEU: Yes. Okay. The other question is: as a professional, as the environmental health officer, do you think that it is a reasonable step to be taken when something like that happens to have some of the production shut down, investigated and perhaps reopened later, because according to the Act, even the lack of full emphasis on full scientific evidence is not a reason not to take action? In this case the consequence could be very devastating and horrendous.

Mr CHRISTY: Sure. Look, thank you for that question. I think I just need to draw on my own experience and knowledge of the food safety surveillance system here in Victoria. You may appreciate that all environmental health officers and health departments in local governments operate from processes and procedures. And they are fairly strict, because that just prevents you going willy-nilly closing a food business because of unsubstantiated evidence or findings. So in this case here the department of health and the Victorian government had given local government guidelines how to assist a food business in doing a *Listeria* clean-up. So there are *Listeria* clean-up guidelines that are available to Victorian food businesses and Victorian councils. Nowhere in those guidelines suggests that you do a forced closure under a section 19 notice. You work closely with that business to do a short-term closure to do a 24-hour clean-up with chlorine-based cleaners to remove the *Listeria* contamination. So that is how I would understand is how the process would be undertaken if *Listeria* was discovered in a food production factory or premises.

The CHAIR: Tien, thank you. That is your time allocation. I move to Georgie Crozier.

Ms CROZIER: Thank you very much, Chair, and thank you, Mr Christy, for appearing before us and for your evidence, which is extremely relevant to the reopening of the inquiry. Could I ask: you spoke to the various people within the Knox hospital—you said Mrs Cullen and others. Mrs Painter was admitted, I am of the understanding, with gastro symptoms. Is that correct?

Mr CHRISTY: That is my understanding. I mean, obviously at the time I did not have her details. I was not given specific information about the patient and her circumstances, but from my recollection she had been admitted to Knox with gastroenteritis symptoms.

Ms CROZIER: Thank you. And you raised in your presentation to us I think some queries around the protocol that was undertaken. Do you believe that the correct protocols were actually followed in this particular investigation by the department?

Mr CHRISTY: No, I do not believe they were. So you can recall from my presentation that that is the usual process that is undertaken—to request local government to investigate a gastro incident—so in this case that procedure was not followed.

Ms CROZIER: The Chair mentioned Dandenong council. Did you have any involvement with anyone from Dandenong council in relation to this matter?

Mr CHRISTY: Yes, I did. So I can confirm that—look, and I must stress that I do not have any documentation or notes referring to any meetings that I had with Greater Dandenong council, but I think it was

around about March, probably about four weeks after I visited Knox Private Hospital. We had a request from officers at Greater Dandenong council to meet with me and Mr Clarkson.

Ms CROZIER: Who were those officers, Mr Christy, if I may ask you?

Mr CHRISTY: Sure. So there was Ms Leanne Johnson, who is the coordinator of environmental health, and a Mr Greg Spicer who, from recollection, is the planning enforcement coordinator. So they were the two officers that came to visit us at Knox.

Ms CROZIER: They requested that meeting with you, did they?

Mr CHRISTY: That is correct, yes.

Ms CROZIER: And can you recall what that meeting was about?

Mr CHRISTY: Yes. So they were seeking some assistance and information to assist them with the preparation of the prosecution brief for the prosecution of I Cook Foods, and, as I mentioned in my presentation, there is always an expectation that each council coordinate and cooperate with each other. So they came seeking specific information about my investigation of Knox Private Hospital, and they requested copies of my reports. After obtaining the permission from my coordinator, Mr Clarkson, all that information was passed on to Ms Leanne Johnson at Greater Dandenong council.

Ms CROZIER: Thank you for that clarification. So in that, you would have been passing on that information and saying, 'I provided this to the department. It's clear that Mrs Painter didn't have a sandwich from I Cook. If she did eat a sandwich, it would have been prepared in the kitchen'? Was there a discussion of that nature, or did you discuss the fact that you had concerns that this prosecution was going forward and that your email had not been—or the information you had provided was not part of that?

Mr CHRISTY: Look, from what I can recall I do not remember specifically talking about the food that Mrs Painter ate and whether she ate an I Cook sandwich. We had never gone onto that topic of conversation. It was all about they wanted to—

And I forgot to mention another thing, I am sorry. They wanted me to hand over my investigation notes with my inspection of Knox Private Hospital kitchen, and furthermore, they also requested that I ask Healthscope if they were prepared to be interviewed by Greater Dandenong council. So further to that I put a request to Mr 'Ofamo'oni and Mr Sweeney of Healthscope if they were willing to be interviewed by Greater Dandenong council. So I put that request in writing and from recollection it was about a week later I received a response and that request was denied. So the hospital had stated that they had received legal advice not to be interviewed by Greater Dandenong City Council.

Ms CROZIER: Did you ever see that or were you just informed by the belief that that had been denied?

Mr CHRISTY: Look, as I said, I do not have all the notes and documents. I think it was given to Knox in writing.

Ms CROZIER: That is okay. I have FOIed documents relating to your matter from Knox council and had 452 pages returned to me, but about 400 of them have been redacted. I am sure it is partly in those documents, Mr Christy, so I can understand your difficulty in recalling. I think my time is out, is it, Chair? You are looking at me.

The CHAIR: Yes.

Ms CROZIER: Thank you so much, Mr Christy. I really appreciate it.

The CHAIR: Thank you. Tania—Ms Maxwell.

Ms MAXWELL: Thank you, Chair. Thank you, Mr Christy, for attending today. I just want to take you back to talking about the soft foods that the now deceased patient was on. Is there any information provided as to why she was on that soft diet, as in why was she not able to eat normal food?

Mr CHRISTY: At the time I was investigating at Knox Private Hospital they would not or they did not give that information to me. So, look, in all fairness to Knox Private Hospital, it is probably best for them to give that explanation, but I do not know the answer to that, I am sorry.

Ms MAXWELL: Okay. I am just trying to establish that to see if she was physically capable of eating ham or corned beef. Was there ever an autopsy done to determine what food the deceased patient had eaten?

Mr CHRISTY: I do not know the answer to that question, I am sorry.

Ms MAXWELL: Okay. That is all I have got at the moment, Mr Christy. Thank you.

The CHAIR: Thank you. Ms Vaghela, Kaushaliya.

Ms VAGHELA: Thanks, Chair. Thanks, Mr Christy, for appearing today. In your role as an EHO I am sure you are well aware of the *Public Health and Wellbeing Act 2008*, and it states that:

If a public health risk poses a serious threat, lack of full scientific certainty should not be used as a reason for postponing measures to prevent or control the public health risk.

Can you please explain how this principle applies to food safety investigations as conducted by environmental health officers and the issuing of closure orders?

Mr CHRISTY: Okay. Thank you for that question, and it is a very relevant and good question to ask. I must emphasise that environmental health officers and local councils are enacted to enforce certain powers under certain acts, so you have got the *Food Act 1984* and the *Public Health and Wellbeing Act 2008*, which you have mentioned. In regard to this investigation, you have got to be very clear about what Act of Parliament you have got to act within when you go and visit a premises. So in this case here, because the matter related to a food business and food services, I have gone to that premises using the powers of the *Food Act*, so never at any time was I acting under the *Public Health and Wellbeing Act*. For the investigation, from my understanding and recollection, I have acted as an authorised officer under the *Food Act*, so in this case the *Public Health and Wellbeing Act* did not apply from my perspective and my part of the investigation. The *Public Health and Wellbeing Act* might have been used in other parts of the investigation by other agencies or other people, but certainly in my case it was the *Food Act* that I acted under.

Ms VAGHELA: Yes. In the initial inquiry that we had for I Cook we heard that the food samples produced on the premises of I Cook Foods tested positive for not one but four strains of *Listeria*, as mentioned by Dr Kieu, and that the deceased patient's sample contained a strand that was highly related, based on genomics and epidemiological data, to these food samples. So again, I go back to the professional training and experience you have: do you think it is an acceptable risk to knowingly allow food to be supplied to vulnerable cohorts in health and aged-care settings that has been manufactured in a kitchen where there is evidence of *Listeria* contamination?

Mr CHRISTY: Okay, thanks for the question. Look, I cannot give you an answer in relation to the genome matching of the *Listeria* in this case, because I am not privy to the reports or the findings. I was actually never briefed or given any advice on those findings, so I cannot answer that part of the question. But I can tell you now that when an environmental health officer investigates these types of matters, we must be absolutely certain and prove beyond a reasonable doubt before taking any serious action against the food business that there is evidence to actually confirm that that risk is present, and an appropriate course of action should be taken. In my experience as an environmental health officer, you would need several criteria and elements to be ticked off before you would be satisfied that you have a reasonable belief or belief beyond a reasonable doubt that that particular food business and that particular food has caused an illness in a person. What I am saying is that you cannot just rely on genome sequencing of the *Listeria monocytogenes* pathogen. An officer would need to rely on evidence to suggest that the person actually ate the food allegedly given by that particular food company or food supplier. That is why I emphasised in my statement that you need a four-day food history and you need food samples and even environmental swabbing to further build your case of evidence, so you can prove it beyond a reasonable doubt. You cannot just have each individual criterion for obtaining evidence to paint an entire picture. I hope that answers the question for you.

Ms VAGHELA: Yes. I will have a follow-on question, but I will come to that in the second round, Chair.

The CHAIR: Thank you. Ms Wendy Lovell.

Ms LOVELL: Thanks very much, Chair. Mr Christy, thanks for your evidence. Mr Christy, on 24 June 2020 Dr Sutton told our committee that whilst in hospital the patient only consumed food from the hospital, with all food provided by Knox Private Hospital's sole caterer, I Cook Foods. Given your report identifies about six different suppliers, is that statement by Dr Sutton correct?

Mr CHRISTY: I do not believe I am in a position to comment on that. All I can say is I have just reported on what I saw—my observations—and what was told to me when I visited the Knox Private Hospital kitchen. I am not in a position to state whether what Dr Sutton said was correct or not.

Ms LOVELL: Thank you. But you were being advised by the hospital that on the soft diet, the sandwiches that the patient would have consumed would have been made in the hospital kitchen, and therefore they would have used the suppliers that they use. Is it possible that the Listeria found in the sandwiches came from the salad and the cheese from providers other than I Cook Foods?

Mr CHRISTY: That is possible, and you raised a very valid point. I mean, I know that there had been a focus on ham as being the cause of the Listeria. As I mentioned in one of the other previous questions, Listeria can be found in soft cheeses, it can be found in salad mix. There are quite a few other possible sources. *Listeria monocytogenes* is a fairly hardy and difficult pathogen to remove from a food product once it becomes a contaminant, and as I said, it can grow in refrigerated temperatures. But the other thing too is that you have got to remember that there is an acceptable level of Listeria and other pathogens in food products. Under the compendium of the microbiological standards for ready-to-eat food, the acceptable standard of Listeria is 100 colony-forming units per gram. So the problem there is that you can have the Listeria existing in a food product and it is at an allowed level, but if it is poorly stored or poorly handled, especially going past its shelf life, the pathogen will multiply and increase in numbers while it is under refrigeration. We have seen in past years where there have been Listeria outbreaks they have been a problem. We saw the recent one—I think it was in rockmelon. It is possible for any of those other food products supplied by other food suppliers to be the cause of the Listeria.

Ms LOVELL: So were the suppliers of those other products that were used in the sandwiches checked for Listeria in their premises?

Mr CHRISTY: No, they were not. I must refer back to what Ms Crozier asked me in the earlier question, which was that the time frame from when the patient was diagnosed with the Listeria to the time that Knox council was notified through the referral from the department was four weeks. So at that stage there was no possible way to go and sample food products from other suppliers and even do environmental swabbing of food contact surfaces because it was just too long between the time of the incident to the time that you could do an investigation. So to be certain whether a food product or a food supplier is the cause of Listeria, you would need to act upon and do your investigation and your sampling practically immediately on being notified of the diagnosis.

Ms LOVELL: Therefore it is also not possible then to identify that it came from I Cook because it may not have existed in their products four weeks earlier either?

Mr CHRISTY: That is possible because you do not have leftover food product. You do not have food product from the same batch that you could examine and analyse to see if you get a match. So that is why I was getting to one of the other questions I had, which was: to be absolutely 100 per cent certain and prove beyond a reasonable doubt, you have got to match the food product of a particular batch that the patient or the person has eaten to the actual Listeria that was isolated in some other location.

Ms LOVELL: Okay. Were you surprised that no—

The CHAIR: Thank you. Sorry, Ms Lovell. Ms Watt.

Ms WATT: Thank you, Chair, and thank you, Mr Christy, for appearing before us today. I am indeed new to this and was not around for the original inquiry, so I have a couple of questions I just wanted to ask. One was: in reading the thoughts and transcripts on the initial inquiry it was noted that the department asked Manningham City Council, the City of Greater Dandenong and indeed Knox to take food samples and

environmental swabs for testing from multiple sources in order to cast a really wide net to try to capture all the possible sources of contamination. Listeria, I note here, was only detected in the samples taken by the City of Greater Dandenong from the I Cook Food premises. So my question is: what is the standard practice taken by local governments to enforce the *Food Act* when Listeria is detected in a food manufacturing facility? You spoke a little bit more about individual cases earlier, but I am wondering more about food manufacturing facilities and particularly, given your comments about acceptable levels of Listeria, what in particular is done when it comes to preparing meals for high-risk cohorts, including the elderly and patients in hospital. I know there is a bit in that.

Mr CHRISTY: Okay, yes. Thanks for the question. Look, I will go to the second part of the question. We know that immunocompromised or elderly patients should steer away and even pregnant women get told, ‘Don’t eat soft cheeses. Don’t eat deli ham’, because the risk is there that there may be some Listeria in a product. My understanding is that Knox Private Hospital would apply their own procedure to only supply food products to vulnerable or elderly clients that is of lower risk. So that would mean avoiding food products—say, for example, with Listeria—being served, so that patients would not consume that product and run the risk of acquiring a gastropathogen like Listeria. That is where that is.

The first part of your question was, ‘What sort of actions would local government take if Listeria was found in a food business?’, and that process is fairly straightforward. There are national guidelines for the clean-up of Listeria in food businesses. Those guidelines assist and guide food businesses and environmental health officers to conduct a clean-up of a food production area which may have the presence of Listeria, especially *Listeria monocytogenes*, which is the pathogen in question here. So usually the practice is—and mind you, local council health departments would have policies and procedures on how they should go through this process—they would attend the premises, they would do their inspection, they would already have a report from a laboratory or a report from the department or from another council that they have got a food product that has had Listeria detected, and they would instruct the food business to undertake a Listeria clean-up. That involves a process that usually takes about 24 hours, so they would apply the necessary sanitising cleaners, such as chlorine-based sanitiser, to clean and wash down food production areas. Then that clean-up process needs to be verified, so there would be a requirement for either the food business or the local council to do it. Most of the larger food businesses employ their own cleaning companies, like Ecolab for example. They would be the experts that come in and do the environmental swabbing to send back to the lab to verify that the clean-up has been successful.

In these sorts of cases, where you are assisting a food business to do a thorough clean to remove the Listeria pathogen, it is not normal practice to turn around and say to the business, ‘Okay, well, you’ve been negligent in your duties as a food business, we’re going to fine you or prepare a prosecution brief and prosecute you’. That just would not happen, because you have got to remember the circumstances around Listeria are that it can appear and pop up in food products in the food supply chain at any time. Food production companies are bringing in raw ingredients from suppliers from all over the place, and they rely on those suppliers to provide them with safe food that is of good quality and that does not contain any contaminants. They are actually relying on those suppliers to give them that type of food, and then they put the components together when they produce food. If an environmental health officer of another council is doing random or routine food sampling—I will give you an example. So in my—

The CHAIR: I am sorry, Mr Christy. If I can just interrupt, I just have to move on to the next question before you give that example.

Mr CHRISTY: No. Yes, sure.

The CHAIR: It is the Deputy Chair.

Dr KIEU: Thank you, Chair. I would like to come back to the Knox Private Hospital. I am still wondering about the genomic link between the patient death and the strain found at I Cook. When you were at Knox hospital, you talked to the catering services manager about how from the kitchen to the consumption there are a lot of things that could happen in between. Did you talk to the control nurse or the ward staff or the ward manager there, just in case something happened in the transit in between the two places?

Mr CHRISTY: Thank you for that question. No, I did not at all. So the only other staff member, other than the catering staff, that I spoke to was Ms Cullen, the head of the infection control team, which I mentioned in my presentation before. She was the only other non-catering staff member I spoke to in my time at Knox Private Hospital.

Dr KIEU: Okay. Now, you also mentioned just now and also in your police statement that you found no evidence the Listeria was caused by I Cook Food in your investigation, and you just said that it should be established beyond a reasonable doubt before something is acted upon. But in this case, prompted by the death, there was investigation in various councils, and the strain that in technical terms related to the patient death was only found in one place, namely I Cook. So do you think that is a reasonable outcome? And is it acceptable that something that would be doing harm to a vulnerable cohort is a reasonable outcome of this?

Mr CHRISTY: I think it is a good reason to believe that if you do not have all the evidence provided to you—and yes, I do mention the term ‘beyond a reasonable doubt’—a food business would pose a public health risk to the community. If you do not have the full picture and all the evidence that a particular food business is a risk to public health, you do not proceed with the process of shutting it down until you have got the complete picture. And this is one of the problems, where the time delay from the day that the Listeria was isolated to the time that the investigation started was just too long. So you do not have that opportunity to actually find that evidence. So I think it is reasonable to accept that there is no risk to public health unless you have got the full picture.

Dr KIEU: But nevertheless, something was found. In terms of it shutting down, is it a permanent closure order or was it just a shutdown with the possibility of being reopened again once cleaning was done and certain criteria and conditions were met?

Mr CHRISTY: That is correct, yes. So under the *Food Act*, my understanding is you cannot close a food business forever. So the officer who does the report and issues the closure order would need to be satisfied that the business has met all the directions of the notice before it is allowed to reopen. But in my experience there is never an opportunity—there is not even a power in the Act—that the business can be closed forever. The only power a council has to prevent a business from continuing to operate is to do with its registration and renewal of registration. So at the annual registration or licensing of a business a council can refuse to renew the registration of a food business, which is at 31 December each year. That would be the only power that a council would have to see a business close, if they refused to register or renew the registration of a business.

Dr KIEU: So it is not unreasonable to temporarily shut down something just for investigation and cleaning?

Mr CHRISTY: Yes, sorry. I did not answer that part of the question. That is correct, so if an environmental health officer sees fit that a temporary closure of a food business is warranted to remove an alleged food safety risk—and that is outlined in, for example, the Listeria clean-up guidelines—in most circumstances you would request or ask the business to close temporarily to do a clean-up, and as I said it is usually only a 24-hour process, maybe 48 hours.

The CHAIR: Thank you, Mr Christy. Mr Ondarchie.

Mr ONDARCHIE: Mr Christy, help me out here. You mentioned a few companies, and I might get their names wrong, so excuse me: Bidfood, S.A.J., Redi Milk, Juice & Co, GWF Tip Top and Mr Donut. Were they investigated as well, as a potential source?

Mr CHRISTY: No, they were not.

Mr ONDARCHIE: Okay. My understanding is that you supplied your report to DHS on 22 February, is that correct?

Mr CHRISTY: Yes, that is correct.

Mr ONDARCHIE: Okay. And were you talking to DHS before you formalised your actual report on 22 February—about your ongoing investigation, how it was going and things like that?

Mr CHRISTY: Yes. Look, from what I can recollect, prior to sending my report I would keep in touch with the officers at the food safety unit, so I would ring up and say, ‘I’ve been there, this is what I found. I’m going

to put my report together, expect to have an email with the report'. That is the usual practice. That is what you would do.

Mr ONDARCHIE: And did they generally know that you could not find any link to I Cook Foods through your investigation before you formalised your report?

Mr CHRISTY: No, they did not indicate that to me at all.

Mr ONDARCHIE: But did you tell them that you could not find a link to I Cook Foods before you formalised your report?

Mr CHRISTY: No, I did not.

Mr ONDARCHIE: Okay. I am just curious that you supplied your report on 22 February, yet the day before the CHO signed a note closing I Cook Foods. He must have some great vision or something. I do not know how that worked. I will come back to that.

Before you supplied your report and you were talking to DHS, did they give you any guidance or instruction on the sort of thing they were looking for in your report?

Mr CHRISTY: Yes. What they were looking for was they wanted me to zone in on the food processes of the facility, and they were interested in the cold storage temperatures and the reheated temperatures for the period of time that the patient was in the hospital. They zoned into having a particular interest in the other suppliers other than I Cook Foods, and as I mentioned in my statement, they also wanted me to go. You see when I went back the second time they wanted me to confirm—was that patient on a soft diet? Because they were advised of that in the first report, and my opinion is they were dissatisfied with that answer, so that was why they sent me back again the next day to confirm whether she was on a soft diet.

Mr ONDARCHIE: Did they ask you to change anything in your report?

Mr CHRISTY: Not at all, no.

Mr ONDARCHIE: Did they give any guidance about, 'We are looking for this sort of solution'?

Mr CHRISTY: I think that, as I mentioned before, they were very interested and they zoomed in and were looking for very specific answers to the questions about food suppliers, food temperatures, whether she was on a soft diet, and also the second time around I was actually asked to instruct the hospital kitchen to do a Listeria clean-up as well, as a precautionary measure.

Mr ONDARCHIE: Okay, so in your expert opinion do you find it curious that no other patient contracted Listeria between the time of the tragedy of Ms Painter's passing and when you finalised your report?

Mr CHRISTY: That is a very good question, and I am glad you raised that. From what I understand, and I did observe this at the time, the I Cook Foods sandwiches that I Cook Foods supplied they actually delivered in batches. They are prepared at their factory in Dandenong South, they are cut into quarters and then they are put in packs and they get shrink-wrapped. So you would think that the same batch of ham would be in every sandwich, not just the one, and would be distributed to a lot of patients in the hospital ward. So you are actually right in saying, 'Well, how come no other person was affected? Why didn't anyone else come down with listeriosis? It's only one patient'. That is the difference between a single-case gastro and an outbreak, and in my experience a lot of single-case gastros do turn out to be clusters, or gastro outbreak clusters, which usually do not get identified until later down the track. You posed a very good question there: why wasn't anyone else affected by Listeria other than Mrs Painter?

Mr ONDARCHIE: Just a couple of quick questions, then: did anybody from DHS once you supplied your report ask you to alter it or change it or anything like that?

Mr CHRISTY: No, they did not.

Mr ONDARCHIE: Okay. And one further question: Paul Goldsmith, who does he report to?

Mr CHRISTY: To be honest, at the time, I am not entirely certain: a gentleman by the name of Gary Smith maybe at the time. I think he also reported to Brett Sutton as well. From my understanding, most of the department managers or heads in the public health unit can actually report directly to the Chief Health Officer.

Mr ONDARCHIE: Okay, thanks. I have nothing further, Chair.

The CHAIR: Thank you. Mr Limbrick.

Mr LIMBRICK: Thank you, Chair, and thank you, Mr Christy. I would like to follow on from the question around what Mr Ondarchie raised about Listeria—why weren't other patients affected by this? In your professional opinion would that seem to indicate that the contraction of this disease is not likely to have happened in the hospital?

Mr CHRISTY: Yes. I believe that probably could be the case. Of course Knox council or any other agency has never had the proper opportunity to do a proper investigation. As I was saying earlier, if that listeriosis had been reported practically straightaway, within a reasonable time, you could have cast a wider net to actually determine the real cause of the gastro. My understanding is that the particular products given to Knox Private Hospital and I Cook are nationally distributed products. Your hams, for example, your delicatessen hams—if they are manufactured by some company in another state and they have got a problem with Listeria contamination and that product is distributed to a lot of retail food businesses around Australia, especially in Victoria, that Listeria could pop up in any food business, not just Knox Private Hospital. Delicatessen ham is a very common food product anyone could eat. Everyone enjoys a ham and cheese sandwich or eggs Benedict. So you are right: if we had known a lot earlier of this case and an investigation had started a lot earlier, it would have been possible to actually pick up sooner where the real source was.

Mr LIMBRICK: Thank you. Back to the menu—I have got a copy of the menu in front of me, the soft diet menu—and the high-risk items on that. You talked about high- and low-risk items, because some of them are heat treated so therefore they are at much lower risk of Listeria. Were any of these high-risk items I Cook Foods products?

Mr CHRISTY: Yes, well, I am just looking at it right now. I do not know whether you have got it in front of you.

Mr LIMBRICK: I do.

Mr CHRISTY: Yes, great. If you look at dinner, you have got 'main course: soup with veggies'. To be really honest, I cannot recall whether those main courses for dinner were actually provided by I Cook Foods, but I would say they were. But I am pretty certain, from what the hospital are telling me, that the hospital make their own sandwiches, because they take the crusts off them. There are no crusts, because it makes it easier for compromised patients to eat them. My understanding is that a lot of those food products on the menu would have been provided by I Cook Foods.

Mr LIMBRICK: But what is the most likely high-risk product that we see there?

Mr CHRISTY: So in all honesty, you would say that all of those food products are high-risk food products. Look, if I zone in to 'roast chicken and gravy', roast chicken and gravy is a high-risk menu item. That is why at the hospital, when they receive the food product and then reheat it, the process is to reheat that food product to a core temperature of over 75 degrees, so the heating process would ensure that all the pathogens are killed, and then when it is served it should be considered safe. That is why Healthscope are required to have a fairly comprehensive food safety program, keeping food safety records. They get audited by a third-party auditor to ensure procedures and processes are in place to ensure proper food safety management. That is what you want to see when you do your food safety assessment and to be satisfied that all the records are in place to confirm that roast chicken is safe when it is served—and even safe when it is received. The arrangements or the procedures that the hospital would have with the suppliers are such that Knox Private Hospital would need to be satisfied that the food products they are receiving from their suppliers are also satisfactory in relation to their food safety management programs.

Mr LIMBRICK: But if that handling process broke down, then you would expect that many patients would have been exposed to Listeria—is that correct?—if that process had broken down.

Mr CHRISTY: That is correct, yes. You are absolutely right in saying that.

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

Ms VAGHELA: Thanks, Chair. Mr Christy, during the initial inquiry in June last year the committee heard from Professor Sutton that, in regard to issuing the closure order to I Cook Foods, no one single piece of information was used in isolation to come to that decision, rather it was the collective picture of public health risk that he believed I Cook Foods continuing food production represented. In your understanding, what do you understand of how the source of a notified Listeria infection is determined?

Mr CHRISTY: Okay. Look, I cannot comment on what Dr Brett Sutton would have said because I am not privy to his conclusion, but to be satisfied that the presence of Listeria in a food product is a risk to public health, especially from a wider scope with the wider community being at risk, you would need to be satisfied with the actual food product that is being served, not some secondary evidence of doing a swab on a food contact surface several weeks later after the incident. If you have got the food product of that particular batch that was consumed by the person who had been affected and it came back with Listeria, there is your proof. There is your proof that there is an immediate public health risk. You have got food product out there available to patients or being served by a food provider, so the immediate action would be, 'Yes, let's remove that food product from sale or from service' to remove that risk to the public. That is why we have a food recall system—routine sampling, or problems that a manufacturer would pick up during their production of a product. If they find a problem, Food Standards Australia New Zealand issue a food recall. So in this case, if it is alleged that a batch of sandwiches contains Listeria, you would want to focus your attention on that particular batch of food product. That is your main evidence. If you tested that and you found Listeria of an unacceptable level, over the acceptable level on the compendium of microbiological standards for ready-to-eat food, that is where you would say, 'Yes, gotta take action'.

Ms VAGHELA: If we go ahead with that, so after the investigation that you did at the hospital, the conclusion was that the patient was on the soft diet. Now let us just assume that I Cook Foods was not closed and at that time when you did the investigation you were not aware that Listeria was found in the food samples from I Cook Foods. What would have happened if I Cook Foods had not been closed and there was further contamination?

Mr CHRISTY: That calls for speculation, really.

Ms VAGHELA: That is what the risk is, though, Ray. If we look at the *Public Health and Wellbeing Act*, if a public health risk poses a serious threat, that is what we are talking about. This is not just one thing—

The CHAIR: Thank you, Kaushaliya. Mr Christy, please.

Mr CHRISTY: I think that is just speculation. Just to clarify, you would need to use the powers of the *Food Act*, because this whole matter is all about enacting vested powers that the council has under the *Food Act*. I think you have got to understand you cannot use the powers in the *Public Health and Wellbeing Act*. That is for separate scenarios and separate situations. For example, we have the COVID pandemic. That is the reason why we have the *Public Health and Wellbeing Act*—for removing those public health risks of infectious disease outbreaks. Where you have got possible or alleged public health risks from food safety breaches, you have got to be 100 per cent certain and prove beyond a reasonable doubt that that food business caused that person to be ill, because you have got this evidence, this evidence and this evidence: you have got a food history, you have got a food sample, you have got the pathogen isolated from the patient and you have got exactly the same pathogen isolated from the food sample or the food batch. Bang, there, you have got your evidence: 'Oh, yes, that business poses a risk'.

Look, if I had gone to the food factory and found it in a disgusting, dirty, unclean, unhygienic condition and there were no food safety records, no trained staff, no pest control and there were cockroaches running everywhere, yes, I would agree that that posed a serious food safety risk to the public and they deserved to be closed. Then in order to reopen they would have to prove to us that they had met all the requirements—to clean up and make the place sanitary or make repairs where possible. That is the difference here. You are talking about a food company that, from what I have seen and heard in the media, has a very high standard of hygiene, has a rigid food safety system and has a management program in place. To me that does not pose a public health risk.

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

Dr BACH: Many thanks, Chair, and thank you, Mr Christy, for being with us. I might just pick up on a couple of earlier questions, and your responses too, from Mr Limbrick, Mr Ondarchie and also Ms Vaghela just now, in particular about the fact that there was this lag time. If it was the case that *Listeria* was present in food in the hospital at such levels that it would make a patient very sick, and obviously in this case, incredibly sadly, the patient died, well, then, you would have expected—and I hope I am representing your testimony properly—to see other patients contract *Listeria*. Given that is the case, is it possible, Mr Christy, that the patient actually came into the hospital already having contracted *Listeria*?

Mr CHRISTY: Yes, that is correct. From my understanding she actually was presented at the hospital with gastroenteritis. But yes, you are absolutely correct that she could have come into hospital with the infection. Off the top of my head I cannot recall what the incubation period is for *Listeria*. A lot of gastro infections take several days to several weeks to incubate before they present as a disease, so that is possible, but we will never ever really know because of the huge time frame between the time of diagnosis and the time of investigation. So that window of opportunity was lost, so we will never ever know—in my opinion, we will never ever know—the real reason why she got the infection.

Dr BACH: All right. Thanks, Mr Christy. Mr Christy, I am clearly missing something with the myopic focus, especially of the health department, on sandwiches. You talked about a range of other foods, you talked about potential risks with a range of other foods. You said—I was taking notes as you were talking a little bit earlier—that you are unequivocally certain that the patient did not eat sandwiches from I Cook Foods. And then again I have got some notes that it was, as we have already talked about, on 22 February, in the morning, that you emailed the findings of your investigation at the hospital through to Mr Goldsmith, who reports to Professor Sutton. But then of course later that day I Cook was shut down and Professor Sutton even said in a press conference that there was a direct link, not only to I Cook but to the sandwiches. What am I missing here, considering there were a range of other foods produced by a range of other organisations—and you have spoken about the risks there as well?

Mr CHRISTY: You have posed a very relevant, very interesting question because it does make me wonder why there was a focus on the sandwiches. And yes, there were other foods involved, and yes, if there were other foods involved and that patient ate other foods, other than sandwiches, why wasn't I asked to focus on those food suppliers? You are absolutely correct. Why was there this zoning in and focusing on a sandwich? You are right. So it is a concern to me why a sandwich, perhaps with ham and salad, would be the focus of this particular investigation. To be honest, I would never know unless somebody from the department would actually ring me and say, 'Oh, I believe it was a sandwich and you need to investigate whether she ate a sandwich because we've got evidence here that she had a sandwich'. I just was not given that information or opportunity.

Dr BACH: But furthermore, the report that you provided to the department actually made it plain that the patient had not eaten an I Cook Foods sandwich. That is not really a question, it is something that we can push other witnesses on at a later time. Just quickly from me Chair, if I still have some time—

The CHAIR: You have.

Dr BACH: Thank you. Earlier on you were asked a very strange question by Dr Kieu about whether or not you went roaming around talking to nurses. I mean, obviously Dr Kieu and other Labor members of this committee have their purposes in asking their questions. Can I just confirm that you carried out your inquiries at the hospital in a proper and normal way, Mr Christy?

Mr CHRISTY: That is correct in saying that, and of course my investigation was and only can be limited to the kitchen and the food services of the kitchen.

Dr BACH: Good. I thought that was important to get on the record. Thank you very much.

The CHAIR: Thank you, Mr Christy, very much for joining us today and thank you for the time that you have given us. I think it has been very illuminating for us all. As I mentioned at the outset, you will receive a transcript of today's hearing, and I encourage you to have a good look through it and make sure that we have not misheard or misrepresented anything that you have said. Thank you to the committee.

Mr CHRISTY: Thank you, Madam Chair, and thank you to the committee for this opportunity to present today.

Witness withdrew.

WITNESS (*via videoconference*)

Ms Kim Rogerson.

The CHAIR: Good morning, everyone. Welcome back to anyone who is watching at home, and we would like to welcome Ms Kim Rogerson, who is here in a personal capacity to help the committee.

Ms Rogerson, if I can let you know that all evidence taken is protected by parliamentary privilege, and that is provided by the *Constitution Act* but also under the standing orders of the Legislative Council. Therefore any information 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 should go elsewhere or outside and repeat those same things you will not have the same protection. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

With me today we have Ms Georgie Crozier; Ms Wendy Lovell; Dr Tien Kieu, the Deputy Chair; Ms Kaushaliya Vaghela; Dr Matthew Bach; Ms Sheena Watt; and Mr David Limbrick. Did I say Mr Ondarchie? And Mr Ondarchie—my screens were moving around as we spoke.

Thank you very much again for making the time for this committee and for this inquiry. If you would like to make some opening remarks, then I will open it up for committee discussion. Thank you.

Ms ROGERSON: Okay. First off I just want to thank you for allowing me to attend today and give you some more information about what has been going on—2½ years now. But first off I just want to start by clarifying a couple of things that Ray touched on, because I was the one who did the original sample and there was no *Listeria*. Levels were not found in the factory, but they said they found them in the actual food. So I did samplings, swabbing out at the factories. And the levels of that food were within safe levels by law; they were completely safe. *Listeria* also has a very long incubation period. It can be from seven to 70 days, so it is a very long, long time.

Now, the lady was ill with symptoms before she went into Knox hospital on the 13th. She did come from a nursing home. As they said, she might have eaten something at Christmas time or something. We do not know. She also had several other comorbidities which would have contributed—maybe to her demise, but also to her illness. I do not know whether anybody had looked at the food from the nursing home when she came in there. We do not know.

Also Greg Spicer, as he said, does not work under the *Food Act*. He is a planning compliance coordinator, and I am not sure why he was one of the ones that went into the Knox hospital. That just seemed a bit odd to me. There was not an autopsy conducted, just to let you know of that. And there were four strains of *Listeria* that were listed there that were close to the genome, but they were all below normal levels. And also too, a couple of things: closure orders must be signed by the EHO, the coordinator of public health, the manager, the director and the CEO, so it does go through a lot of different levels in order to be acted upon. As I said, it is ubiquitous, *Listeria*; we find it everywhere. But *Listeria m* is particularly toxic to vulnerable people in the community and, as I think Ray said, elderly people with other comorbidities and also pregnant women.

PrimeSafe was the company who had provided the meat to I Cook and 100 other premises. I did ask the question, ‘Why isn’t PrimeSafe and the meat being tested?’, and I was told, ‘Oh, I think they are’. But then I was also told that the packaged ham that was used by I Cook was not listed, as they did not have that batch available, which I find hard to believe because big companies like this always keep batches, the batch codes, on site for future sampling. So that was fairly—

The CHAIR: Yes. Thank you, Ms Rogerson.

Ms ROGERSON: I will try and be fairly quick with my other evidence that I have written. I do want to say I was very, very shocked by some of the falsehoods that you were told during the previous hearings. At the time I was not sure what to do when I heard what I believed were lies after lies being told to you. Some of these lies were designed to smear me, and that was particularly hurtful. To hear from former colleagues, including my superiors at the City of Greater Dandenong, lying about me to cover up their crimes was truly shocking and also pretty destructive. Having already destroyed my career and big parts of my life, they then came into the

Parliament and did everything they could to destroy my good name. I have been away from the City of Greater Dandenong for over two years now, and only now do I feel safe to say that Dandenong council operates under a culture of corruption and bullying.

When I appeared in front of you last time, I was scared, and honestly, I was concerned for my safety. I also did not know whether I should only answer questions as in court or whether I was meant to tell you the things I believed that you should know. Since my appearance I have been interviewed by Victoria Police and have told them about witnessing Leanne Johnson and Elizabeth Garlick changing and doctoring photos and body-camera video which they knew were to be used in the evidence in the criminal trial against I Cook. I knew that this was wrong and illegal, but I did not realise the importance of it. But I can assure you I was horrified. I am happy to read to you an excerpt from my police statement that makes it clear that Leanne Johnson and Elizabeth Garlick were central to the alleged crimes against I Cook. I use the word 'alleged' because, despite numerous police investigation with overwhelming evidence and the passing of more than two and a half years, Victoria Police have not laid a single charge. I ask myself on a daily basis: where are the police, why haven't they acted and who is stopping them from doing their job and delivering justice, if that is what is going on? In fact the only ones who have faced charges in this scandal are Ian Cook and I Cook Foods, and every single one of those charges was based on a lie and subsequently dropped in court. Let me be clear: I Cook Foods would never have faced criminal charges. This whole saga stank from the start.

Council eventually turned on me when I refused to help illegally frame I Cook Foods. Looking back I now realise my fate was sealed when the supervisor of planning and compliance at council, Greg Spicer, asked me to lie in what was meant to become a sworn statement designed to destroy the Cooks. There were things I refused to have included in my statement, like the conversation at the meeting that I had with Ben that never took place. I never had a meeting with Ben Cook after I collected my samples. In the end I did sign a statement that others had contributed to, as I was scared I was going to be sacked and I felt I had no choice. Leanne knew of this, and she asked me to change some of the wording of that statement into my own words because Greg had written it in a different format.

I thought the public had a right to know the council corruption and corruption within the Department of Health and Human Services. Some of that corruption happened at a level that I was not able to witness. Other things happened in front of my eyes. I knew that Elizabeth Garlick would deliberately take close-up photos and then blow them up and print them in order to misrepresent the condition of the premises. I saw the photo of broken food processing equipment, including knives and whisks. Rather than being honest and acknowledging that these were being thrown out, she pretended they were in use, and a criminal charge was created using this photo. This was standard behaviour that I was exposed to. I could not believe it when the inquiry was told by Elizabeth Garlick that it was hard to see the piece of tissue in the photo of the slug that I had earlier seen her editing. She told this inquiry it was a copy of a copy of a copy, which is a lie. I am happy to talk about any further things and anything you would like to ask me about, but most of all thank you for allowing me to report to you.

The CHAIR: Look, thank you very much, Ms Rogerson. I appreciate that for you this has been quite a roller-coaster, and so we very much appreciate you continuing to give us your time. I will just open up the questions. I still cannot quite understand why Dandenong council was doing the investigation, because it seemed that the event occurred in Knox council. I would have thought that it would have been Knox council that would have been managing this investigation, seeing it was within Knox city.

Ms ROGERSON: That is right. Sometimes that can be a bit of a grey area. The factory that allegedly made the sandwich, or made the product, was in Dandenong South, and up until the end of 2017 it was under my jurisdiction. So that I think is why I was sent to do the samples, and as this patient had entered Knox hospital, they are the ones that should have done the investigation of the nursing home as well.

The CHAIR: Are you surprised that it appears that the hospital and the nursing home were not inspected at that time?

Ms ROGERSON: Absolutely. I am horrified actually, because if this lady went into the hospital with gastroenteritis symptoms on 13 January, why weren't samples taken right then and food history and also of the nursing home? They would have had those kinds of records available. I was not informed at all about anything

until 31 January. At the time she had been, I think Ray said, readmitted, and then I did the sampling on the 1st. So no other sampling occurred until later in February.

The CHAIR: Right. Just returning back to some of the comments you made about Ms Garlick's testimony to us and the photographs that she showed. You obviously witnessed her photoshopping those photos?

Ms ROGERSON: Yes, I did.

The CHAIR: Thank you.

Ms ROGERSON: Yes. I have it in my police report. I am happy to read it to you if you would like.

The CHAIR: Thank you. Ms Garlick and Ms Johnson painted a fairly dire picture of I Cook with the photos of the broken instruments and things like that. So as someone who had been inspecting I Cook for a number of years previously, did these seem quite a stark contrast to what you knew of that business?

Ms ROGERSON: That is correct. So they went in unannounced and walked in, and that was usually how I did my inspections for I Cook. I always asked the questions: 'Okay, what is this for? What is this?'. And the answers were such as: 'They're going to be disposed of'. Whatever questions they were, they answered them clearly and honestly. They did not in any form deserve what they received, and certainly not the—I think it was—7 tonnes of food that were disposed of by Johnson and Garlick.

The CHAIR: Yes. The photos that we saw did seem to show disrepair, did seem to show pooling et cetera. This would not have been what you would have regularly seen during your inspections at I Cook?

Ms ROGERSON: No. I believe at that time they went in while they were doing cleaning. The water on the floor is a fairly normal thing, but it is cleaned every night and it is dried. So it would have been very difficult to bring that up as a charge if they had known the company or if they had even spoken to me and asked these appropriate questions of the Cooks.

The CHAIR: Yes. Thank you, Ms Rogerson. I will hand over to Deputy Chair Tien Kieu.

Dr KIEU: Thank you, Chair. Thank you, Ms Rogerson, for appearing here today again. Just very quickly, you mentioned that there were a cover-up, bullying and also corruption, and you have referred that to IBAC. So what is happening now?

Ms ROGERSON: With IBAC—it is a good question. At this stage I think the last inquiry recommended that an outside force like IBAC start an investigation. As to IBAC and where they are, I am not privy to that information.

Dr KIEU: Okay. The other thing is you have been an EHO at the City of Greater Dandenong for some time. In a statement you said that I Cook has been shown to be professional and clean and safe for food preparation. I am not quite sure whether you are there in 2016 to 2018, but the City of Greater Dandenong raised at least 13 different issues. So how do you reconcile and explain that? Were you there from 2016 to 2018?

Ms ROGERSON: Yes, I was. I Cook is a very large manufacturer, and for any large manufacturer there is always something that could be done or a recommendation. It is very hard for any of these large manufacturers to have 100 per cent compliance. So any of those items would have been written down as suggestions or requests for them to fix, which the Cooks did straightaway.

Dr KIEU: So in terms of those recommendations, have you ever asked I Cook in the capacity of an officer to update food safety or to tend to those concerns?

Ms ROGERSON: If there was anything that was of a concern, yes, I would.

Dr KIEU: So with regard to the 13 issues, did you do anything?

Ms ROGERSON: Well, I am not quite sure what you mean or which report these 13 issues were in, but anything on a list, if there were 13 items to be done, would have been done by the Cooks.

Dr KIEU: Okay. In terms of the finding, it is still a puzzle to me, because of the scientific link, the genomic link, between the disease and the strain that was found at I Cook. They are not very common. So in your opinion why is there such a unique or closely related strain there?

Ms ROGERSON: I believe Ray actually gave a good pointer as to why. This unusual genome of the *Listeria monocytogenes*—those levels were in the safe levels of CFUs, which is the colony-forming units. These are levels that are given to us by the Doherty Institute and all of the microbiologists. They are levels that we go by when we say that it has or does not have *Listeria* or *Listeria m*, so it can still have it but be under safe levels.

Dr KIEU: Do I still have time, Chair?

The CHAIR: You have 50 seconds.

Dr KIEU: Just very quickly then, in terms of the batches. I did not hear you very clearly, I am sorry—did you mention that I Cook did not keep their batches for later?

Ms ROGERSON: No, no, no. That was PrimeSafe, which is the meat industry. So they are the ones that would send their authorised officers to the meat factories for inspections.

Dr KIEU: Okay. I think my time is up. I will wait for the next one. Thank you.

The CHAIR: Thank you. Ms Crozier.

Ms CROZIER: Thank you very much, Chair, and thank you, Ms Rogerson, for appearing before the inquiry again. We really appreciate your time. I would just like to follow up that issue about PrimeSafe. There are a couple of questions I have got here. You mentioned those who would close a business, who would be involved in that decision, is the environmental health officer; the coordinator of public health, I think you said; the manager, CEO and others. Correct me if I am wrong on that. So with PrimeSafe, if there was a meat product that was of concern, would you expect them to have been brought into the investigation for such a serious decision, to close a business, such as what happened with I Cook?

Ms ROGERSON: Yes, absolutely.

Ms CROZIER: So have you got any understanding why they were not brought into the investigation? Have you got any knowledge of why they would not or was it ever raised? These products were provided to I Cook from secondary suppliers or other suppliers. Why weren't they investigated as well?

Ms ROGERSON: Yes. I had raised that issue with the coordinator of Dandenong council, Leanne Johnson, and apparently, as I just said, PrimeSafe and where the Cooks got their meat from, their manufacturer, did not have the same batch number. Every food that we eat has a batch code number so you can trace it back. So apparently they did not have a batch of that number.

Ms CROZIER: So when did you raise that with Ms Johnson?

Ms ROGERSON: It would have been—I am not quite sure, but it could have been the middle of February, I would just warrant a guess. Yes.

Ms CROZIER: Okay. Could I just ask, in terms of the closing of the business, when you mentioned all of those individuals, all the people within those positions, could you just explain to the committee a little bit more why you bring people in when you are making this decision? Obviously it is a big thing to do, to close a business. People will lose their jobs, the business will ultimately lose business, and in the case of what we have seen with the Cooks it has destroyed their business. So could you explain to the committee a little bit more about that process?

Ms ROGERSON: Yes. So under the *Food Act* there is a way that it has to be signed. You cannot close a business with just an EHO, even though we are the person that is inspecting it. We make the recommendations, it goes to the coordinator, who then oversees the photos and everything else or does an inspection with that EHO. It then goes to a manager, who looks over it, and to the director, who signs off on it, and also to the CEO.

Ms CROZIER: Sorry, just to interrupt you, who are those people in that chain? You have got the coordinator, being Leanne Johnson. Who are the others?

Ms ROGERSON: Correct. So the manager at the time was Peter Shelton. Then we have that the director, Jody Bosman, and then we have the CEO, John Bennie.

Ms CROZIER: So all of those people would have known what was going to happen about the closure or the impending closure, based on the information that was provided to the council?

Ms ROGERSON: That is correct.

Ms CROZIER: Okay. Ms Rogerson, you have made some big claims in your evidence today about the cover-ups, the lying. You have talked about the doctored photos, but had you witnessed any other occurrences of where this has happened during your time at Dandenong?

Ms ROGERSON: No. This was over the top. It was—

Ms CROZIER: What do you mean by ‘over the top’?

Ms ROGERSON: It was as though—this is just my opinion—they had been given directions to follow it through to I Cook regardless of any of the other reports. As Ray said, he wrote a report earlier. And when I did the sampling of 1 February nobody else—it was not in my area then—had gone in after 1 February until the 22nd, I think it was, of February. They should have gone in beforehand. Yes, so—sorry.

Ms CROZIER: I think I have run out of time.

The CHAIR: You have. I will move to Mr Limbrick, thank you.

Mr LIMBRICK: Thank you, Chair. And thank you, Ms Rogerson, for appearing again. There are some very serious claims that you have made. One of the things I would like to understand, though, is—you talked about doctored photographs, and I think in your last testimony you talked about being influenced to change reports and things like this—what is the motivation here, do you think, to do this? Why would they want you to do that, and why would I Cook Foods be targeted like this?

Ms ROGERSON: For I Cook Foods to be targeted like this was very unfair and, as I said, again, over the top. It was just not right, right from the start. It just did not feel good. And some of the evidence that I had given last time as well—I think I have said that as well in that statement—yes, I am not sure.

Mr LIMBRICK: Okay. And you spoke in your opening remarks about corruption. What do you mean specifically by that?

Ms ROGERSON: There was—literally, as I said, I can read this part from my police report—the doctoring of the evidence and the changing of evidence. Now, one of the things was that when I had done my original sampling, I sent it off to MDU, but I did it under chain of custody. Leanne Johnson did not want me to, but I decided to do it anyway. So I am really glad that I did. So with the corruption of that is my statement, and also my initial statement that I did was shown to IBAC but it did not form part of the brief. And also when I witnessed what Elizabeth Garlick was doing in getting rid of the paper tissue out of the photograph, I knew it was very wrong.

Mr LIMBRICK: And you said that you were glad that you used the chain of custody. What was your fear of not using the chain of custody?

Ms ROGERSON: So Leanne did not say anything. She said, ‘Oh, I don’t know; it’s probably not necessary’, but I had a very strong intuition that I needed to do this. So I had called the department of health—there was a whole other story involved with that—and pretty much they said, ‘Oh, look, it doesn’t really matter’. But I did choose to do it on my own. What it does mean is that two officers are with the food at all times, so you cannot both disappear off to somewhere. It has to be in your custody at all times, which is what it was, and it was signed off as such at MDU. They were not sent to the Doherty Institute or any other place, these samples, because they were relating to a death—even though I did not know that at the time. This was the first. It was signed off at MDU as in the chain of custody.

Mr LIMBRICK: Did you fear that the samples might be tampered with?

Ms ROGERSON: Could be. You do not know. That is part of the doubt when you send something via courier to one of these departments. You have to be very sure that no-one has opened it and looked at it. We seal it with tape and all of that, but you just do not know what has happened. So I took that upon myself. I felt that it was imperative to follow that chain of custody.

Mr LIMBRICK: Thank you very much.

The CHAIR: Thank you. Ms Vaghela.

Ms VAGHELA: Thanks, Chair. Thanks, Ms Rogerson, for your time today to join us. My question to you is: why are food premises like I Cook Foods that produce meals for consumption by vulnerable clients in hospitals and aged-care services required to have a safety plan that outlines how they control and manage food safety hazards, including Listeria?

Ms ROGERSON: So you are asking why are they? That is mandated by the Department of Health.

Ms VAGHELA: So had you previously requested I Cook Foods review and update their food safety plan to be compliant with these requirements?

Ms ROGERSON: Only once did I ever have to do it, and it was a minimal change. It was more a formatting issue.

Ms VAGHELA: Okay. So they did have a food safety plan?

Ms ROGERSON: Yes, they did.

Ms VAGHELA: Okay.

A member: It was a formatting issue.

Ms ROGERSON: Correct.

Ms VAGHELA: Okay. So if they did have this, what is the usual process undertaken by people like you—EHOs—when notified by the Department of Health about a case of Listeria in the community? What sort of record-keeping and documentation requirements are there for EHOs inspecting local food premises?

Ms ROGERSON: Are you specifically—

Ms VAGHELA: What sort of record keeping do you do?

Ms ROGERSON: Okay. We write a report. At the time that I did my sampling, on 1 February, there was not any time to do an inspection. So an inspection of a large manufacturer takes several hours. I was only there to do the sampling that day. In order to get it under chain of custody and to MDU takes a quite a long time, because you have a lot of forms to fill in and you have to maintain temperature. So that is one of the things that I did. Sometimes you would do an inspection just afterwards. At that time I did not do an inspection, and as I said, these premises were not in my area after 1 January 2019, but they were not inspected even after the death of the lady. The EHO, who was Elizabeth Garlick, did not do any other sampling.

Ms VAGHELA: We had Leanne Johnson from the City of Greater Dandenong, who confirmed that DHHS found that the business did not have a Listeria management plan. Is that correct?

Ms ROGERSON: No, that is not correct. The Listeria management plan—all big manufacturers always have that in their food safety plan, and theirs was for the clean-up. They knew what to do. They are a large manufacturer. They knew what to do, and they did.

Ms VAGHELA: So they knew. But in terms of record keeping, were you able to see whether they did have it? Because that is what our understanding was—that they did not have it.

Ms ROGERSON: They had a pest report to be done, and the Listeria plan was of the clean-up. So, yes, they would have had that. They did have that actually.

Ms VAGHELA: Because, as Dr Kieu was saying, we have been given a list of a few of the findings. At I Cook Foods there were 13 findings. In the past, particularly in 2017, there was—

Mr ONDARCHIE: These have been asked and answered. They have been asked and answered.

The CHAIR: Excuse me, Mr Ondarchie, you will have your turn. Thank you.

Ms VAGHELA: So, yes, *Listeria mono* was found in 2017. I just wanted to know, if it was found in the past, whether there was a Listeria management plan and I Cook Foods knew how to handle an outbreak?

Ms ROGERSON: Yes, they did.

Ms VAGHELA: So they did have. So what is the standard practice taken by local government to enforce the *Food Act* when areas of concern are identified at a food production premise?

Ms ROGERSON: We do an inspection and we write a report and we send it to them, and then, if necessary, we follow up.

Ms VAGHELA: So some of the programs—

The CHAIR: I am sorry, Ms Vaghela.

Ms VAGHELA: I will come back to it.

The CHAIR: Ms Lovell.

Ms LOVELL: Kim, thank you for your presentation. I would just like to go to the point that Dr Kieu raised—and again it was raised by Ms Vaghela—that there had been 13 items that had previously been investigated with I Cook. But weren't they all investigated and I Cook cleared of any wrongdoing in those 13 items?

Ms ROGERSON: Yes.

Ms LOVELL: Thank you. You explained that any large manufacturer would have a number of issues raised over time. How often in your experience do those sorts of issues occur?

Ms ROGERSON: I inspected these places at least once, sometimes twice a year, because I went in without making an appointment, and they usually had something that had to be done.

Ms LOVELL: Thank you very much. And could we just ask about the photos of the water lying on the floor in I Cook's factory? Do you know what time these photos were taken and why the water was there?

Ms ROGERSON: I believe they were doing some cleaning, so obviously there would have been water on the floor if they were cleaning. I am not sure of exactly what time. I think what is foremost and should be reiterated is that the editing of legal evidence and the tampering with this evidence is more important than some water on the floor.

Ms LOVELL: Excellent. I would just like to ask—you said earlier that you have been asked to lie in a statement, and basically it sounded as if you had been given a statement that was already written for you by somebody else and then you were asked to put some of it into your own words. Is that standard practice? Has that ever happened to you before?

Ms ROGERSON: Not with the previous coordinator, no. There were some times that the manager—the previous manager, Peter Shelton—would ask us to do that, but normally I would write my own statement. But in this case Greg Spicer, the coordinator of planning compliance, was the one doing my statement, or adding and changing things. I did ask about that, and I was told, 'Oh, he knows what he's doing'—Leanne said. And I did question her as to why the planning compliance coordinator was putting together statements under the *Food Act*.

Ms LOVELL: It seems to me you think there was quite a deal of pressure within the City of Greater Dandenong to have this finding against the Cooks to close them down. How far up the tree in the City of Greater Dandenong do you think that pressure was coming from?

Ms ROGERSON: The CEO, and then perhaps outside sources.

Ms LOVELL: And when you say ‘outside sources’, do you believe those sources were within the government, within the department or in other companies?

Ms ROGERSON: I believe the department of health.

Ms LOVELL: Department of health.

Ms ROGERSON: And there was also another manufacturer—that was Community Chef—as well. There were issues surrounding that too.

Ms LOVELL: And why do you believe that the department of health and Community Chef would have been putting pressure on the city of Dandenong to close down I Cook Foods?

Ms ROGERSON: Look, probably the best person to ask questions of like that would be Ian, who will be on this afternoon. He can give you a more thorough answer to that.

Ms LOVELL: Okay. Do you have an opinion yourself?

Ms ROGERSON: At this stage I do not really want to give my own opinion.

Ms LOVELL: Okay. All right. Thank you.

The CHAIR: Thank you. Ms Watt. Sheena Watt.

Ms WATT: Good afternoon, Ms Rogerson. Thank you so much for appearing before us today. I was not around last time, so I just have a few questions for you. I will start with the first one. You had quite significant experience as an environmental health officer, as you were outlining in your opening remarks. Based on your professional training and your knowledge of the *Public Health and Wellbeing Act 2008* and the *Food Act*, I am just wondering: do you think that it is an acceptable risk to knowingly allow food to be supplied to vulnerable cohorts in healthcare settings, particularly pregnant women, people that are immunocompromised, the elderly and others, particularly if it has been manufactured in a kitchen where there is evidence of *Listeria* contamination?

Ms ROGERSON: No, it should not be given to them.

Ms WATT: Excellent. Thank you. So what responsibility did the City of Greater Dandenong and furthermore the department have to respond to the findings of the food samples collected at the premises of I Cook that indeed tested positive for not one but four strains of *Listeria*, noting also that the deceased patient’s sample contained a strain that was highly related?

Ms ROGERSON: I cannot comment to what happened or what was said at different echelons of hierarchy.

Ms WATT: It is more about: what are the responsibilities, in your view, of the City of Greater Dandenong to respond to the findings of the sample?

Ms ROGERSON: All right. So when I got the original samples back, in which all the swabs were fine—all the other samples were within normal levels—I had a conversation at that time to let the Cooks know that they needed to do a *Listeria* clean-up, which requires chlorine and everything to be washed down and cleaned, which they did do.

Ms WATT: Which they did do. I just had a question: for five years, indeed, you had responsibility for the area that covered I Cook and had particular responsibility for I Cook over those five years. I am just wondering: what steps did you take to ensure you avoided any biases in your reporting and ensure that your inspections were rigorous and objective?

Ms ROGERSON: Ian will attest to that. He actually said that I was tough but fair.

Ms WATT: Okay. And what about you? What things did you personally take on board to ensure that you were free from any influence of those organisations?

Ms ROGERSON: I did not know them out of work; I had no conversations with them out of work, so I treated them like any other manufacturer.

Ms WATT: Okay. All right. I just was keen to know what steps you had taken as the previous inspector. Thank you for that. I reckon I might be about done, Chair, so thank you.

The CHAIR: Great. Thank you. Deputy Chair.

Dr KIEU: Thank you. In your opinion there were some very serious things that happened up to the CEO level and outside influences, including other manufacturers and perhaps the department of health, which are very serious if proven. So do you think those are the motives for the changing of your statement? So the first question is: do you still have the original statement that you wrote? And secondly, what has been changed and to what effect?

Ms ROGERSON: Okay. So my statement was actually changed. There were four versions of it, and I have, I believe, three versions of it but I do not have the original first one. The Dandenong council would not give that to me after I left, so I only have the last three. As to whether the statements were changed because of influence from the CEO, I cannot answer that because the only people that had influence on my statement were Leanne Johnson and Greg Spicer at that time.

Dr KIEU: Yes. In signing the order for the closure or temporary closure of I Cook, the acting Chief Health Officer at the time did say that, and may I quote:

No one single piece of information was used in isolation to come to that decision. Rather, it was the collective picture of public health risk ...

So what do you think about that decision? Because, according to what Professor Sutton said, there were several or collective evidences. Do you think that was the appropriate action?

Ms ROGERSON: I was not there—actually at work—when that happened, so I was not privy to conversations or anything that went on, and again, as I said, I was not the EHO for that area.

Dr KIEU: Okay. This has come back through the genomic evidence. You mentioned that this is at a lower or safe level of Listeria.

Ms ROGERSON: Correct.

Dr KIEU: Is that level mandated or is it just—

Ms ROGERSON: Yes, it is mandated by the state government and all of the registered microbiology units, like Doherty Institute.

Dr KIEU: Do you think that the level is safe even for people that are vulnerable, like pregnant women, like the elderly, like immunocompromised people?

Ms ROGERSON: Well, they should not be given that food to start with.

Dr KIEU: Sorry, what do you mean by that?

Ms ROGERSON: Food that is of high risk to that vulnerable cohort should not be given to those people. So you would have to question the scientists at these various institutes as to why they chose those levels.

Dr KIEU: Even though it may not be set for those people?

Ms ROGERSON: Again, you would have to ask them about their criteria for making those levels.

Dr KIEU: The other thing, quickly, is that you just mentioned that you have made some statement to the police for the investigation.

Ms ROGERSON: Yes, I have.

Dr KIEU: Is it available to the committee?

Ms ROGERSON: Yes, I can read it to you. I will read you the statement—just the paragraph of what was said.

Dr KIEU: It is up to the Chair. We may not have the time.

The CHAIR: Ms Rogerson, I wonder if you would be willing to send a copy of that to the committee secretariat.

Ms ROGERSON: Okay.

The CHAIR: Thank you. Dr Kieu, you have 30 seconds.

Dr KIEU: Thirty seconds—I think I will wait for my next round.

The CHAIR: Okay, thank you. Mr Ondarchie.

Mr ONDARCHIE: Ms Rogerson, thank you for presenting today and being so open and frank with us. I know it must cause you a great deal of stress. I almost feel like paraphrasing Hamlet today: something seems rotten in the state of Dandenong. But I would like to ask you about your relationship with the City of Greater Dandenong as you went through this process and now.

Ms ROGERSON: Okay. Oh, gosh. That is a can of worms. My relationship at the time with Dandenong when this all came out in the open was tenuous, because there was some bullying, some definite gaslighting. There were conversations and things that I was told that were not very nice in nature, to the end of which, after I had completed an investigation they wanted me to do, they then took me off my work.

Mr ONDARCHIE: Okay. And since you have departed, in terms of your support et cetera, how has that been?

Ms ROGERSON: I have had nothing from Dandenong. I had a few emails to begin with, which I found quite stressful, so I requested that they did not contact me.

Mr ONDARCHIE: Okay. Did you have access to employee support, like WorkCover or anything like that?

Ms ROGERSON: Yes, I did. I tried for that, but it was refused not once but twice. But they refused to go to mediation. For the WorkCover, when I applied for it, they would not agree to it. And they also had a letter from a lawyer sent to the self-insurer of Dandenong council asking to deny my request.

Mr ONDARCHIE: Who is the self-insurer?

Ms ROGERSON: At that time it was JLT. JLT then became MAV Care. John Bennie, the CEO at that time, sat on the board of MAV Care.

Mr ONDARCHIE: At the time that your claim was rejected?

Ms ROGERSON: Yes.

Mr ONDARCHIE: I will come back to that. How much time do I have left, Chair?

The CHAIR: Two and a half minutes.

Mr ONDARCHIE: Thank you. Then I would like to take that opportunity, because I am really interested: could you read me that paragraph that you wanted to talk about?

Ms ROGERSON: Yes, sure. Okay.

It was only after CGD dropped all criminal charges that I became aware of the doctored image on the brief of evidence against I Cook. The evidence they produced to support this charge was the photograph taken by Garlick, and I assume her statement. Garlick did not have her camera on that day.

Actually, sorry. I am looking at—sorry, I am reading the wrong thing. Anyway, okay.

In approximately mid-March to early April I was standing at my desk. The office is open plan to allow people to look across the entire floor. Garlick's desk was directly behind mine and only approximately 2 metres away. I heard Garlick and Johnson speaking softly behind me. This was unusual and appeared sneaky. I found this suspicious and began looking over at them. I heard Johnson say something along the lines of, 'Why is there a hold-up? Why is media and comms taking their time? Would you be able to do this?'. That was a question to Elizabeth Garlick. Garlick responded, 'Yes, I would'. Johnson said, 'Well, go and get it'. She was referring to a thumb drive. I saw Garlick's computer screen, which had the image of a slug on the concrete flooring. In the lower left-hand side of the image were the remains of a white tissue. However, I could clearly distinguish the slug, tissue and floor. The slug would have been approximately 2 centimetres in length and the tissue evidence approximately 4 to 5 millimetres in length. There was only one individual piece of tissue. I know this picture was taken by Garlick on approximately 18 February 2019 from an inspection she undertook of I Cook. It was alleged that Garlick located this food within the manufacturing area at I Cook. The photo was open on her screen and I saw Garlick with a little red circle on the screen, which I believed to be some kind of cropping tool in the program. The red circle was around the tissue remnant like it was going to be removed from the picture. I asked Garlick and Johnson what they were doing. Johnson said, 'Just cleaning it up and removing personal conversations', which was the photos and video. I turned back to my desk and continued working.

The CHAIR: Thank you. We will just have to leave that. Thank you. Ms Vaghela.

Ms VAGHELA: Thanks, Chair. Chair, I would highly appreciate it if Mr Ondarchie does not interject while I am asking the question in my allocated time, because he has done it twice. My questions are not directed to him, they are directed to the witnesses. Thank you.

The CHAIR: Thank you.

Ms VAGHELA: So I would like to ask Ms Rogerson. She has alleged that she was asked by the council staff to add information and the observation of things that never took place during her inspection of the I Cook Foods facilities, and she said that she was instructed to delete words or sentences from her report. What I want to know is: was Ms Rogerson the only EHO who was asked to do this or were other EHOs also asked to amend the reports?

Ms ROGERSON: Again, I do not know whether other officers were asked. I did not read their statements. In the past they have been. And I just want to reiterate again that this was not an inspection that I did. I only went there on 1 February to do samples for MDU.

Ms VAGHELA: Yes, but historically were you the only one asked to change the reports, or were other EHOs also asked by the council staff?

Ms ROGERSON: There were many times in the past, for other premises, that I was asked to change, modify, add words, delete them in my statement, yes.

Ms VAGHELA: Did you raise that issue with anybody?

Ms ROGERSON: Yes.

Ms VAGHELA: And nothing was done?

Ms ROGERSON: Correct.

Ms VAGHELA: The photos that we have seen of the I Cook Foods inspection that was done show off disrepair. If you had gone to do that inspection, would that have been of concern to you?

Ms ROGERSON: It would have, but those photographs were taken—as I have said here and was going to read: Elizabeth Garlick had a camera that would zoom into a very, very small area, whereas I would take a true photograph of that area, which was more honest.

Ms VAGHELA: So Ms Rogerson, have there been other instances in your time working as an environmental health officer for either the City of Greater Dandenong or another employer where you felt it

was not necessary to act upon reports of food safety concerns, including the presence of *Listeria* and foreign objects in foods? Have there been any other instances in your time working as an EHO, whether at the Dandenong council or another employer, where you saw a few safety concerns and you did not report? Were there any other instances?

Ms ROGERSON: No, I reported everything in my reports.

Ms VAGHELA: And as the environmental health officer responsible—because you said you were responsible for five years out of seven years that you worked at Dandenong council—what steps did you take to ensure that you were conducting inspections in a very vigorous and objective way?

Ms ROGERSON: Okay. That has been answered already, and I also answered that in, I believe, the last parliamentary inquiry. So I have just answered that.

Ms VAGHELA: So there was no potential bias there?

Ms ROGERSON: No.

Mr ONDARCHIE: Come on.

The CHAIR: Continue, Ms Vaghela. You have 1 minute.

Ms VAGHELA: Thank you very much. Thank you, Chair; I am done.

The CHAIR: Thank you. Dr Bach.

Dr BACH: The previous questioner could have just asked the same question for a third time, to see if she got a different answer. Ms Rogerson, thank you so much for having the courage to present to us again. I want to say at the outset that when you talk about the hardship that you have gone through, and bullying and harassment in particular, I believe you. At the first inquiry I was sat very close to you, and I still have such a strong recollection of how much you shook, if you do not mind me saying, as you were giving your evidence. You were clearly incredibly scared, and I think, given that Labor Party members of this committee saw that the first time around, the way that they have quite shamefully again today gone after you is quite dreadful, Ms Rogerson—

The CHAIR: Dr Bach, please, if you would like to stick to questioning Ms Rogerson, rather than commenting on other members.

Dr BACH: Ms Rogerson, did officials at Dandenong council plant that slug?

Ms ROGERSON: Yes.

Dr BACH: Under questioning from other members, it has consistently been put that, despite what you have said, which I think is very useful for us, about *Listeria* being ubiquitous—that was the word you used earlier in your evidence—shouldn't this step, this nuclear step of shutting down I Cook Foods, have been taken based on the evidence that is being presented? If I Cook Foods had represented such a significant public health risk, would you, in your experience and given your expertise, have expected some other people to have become sick?

Ms ROGERSON: Absolutely, yes.

Dr BACH: Okay. Thank you. There were some questions earlier about record keeping and whether or not the record keeping of I Cook Foods was appropriate and adequate. I was taking some notes as you were talking, but I confess my notes are not fulsome. Was the record keeping of I Cook Foods at this time appropriate or not?

Ms ROGERSON: Yes, they were. It was appropriate.

Dr BACH: Okay. And look, without wanting to comment on other members, they have got more front than Myer, Ms Rogerson, for going after record keeping, given the appalling state of the report, if you can call it that—the government report—on which I Cook Foods was shut down. I mean, if Myer was still actually operating, given the government's COVID bungles, well, then, they have got more front than it.

The sandwiches—that was obviously given as the reason for shutting down I Cook Foods, the fact that this poor lady had consumed sandwiches, and yet earlier on we heard that it was actually impossible that this lady could have consumed sandwiches from I Cook Foods. This may be beyond your remit, but you have not had an opportunity to comment on that quite startling evidence, which really was the key catalyst for reopening this inquiry.

Ms ROGERSON: Yes. Look, as Ray said in his reply before, you could not say unequivocally that this lady ate something or anything—sandwich—from I Cook Foods.

Dr BACH: And yet the Chief Health Officer, even though a report had been provided to his underling before I Cook Foods was shut down, specifically gave I Cook Foods sandwiches—despite what Dr Kieu said earlier about a range of factors, the Chief Health Officer specifically gave the sandwiches from I Cook Foods as the reason to shut down this business?

Ms ROGERSON: That is correct.

Dr BACH: All right. Thank you. Nothing further from me, Chair.

The CHAIR: Thank you, Dr Bach. Ms Watt.

Ms WATT: Thanks, Ms Rogerson, for sticking with us. I might be the last one. I was not around last year for this inquiry, so my apologies if my questions were particularly harsh to you. I was not familiar that there was shaking and other things that Mr Bach spoke of. I do have a question for you. I will be quite quick. Having previously been an inspector, I know just how very challenging this work can be—not in food, I must confess, though. The report from the last inquiry—I will just go to that—states, and the committee found, that the closure order signed by the acting chief officer was prepared and served on valid grounds and for proper purpose. Can you explain to me in your opinion what you believe to be valid grounds and a proper purpose for the issuing of a closure order?

Ms ROGERSON: Okay. Just to save time, I go back to Ray's testimony just an hour or so ago, when he explained that system to the panel. It was exactly the same kind of pattern that we would do as well at Dandenong council.

Ms WATT: Okay. And if there are in fact vulnerabilities there with the service of that food to vulnerable cohorts, do you believe that the standard in fact should be quite stringently held? I mean, we are talking about people who are immunocompromised and pregnant, so their risk there is incredibly high. And we have seen the unfortunate death that happened. Do you have any commentary on a particular standard difference between those food settings that provide to the general public and those that provide to the high-risk cohorts?

Ms ROGERSON: Not at this time. Again, you would have to ask that of the scientific institute.

Ms WATT: Okay. That is all right. Did you have any thoughts or commentary to be made about conducting those checks and the standards which you apply when they actually are providing food services to vulnerable cohorts such as immunocompromised and sick people?

Ms ROGERSON: Are you talking only about manufacturers or are you talking about—

Ms WATT: Food manufacturing, yes.

Ms ROGERSON: All manufacturing? Yes, there is.

Ms WATT: So is there a different, higher standard when it comes to Listeria plans and other things, or is it essentially the same?

Ms ROGERSON: It is essentially the same.

Ms WATT: Okay. And that includes—what do you call it?—the clean-up and the things that need to happen afterwards?

Ms ROGERSON: Correct.

Ms WATT: All right. So there was just some earlier evidence around the acceptable level, and you will excuse me because it was quite technical—100 grams per something.

Ms ROGERSON: CFUs are colony-forming units, so that is how it is plated. And that is where the scientists or the specialists would count those units, yes.

Ms WATT: Yes. Thank you for explaining that. I just wonder: is there a difference between those acceptable levels when it comes to food manufacturing places that are providing services to vulnerable cohorts versus those that provide services to—

Ms ROGERSON: It is the same level.

Ms WATT: They are the same level, all right. It is not that clear. All right. I believe that is it for me, unless there is more time remaining, Chair.

The CHAIR: Thank you, Ms Watt. Ms Rogerson, thank you very much for your time again today. We appreciate it no end. Thank you for your candour and certainly your stoicism and courage in continuing with us. That concludes this part of the hearing. The committee will take a break and reconvene at 12.45. Thank you, and thank you again, Ms Rogerson.

Ms ROGERSON: Thank you for having me.

Witness withdrew.

WITNESSES (*via videoconference*)

Mr Ian Cook, Director, I Cook Foods; and

Mr Paul Brady, former Victoria Police detective sergeant.

The CHAIR: Welcome back, everyone. Apologies if I gave you a start with the wrong time when we finished the previous session. This is the Legislative Council Legal and Social Issues Committee's public hearing for the Inquiry into the Closure of I Cook Foods Pty Ltd.

I am very pleased that we have with us for this hearing Mr Ian Cook, the owner of I Cook Foods, and his colleague, Mr Paul Brady.

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

I am Fiona Patten, the Chair. With me today are Dr Tien Kieu, the Deputy Chair; Ms Georgie Crozier; Ms Kaushaliya Vaghela; Mr David Limbrick; Ms Wendy Lovell; Mr Craig Ondarchie; Ms Sheena Watt; and Dr Matthew Bach.

This is being recorded, and of course you will receive a transcript in due course.

If you would like to make some opening remarks, Mr Cook or Mr Brady, then I will open it up to a committee discussion. But again, thank you for your time.

Just for those at home, just to clarify, you are in a place that has very large density limits, and you and Mr Brady are operating in a very COVID-safe way in that office, just in case anyone was concerned about your personal safety.

But thank you, Mr Cook and Mr Brady, for joining us, and we can start with some opening remarks from you and then we will open up for the committee discussion.

Mr COOK: No problem. Thank you, Ms Patten. Thank you for giving me the opportunity to address the committee today. The reopening of this inquiry happened because new evidence has come to light that clearly shows that this committee was misled and at times, it now appears, deliberately lied to.

On 24 June 2020, I sat and listened in the committee room to what seemed to be provable lies told by John Bennie, Leanne Johnson, Elizabeth Garlick and Jody Bosman, all from the City of Greater Dandenong. Evidence found since that day has only made these more stark and easier to prove. The same is true of things told to this committee by Dr Brett Sutton and Dr Angela Bone.

That day was one of the most difficult days of my life. I had to listen to misrepresentations and what clearly seemed to me to be lies from people in positions of trust that we should be able to rely on and respect. Throughout that day I could not stop thinking about the 41 jobs that were deliberately destroyed along with my business. Those jobs belonged to incredibly good people who did not deserve to have their lives and their families' lives destroyed by corruption.

I specifically want to address key statements made to the committee by Dr Brett Sutton. Dr Sutton closed I Cook Foods using the *Food Act*. He did not use *Public Health and Wellbeing Act*. He told this inquiry that Kym Peake, the former secretary, had delegated this power under section 19. But the law just simply does not allow for this, so even the closure order was made unlawfully.

Now, I did not know Dr Sutton when he closed our business down. Nobody did. He was the newly appointed acting Chief Health Officer. Most Victorians had not heard of him. So when Victoria Police Detective Sergeant Ash Penry carried out the first police investigation into crimes surrounding the destruction of our business, no-

one at Victoria Police or Spring Street was overly concerned that Detective Sergeant Ash Penry named Dr Brett Sutton as a person of interest in relation to those crimes. But then the pandemic hit us all, and suddenly the Victorian government's political survival relied on Dr Sutton, on his survival, and so everything changed.

That is when Detective Sergeant Ash Penry was suddenly taken off the investigation. It was reassigned and then reassigned again and then reassigned again. This went on for almost two years. Finally, the investigation was killed off, only to be reopened by the persistence of a small team of volunteers who have helped I Cook Foods fight for justice, as well as inspiring journalism from the *Herald Sun*; the ABC; 3AW; channels 7, 9 and 10; the *Age*; and numerous podcasts. Now, thanks to the intervention of Chief Commissioner Shane Patton, the investigation into the crime surrounding the closure of I Cook Foods has reopened, and I try to maintain my faith in Victoria Police. I need to believe that VicPol will now focus on the police work and leave the politics to others. Through all of this I have been forced to watch Dr Brett Sutton, a man who I maintain lied and destroyed my business and who Detective Ash Penry calls a person of interest in serious crimes, being given unfettered powers to lock up 6.4 million Victorians. You can understand how concerned I have been for Victorians during the last 18 months. I strongly believe this government is running a protection racket for Dr Sutton. This needs to stop, regardless of the pandemic. I also understand from media reports that the minister who oversaw the destruction of I Cook Foods is reluctant to appear. I believe this is showing contempt to this inquiry. I hope she appears somehow.

Since the first hearings of this public inquiry more evidence has come to light, which I would like to share with you now. No-one knows this, and I am pretty sure I was not meant to know this either. I am not going to name the company I am about to speak of, but I am happy to provide this evidence to the committee privately with the consent of those involved. You see, good people who were directly involved in what I am about to discuss reached out to me and shared this evidence because they saw the lies being told about I Cook Foods and they could not stand it.

Recently Victoria's health department opened an investigation into the death of an elderly man who had contracted listeriosis. Now remember, there is now unequivocal proof that I Cook Foods had nothing to do with the death of Ms Painter. We did not kill anyone. The Department of Health and Human Services knew this before they closed us. The City of Greater Dandenong were informed shortly after and still proceeded to charge me. But in this recent case health officials investigated this elderly man's home and took samples of meals that were produced by a company that produces and makes Meals on Wheels meals. The samples that were taken tested positive for *monocytogenes* Listeria. The department then contacted the local environmental health officer and asked that officer to investigate the company that provided the meal. The EHO took further samples and swabs of the business's kitchen. A total of five swabs tested positive for *Listeria mono*, with at least two different genome sequences.

So what happened? Did Dr Brett Sutton do a press conference naming and destroying this business? Were 96 false charges laid against this business and its owner? Did the state government spend the next two years lying about this business? No, none of these things happened to the second business. Instead, the owner of this second business was recently contacted by their local environmental health officer and told, 'Case closed. No more investigation'. Now, the business did actually provide a meal to the elderly man that contained Listeria. We never did. My business has never contributed to the death of anyone.

So why the double standard? Why was I Cook Foods treated so differently to the other business? Well, evidence is now before the committee that shows we were treated differently because we were a commercial rival to the business that was run by the very council that was involved in closing us down. How can a council be allowed to regulate a commercial rival? As I said last time, it is like giving Hungry Jack's the power to close down McDonald's and take all their customers.

In his media conference on the afternoon of 22 February 2019 Dr Sutton named and destroyed I Cook Foods. He claimed he was acting out of an abundance of caution to protect thousands of elderly people that might be at risk. Well, where were you two weeks ago, Dr Sutton—or were you acting out of malice when you killed off I Cook Foods and not an abundance of caution? Ms Painter did not eat any foods from I Cook Foods.

We never should have ended up here, and yet we are back here going over this again. Why? Well, for one thing, Victoria Police is yet to lay a single charge. They assure me their commitment to the law is pure, and I take them at their word, but this committee has been reopened to investigate a different crime: the crime of

lying to Parliament, and as you all know it is a crime. Here is the thing that many people seem to forget: when a witness lies to a parliamentary inquiry they are also lying to every single Victorian whose lives are affected by the decisions made by the Parliament. People need to be able to believe in Parliament. Therefore there must be consequences when witnesses knowingly and deliberately lie to and mislead under oath people like yourselves. If we do not honour the truth and protect it and defend it, and fight for it when we have lost it, how can we ask our kids or ourselves to believe in anything?

I respectfully ask that you bring me back before the inquiry once Dr Sutton and others have given evidence so I can immediately point out if other falsehoods have been made before you all. Thank you for listening and thank you very much for reopening this inquiry.

The CHAIR: Thank you, Mr Cook. As you know, we make it very clear, as I stated to you, any deliberately false evidence or misleading of committee can be considered a contempt of Parliament. So we will let that take its course. Thank you again for appearing before the committee and, yes, certainly, we have reopened in light of new evidence. On the 22nd Mr Christy sent emails to DHHS, which would have been the day after Mr Sutton had signed that closure notice for you.

I just want to go back to the start—and I asked Mr Christy this as well. Given your experience in the food industry, given your experience as a supplier of food for special needs, why weren't the hospital's kitchens investigated at the beginning, at the time when there was a concern that the patient may have eaten something that—well, ultimately, that may have been contributing to her death? Why was it that they immediately went to you?

Mr COOK: That is a very good question: why did they come directly to us? Why did they never inspect the hospital straightaway? It was known that the hospital had its own food service and produced its own products as well from ingredients it purchased in elsewhere. It seems very strange to me that they would home in on just us.

The CHAIR: Now, I know this was particularly difficult at the time, but when you saw the photographs that Ms Garlick and Ms Johnson presented to the committee—let us put aside the slug photo for a moment because I think we have all become quite confident that that was doctored. But some of the other photos were presenting your business as a business in disrepair, as a business that there were health concerns about, and they were quite firm in raising that when they gave evidence the last time. Would you explain for the committee how, in your opinion, that misrepresented the inspection that was undertaken.

Mr COOK: Okay, so let us deal with something that came up with previous other witnesses about the water pooling. That was where Dr Angela Bone in the last committee said that the floor had to be completely re-laid before they could open it. Number one, the only person that ever took photos of water pooling at I Cook Foods was Elizabeth Garlick, and she took them while we were in clean-down. I have her on our CCTV footage where when I have an employee who was literally washing the floor down, because we cover it with water and chlorine every afternoon—she was washing it down. Elizabeth Garlick races around her to get a photo of her putting the water on the floor. That photo was used in the charge of allowing water to pool in my factory. If that is the case, you are going to have to close down every manufacturer in the state who washes their floor in an afternoon. It was blatant perjury. So Rogerson was right. She manipulates the camera and she sets stuff up. She takes photos of us—middle of clean down, of wash down. She shows you a sink with a heap of trays in it—they were washing them.

Now, on the issue of the flooring, two things. One: every year at Easter we need to let the floor dry out before we recoat it with paint. That happens every year. They closed us down just prior to what we would do every year, because floors wear. I have to have a surface on it that stops people slipping so that I do not hurt people at work, and I also need to seal it so that it can be cleaned, get washed down—everything done like that. Now, Angela Bone said I could not be reopened until the floor had been completely redone. She actually used the word 'complete', as in completely re-laid—what she said. If anyone would like to come down and see it, my floor is exactly the same, exactly the same condition, exactly everything. It was never re-laid, but they reopened me. All that happened was it got its annual painting.

The CHAIR: Right. Prior to this event were there indications that the council or Community Chef were trying to enter into some fairly heavy competition with your company?

Mr COOK: Because Community Chef had so many exemptions from tender and other processes, we really did not know what they were doing at the time. We only found out what Community Chef had been up to after we had been closed, when we were able to get all their board papers and their risk assessments. It was only then that we realised the things we were doing were having a serious impact on contracts they thought they would win.

The CHAIR: Okay. Thank you, Mr Cook. I will turn to Deputy Chair, Dr Kieu.

Dr KIEU: Thank you, Chair. Thank you, Mr Cook, for appearing before the committee again. I heard that you mentioned something about the Chief Health Officer, Brett Sutton, his integrity and his authority, and I also note that you mentioned a very recent case about a man dying. I personally do not know much about that, except from the *Herald Sun* this morning. The only thing that stands out from the *Herald Sun* about that case is that there was no genomic link. But anyway, this is not the focus of this committee hearing. This is about I Cook and about new evidence. So going back to when I Cook was ordered to close down—I presume that was only temporarily until some so-called problems were fixed—were you given any opportunity by the council or by the Department of Health and Human Services in order to rectify the so-called problems?

Mr COOK: Could you repeat the last parts of that question, please, Dr Kieu?

Dr KIEU: Yes. Were you given any opportunities after I Cook was closed down in order to reopen it again, and what actions have you taken following the closure?

Mr COOK: Okay. So we were kept closed for nearly a month, and that was by collusion between an independent authorised auditor, Pauline Maloney of the Department of Health and Human Services, and Leanne Johnson. They colluded to keep us shut. That is why there is a Supreme Court action against Gavin Buckett, the auditor involved, because I have it in writing.

Dr KIEU: So you were not given an opportunity to rectify or to do anything just to have the business open again?

Mr COOK: Dr Kieu, none of the things that I did or could have done was going to satisfy them. Number two: I was ordered to do a sampling plan, under section 4.2.3, which is in chapter 4 of—I am just going to find it for you—Food Standards Australia. The only person in Victoria who can enforce chapter 4 is the secretary to the department of primary industry, okay? And you were asking about Listeria. Let us clean a couple of things up. There were not four strains of Listeria found in our premises; there were two strains found, on corned beef and ham, end of story. The lab broke up the samples that would have cross-contaminated each other and managed to get a couple of other samples but only two strains. We tried desperately to comply with standard 4.2.3, but that was a completely unlawful thing to force upon us. Our food safety plan covers all pathogens, not just Listeria. That particular standard is for a Listeria management plan. Everybody that mentions it to you people is lying to you. There is no Listeria management plan on its own for people like us. We have to deal with E. coli, salmonella, coliforms—a whole range. They all die with heat, they all die with chlorine and they can all poison people, which is why our food safety plan covers the whole lot. So we need to get some facts straight here. In fact, the problem with—when I was listening before—some of the questions you people have been forced to ask is you are relying on what you were told at the last hearing. Well, I have got news for you: at the last hearing people lied to you.

Dr KIEU: We can only act on what we have been given and know. Just quickly before my time runs out: I believe that you have a court action against certain entities and also some police statements that you have made in view of the investigation now being open. If you think they are relevant, could you provide it for us, as the committee?

Mr COOK: How do you mean provide it, Dr Kieu? What would you like me to provide, the statement of claim?

Dr KIEU: The statement, just like Mr Christy provided us with his, not just one—

Mr COOK: I am sorry. Yes, I can send you my police statement. I can also send you the statement of claim for the Supreme Court actions, both of them.

The CHAIR: Thank you, Mr Cook. Ms Crozier.

Ms CROZIER: Thank you very much, Chair, and thank you, Mr Cook, for appearing before the inquiry again. I know this is incredibly difficult after everything that you have gone through, and I just want to put on record the tenacity and resolve that you have had in getting to the bottom of this. Can I go to the point you made around the police investigations. I think it was Ash Penry who did the first investigation, who you said had named Dr Brett Sutton as a person of interest. Now we have got a fourth police investigation into this issue. Am I correct in saying that?

Mr COOK: Yes, basically. So Ash Penry was the one. He and Detective Rick Mokos would have spent maybe 7 hours here in our offices going through evidence with us. So they were across it all; they really understood what was going on. In fact, while they were here they were quoting the crimes that these people had committed as they did it. Now, remember, none of this is hearsay and none of this is circumstantial. The evidence that is against these people is by their own words. They hanged themselves. This is compelling, direct evidence.

Ms CROZIER: Yes, I understand that. I just want to go to the point that I made. How many police investigations have been undertaken into the closure of your business and what you are trying to [Zoom dropout] criminal charges brought against you?

Mr COOK: Okay. So there are four, including the review that Patton organised.

Ms CROZIER: Okay. So four police investigations. So could you tell the committee what the police from the first investigation, which you have just briefly done, about what Ash Penry has told you—why are we having four investigations into the closure of your business, four police investigations?

Mr COOK: Because it is a political hot potato. Nobody wants to touch it. And so while we get told that during this pandemic that no-one is above the law and people can be locked up or fined thousands and thousands of dollars just for not wearing a face mask, well, I can assure you the crimes against I Cook Foods and its employees amount to extremely serious crimes, some of the most serious on the statutes, and it would appear some people are above the law.

Ms CROZIER: So on this very point, four police investigations and some very serious crimes, and yet we have not got a conclusion. Have you been given any indication from police about where they are in relation to their investigations and their findings on this matter?

Mr COOK: The answer is no. The detective in charge has given an indication that he does not expect it to go on for a long time, but I do not have a time frame. They just will not tell us.

Ms CROZIER: Well, you have been fighting this for two years. Sorry, when did the first investigation commence?

Mr COOK: I made my first complaint in November 2019.

Ms CROZIER: November 2019, and we are now mid-August 2021 and the police cannot tell you when this is going to conclude?

Mr COOK: No.

Ms CROZIER: Have you got any indication why that is the case?

Mr COOK: No. You know, recently we were contacted by retired police commissioner Kel Glare. He is astonished, and if anybody would know—

Ms CROZIER: What do you mean by astonished?

Mr COOK: Well, he has looked at the evidence and he said there is compelling, clear evidence of criminal offences and that people should be charged and should face the courts. Remember, it is not up to the police to come up with beyond reasonable doubt. That is up to the courts to decide. What the police have to do is say, 'Is

there a prima facie case'? Prima facie just means 'on the face of it'. If you cannot see that this is on the face of it, then you possibly should not be a police officer.

The CHAIR: Thank you. Mr Limbrick.

Mr LIMBRICK: Thank you, Chair, and thank you, Mr Cook, again, for appearing today. I acknowledge how hard this has been for you over the last few years. My first question: this abundance of caution that you mentioned, we have heard this many times and it often results in destruction. Where did you think this abundance of caution came from, and do think it was justified?

Mr COOK: I think that motherhood phrase that Dr Sutton used was his justification for him doing what he was doing. The question is: why did he want to do it? Why was he so dead keen to close us, and why were Elizabeth Garlick and Leanne Johnson so keen to make sure that they gave a whole lot of false and misleading reports?

Mr LIMBRICK: And why do you think that is?

Mr COOK: Well, having read the board papers of Community Chef, there is a compelling argument to show that having us out of the way would be advantageous to them. And so John Bennie, the very next day—the day we were closed—takes the information and trades on it with them.

Mr LIMBRICK: And ultimately who do you believe should be held responsible for everything that has happened to you here, if all this turned out to be true? We have heard some very disturbing evidence this morning from our witnesses, including you. Ultimately who is responsible here?

Mr COOK: In terms of our closure, ultimately Dr Sutton is the one responsible. The buck stops with him. And you know what? He knew, not just that the woman did not eat any of our food, but he knew that there were six other food suppliers to that hospital. In his statement to the committee he says I was the sole supplier. That is a blatant lie. He knows I was not the sole supplier, unless of course he gets what I call 'Coate amnesia'.

Mr LIMBRICK: Yes, we saw evidence this morning of all the suppliers and what they supplied and the ingredients on the menu, so it is quite clear that you were not the sole supplier from the evidence that we have seen. I think I am probably close to being out of time, so thank you.

Mr COOK: Can I just make one comment on that?

Mr LIMBRICK: Yes.

Mr COOK: When they talked about the special diets et cetera, let us be crystal clear: I have worked in house in that hospital for weeks on end. The special diets are done by one single individual. There is no making mistakes. That person specifically gets the menu cards off anyone who is on a special diet. The reason they have just one person doing it is to make sure that it is checked and double checked and that they do not mix up with normal full-ward diets. So if that woman was on that diet, that is all she got, and to be clear to everybody else who is sitting there about, 'Should you give sandwiches to this cohort, that cohort': that had nothing to do with I Cook Foods. I Cook Foods were given a very specific set of things to manufacture for that hospital, and that hospital knows what the health department say about the protocols for giving high-risk foods to immunocompromised people. I have no control. I am not feeding the patient. The hospital does that.

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

Ms VAGHELA: Thanks, Chair, and thanks, Mr Brady and Mr Cook, for your time today. Mr Cook, the City of Greater Dandenong has provided the evidence listing at least 13 different food safety notifications issued to them by other councils about I Cook between 2016 and 2018, and that included notifications of foreign objects in food items and three separate notifications of samples testing positive for both *Listeria* and *Listeria mono*. Can you please explain what actions you took to rectify these issues and avoid being subjected to a closure at that time?

Mr COOK: All right, Ms Vaghela. At the last inquiry this came up because that was the testimony of John Bennie. I have written to the committee. I suggest you get the paperwork out and have a look at it, because it is crystal clear that he misled you and in some cases directly lied to you about it. If I deal with all 13, we will be

here for a while. The very first one on that list that you are describing was a stone found in rice. Now, what he has done is he has pulled down what is called the 'merit system'. Merit, by its definition, is something that needs further investigation to decide whether a punishment or a compliment or further investigation should happen. That is why they call it the merit system. Now, that rice that had a stone in it: the rice came from Riviana. We cook it in bulk. We found the stone. It was also found by one of our customers in Ballarat. We organised the recall. We were complimented on the recall and we have letters to show from Riviana that it was their fault. They paid for the whole recall. So Mr Bennie giving that to you and saying that was a complaint that we somehow were going to damage someone's teeth with a stone was just a complete misleading, and he needs to be hauled over the coals about that. I can step you through all of those. Listeria turns up. Breadwinner, a sandwich manufacturer over here, had Listeria turn up just prior to—about five years ago—the Boxing Day Test. They were about to issue 7000 sandwiches. The then manager of health at Dandenong would not close the place down because that meant the sandwiches would not go to the Boxing Day Test. So it turns up—we have to manage it and manage the risks and do everything properly. As they pointed out, we have a full pathogen food safety plan in our ISO 22000 that covers all of these things, as does every other food manufacturer in this area.

Ms VAGHELA: Yes. You mentioned that this time it did not matter what you did or what actions you took to rectify it, it was not going to be enough. Why do you say that? All these instances were listed and you were able to rectify those in the past. Why do you say that this time it does not matter what you did? What is it?

Mr COOK: If I understand your question correctly—

Ms VAGHELA: After the closure you were not able to reopen because there were instances of Listeria in the past, and you were able to rectify those issues that were listed over there. But this time when the list was given you said that it did not matter what you did, what steps you took to rectify it, it was never going to be enough.

Mr COOK: You are right. It did not matter what we did.

Ms VAGHELA: But why?

Mr COOK: No, no, no. Pauline Maloney from the Department of Health and Human Services, Gavin Buckett and Leanne Johnson conspired to keep us closed. You know what? I will check. If it is allowable, I will send you all of the discovery. I mean, we now have the discovery of all of this. We got a heap of it also with freedom of information, and it clearly shows that they were conspiring.

Ms VAGHELA: So you wanted to reopen but there was no way that they would allow you to reopen—is that what you are saying?

Mr COOK: That is correct. Look, you are dealing with Listeria. Remember: at the last inquiry you had Maloney at the end of the day say, 'Oh, well, you know, once it's in the system it can be there for 10 years and it'll keep showing up'. You had Dr Sutton talking as if Listeria was in the factory on surfaces. No, it was not. It was in bought-in products. Close me, then go and close Coles, close Woolworths, close anybody that is selling those smallgoods.

The CHAIR: Sorry, Mr Cook. I want to make sure that all the members get a chance to contribute and ask questions.

Ms VAGHELA: Thank you. I will come back in the second round.

Ms CROZIER: Chair, can I just ask that Mr Cook provide those documents that he has offered to the committee, please?

The CHAIR: Yes. Thank you. Whatever you are able to provide to the committee would be welcomed.

Mr COOK: Yes, we will.

The CHAIR: Thank you, Mr Cook.

Mr COOK: No problem.

The CHAIR: Ms Lovell.

Ms LOVELL: Thank you, Mr Cook. This morning Kim Rogerson told us that, in her opinion, there was pressure to close I Cook Foods that was coming from the very highest levels at the City of Greater Dandenong, right up to the CEO, and also from outside sources, including the department of health and Community Chef. Why do you think the CEO, the department of health and Community Chef were pressuring officers within the City of Greater Dandenong to close I Cook Foods?

Mr COOK: The simple answer is they were going broke. They had not made a profit in 10 years.

Ms LOVELL: Sorry, are you saying—who are ‘they’?

Mr COOK: Community Chef. By the way, factually I can step you through all the facts. Now, those facts become what you might call ‘the dots’. When you line them all up together they make a very compelling case for engineering the closing of us. Community Chef wanted to get into the health system. They wanted to get into the health system using texture-modified food. They saw that as their big opportunity. Once they are in the health system, then what happens is they get free money all the time. They effectively become funded just like, you know, any other hospital kitchen, so they do not have to keep going and asking for it.

Now, we had just patented our process for texture modified. It was about to go into the public health system, and then all of a sudden the tender for it was pulled, and we know that it is at exactly this time Community Chef are desperate to get in with that as their leverage to get in.

Ms LOVELL: Thank you. Also Ray Christy told us this morning that when he asked the Knox hospital for the history of the patient’s diet there had been no records kept of the history of that patient’s diet. Is that normal practice within hospitals—that for someone who is on a special diet like a soft diet they do not keep the record of their history?

Mr COOK: Okay. So there are two records that are kept in the hospital. One is the medical record. So they have a computer system and a specific program that covers off everything to do with the patient while the patient is in hospital. That will include what diet they were on, whether it be a full ward diet—where they choose from everything—or a restricted diet. So it could be nil by mouth, it could be a soft diet, it could be a low residue diet et cetera. In this case what will have happened is the infection control coordinator that spoke to Christy, that is Cullen, and her offsider would have gone back to that computer system to find out what diet the lady was on. That is how they know she was on a soft diet. So that you have as a fact.

What you do not have is the menu card, which is a slip of paper. That hospital does not run a computer system, which a lot of hospitals do now run, that actually says what they actually ate. What they know is she would only have been offered from the soft food diet, and you have a copy of that. Now, the soft food diet also includes what we call ‘mechanically soft’, which is sandwiches, fresh bread, crusts cut off. Because of the nature of that product it was always made by the person doing diets in house on the day.

So, this strip of paper gets discarded. No, it should not. We actually said it to them at the time, when we helped them with the establishment of their new kitchen. We suggested that they should keep those, but they said no, it was too much paper; they were going to introduce a computer system. I do not know if that has happened yet.

Ms LOVELL: Thanks very much. Also, I am really fascinated by your food modification technology. Are you able to tell us when you first implemented that? You said you were about to roll it out, but when did you first—

The CHAIR: I am sorry, Ms Lovell. You have given him 4 seconds to answer that question. Hopefully we will have time to come back to it, Mr Cook. If I could go to Ms Watt, please.

Ms WATT: Thank you, Chair, and thank you, Mr Cook, for appearing before us today and for your very fulsome opening remarks, and particularly to one of the questions that just was answered by you. You spoke about an ISO standard—was it 22000—that you are a signatory to; you meet that standard. It did then get me thinking about which other Australian standards your manufacturing plant is adhering to. And then with that would be—how do I put this—the food safety program that you need to establish, which I am assuming forms part of the standard, and the processes that fall under that standard. I just wonder: how do you develop them? Is

this something that you have done entirely in house? Are you doing this in partnership with a third-party organisation, a peak body? How is it that you came to the development of your food safety program, compliant with relevant standards?

Mr COOK: Okay. ISO stands for ‘international standard’, so it is above an Australian standard. Years ago we employed a company to come and help us get our first HACCP program underway, and then, when we wanted to go from HACCP to ISO 22000, we got another consultant in who specialised in that area, and they helped us develop that. The ongoing maintenance of it was done by my son, Benjamin Cook. Now, Ben has SAI Global’s auditing standard—national auditing standard class 4, I think, is the right terminology. He studied that and finished it, and he has that as a qualification, which means he has the same qualification as any of the department’s independent auditors. And he specialised in looking after our food safety program and making sure that it was up to date all of the time.

Ms WATT: Sorry, this is Ben Cook?

Mr COOK: Correct.

Ms WATT: I had noted in the original inquiry that your nominated food safety supervisor was Michael Cook.

Mr COOK: We had two.

Ms WATT: Two, right. And he was appointed despite not having appropriate qualifications. Were those qualifications in—

Mr COOK: Can I—no, no, no, no. Hang on, hang on. No, no, no. I need to stop you right there.

Ms WATT: Can you talk to me about the qualifications, then, or training or otherwise of your food safety supervisor?

Mr COOK: Yes. So let us get to the training. When people come and they are employed here, they need to have a food handlers. If they do not have it, we put them through the course. We put all of our people through the course. To be absolutely crystal clear, all of our about 20 full-time employees had a refresher course every year. We do not have to do that. So that is that. So that is all the people handling food out there in the factory.

Now, let us go to the qualifications. Michael Cook and Ben Cook also have food safety supervisor qualifications for a manufacturing plant. That is the minimum requirement. Now, we have more than that, but that is the minimum requirement. We have that. Last year Dandenong city council tried to stop me from producing the few small orders that we got back in, and they tried to stop us from doing anything by saying that our food safety supervisor certifications were not appropriate to our industry. So I put an application in to the Magistrates Court of Dandenong under the Act to have that decision overturned. They threatened me with thousands and thousands of dollars in costs if I pursued the matter. I said, ‘Tough luck. I’m going to pursue it’. I pursued the matter. I also took an injunction against them. The day before the injunction was to be heard—so, like, the day finished at 5—at 4 o’clock we got notification from the City of Greater Dandenong through its lawyers: ‘Well, yes, you’re right. We’re wrong’. They did not want to go to court.

The CHAIR: Thank you.

Ms WATT: I assume my time is up. Is that right, Chair?

The CHAIR: Yes, thank you, Ms Watt. The Deputy Chair, Dr Kieu.

Dr KIEU: Thank you, Chair. Now, coming back to the 96 charges that the City of Greater Dandenong first put out and now have been withdrawn, have you seen the charges? And do you think they are all inappropriate, or are there any elements in there that are worthwhile in relation to the safety of the food handling at your place?

Mr COOK: All of those charges—every single one of them—were fabricated. All of them were withdrawn because of that. On 3 October 2019 I walked into Dandenong Magistrates Court. Two hours later I was taken outside by my lawyer and told, ‘They’re going to offer to withdraw all the charges except four of them’—the

first two on each company, and me, and they wanted to change a couple into infringement notices. I said, 'No, we're not changing any into infringement notices. I can stop that. We'll go and see the magistrate'. I said, 'I can't stop them withdrawing charges'. Anyway, we were supposed to then walk into the court. Another hour goes past, and then all of a sudden I am pulled aside again by my lawyers, and they say, 'Okay, well, they're going to withdraw all of the charges now'. And I said, 'Oh, okay'. He said, 'But they would like a non-disparagement clause'. And I said, 'What, I can't talk to anyone—the press or anyone—about this?'. He said, 'That's pretty much what they would like, and they'll withdraw all the charges'. I said, 'In which case tell them to leave all the charges. We'll go back into court'. In the end there was no non-disparagement clause signed. There was nothing signed. They withdrew all of the charges because they knew the charges were bogus.

And to sit and tell you, the committee, that these were valid charges and the reason they did not proceed was \$1.2 million—well, first they told the ABC on the afternoon the charges were withdrawn that the reason they did not proceed was that I was now compliant. And then they told the local paper a few weeks after that that it was going to cost \$500 000. And then when they came and saw your committee, they told you it was going to cost \$1.2 million. Turns out, as long as you have got money and promise never to do it again, you can get off anything in the city of Dandenong. That is just rubbish.

Dr KIEU: Now, we have been told there were four strains of *Listeria* found, and you are now telling us there were only two strains. Is it true that one of the strains is related, or closely related, to the one found in the deceased?

Mr COOK: On that issue, that was the corned beef. The corned beef was a national product. The other misleading that happened to you as a committee was this: when you were trying to question the Doherty Institute, they misled you. The document they were holding—we could see it on the video when we watched it; you could see that they had all of the detail that was taken off. The document you had was the one I was given, which effectively had been doctored, okay. So what you are saying, Dr Kieu, was apparently the corned beef had the same genome sequencing as the woman. So you say, 'Okay, does that link it to I Cook Foods?'. Well, that would be possible if it was only from me. The other thing they told you was that it was the only one of its kind in a non-human sample. Well, that is because our food was the only thing that had been tested. What they did not tell you is exactly the same genome sequencing occurred twice in Queensland and once with a slightly different binary in Western Australia—from that report. You were bamboozled with science.

Dr KIEU: Okay, so nevertheless would you agree that the detection of any strain of *Listeria* would pose a risk to the health and life of the cohort that are vulnerable to or susceptible to *Listeria*?

Mr COOK: Dear oh dear. I gave you in my opening statement that another operator who sells for exactly the same cohort had *Listeria* found not just in the food but on his premises, okay. And what did Sutton do? Nothing. So to suggest that somehow we were providing to a cohort—*Listeria* turns up; it is ubiquitous. It is everywhere. I mean, you will have eaten it. This is just ludicrous. And it also has a crack at us. Somehow you are trying to tell me via this question that you want me to admit that somehow I was selling food to someone who should not have it? By the way, when people refer to knowingly doing something—

The CHAIR: I am sorry, Mr Cook, I will just have to stop it there because I got to move on to Mr Ondarchie.

Mr ONDARCHIE: Thanks, Mr Cook—

Mr COOK: Can I just finish really quickly on that? 'Knowingly', under section 8, is what Dandenong tried to do to me. That puts you in jail for two years. And I knowingly did nothing. I am sorry, Mr Ondarchie.

The CHAIR: Thank you.

Mr ONDARCHIE: That is all good, Mr Cook. We have only got 5 minutes of this, so I am going to ask you two or three questions and we will just belt through them. Mr Christy told us this morning that there were a number of suppliers to Knox hospital: Bidfood, S.A.J., Redi Milk, Juice & Co, GWF Tip Top, Mr Donut and I Cook Foods. Why was it just you investigated?

Mr COOK: Good question. I have no idea—oh, I do. I have told you before what I think happened, and most of the evidence is pointing that way, but if you have a look at what happened in this most recent case that I

outlined before for you, that is the way it should be handled. As your two other witnesses this morning have both told you: 24 hours, do a Listeria clean-down, everything is fine. You can do it over the weekend; you do not even need to shut someone.

Mr ONDARCHIE: You mentioned Dandenong council a few times, and it has been brought up a number of times today. Have you had any dealings with Dandenong council recently?

Mr COOK: Yes, they tried to stop me operating again this year.

Mr ONDARCHIE: What is the basis for that?

Mr COOK: So, to renew your registration, you get a letter in the mail. You fill in a couple of details—whether anything has changed, food safety supervisor et cetera—and then you go onto the portal, you enter your registration number into the portal, you pay the fee and you post back the documentation with a note that you have paid it. They check and off you go. I smelt a rat in the last week before the end of July when the renewals were up and I asked my previous admin manager—she went onto the portal for me and I said, ‘Just enter our number and pay the fee, even if the paperwork hasn’t turned up’. Anyway, she could not do it. It would not allow that. It had not been uploaded. Then funnily enough, on the Monday I got a letter from their lawyers—not from my regulator, but from my regulator’s lawyers—saying, ‘Oh, look at that. Your registration has lapsed, therefore you’ll have to apply for a whole new one and we will consider it along the same lines as anything else’. The following week I took the director to task on it and he assured me, ‘Oh, no, they should have sent you the renewal paper, not going for a new one’. I said, ‘Okay, well, I’ll accept that this was lost in the mail if you would like to send it out to me’. He said, ‘Oh, yes, yes, we will’. Now, that conversation was longer than what I just abbreviated for you but yes, when taken to task, once again they rolled over.

Mr ONDARCHIE: Okay. And just one final question with the limited time that I have: this has been—and pardon the pun here—very taxing on you and your family. Tell me how everybody is.

Mr COOK: We are strong, and it is like I said last time—we are not going away. You know what? This is not just about me, my family and my employees anymore. This is about the very democracy in Victoria. I mean, this state is being run by a man who appears to have loaded almost every major department with cronies that will do whatever he says, so you know what? Someone needs to hold Daniel Andrews and his government to account. And the same, you know—Mikakos said Daniel Andrews was a liar, because of the Coate inquiry, and yet she will not come and talk to you guys.

Mr ONDARCHIE: Take care.

The CHAIR: Thank you. Ms Vaghela.

Ms VAGHELA: Thanks, Chair. Mr Cook, there are different classes of food businesses—class 1 and class 2. Your business was classified as class 2(a). Do you think it would have made any difference if your business was, say, classified as a 1(a), which supplies the food to the vulnerable cohorts?

Mr COOK: Okay, under the classification system there is class 1, 2, 3 and 4. That is it. Some councils have made the class 2(a) because they have manufacturers like us that deal with class 1 customers, and if you read the Act, a class 1 actually has to serve, so technically I should be serving the patient in the hospital, which I do not do. I have no control over what they call me, none at all. That is entirely up to them. And it makes no difference, because the only difference between a class 1 premises and a class 2 premises is if you are a class 2 you can use the department’s food safety template. That is the lowest form of food safety program you can use. We do not. We use the highest we can get. So our ISO 22000 is up there with any class 1 premises. So it made no difference. They intended closing us, and that is what they did.

Ms VAGHELA: And because you were not able to reopen your business, have you found out where the food contracts have gone to, which companies?

Mr COOK: In some of them. I do not know all of them. Some councils will not tell you. We did try and inquire about them. We know that for texture-modified, Monash went to Community Chef, we know that Glen Eira went to Community Chef, we know Yarra Ranges went to Community Chef. So that is what we tried to

find out. There are a couple of others that have gone to other suppliers, like the one I was talking to. There are a number of companies around Melbourne that I believe have picked up one or two of our contracts.

Ms VAGHELA: So it is not that all the contracts have just gone to Community Chef.

Mr COOK: Sorry, no, not all the contracts went to Community Chef. They got a couple of them—and they got a couple of the good ones, too; they are quite valuable. And I do not think they ever expected to get all of them.

Ms VAGHELA: Well, I thought, if they were considering you as rivals and if you were not in the business, that maybe they got all the contracts. That is all I wanted to know.

Now, you have mentioned several times about lies and, you know, different entities colluding and fabrications and conspiracies and all those sorts of words that we have heard and read. Now, the City of Greater Dandenong had referred the allegations which were made by Ms Rogerson about misconduct to IBAC, and that was referred to the Ombudsman. What are your views on that?

Mr COOK: First of all, I have never used the word ‘conspiracy’.

Ms VAGHELA: Not only you—throughout, not just you.

Mr COOK: Hang on. I have not used the word ‘conspiracy’, because a conspiracy invites speculation. Everything I have given you about Community Chef is facts. How you join those dots and what you call it is up to the individual. I have said there is compelling circumstantial evidence. What was the other part of your question?

Ms VAGHELA: So if there were lies and corruption and all those sorts of things, then from IBAC it was referred to the Ombudsman. So if you are saying that every person or most of the witnesses who came and said that lied or they have provided us wrong information, then why did something not eventuate out of IBAC or the Ombudsman?

Mr COOK: Okay. First of all, the Ombudsman who looked into what? Rogerson’s complaint happened before your inquiry, so they obviously would not have got the evidence we have now seen. Secondly, the Ombudsman did not say that there was nothing to see; what they said is they did not have enough evidence. Now, if the Ombudsman had got the police to go and take out a search warrant or IBAC had done it on the computer systems at Dandenong, they may have found the evidence. What they said—and it was told to your committee—is: ‘We didn’t say they didn’t do it. We just said we don’t have enough evidence’. So perhaps this committee might encourage IBAC, who have enormous powers, to go and actually have a good hard look at this now, because there are a number of things, including Tony Doyle, who hid Ray Christy’s report even though he knew that it would be used in a court action against me, and that—

The CHAIR: Sorry, Mr Cook, I am just conscious of time. Dr Bach.

Dr BACH: Thanks so much, Chair, and thanks, Mr Cook, for being with us. Before Mr Ondarchie’s question, you were responding to some questions specifically I think at that point that had been asked repeatedly, grubby and transparent questions that have been asked repeatedly not only of you, sir, but of other witnesses today about the fact that there was Listeria at your business. You have also been asked questions today about 13 occasions on which concerns were raised, and you in a very clear way made the point that not only did that not demonstrate cause for concern but there were a range of examples—you raised a very pertinent example of, what was it, the rock in the rice, for goodness sake. Obviously these questions are being raised not only here but in the press solely in an attempt to smear you, Mr Cook. You did not have an opportunity to finish your response before Mr Ondarchie asked his question. Is there anything else that you would like to say in response to these types of ongoing questions being raised, predominantly by members of the Victorian branch of the Labor Party?

Mr COOK: You are absolutely correct. Do you know what? If this is all they have got, then it just shows that this was all done maliciously. The City of Dandenong and through its CEO, John Bennie, who delivered that report to you that covered off all of those merits—he really has to be held to account for that because that is lying by omission. That document, which is a false and misleading document—by the way, that is another

crime—was used to make us look bad, dirty, whatever, and it was completely fraudulent. As I said, if you had some time and I stepped you through all of it, might I encourage all of you to ask the committee organisers to find my letter, or I can resend it to you? It sets out exactly what happened.

One of the other things, too, was that they found a piece of glass and they sent it off to a lab and had it all tested. It came back that it was domestic glass and it was unlikely to have come from I Cook Foods. We do not use glass in the factory. We were doing between the hospitals and that, what, 50 000 components a week. Occasionally you will get someone who wants to blame you for something. That is fine. That is why we investigate it thoroughly, and the council does.

Dr Bach interjected.

Mr COOK: Yes. Sorry.

Dr BACH: No, don't be. I know that my time is running out. There have been more Labor lies today, Mr Cook. You were just verballed before and said that you have called this a conspiracy when you have not, obviously solely for the purpose of our viewing audience today. So thank you so much for coming along and setting the record straight and giving us some facts.

Mr COOK: No problem at all.

The CHAIR: Dr Bach, you went very close there. Thank you. Ms Watt.

Ms WATT: Thanks, Mr Cook. I just have a further question to before when we were talking about the standards required in food settings. Of course there were a number of charges that were brought against you, and you have disputed those. But I wonder, then, if you can comment—with so many of those charges, and we have heard about the rice and the water and there is the build-up of debris and other things—on why it is that you believe that despite failing to comply with the food standards code and contravening orders made under the *Food Act* your business should be allowed to continue to operate?

Mr COOK: Well, first of all, you have just suggested that I actually did those things. So if you or anybody else—

Ms Watt interjected.

Mr COOK: That is exactly what that question sounded like to me, unless you would like to rephrase it.

Ms Watt interjected.

Mr COOK: The bottom line is this: if they had had the evidence they said they had, they would have proceeded with the charges. They had 96. They only had to get a couple of charges up against me, if they were accurate. Remember, all those charges were breaches of the *Food Act*. So if I had done what they said I had done, they just had to prove it in court. We would not be sitting here today. I would be dead in the water. The reason that it did not go ahead is that they could not prove it. Why couldn't they prove it? We did not do anything wrong, and now I find myself justifying myself for not having done anything wrong. And do you know? That is incredibly frustrating.

Ms WATT: I appreciate that. That is it for my questions. Thank you, Chair.

The CHAIR: Thank you very much, Mr Cook. We appreciate your time. I will make a point that we will recirculate some of the correspondence that you had with the committee, just for the benefit of refreshing people and for those who were not part of that initial inquiry. As I mentioned, this is being recorded by Hansard. You will receive a transcript of today's hearing in the next few days. Please, I encourage you to have a look at that and make sure that we have not misheard you or misinterpreted anything that you have said today. That concludes today's public hearing into the closure of I Cook Foods. Thank you to all of the committee members. I will close the meeting now.

Mr COOK: No worries. Thank you very much.

Committee adjourned.

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 of 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.

TRANSCRIPT

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into the Closure of I Cook Foods Pty Limited

Melbourne—Thursday, 2 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

WITNESSES (*via videoconference*)

Mrs Jo Woodstock, and

Ms Fiona Wharry.

The CHAIR: Good afternoon, everyone. I declare open the Legislative Council Legal and Social Issues Committee's public hearing into the closure of I Cook Foods.

May I first begin by respectfully acknowledging the Aboriginal peoples, the traditional custodians of the many lands that we are meeting on today, and pay my respect to elders past and present and particularly to any First Nations people who are joining us today or who are watching these proceedings. In fact I would like to welcome everyone who is joining us via the internet to watch these proceedings.

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

We are very happy that Mrs Woodstock and Ms Wharry could join us. They are Mrs Painter's daughters.

Just to let both of you know that all evidence taken today is protected by parliamentary privilege, and this is provided under our *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, those comments may not be protected. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

We are recording today, and Hansard will provide you with a transcript of today in the next week. I would encourage you to have a look at that and make sure we have not misunderstood you or misrepresented anything that you say today.

If you would like to make some opening remarks, then we will open it up to the committee for the discussion. Thank you.

Mrs WOODSTOCK: Thank you. Madam Chair, committee members, we would like to thank this inquiry for the opportunity to provide input into this matter, which for us is very important in trying to get some closure and understanding as to the reasons for the death of our mother. Ironically, today would have been her 89th birthday. I am the second daughter of Jean Painter, and I, like my sisters, believe that my mother needs to be represented and have a voice in this very distressing matter, which has been played out in what appears to us as a deliberate media campaign since this all evolved.

There has been no input sought or provided from the members of her family—me, my sisters and our extended family—in any investigation, whether via this inquiry or the Victoria Police. We appreciate that the privacy and respect shown to us in the early stages of the investigations may explain the fact we never have been approached to contribute to any investigations to this point in time. However, given the very public discussion that her death has now taken we believe it is now time to speak up and try and set the record straight.

The evidence that we can provide challenges many of the falsehoods and incorrect information and assertions that have driven much of the discourse in the public arena about who our mother was, what she ate and how she died. To the world we say: draw your own conclusions but do not dismiss us. I ask a question: has anyone thought to ask us what we saw and what we witnessed? We can provide information of several instances that we personally witnessed our mother eating food whilst a patient at the Knox Private Hospital. This includes the consumption of sandwiches on four occasions, one of which I personally witnessed, and that was on 23 January in the emergency department after being discharged to Donvale Rehabilitation Hospital and then sent back for readmission to Knox within 2 hours as she was so unwell and not suitable for admission to the rehabilitation centre. During her readmission to Knox, she ate packaged sandwiches given to her in the emergency department, which she ate and made comments to me about, where she said, 'Oh, these don't taste very nice', as she ate the sandwiches. My sister Fiona also witnessed her eating sandwiches on at least two other occasions, as well as other meals chosen from the standard hospital menu. My eldest son can also recall an occasion of her

eating sandwiches during one of his visits to see her during her time in hospital, which equates to four occasions.

We should start by getting some facts clear. Our mother lived independently in a retirement village in Doncaster. She was not in an aged-care facility and did not require care or assistance. She enjoyed reasonable health, indicating to us some six months prior to her death that she was going to be around for at least another five years as she was feeling pretty good about her health and life in general. She was totally ambulant, albeit a little wobbly on her feet from time to time. She was a very social lady. She was also a fighter, having beaten breast cancer twice some 30 years before her untimely death.

She was admitted to Knox Private Hospital on 13 January to try and work out why she had been having issues with her stomach and losing weight. She was admitted on 13 January and underwent several tests and procedures, and she was diagnosed with gastric ulcers during her early days in hospital. From her admission date up until her deterioration on or about 24 January, she was conscious and ate normal hospital food, including sandwiches on several occasions, which she both enjoyed and on one occasion did not. As previously stated, her consumption of these sandwiches was witnessed by me, my sister Fiona and my eldest son, and at no stage between these dates was she placed on a soft-food diet.

The soft-food diet did not commence until she had been diagnosed with Listeria, which was on or about 25 January. The diet was given because her state of consciousness became a thing of change from that date, and the fear of her choking became the driving force for this diet change. On many occasions she lapsed from being conscious, in our minds, to being unconscious. Her deterioration was one of the most distressing things to witness as it progressed to what we were informed became a meningitis-related condition caused by the Listeria. She was clearly in great pain, and we witnessed her groaning on numerous occasions—what were described to us as primal groans—during her periods of what we considered to be unconsciousness. This was largely how things remained until her death, despite a few short instances of pained consciousness. The treating infectious diseases doctor gave us encouragement during this period that he was confident that she would recover. Sadly, however, her health deterioration continued as a roller-coaster ride for us, and it was something that no person would ever wish to experience or witness. This has been the most distressing and agonising experience we have ever had to endure, and the visions of her suffering will always haunt us.

By way of experience and assistance to me, my husband, who was a respected member of Victoria Police for 43 years prior to his retirement earlier this year, told me that he had dealt with many deaths and people in pain and dying over his time in the force and that this was one of the worst deaths that he had ever seen, given the pain she was going through. It was just horrible. He, like me and my two sisters and my brother-in-law Steve, were present when she died. Although my husband did not personally witness my mother eating sandwiches during her stay, he was certainly aware that she was consuming food at Knox Private Hospital while she was fully conscious and aware of her ability to make decisions and was present with me when she was filling out her food menu requests on several occasions from 13 January until her Listeria diagnosis. He visited her on numerous occasions during this period and would be more than happy to give evidence to this inquiry if warranted.

We have followed most of this discourse in the media and the parliamentary inquiry about this matter, listened to most of the hearings and read all the transcripts from the initial parliamentary inquiry. Given what has now played out in the media since this time, we believe it is now time to speak up and to provide some direct evidence of what we saw, what we experienced. We have no interest in conspiracy theories or political motivations about the decisions taken by any parties in this matter, either real or perceived. We just want the facts presented to the inquiry to be correct and the truth to be put into the public arena. In our view the evidence given by Professor Brett Sutton in the original inquiry was, for us, the most balanced and accurate account and summary, which explains what occurred leading up to and including the death of our mother. We took great comfort from his original appearance because his evidence explained to us what happened, how it happened and, lastly, why it happened. We have great faith in our health system, and we hope that the findings of this inquiry will be based on factual evidence, the rule of law and the principles of justice.

We have provided the committee with three documents that might assist in establishing who our mother was, why she died and—despite the best efforts—how things can go wrong when due care is not taken. These include copies of some promotional features that she appeared in promoting Aveo, where she resided, in the Domaine retirement village; a copy of her death certificate, which clearly lists Listeria as a primary cause of her

death; and a copy of a mass-produced letter from a mail-out from Knox Private Hospital advising former patients of a Listeria outbreak and what you should do if you develop symptoms. Incredibly this letter was personally addressed and posted to our mother some 18 days after her death. We believe that our mother's death and the resultant fast and immediate actions taken by DHHS following her death were appropriate and possibly saved the lives of others. To this we say thank you.

The CHAIR: Thank you so much, Mrs Woodstock and Ms Wharry. And I appreciate you actually supplying us with a photo of your mother; that was really lovely to see.

Mrs WOODSTOCK: Well, just to put a face—

The CHAIR: I know. I so appreciated that. We have only got a very short time together. Could I just confirm that your mother when she first came to the hospital was not on a soft diet, and also, on the 23rd when she was in the emergency room, she was given some packaged sandwiches.

Mrs WOODSTOCK: Yes.

The CHAIR: And those were the ones—she said, 'Oh, I don't like the taste of them'.

Mrs WOODSTOCK: Yes. So both myself and my sister Fiona saw her eat them. And she did not eat the whole packet because she said they did not taste nice. And we have got dates of witnessing her, seeing her, eating sandwiches.

The CHAIR: So it was when she became very ill that they put her onto the soft diet?

Mrs WOODSTOCK: Yes, once her conscious state altered—and that was on or about 25 January. And she was diagnosed with the Listeria then, and there was a fear of choking because of her consciousness.

The CHAIR: Of course. Thank you. I will move to Deputy Chair Tien Kieu.

Dr KIEU: Thank you, Chair. Thank you, Mrs Woodstock and Ms Wharry, for appearing in front of the committee today to share your story to assist us. We do appreciate the distress that you are going through with all the publicity and allegations and the very difficult nature of the inquiry. Once again, you have submitted to the committee the death certificate and also the letter from Healthscope linking Listeria to your mother's death. In your own words you said that the actions that had been taken by the department of health and the local city councils, local governments, were balanced and also appropriate. So in your opinion do you think that a business that provides foods for healthcare settings and the vulnerable cohort should continue to be operating if there is some linkage of Listeria, particularly to a death, and should they be expected to have higher standards?

Mrs WOODSTOCK: I totally agree. They should not be operating if there is a linkage with Listeria and they should be operating at the most—the highest of standards. They are delivering food to vulnerable people, yes, and you would expect they have the highest standards.

Dr KIEU: Thank you. Once again, our condolences to your family, particularly on what would have been her 89th birthday.

Mrs WOODSTOCK: Thank you very much.

The CHAIR: Thank you. Ms Crozier.

Ms CROZIER: Thank you very much, Chair. And thank you, Mrs Woodstock and Ms Wharry, for appearing before the inquiry—again, a difficult day in terms of the anniversary of your mother's birthday, so thank you.

I have got a couple of questions, if I may. On 13 January, it is my understanding from the previous evidence that we received last year, your mother was admitted to Knox hospital with gastritis and colitis. Is that correct?

Mrs WOODSTOCK: Fi?

Ms WHARRY: Yes. Yes, it was.

Ms CROZIER: So that is very severe—gastritis is obviously very painful; colitis is diarrhoea—is that correct?

Ms WHARRY: Correct.

Ms CROZIER: So they are symptoms of food poisoning. Did your mum have blood tests taken at that point, when she was admitted on 13 January?

Ms WHARRY: She had blood tests the following day.

Ms CROZIER: Any blood cultures when she was admitted on 13 January?

Ms WHARRY: Let me refer. She had a CT bowel scan, she was on antibiotics, blood tests—I am not sure whether it was blood cultures.

Ms CROZIER: Okay. And did you request an inquest into your mum's death?

Mrs WOODSTOCK: No, we did not, because we knew that she had died from. As the infectious diseases doctor had stated, it was Listeria, and the treating doctors felt there was no need to have an autopsy or inquest.

Ms CROZIER: Sorry. I just need to ask that again. So on the medical certificate it is my understanding that the primary cause of death was not listeriosis, it was an underlying condition. Could you just repeat what you said about the doctors saying it was not necessary to hold an inquest? Did I hear that correctly?

Mrs WOODSTOCK: It was not necessary to have an autopsy. It was not considered, because we all knew that she had died from Listeria, as stated by the infectious diseases doctor at Knox private, and the treating doctors would sign the death certificates accordingly. She had had the heart condition for well over 15 years, so—

Ms CROZIER: Yes, that is right. That is my understanding too.

The CHAIR: Georgie—

Ms CROZIER: So she had—just one thing; sorry—acute pulmonary oedema, ischaemic heart disease and Listeria, in that order, from the medical certificate. One other thing: did you FOI the Department of Health and Human Services on your mother's death?

Mrs WOODSTOCK: They contacted us.

Ms CROZIER: Why?

Mrs WOODSTOCK: Because there was a media release. And they also contacted us once she was diagnosed with Listeria, because it is a reportable disease, as you would be aware. So then they contacted my sister Fiona, advising us that there would be a media release.

Ms CROZIER: On what date was—

The CHAIR: Georgie, I am sorry. Mr Limbrick.

Mr LIMBRICK: Thank you, Chair, and thank you, Mrs Woodstock and Ms Wharry, for appearing today. I cannot imagine how difficult this whole experience must be for you. Just one question. Listeriosis—my understanding is that it has quite a long incubation time. Were you asked by the department of health for, like, a full food history of what your mother ate?

Ms WHARRY: Yes.

Mr LIMBRICK: And so when did that occur? So they had information on all of the food that she had eaten over a period of how long?

Ms WHARRY: Yes, and it was a period of approximately two weeks prior to her admission.

Mr LIMBRICK: Okay. Thank you.

The CHAIR: Thank you. Ms Vaghela.

Ms WHARRY: Could I just also say—sorry—on admission she was diagnosed with gastroenteritis, just to get that clear.

The CHAIR: Okay. Thank you, Ms Wharry. Ms Vaghela.

Ms VAGHELA: Thanks, Chair. Thanks, Mrs Woodstock and Ms Wharry, for coming today and sharing your story with us. It will certainly shed light and will assist us in this inquiry. I am really sorry to hear about the death of your mother and particularly the circumstances under which it happened. My thoughts are with you and all your family members. The question I have is: is there anything that the committee could have done during the inquiries over the past year and a half to improve the experience your family has had to go through?

Mrs WOODSTOCK: That is a good question. I just think we all feel the way that it has been played out in the media has been extremely distressing. Even yesterday there was a truck going around with ‘Take a selfie with the slug’. You know, we were all lost for words—just could not believe what we were seeing. So yes, it is just the way it has been played out in the media. And maybe we could have been contacted for our information. But now we have been given the opportunity, and we thank the committee for that.

Ms VAGHELA: Just a quick one, Chair. At what point did you guys think, ‘I think we need to go and give information’? What led you to that decision?

Mrs WOODSTOCK: The first parliamentary inquiry we listened to and took in, and as I said, we were really pleased with Professor Sutton’s comments and findings. Then when it was reopened we thought, ‘Now we have to stand up and give our mother a voice, because we don’t want this to happen to anybody else’.

Ms VAGHELA: Thank you. My sympathies are with you on this bittersweet day. Thank you.

Mrs WOODSTOCK: Thank you very much.

The CHAIR: Ms Lovell.

Ms LOVELL: Thank you, Fiona. If I could just extend my condolences to the family. The loss of any parent, a much-loved parent, is a very difficult time for the family. I am going to concede my time to Ms Crozier as she was unable to continue with her line of questioning.

Ms CROZIER: Thank you, Chair, and thank you again for providing this information. It is important that we get to the bottom of this issue. I know it is difficult and distressing, but there is a letter we have received from Healthscope dated 22 February 2019 that was addressed to your mum, sadly. In that letter it says:

Listeria symptoms can appear anywhere between 3 and 70 days post-exposure and can include:

- Fever
- Headache
- Tiredness
- Aches and pain
- Nausea and diarrhea

As Ms Wharry said, your mum was admitted on 13 January with gastroenteritis. Obviously, as we understood in the previous inquiry, some of those symptoms—gastric pain, nausea, vomiting and diarrhoea—are very much part of gastroenteritis. So could there be a situation in your mind that your mum came in unknowingly being unwell and having those symptoms, or had she expressed to you maybe that she had got gastroenteritis by some other means?

Mrs WOODSTOCK: No, and also her GP felt that she was over the worst of it. We, along with her GP, felt, because she was losing weight, she should go to hospital to get her built up again and looked after. You go to hospital to get well, not to get sick.

Ms CROZIER: Sorry to cut across you Mrs Woodstock, but at the time, as you said, she was admitted with gastroenteritis—

Ms WHARRY: With gastric ulcers.

Ms CROZIER: But Ms Wharry, your sister said gastroenteritis, which is diarrhoea, vomiting, nausea, in addition to gastric ulcers. So she would have been very unwell.

Mrs WOODSTOCK: Yes. But as I said, the GP said she was over the worst of it.

Ms WHARRY: The GP had diagnosed her a day prior to admission with gastroenteritis. Then once she was admitted to Knox private, with the scans et cetera she then was diagnosed with gastric ulcers. Three days prior to her admission she had not eaten, and the health department had taken a full listing of previous places where she ate and what she ate and that was investigated.

Ms CROZIER: Have you got a list of—

The CHAIR: I am sorry, Ms Crozier. Ms Watt.

Ms WATT: Thank you, Chair. Thank you, Mrs Woodstock and Ms Wharry, for being with us today on what is a sad day for your family, and can I extend to you my sympathies. I just have a question: as a family, what was your expectation of the food that was supplied to your mum in these health settings?

Ms WHARRY: A balanced diet, certainly with safe products. Yes.

Ms WATT: Do you have any thoughts on the standards that should be kept at the food manufacturing centres where the food is made for clients of hospitals? If there is a higher standard, do you think that there should be a higher standard for the food production, quality and sanitation at these places that make food for vulnerable clients?

Ms WHARRY: Absolutely. I absolutely agree, because in hospitals a lot of people are vulnerable, so the standards need to be high.

Ms WATT: That is really all I had for today. Thank you.

The CHAIR: Thank you. Mr Ondarchie.

Mr ONDARCHIE: Thank you, Mrs Woodstock and Ms Wharry. It is very brave of you today to come in and do this, given how tough it is.

Mrs WOODSTOCK: Thank you.

Mr ONDARCHIE: I do understand. Were Knox hospital supportive of you after your mother's passing?

Ms WHARRY: No.

Mr ONDARCHIE: Okay. I do not know, but do you know, did anybody else catch Listeria at Knox hospital about the same time as your mum?

Mrs WOODSTOCK: We are unaware of it. We do not know.

Mr ONDARCHIE: Okay. Thank you.

The CHAIR: Thank you. Ms Vaghela.

Ms VAGHELA: Thanks, Chair. Either of Mrs Woodstock or Ms Wharry can answer. As far as this inquiry goes, what lessons would you like to be learned from your family's experience?

Ms WHARRY: Jo?

Mrs WOODSTOCK: I would like that businesses that prepare food for anybody—it does not matter if they are vulnerable or not—that it is of the highest quality and standards and all the strict regulations are adhered to

so that no-one gets sick, whether they are selling it to cafes or providing it to hospitals. It must be of the highest standard, because when you eat food you do not expect to get sick.

Ms VAGHELA: I just want to confirm once again: if we had not held the second inquiry, the reopened inquiry, you would never have come forward to provide us with the information that you have provided today, and we would never have known then?

Mrs WOODSTOCK: Well, no. This has given us the voice and Mum the voice, and we thank the committee for that opportunity. That is where we have sat back and watched the media ‘circus show’, I call it, being played out.

Ms VAGHELA: Thanks, Chair.

The CHAIR: Thank you, and that has really hit home—the impact that the media around this has had on your family. Your mother came straight from Doncaster—from her home to the hospital. Do you know if anyone at her home had fallen sick or if there had been any gastro outbreaks or anything like that at Aveo?

Mrs WOODSTOCK: No. It is a retirement village. They live independently in their own—

The CHAIR: Of course. They are cooking their own. They are not eating communally. Yes, of course. Thank you. Ms Watt.

Ms WATT: I just have a question for you both about support from anyone when it comes to preparing for today. Were you offered any support and assistance? I understand this can be very distressing. Are there any lessons that you would like to share for us about support for grieving families as they present evidence to inquiries like this?

Mrs WOODSTOCK: We have been supporting each other. All of our husbands have been fantastic. Also, we all have sought professional help, and that has been a great support for us.

Ms WHARRY: We have not received any support from other sources, to answer part of your question.

Ms WATT: That is certainly something for us to consider. Thank you.

Mrs WOODSTOCK: Yes, but the contact we have had with the inquiry staff has been very good, very supportive. Thank you.

The CHAIR: Great. Thank you. They are a good bunch. Dr Bach.

Dr BACH: Thanks, Chair. And thank you to you both for being with us. My condolences to you as well. I might pick up where Ms Watt left off, also touching on the question that Mr Ondarchie asked, because undoubtedly we in these inquiries, in government departments and in other entities can do far better to support people who find themselves in positions such as yours. You said in response to Mr Ondarchie’s question that you did not receive any support from Knox hospital. Would you mind just explaining in a little bit more detail what that looked like? I think you said you felt unsupported—I certainly do not want to put words in your mouths—by Knox hospital. What did that look like as a learning exercise for us?

Mrs WOODSTOCK: Well, they did not offer any support. She died there; that was the end of story. And then, as I said, 18 days after her death we get a letter from them. So they offered no support at all.

Dr BACH: Okay. Okay. And then just quickly, again linking back I think to the very good question that Ms Watt asked you, you also did not receive any support, any contact, from the department of health or any figures in the government; is that right?

Mrs WOODSTOCK: Yes. They contacted Fiona.

Ms WHARRY: So they contacted me initially for reporting the Listeria and getting the information that they required. And on one other occasion, which was perhaps—whether it was a week to two weeks later, I cannot recall—I actually rang them and asked what was going on, any updates, just asking for some information, and they said that they were unable to provide any information at this stage, and that was it.

Dr BACH: All right. Thank you both for coming very much. It was definitely very useful. Thank you.

Mrs WOODSTOCK: Just one thing which might help maybe in future if people are being mentioned in inquiries, maybe ask the family would they like to participate. Yes, that is just one thing.

Dr BACH: Thank you.

The CHAIR: Dr Kieu.

Dr KIEU: Thank you, Chair. Thank you. I would just like to mention that we did consider the question of inviting you for the first inquiry, but out of respect and official law. So once again I would like to say that. This is difficult, but I would like to recall what the witness Mr Christy last week—that is the Environmental Health Officer—said, in answering my own question and many others, that the only diet was a soft diet for the entire length of the stay in the hospital. So what did you make of that? And that was based, according to Mr Christy's evidence, on the confirmation of the chef or the manager in the kitchen, so what did you make of that?

Mrs WOODSTOCK: That is absolutely incorrect. She was not placed on a soft food diet until about 24 or 25 January, and also they put a sign above her bed saying 'Risk of aspiration'. So I do not know—

Ms WHARRY: That was on 25 January.

Mrs WOODSTOCK: Yes. And I do not know how the kitchen manager at Knox Private Hospital thinks that records are not kept of patients' food orders. I do not know how he could make that assumption or claim.

Dr KIEU: Thank you.

Ms WHARRY: And the dietitians—surely the dietitians would have information as well about her being on a full ward diet.

Mrs WOODSTOCK: And we helped her fill out menus and she filled out menus independently from the full hospital menu, not a soft food diet.

Dr KIEU: Thank you. Thank you so much.

The CHAIR: Mr Limbrick.

Mr LIMBRICK: Thank you, Chair. This letter that you have submitted—the letter from Healthscope, which remarkably was addressed to your mother—is it your understanding that this letter was sent to all of the patients that were in the hospital during that period and they all received this letter?

Mrs WOODSTOCK: Yes, that is what I understand. I presume that it was a mail-out, yes, a general mail-out.

Mr LIMBRICK: Yes. Okay. And the timeliness of this, it seems like a very long time after the fact to get that. Was that sort surprising to you—that it took such a long time before you got this sort of information?

Mrs WOODSTOCK: Absolutely. We could not believe that it was addressed to Mum and, you know, 18 days after she died. We just could not. And this is where if due care is not taken—as I said in the statement, if due care is not taken—mistakes can be made.

Mr LIMBRICK: Yes. Okay. And when you are talking about due care here, you are talking about the hospital itself?

Mrs WOODSTOCK: Well, sending it, yes—just sending out a letter to someone that is deceased. Yes.

Mr LIMBRICK: I understand. Thank you.

The CHAIR: Thank you, both of you, very much for today. I think possibly in retrospect we should have contacted you. I wonder why the department and others had not also been in greater contact with you last year. But thank you so much for today. I hope in some ways that it has helped you, because you have been able to speak really fully and really provide a voice for your mother. So thank you again on behalf of all of us for

appearing today. You will receive a transcript of today's hearing. As I mentioned, please have a look at it and make sure that we have not misrepresented or misheard you in any way. Thanks, everyone.

Mrs WOODSTOCK: Thank you for the opportunity.

Witnesses withdrew.

WITNESSES (*via videoconference*)

Professor Brett Sutton, Chief Health Officer,
Dr Angie Bone, Deputy Chief Health Officer,
Mr Greg Stenton, Deputy Secretary, Corporate Services,
Mr Paul Goldsmith,
Ms Pauline Maloney, and
Ms Sally Atkinson, Department of Health.

The CHAIR: Thank you, everyone, and welcome back. I am very pleased that we are now joined by Professor Brett Sutton; Dr Angie Bone, the Deputy CHO; Mr Greg Stenton, the Deputy Secretary of Corporate Services; Mr Paul Goldsmith; Ms Pauline Maloney; and Ms Sally Atkinson, all from the Department of Health. Thank you again for joining us.

I am Fiona Patten, the Chair of the committee. I am joined by Dr Tien Kieu, the Deputy Chair; Mr Craig Ondarchie; Ms Kaushaliya Vaghela; Mr David Limbrick; Ms Wendy Lovell; Ms Sheena Watt; Ms Georgie Crozier; and Dr Matthew Bach—the people swishing around on my screen.

If I could just also advise that all evidence taken is protected by parliamentary privilege as provided by the *Constitution Act* and further subject to the provisions of the Legislative Council standing orders. Therefore any information that you provide here today is protected by law during this hearing. You are protected against any actions for what you say here, but if you go elsewhere and repeat the same things, those comments may not be protected. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

As you would be aware, all the evidence is being recorded by our Hansard team, and you will be provided with a transcript of today's hearing. I would encourage you to look at it and make sure that we have not misrepresented you or misheard you. Ultimately that will form part of our report and be made public on our website.

I understand there is an opening statement that will be around 10 minutes, and Professor Sutton, if you would like to open.

Prof. SUTTON: Thank you, Chair. And thanks, committee members, for the opportunity to speak. You have heard who I will be joined by, so I will not reintroduce them. I would like to acknowledge Mrs Painter's next of kin and provide my condolences as well.

I understand the purpose of the reopening of this inquiry is to deal with a matter not specifically addressed when the inquiry first sat: namely, the emails from Mr Ray Christy of Knox City Council to the department on 22 February 2019, which suggested that the patient was on a soft diet and the impact this has on testimony previously provided to this inquiry. First I would like to start by saying that, save for one specific matter for correction, which I will address in a moment, I stand by the testimony previously provided to this inquiry. As such I will not readdress the inquiry on the matters subject to that previous testimony and will focus on the additional information related to the Ray Christy emails.

With respect to these emails I would like to address two primary points: firstly, these emails postdate the making of the closure order and were therefore clearly not something that I could have taken into account and obviously did not take into account in the making of the closure order; and secondly, even if these emails had been brought to my attention at the time or shortly thereafter, they would not have changed my decision to issue the closure order.

The first point is a simple one: I issued the closure order on I Cook Foods under the powers of the *Food Act* that had been delegated to me by the secretary to the department on the evening of 21 February 2019. This closure order was served on I Cook Foods at their premises at 4.00 am on 22 February 2019, prior to morning

production commencing at half past 4. Mr Christy's first email to the department, which has recently been brought to my attention, was sent at 10.34 am that same morning. A subsequent email was sent by Mr Christy at 12.41 that day. As such, clearly Mr Christy's emails, even if they had been relevant and provided to me, which I will get to in a second, were not something I could have taken into account at the time of making that decision to issue the closure order. Nor, should I add, do I think it was a critical input that I should have waited for before being in a position to make a decision on the closure order, given all the information provided to me indicating that there was an immediate risk to public health arising from the food produced by I Cook Foods.

Secondly, I wish to address the relevance of the Christy emails and the bearing they would have had if they had come to my attention. I should point out the Christy emails were considered and appropriately addressed by the relevant teams and therefore were never escalated to me. I will allow Dr Bone to address that in a moment.

As I have discussed previously with this inquiry, at the time of making the closure order the following matters were known to me based on oral and written information provided by several authorised officers over a number of days prior to that order. First, after the department was notified of the case of listeriosis confirmed by blood culture, the department conducted interviews with her next of kin, as you have heard, and the treating doctor to obtain the food history for the four weeks prior to the onset of her *Listeria* infection, including information on the patient's food selection whilst in hospital. This investigation included email advice from the principal infection control consultant at the Knox Private Hospital that the patient was on a full ward diet, food served at the hospital was provided by I Cook Foods and any food items that are recognised as high risk for *Listeria* were supplied through I Cook. I understand that a copy of this email has been provided to the inquiry.

I would like at this juncture to point out that when I previously addressed the inquiry, I erroneously referred to I Cook being Knox Private Hospital's sole caterer. This is what was initially understood and had been told to me. I have since been informed that subsequent information provided by Mr Christy indicated that this was incorrect, and I do apologise for any confusion caused. Of relevance, items identified in the food history as being consumed by the patient while in hospital were sandwiches, and it was known that I Cook Foods provided the hospital with sandwiches for those on a full ward diet as well as providing a range of other foods. For the purposes of this investigation, nothing turned on whether I Cook Foods was or was not the sole caterer for the hospital.

Second, the department asked Manningham council and the City of Greater Dandenong to take food samples and environmental swabs for testing from multiple sources in order to cast a wide net to try and capture all the potential sources of infection. The results for food and environmental samples from Coles, Woolworths, Mirabella Bros and Aveo Domaine retirement village were all negative for *Listeria*. However, at the time of issuing the closure order *Listeria* species had been detected in seven food samples at I Cook Foods premises. Six of these had grown *Listeria monocytogenes*, the organism responsible for invasive listeriosis, and four of these had grown *Listeria monocytogenes* that had the same molecular serotype and the same binary type as that found in the patient. It was later shown that *Listeria* isolated from these four foods had exactly the same genetic sequence—or fingerprint if you like—as each other and that it was a very close match to the strain found in the patient, providing strong evidence of a link between I Cook Foods and the patient. Indeed this strain of *Listeria* with this particular genetic sequence has not been matched to any other isolates in Australia before or after this event, so there is really no other reasonable explanation that the source of the patient's infection was anything other than I Cook Foods.

Third, reports from senior environmental health officers at the City of Greater Dandenong stated that I Cook Foods staff, including the food safety supervisors, had little understanding of food safety practices and that the food safety program was inadequate for the scope and scale of production. These deficiencies were subsequently confirmed when the department's authorised officers visited the I Cook premises on the day after the closure order was issued to determine what specific remediations were required before I could lift or revoke that closure order.

Fourth, the City of Greater Dandenong advised the department that I Cook Foods supplied 10 Melbourne hospitals, eight council Meals on Wheels programs and two aged-care facilities. I was informed that I Cook Foods prepared approximately 7000 meals per week. It should be assumed that in all of those particular settings vulnerable patients and residents make up the vast majority if not everyone in those settings. That indicated to me that there was potentially a large number of individuals who could be exposed to *Listeria* and that this could be a very significant public health risk, because the infection could be invasive, infecting the blood and/or brain

in those most vulnerable, causing serious illness and death. If there was ongoing exposure to contaminated foods and subsequent infections, then further serious illness and/or deaths were a strong possibility. As I have stated previously there was no single piece of information that I used in isolation to come to the decision of the closure. It was on the basis of that collective picture.

In light of this, the emails from Knox City Council suggesting that the patient was on a soft diet for one or more days, and we have heard which admission it appears to apply to, would not have in and of itself impacted my decision on the closure order. The information supplied by Mr Christy that the patient was on a soft diet contradicted the advice obtained by the department directly from a member of the infection control team at Knox Private Hospital with respect to that first admission after conferring with the ward's menu monitor, who confirmed the patient was on a full ward diet for the period 13 January to 23 January 2019. That is just prior to her being diagnosed with listeriosis. Even if the patient may have been on a soft diet for one or more days in that time, the overwhelming evidence of the presence of *Listeria* in I Cook Foods samples being so closely related to that from the patient would suggest that she had come into contact with food originating from I Cook Foods regardless of other potential diets during her days in hospital. In any case by the evening of 21 February, when I issued the closure order, it was clear that investigations of I Cook Foods had identified the presence of *Listeria monocytogenes* at their premises and inadequacies in their food safety practices and their food program.

That was the information available to me for my judgement, and given these concerns, regardless of the potential days of soft diet and other suppliers, I would have considered it appropriate to issue the closure order to ensure that these matters were addressed before I Cook could resume producing food for vulnerable people in the community. I will allow Dr Bone to continue. Thank you.

The CHAIR: Dr Bone, I am just very conscious of time. You have got about 4 minutes. I do not know if you and Mr Stenton want to divide that. Mr Stenton might like to answer the questions fully and give his statements later in the day. Dr Bone.

Dr BONE: Thank you. So yes, thank you, everybody. I will go as quickly as I possibly can, but I think I have some key information that is important for you to hear. Really I am going to address the inquiry on the investigations undertaken to determine the source of *Listeria* infection in the patient, particularly in light of those emails from Mr Christy on 22 February. I will not reiterate how important *Listeria monocytogenes* is for public health or how some of those investigations can be quite challenging, but I do want to emphasise that our main aim is to prevent or limit any ongoing risk to public health, and that is achieved by acting in a timely manner to identify risk and then try and remove it.

From the department's perspective the process undertaken to investigate the source of *Listeria* infection in this patient was conducted in the usual manner and followed usual processes following notification of a listeriosis case. I understand Mr Christy spoke to the inquiry about the specific procedure followed for a single case of gastroenteritis. I should pause here to make it clear to the inquiry that this was a case of listeriosis and not a single gastroenteritis case and also be clear that the two situations are managed very differently. Gastroenteritis refers to inflammation of the lining of the stomach or intestines and can be caused by things like salmonella or campylobacter. Whilst we know that *Listeria monocytogenes* occasionally causes diarrhoea, that is not the main symptom and it is not often observed; it is usually a septicæmia.

Gastroenteritis cases are about 100 times more common—probably more—than listeriosis, and the investigation of a single gastroenteritis case is usually much more straightforward. There is a shorter incubation period for pathogens, and it is much easier to get a food history in that situation. As such, single cases of gastroenteritis are usually referred by the department to council to interview the patient in question and follow up any risk factors. In order to do that councils are provided with the case's personal details. However, in cases of listeriosis, such as this one, the patient and their next of kin are interviewed by the department, and it would not be usual for us to pass details on to the council.

Victoria's guidelines for the investigation of gastroenteritis are available on our website, and they set out the various actions expected of councils. They clearly state that listeriosis cases are not referred to local government but investigated by department officers, who may request assistance from local government for specific tasks.

The CHAIR: I am sorry to cut you off, Dr Bone, it is just that we do have a short period of time. No doubt we will explore more of the information that you have to provide, and Mr Stenton no doubt will do that. If I could start. Given the numbers that you spoke about, Professor Sutton, of the variety of locations, the possible 7000 meals that were coming out of I Cook Food, is it surprising that there only appears to have been one case of listeriosis and there were no other recorded cases at Knox Private Hospital as well?

Prof. SUTTON: Thank you, Chair. I do recall addressing this in the original inquiry. There are a number of steps that you need to go through in order to have a confirmed case of listeriosis, invasive diarrhoeal listeriosis. There will be a number of people who consume potentially contaminated food or indeed contaminated food who do not become unwell. There are a proportion who may have a milder illness, and a diarrhoea illness is another potential consequence. If they provide a faecal specimen to their GP or to an emergency department and there is a specific request for Listeria to be looked for, then a diagnosis might come from that gastrointestinal illness. Invasive Listeria is either an infection of the bloodstream or infection of the lining and substance of the brain. Clearly that is a much more serious illness. There would be tests done for those individuals. But you need a blood culture in order to identify it in someone who has got a fever, and you would need a lumbar puncture or some other diagnosis—based on a CAT scan or MRI scan, for example—that would support meningitis.

The reality is not everyone is vulnerable to invasive listeriosis. There may well have been a number of people who were exposed to contaminated food who had a milder illness, who never got diagnosed, and there may well have been a number of people who would have become unwell and had serious illness if that closure order had not occurred.

Mr ONDARCHIE: You do not know that. You do not know that, though.

The CHAIR: Excuse me. Mr Ondarchie, please. Thank you, Professor Sutton. Yes, I appreciate that. Just turning to Mr Christy's emails, which really were part of the reason we reopened this inquiry, and personally I was quite surprised reading from Mr Christy's emails that the patient had been on a soft diet the whole time and therefore could not have consumed sandwiches provided by I Cook Foods. Were you or Mr Goldsmith—Mr Goldsmith, I believe these emails were addressed to you—surprised by his findings? Was this something that caused you to go back and review what information you had?

Prof. SUTTON: For myself, Chair, I have only become aware of these emails very recently, so they were not provided to me at or around the time of the closure order, so I will allow Angie or Paul to speak to how they considered that information.

Dr BONE: Yes. I am happy to answer that question. We discussed the Christy emails at our incident management team on 22 February, so the day after the very early morning when the closure order was issued. We considered them, but we also compared them with the other information that we had. We saw that he had said that it was more than likely first of all and then it was confirmed, but his information was not specific to the time period and did not say who had given him that information, and we had this whole host of other evidence from our discussions with the infection control nurse and from the discharge summary, all of which stated that the lady was on a full ward diet. And of course we had the information from the City of Greater Dandenong about concerns about food safety programs and practices, and we had the strongest evidence, which was the typing link and the genetic link between the Listeria in the case and the foods at I Cook Foods. So in the end we just decided that the information was not as credible as the other information that we had.

The CHAIR: Thank you, Dr Bone. Thank you, Professor Sutton. Dr Kieu.

Dr KIEU: Thank you, Chair. Thank you, all from the department, for appearing today and also for providing us with the chain of emails about the food diet. I may have a question for Professor Sutton. First of all, thank you very much for appearing. I know that you are very busy with the situation at hand in Victoria and in Australia. I will just go back to what you said at the previous hearing, quote:

No one single piece of information was used in isolation to come to that decision—
namely, the closure of I Cook foods.

Rather, it was the collective picture of public health risk that I believed I Cook Foods' continuing food production represented.

Just now in your opening statement you presented several pieces of evidence leading to your decision and also the issuing under the delegated power under the *Food Act*. Was there any single evidence that most strongly influenced you in coming to that decision?

Prof. SUTTON: The really key ones are the epidemiological link through the food history that I Cook Foods supplied Knox hospital and that the patient ate foods in Knox hospital that were described as the normal ward diet, which I Cook supplied foods for. That was one key piece. Of equal and maybe even greater importance was that genetic fingerprint or the genetic typing of the *Listeria monocytogenes* which, as I say, was identical across food types within the I Cook Foods kitchen and very, very closely related to the sample from the patient—and that was closer than any other food or environmental sample taken from across Australia for some years prior to that time and for years subsequent. So those two pieces of information in particular really linked the plausible exposure to contaminated food and showed that genetic link that we do in the same way for COVID diagnosis to understand where it has come from but also understand, for example, whether someone has been exposed to that infectious agent.

Dr KIEU: Yes. Also I note that, apart from the City of Greater Dandenong and the department, you have also sought assistance from other councils like Whitehorse, Knox and Manningham. What did you find there?

Prof. SUTTON: There were a number of deficiencies that were identified in terms of food safety understanding and food safety practices by the department's environmental health officers but also through the third-party auditor. Angie may have more of the specific details; I think she was going to go to them in her presentation. But there were a number of deficiencies that, again, between environmental health officers from the City of Greater Dandenong council, the department and independent auditors, were found.

Dr KIEU: Okay. So I just want to close this session, my part, with the remark that Mr Cook, in appearing last week, said something about the department or some other people using science to bamboozle the committee, which I myself, a scientist, could not understand. That is all. Thank you.

The CHAIR: Thank you. Ms Crozier.

Ms CROZIER: Thank you very much, Chair. And thank you all for being with us this afternoon. Dr Sutton, I just want to go straight to the death certificate of Mrs Painter. She died of acute pulmonary oedema, ischaemic heart disease and *Listeria meningoenephalitis*, but an autopsy was not undertaken. So, based on that, there is no way to determine cause of death, is there?

Prof. SUTTON: Cause of death is not only confirmed through autopsy. The great majority of people who die have a diagnosis for cause of death on the basis of their clinical presentation, pathology samples that are taken, imaging samples that are taken. So I do not agree with that. The pre-existing condition of ischaemic heart disease would have made her more vulnerable to pulmonary oedema. Equally, having invasive *Listeria* in the bloodstream, so a septicaemia, is known to cause pulmonary oedema, especially for people who have got pre-existing heart disease, and indeed inflammation of the lining of the brain and the substance of the brain is one of the most serious illnesses that you can get. It is meningoenephalitis with bacteria, that has a one in four mortality rate for those individuals who have that infection.

Ms CROZIER: If I can just go into this, you have just given us a whole heap of documents, just a few minutes before we came into this hearing. In that there is some pathology, and it states that on admission to hospital Mrs Painter had four days of feeling unwell, blood tests were taken, faecal cultures, and it showed that she had a history of gastroenteritis. It was subsequently found that she had colitis and gastric ulcers. Now, *Listeria* can cause gastroenteritis, can it not?

Prof. SUTTON: Yes, it can.

Ms CROZIER: And in some of these blood tests—I think Dr Bone was referring to salmonella, but it was not detected in the faecal sample that was taken when Mrs Painter was admitted, and there are other notes in these admission notes that talk about her being unwell for quite some days before she was admitted to hospital on 13 January. So is it entirely possible that there could have been an underlying case of *Listeria* that had caused her gastroenteritis for admission?

Prof. SUTTON: I do not believe so. She obviously had a history of colitis. The—

Ms CROZIER: But how do you say that when no specific tests were done at that time of admission to rule it out?

Prof. SUTTON: Well, just to answer, she presented with colitis and she had investigations of gastroscopy and colonoscopy that confirmed that. You can have both infectious and, not uncommonly, non-infectious causes of colitis, and with a recurrent illness it is more likely to be non-infectious. The—

Ms CROZIER: But her neutrophils were raised and there was—you know, as time went on she got sicker.

Prof. SUTTON: Indeed, and that can be caused by any other infectious or non-infectious cause of colitis. She did not have a diagnosis of Listeria at that time, and she developed fever and had blood cultures taken several days later. You would not have an invasive Listeria infection and not become critically unwell with septicæmia for several days after your admission.

Ms CROZIER: But Listeria symptoms can appear anywhere between three and 70 days post-exposure and can include symptoms such as what Mrs Painter experienced; is that correct?

Prof. SUTTON: Yes and no. The incubation period for illness is often described as between three and 70 days. In fact it is between three and 67 days in the literature. Up to 67 days is exclusively for pregnant women. For other invasive listeriosis cases it is essentially up to 14 days only. So for septicæmia and meningococcal meningitis it does not have an incubation period up to 67 days; it is really only up to 14 days. She spent 10 of those 14 days in hospital prior to developing her illness, so the great majority of the likely incubation period where she might have been exposed to Listeria was during her Knox Private Hospital admission.

Ms CROZIER: There is no definitive here, is there, Dr Sutton? Because of her medical certificate, the death certificate, you cannot exclusively say that she died of listeriosis based on that death certificate—that is correct, isn't it?

Prof. SUTTON: Yes. You cannot say on any one single piece of information that it is absolutely definitive. What I am saying is that if you have invasive listeriosis you have got a one in four chance of dying. Whether or not it was the sole cause of her death or the most significant contributor to her death, she got invasive Listeria disease from eating contaminated food that was linked to the I Cook kitchen both epidemiologically and genomically.

Ms CROZIER: But you have already admitted in this hearing that you got it wrong in the evidence that you provided to the committee last year. You said—

The CHAIR: Ms Crozier, you have run out of time.

Ms CROZIER: What a shame.

The CHAIR: Yes. Thank you. Mr Limbrick.

Mr LIMBRICK: Thank you, Chair. Thank you all for appearing today. Professor Sutton, you mentioned something at the start of today about how you were not aware of the multiple suppliers that were going to the hospital. And in the very short time I have had to look at these email trails, they seem to definitively say that I Cook Foods are the only supplier to the hospital. Does this sort of indicate that at the time the department was not aware that there were other food suppliers, that they were acting as if I Cook Foods was the only supplier? Because these emails do not seem to indicate any sort of awareness that I can see that there were other suppliers, and therefore they would not have been investigated if they were not aware of them.

Prof. SUTTON: I will pass to Angie, because she was involved in the incident management team on the following day that had that additional information from Mr Christy, if I may.

Dr BONE: Yes, certainly. Happy to answer that. I think it is important to know that we only investigate suppliers of high-risk foods for Listeria, just to try and focus our investigations. So the information that we were being provided by Knox Private Hospital through their infection control team, which is our normal procedure, was that any high-risk foods for Listeria were provided by I Cook, so that is why our attention went to I Cook. It does not mean that that was our exclusive focus. As you have heard, we were investigating other

areas. But we followed the evidence, and eventually the focus became clearer and clearer that I Cook had to be the focus of our investigation because of everything that we were finding. I hope that answers your question.

Mr LIMBRICK: Thank you. But we also heard evidence that there were some other high-risk foods—like apparently some of the soft sandwiches—that were being produced that were not from I Cook Foods; they were produced within the hospital itself. So were those sources investigated as well?

Dr BONE: Yes, it is correct that there were some other high-risk suppliers, but we only heard about those on 22 February after the closure order, and by then we had such a clear focus on concerns about an ongoing risk to public health that we focused on that as opposed to looking at those other suppliers. I think it is worth also noting that there were no further cases of *Listeria* after that point and there have been no further cases ever since with that particular genetic type. I think our focus was in the right place in I Cook.

Mr LIMBRICK: But those samples from the other suppliers, like meat products, for example—were they not tested?

Dr BONE: They are tested routinely under the regulatory regime that is managed by PrimeSafe, but not specifically for this particular investigation.

Mr LIMBRICK: Okay. I understand. Thank you.

Prof. SUTTON: And just to add, Mr Limbrick, I think Dr Bone is saying: if there were an unmitigated ongoing source of contaminated food that had not been identified—because if it had been through routine testing or through other illness it would have been known to us—and if that had continued without being mitigated, we would have seen ongoing cases in the community for another source that was never identified.

Mr LIMBRICK: But didn't you just say earlier that there were thousands of these meals sent out from I Cook Foods that we did not see any results from, that were not identified; we only saw one that was identified. Surely that could have been the case from another supplier, couldn't it?

Prof. SUTTON: *Listeria*, as you have heard previously through the inquiry finds an environmental niche and then continues to cross-contaminate or contaminate food in those premises unless it is identified and addressed. So if there were another supplier, whether primary production or a kitchen, that was never addressed, then the likelihood of there being no further illness with it not being addressed is quite small.

Mr ONDARCHIE: But you did not check.

Prof. SUTTON: We have had no subsequent identification of genetically related *Listeria monocytogenes* anywhere in Australia with this genetic fingerprint.

The CHAIR: Thank you. Ms Vaghela.

Ms VAGHELA: Thanks, Chair. And thanks to the team for appearing today in front of the committee for this hearing. My question is for Dr Bone. The committee heard in the inquiry last year that the department first became involved in investigations on 25 January after being notified by Knox Private Hospital that the patient's blood culture test had grown *Listeria*. How did your team determine the source of the patient's listeriosis? You touched base on this one, but I would like to hear a little bit more about this.

Dr BONE: Yes. So we have a very clear listeriosis protocol. One of the first things we do is try to speak to the patient to find out what their food history is. If we cannot find out that food history directly from the patient, then we go to other sources. Particularly if a case is related to a hospital, we are speaking to the infection control team because they are the people who are responsible for infection control in the hospital but also have access to the medical records, unlike, say a catering team who would not have access. Then we obtain a four-week food history because of this longer incubation period. I noticed that Mr Christy was referring to a four-day food history, and that is really not correct for a listeriosis case. So we look at all possible sources. We cast the net as wide as we possibly can, and then we will approach council to go and take samples and just check the food safety processes of the various suppliers, and that is what we did in this case. I hope that answers your question.

Ms VAGHELA: Yes. So then what evidence made you decide that there was a need to ask the City of Greater Dandenong to further investigate I Cook Foods as the potential source of contamination?

Dr BONE: As you will see from the emails that we were getting from the infection control nurse, we were being clearly told that the supplier of any high-risk foods for Listeria was I Cook Foods, so that is why we went straight to I Cook Foods, and the City of Greater Dandenong is the regulating authority for I Cook Foods, so it was appropriate for them to go and do the sampling.

Ms VAGHELA: And this question either you can answer or Professor Sutton can answer: why are food premises like I Cook Foods required to have a food safety plan that outlines how they control and manage food safety hazards, including Listeria?

Dr BONE: Shall I take that, Brett?

Prof. SUTTON: Yes.

Dr BONE: That is absolutely part of the food standards code and all of the *Food Act* legislation. It is really very important, particularly when you are handling food for high-risk, vulnerable consumers, that you identify all hazards and you put in all critical controls that you need to mitigate that hazard. This was one of our contentions—that I Cook Foods had not done an adequate assessment of the hazards but also had not put in adequate controls to ensure that the food they were supplying was safe and suitable, as required by the *Food Act*.

Ms VAGHELA: So the department had concerns about the food safety program in place at I Cook Foods.

Dr BONE: Yes, that and many other aspects of their operations.

Ms VAGHELA: Going back again to the patient, given the patient had been in hospital for over a week, how do you determine that the woman was not ill from food she ate before she was admitted to hospital? Because we are hearing this conflicting information, so how did you determine that?

Dr BONE: Well, we got information from the treating doctor and we had access to the discharge summary notes, which provide a lot of information about the tests and the condition that the lady was suffering from, and there was no suggestion of listeriosis on admission at all. I note that she did have a slightly raised white blood cell count, which you would see in an infection, but more often you just see that in the kind of inflammation that gastritis and colitis have. If she had had invasive listeriosis on admission, she would have been much, much more unwell and there would have been many more signs, and I think that the doctors and the nurses at Knox hospital would have been able to make that diagnosis. So as far as I am concerned there was no suggestion of listeriosis, and as Brett has said, given the incubation period—

Ms CROZIER: That is pure speculation, Dr Bone.

The CHAIR: Ms Crozier.

Dr BONE: Yes, if I could finish. The incubation period fits, and also if you look at the death certificate, the onset is suggested to be around 21 January as well, two weeks before her death. So it all just ties up. We can never be absolutely definitive in this situation, but we do not have to be absolutely definitive in order to take action to protect public health, and I think that is also an important point. We have heard about this idea that it needs to be beyond reasonable doubt or we need to be 100 per cent certain, and that is not the requirement. And if it was, we would have many more public health challenges than we do already.

Ms VAGHELA: And would Professor Sutton like to add anything to the answer that Dr Bone has given?

The CHAIR: In 30 seconds.

Prof. SUTTON: Yes, only that the food history obviously included the foods that she might normally have eaten at home, and the sampling at Coles and Woolworths reflected that—so some of the high-risk foods that she might have purchased from those establishments as well.

The CHAIR: Thank you. Ms Crozier.

Ms CROZIER: Thank you. If I can just go back to Dr Sutton, if I may. Dr Sutton, you spoke about the authority that you had under the various Acts. Have you got a signed instrument of delegation?

Prof. SUTTON: Yes, I do.

Ms CROZIER: Okay. Could you provide that to the committee for us?

Prof. SUTTON: Of course.

Ms CROZIER: Thank you. In relation to that sandwich I want to just go back to this issue about the other six suppliers. Bidfood, who is a supplier to Knox, actually has meat and other products that could be contaminated with Listeria, and the department never went there to investigate those six suppliers. Isn't that negligent? In this very serious issue, you have gone out there and you have shut a business. And Dr Sutton, you said you did not get any emails. Well, on the very day that you issued the closure order Dr Bone said to you in an email:

No records of what food is eaten by patients—choose from a wide menu.

Now, there are a whole lot of conflicting issues going on here, and this is what this committee is trying to establish, because only just a few weeks ago a man died. A company was investigated by the department. It was not shut down. You did not go out and make a public statement about the dangers of that company and the listeriosis that caused that man's death. Why is there such a difference here? I think this is what the public want to understand, and this is why we are having this. So I think there are a lot of issues here, and your evidence of last year does not stack up with what we heard from Mr Christy last week and the emails that were provided to the department. So can you explain why those six companies, those other providers to Knox, were not investigated?

Prof. SUTTON: Firstly, I did not have that information at the time of the closure order, so there was no possibility for me to consider that with respect to the closure, but I made the closure anyway on the basis of all that information that I have provided. With respect to the other suppliers, as Dr Bone has had, many of them provide very low risk foods—tea, coffee and the like—some of which is not so-called ready-to-eat food. It goes through a cook-kill process, which would remove the risk of Listeria if done properly. And the foods that were noted in the food history were examined both in the case's normal purchasing as well as at I Cook Foods, and when we had definitive, really, genomically linked evidence of—

Ms CROZIER: But you did not. You said 'close to genetically'. It was not definitive. I am sorry to cut across you, but that is the point here. Close is not good enough. This business was shut down. Businesses were lost. And no other patient got sick.

Prof. SUTTON: It is expected that there would be minor genetic differences in the evolution of bacteria as they move from foods to patients or from foods sampled at one point in time to a later point in time. As I have said, there have been no other foods, environmental swabs, food samples or patient samples at any other point before or after across the—

Ms CROZIER: But you did not investigate them. Did you investigate other patients?

Prof. SUTTON: All invasive Listeria cases are notified in every jurisdiction in Australia. Every—

Ms CROZIER: We were told last week—I am sorry again; just time is of the essence—that those sandwiches came in a big tray. If they were contaminated, you would think that there would be multiple sandwiches contaminated and multiple people getting sick, would you not?

Prof. SUTTON: There may well have been multiple sandwiches contaminated. Not everyone becomes sick when they ingest contaminated food. Some of them will have mild illness and never seek medical care. Some will seek medical care and never have a specimen taken—

Ms CROZIER: But they were in a hospital. They were not outside.

Prof. SUTTON: Indeed. The point remains: not everyone becomes unwell if they consume contaminated food.

Ms CROZIER: But the meat came from Bidfood. I mean, that was linked in other states, was it not? That meat came from other states, which you did not look into properly.

Prof. SUTTON: Angie, do you want to address that?

Dr BONE: Certainly. All I would say is that we follow the evidence and we focus our investigations on where that strongest evidence is, and I can only reiterate the evidence that we had that revealed that there were severe problems and an ongoing public health risk that meant that we needed to act there, and we have had no further cases.

Ms CROZIER: Well, why didn't you shut the last company down and go out there and publicly name them?

Dr BONE: Yes, I think that is a very good point. As I say, we follow the evidence and we take a risk-based, proportionate approach. So the other company that was involved in the listeriosis case—you are quite right, there has been a case and we did investigate them. Firstly, the case had a very different *Listeria* genetic sequence to the isolates that were found in this company. But secondly—

Ms Crozier interjected.

Dr BONE: Shall I finish?

Ms CROZIER: Yes, but I am—

The CHAIR: Ms Crozier, let her answer the question.

Dr BONE: Thank you. Secondly, whilst there were some minor shortcomings in their processes it was nothing to the scale of the failures—

Ms CROZIER: A man died.

Dr BONE: I would still like to finish responding if I may. Yes, a man died, but as I say, if you just let me finish I can explain to you what the issue is. There was a different genetic sequence of the *Listeria* in the case to those isolates from the company, so that means that there was another source. The second thing is that whilst there were some minor shortcomings in this company, just like there always are, they were nothing to the scale of the shortcomings from I Cook Foods. And thirdly—

Ms CROZIER: But the genome—

The CHAIR: Ms Crozier, you are out of time.

Ms CROZIER: The genomes were found in WA and Queensland—

The CHAIR: Ms Crozier, you are out of time. Thank you. Ms Watt.

Ms WATT: Thank you, Chair, and thank you to our witnesses for appearing before us today. I just have a question about outside suppliers to I Cook Foods. How did you determine that the *Listeria* was not due to contaminated items from outside suppliers, such as ham and cheese brought in to make the sandwiches?

Dr BONE: Yes, thank you. Shall I take that?

Ms Watt interjected.

Dr BONE: No, that is fine. So we did follow back through the suppliers particularly of the meat, the smallgoods—so the ham and the silverside. The regulator for those businesses is PrimeSafe, so we referred it to them to follow up. They looked through the records that they had in the previous sampling and were not able to find any records of *Listeria* detections that were relevant to the investigation, and for one of the suppliers they were actually able to do a sample of the exact batch. So that is the main explanation. The other thing I would

just say is that we had evidence of cross contamination between foods in I Cook Foods because four foods had exactly the same genetic sequence, which suggests that it perhaps was brought in by one supplier. But then I Cook Foods, because of their poor handling, spread that *Listeria* strain from one food to another to another to another, so that we had four all with the same *Listeria* sequence.

Ms WATT: So cross contamination clearly was a very big issue. Now you spoke just in the last answer about the scale of difference. Can you talk to me about the scale of the problem that was there at I Cook Foods that led to cross contamination and other issues?

Dr BONE: Yes. So from what I was informed by the team who visited, from the information that we had from the City of Greater Dandenong, there were real issues with the way the processes were set up, so the workflow processes—the way raw foods and cooked foods and ready-to-eat foods were kind of crossing each other, the way people were crossing each other in the business—meant that it was very easy for cross contamination. There were also issues, as we know, around the floor. And wherever it is damp, this is where *Listeria* can grow and get worse, and we also have evidence that the food safety program just was not adequate for the scale and the scope of the business that I Cook was undertaking. And lastly, there were issues to do with the training of supervisors, which meant, again, that we could not be sure that I Cook operations were providing safe and suitable food as required by the *Food Act*.

Ms WATT: Thank you, Dr Bone. According to the *Public Health and Wellbeing Act* if the public health risk poses a serious threat, a lack of full scientific certainty should not be used as a reason for postponing measures to prevent or control a public health risk. Can you talk to us a little bit more in detail about what that means for you in your role as the deputy chief officer or indeed the chief officer—whoever is most appropriate to answer that question?

Dr BONE: Yes, I can start, and I am sure Brett can add further.

Ms WATT: Yes, indeed.

Dr BONE: Yes, absolutely. The standard of beyond reasonable doubt and being 100 per cent certain applies to things like when you would do a prosecution. When your focus is on protecting public health we always have to act with the best information that we possibly have, and we are balancing the information that is coming in with the risk that is being posed—and eventually we get to a point where we feel that we have sufficient evidence, which means that it is appropriate to act in order to protect public health. And I honestly think in this situation that if we had not acted, there may well have been further cases, and if we had not acted we would be before a committee explaining why we had not acted given all of the evidence that we had. But I will hand over to Brett; he may wish to add further.

Prof. SUTTON: Thanks, Angie. Obviously the lack of scientific certainty is one of those considerations against the potential severity of the public health risk. That includes the potential number of people who might be affected and indeed their risk of developing serious illness. And so those two factors were both at play here. There were 7000 meals produced and, as I said earlier, the overwhelming majority of those populations—patients in hospital, Meals on Wheels recipients and those in aged care settings—are particularly vulnerable to severe illness and a higher risk of dying, a higher risk of invasive listeriosis. And so it is the combination of those things that means that you should take action, because if you wait, for example, for a cluster of cases, then there might be several thousand individuals who have already been exposed to *Listeria* and their incubation period is yet to play out, and you cannot intervene to, for example, prevent them from becoming unwell if they have already consumed that food and if the incubation period is already playing through.

Ms WATT: Thank you. No further questions, Chair.

The CHAIR: Thank you. Mr Ondarchie.

Mr ONDARCHIE: Professor Sutton, 7000 preprepared meals a week by I Cook Foods and no other cases of *Listeria*, other than, according to you, that there may or may not have been a number of other suppliers to Knox hospital—Bidfood, S.A.J., Redi Milk, Juice & Co, GWF Tip Top, Mr Donut, and of course I Cook Foods—and only I Cook Foods were checked out. When Dr Bone says there were severe problems, there was ongoing risk to public health, are you satisfied that when you signed that order—albeit you said you did not have all the information in this hearing—are you satisfied that you got all the things you needed to sign that off,

despite the fact none of these other people had been checked out and there were 7000 preprepared meals a week and no other cases of Listeria, other than your speculation?

Prof. SUTTON: Yes, I am.

Mr ONDARCHIE: That might come back at you. The CEO of the City of Greater Dandenong yesterday in his evidence said that the advice to close I Cook Foods bore no relation to what was happening at Knox hospital. He said that in evidence yesterday. Yet you went out in your statement and absolutely tied the two together, including the evidence that you have given today. So was the CEO of the City of Greater Dandenong wrong, was he?

Prof. SUTTON: I have not heard his testimony, but as I have stated here today and previously, the food supplied to Knox hospital, in particular the high-risk foods and the foods identified by food history, including next of kin, including information provided by food monitors at Knox Private Hospital, indicated that the case consumed those foods and that those foods were sandwiches and that those sandwiches were supplied by I Cook Foods.

Mr ONDARCHIE: Is it usual practice that patients source food from other sources?

Prof. SUTTON: I do not know what you mean by that, sorry, Mr Ondarchie.

Mr ONDARCHIE: Well, when I have visited loved ones in hospital I see patients in the hospital consuming food that is other than that from the hospital.

Prof. SUTTON: Oh, indeed. That can happen for some individuals, no question.

Mr ONDARCHIE: Would that form part of your investigation, to check that that was the only source?

Prof. SUTTON: Yes. In taking a food history you would try and determine all potential sources of food in that four-week period, absolutely.

Mr ONDARCHIE: So if that was the case, why weren't the other suppliers, as I have mentioned today, given what Dr Bone said about the challenge of ongoing risk to public health, about being sure that this was the case at I Cook Foods, investigated as a thorough part of this process?

Prof. SUTTON: I think we have spoken to that. At the time that we investigated, the highest risk foods were from I Cook Foods' kitchen. We then subsequently identified contamination of their foods across a number of foods that indicated the potential for cross contamination and *Listeria monocytogenes* establishing a niche in that kitchen and the genetic fingerprint, which would indicate that any other source was vanishingly unlikely.

Mr ONDARCHIE: I think—and I think I speak on behalf of myself and my constituents—they are looking for some certainty from you in terms of what actually happened as opposed to what did not happen. They look for that every day through your press conferences. I am not sure that we have had some certainty from you that the process was completely thorough.

Prof. SUTTON: Is there a question there?

Mr ONDARCHIE: Do you agree or disagree?

Prof. SUTTON: I disagree.

Mr ONDARCHIE: So having not investigated those other companies and not checked out where other food sources came from—7000 preprepared meals a week out of I Cook Foods and no other cases of Listeria, from your speculation—you are convinced that you got it right on this occasion?

Prof. SUTTON: I am. I accept that there is no single piece of evidence that is definitive. On the body of multiple issues of evidence with regard to the food safety program, the food safety supervisor's knowledge, the sampling that was done that identified a unique genetic fingerprint across foods that was highly related to that of the case, the case eating foods that were epidemiologically linked to I Cook Foods—these are things that satisfy me that the closure order, despite having really awful and significant consequences for the business and

all of the individuals that it employed, was the right thing to do to protect potentially thousands upon thousands of people from being exposed to a deadly illness.

Mr ONDARCHIE: I do not think the job was done thoroughly. No further questions.

The CHAIR: Thank you. Ms Vaghela.

Ms VAGHELA: Thanks, Chair. Professor Sutton, can you please explain why a varied order was issued to I Cook Foods on 23 February, two days after the initial closure order was signed?

Prof. SUTTON: Essentially it was because we had the information about what the deficiencies were with respect to the food safety program and the structural issues at play that would contribute to the risk of Listeria being maintained in that environment, and it was to allow the lower risk foods to continue production on the basis that those issues were addressed, so as to give I Cook Foods a pathway to reopening, to producing foods again in a way that could be done safely and to keep the business operating.

Ms VAGHELA: So how did the management at I Cook Foods respond to this varied order? Surely they would have been pleased that they would be able to restart production of some food items and minimise the impact of the closure on their business?

Prof. SUTTON: I am not entirely sure; you would have to go to them directly. But it was intended as a pathway for them to produce food safely again, and clearly there were some costs involved, as there always have been when we have shut factories with Listeria contamination in the past. Jindi Cheese is an example. It was an extremely expensive process for them to bring the structural issues up to a standard to make sure that that risk was addressed in full. So there would have been costs involved, but we were working to ensure that they understood the standards that needed to be met and the specific remediations that needed to take place in terms of the food safety program, the cleaning and the remediation structurally.

Ms VAGHELA: So did you observe any remedial actions taken by I Cook Foods to follow the advice provided about what they needed to do before the closure order could be lifted?

Prof. SUTTON: Yes, there were some. Mr Goldsmith might have more details, but there were some actions taken, no question, in terms of work being done on the floor. The cleaning was done, and there was work on protocols and flows. For whatever reason, that process stalled and the conditions for reopening really informed by the independent audit were not met, so reopening did not occur.

Ms VAGHELA: Is that the usual response from food manufacturers when they are told that there is a potential link between their food product and serious incidents of foodborne illness?

Prof. SUTTON: No, it is not. I do accept that again the impost for getting all of the issues right for Listeria contamination are really substantial. For campylobacter or salmonella it is less often a structural issue of a kitchen and more the introduction of bacteria and food processes and food safety standards, and those can be addressed somewhat more readily than those really substantial engineering changes that are often required for Listeria contamination. But most businesses would say, 'What do I need to do? How can I do it most quickly?', and seek the guidance and cooperation of the department to make that happen.

Ms VAGHELA: So what support did your team give to I Cook Foods to help them resolve the issues and restart production as soon as possible?

Prof. SUTTON: Paul or Angie—I know they worked with them every single day and there were tensions around some of the things that we understood to be required, but I know that they made themselves available and provided guidance on a daily basis.

Dr BONE: Yes, I just confirm that. We had two members of staff who were visiting the premises to try to assess what the problems were and then provide advice, and we also had multiple telephone calls over the weeks that it finally took to try to get I Cook up and running again. And that was always our intention—to be as positive and as supportive and to get them to the standard that they needed to be at to be able to provide safe and suitable food to vulnerable people.

Ms VAGHELA: Professor Sutton, there is some confusion. We heard before that the closure order was done incorrectly, under the wrong Act. Can you please shed some light on that about what Act it should have been, or was it done under the correct Act?

Prof. SUTTON: Yes, it was done under the correct Act. I guess the unconventional element was that it was under Chief Health Officer powers in the *Food Act* rather than CEO of Greater Dandenong council. I approached the CEO of City of Greater Dandenong council to put into effect that closure himself. He spoke of his conflict of interest, and therefore it was my powers under the *Food Act* that needed to be exercised in order for that recommendation to be put into effect.

The CHAIR: Thank you, Ms Vaghela.

Ms VAGHELA: Thanks, Chair.

The CHAIR: As I mentioned previously, it was Mr Christy's emails that instigated the reopening of this inquiry. I am interested to hear what triggered the request to Mr Christy to undertake further investigation at the hospital.

Prof. SUTTON: Angie?

Dr BONE: Yes, I can take that. As I was saying, listeriosis investigations are led by the department. We were focusing down on I Cook Foods because we were following the evidence, but we wanted to contact Knox city hospital to just also understand how they were handling I Cook Foods once it had arrived, because we wanted to ensure that they were not mishandling, for example, the food once it had arrived and we wanted to understand more about which patients received what foods. So that was really why we made contact with Knox City Council. We wanted to look at the food safety program and food safety audit as well for completeness there. That was the reason. But it was not something that we needed to do right at the very beginning. I know there was talk about this delay, and I think that was because there was confusion about whether this was a single case of gastroenteritis procedure or a listeriosis procedure.

The CHAIR: Yes. Look, it is probably my ignorance on this, but why weren't swabs and that type of investigation—swabs—taken of the Knox hospital kitchen at the time? I would have thought that would have been the first place to go.

Dr BONE: Really, because of the information, again, that we were getting from the infection control nurse that all of the high-risk food was coming from I Cook Foods, that was the first place that we looked. We did eventually get some swabs from Knox city hospital, but that was, I think, around 26 February. I do not know, Sally—I know that you were very involved in those decisions—at the moment, whether you wanted to add anything to that.

Ms ATKINSON: Just that we had been indicated that the foods that were brought in from I Cook came in sealed, and so the risk of contamination at Knox Private was pretty minimal because they already came in presealed and ready to serve—things like that. So in a normal investigation where food is already sealed and just served straight to the patient, in this instance we then go straight to the manufacturer of the food because there has been no ability to cross contaminate or anything with that food at that time.

The CHAIR: Can I just seek some clarification on that. I think we had heard that the sandwiches came on big trays, but I know certainly that the patient's family said that she had a packaged sandwich. So is that how they arrived, as a single-serve packaged food?

Ms ATKINSON: That is what I understood them to come in as, yes, which is why I went directly to—

When I spoke to the infection control nurse—that is the sort of information we get right at the beginning—it was indicated in the email on 29 January that things came in ready to go from I Cook, and the information I had was that they came in as a single-serve, sealed, ready to go.

The CHAIR: Thank you. Ms Watt.

Ms WATT: Thank you, Chair. I might be a little different and have a question for Mr Stenton that goes to Community Chef in particular. You have told the committee that the Department of Health's organisation and

governance structures are specifically designed such that we avoid—you avoid, sorry—potential conflicts between the Chief Health Officer and his regulatory roles on public health matters and the department's financial and funding decision roles. Given the separation of these roles that has been the subject of recent scrutiny, particularly by some witnesses, can you please provide details of how indeed they are kept separate there at the Department of Health?

Mr STENTON: Thank you, Ms Watt. First, as in the evidence I gave in the last inquiry: the organisation's structure itself separates the regulatory functions of the department and the management of those from policy and funding decisions, so we have different divisions. There is a public health division which holds the regulatory functions. Policy decisions, particularly those around funding for Community Chef at the time, were in a separate division—an aged care branch in a separate division. The decision-making of those divisions in a policy sense, if we were taking a decision to provide funding to Community Chef or to acquire Community Chef, that would flow up through the management line to secretary or minister.

The regulatory functions—as Brett has outlined, there are specific statutory powers that the Chief Health Officer has, and I will not purport to know them as well as Brett, but they are statutory in nature and authorise Brett to take certain decisions and/or advise ministers and secretaries of risk-mitigation strategies, and they flow directly from the public health division.

So the two conversations never meet in terms of decision-making. They are separate and kept separate for that very reason—that the department is a funder of many services, some of which have regulatory intersections with public health.

Ms WATT: So further to that, what involvement does, then, the office of the Chief Health Officer have in the relationship with Community Chef?

Mr STENTON: None, other than in the same way that Community Chef as a commercial provider would be subject to food regulation rules and in the same way that I Cook have inspections from local government and where there is an issue such as this one would be subject to Chief Health Officer directions. Community Chef would be the same. As previously advised to the committee, the relationship between Community Chef and the department was around food security and food continuity for home and community care and disability. When I last appeared at the committee, we were in the process of finalising acquisition of Community Chef for food continuity at Western Health. That acquisition has now been finalised, but that was a policy relationship on food for vulnerable people in the community, and subsequently, again as previously advised, we had provided recallable grants. We had some food and kitchen continuity issues at Western Health. We looked at various options for that, and they were policy decisions. No conversation—at no point was I Cook ever considered as part of that, and it was not discussed, mainly because the people making those decisions would have been completely unaware of the I Cook issue as a public health issue. So that transaction has now been finalised.

By way of comparison, I know from a public interest point of view that transaction involved us forgiving those recallable grants and funding Western Health to pay out the liabilities of Community Chef in the order of about \$7 million. To build or replace the kitchen facility that we required at Western Health was in the order of \$25 million to \$30 million, so from a community value-for-money proposition it was the right policy decision and, as I say, had no consideration whatsoever of anything happening at I Cook.

Ms WATT: So the Chief Health Officer and the office of the Chief Health Officer were never consulted regarding the purchase decision for Community Chef?

Mr STENTON: None whatsoever.

Ms WATT: Okay, I am happy to leave it at that. If there is anything else—

The CHAIR: Thank you, Ms Watt. Dr Bach.

Dr BACH: Thank you, Chair. Dr Bone, why didn't you correct Dr Sutton when he was misleading this inquiry and this committee on 24 June last year?

Dr BONE: Regarding the sole caterer, I believe you are referring to.

Dr BACH: Yes.

Dr BONE: Yes, that is because I had also understood at that point that I Cook was the sole caterer, so—

Dr BACH: But that is not true. You said, Dr Bone, to this committee just earlier in this particular hearing that on 22 February you met with your team to discuss the email from Mr Christy that Dr Sutton himself said was the reason, when he ultimately—apparently very late in the day—became aware of it, for his change of heart. So you did know, Dr Bone.

Dr BONE: If you would let me finish, I can explain to you what happened.

Dr BACH: Please.

Dr BONE: Thank you. So it was raised, as I say, at this meeting at the IMT on 22 February. What was raised was that there was a possibility that the patient was on a soft diet and that some of the components of the soft—

Dr BACH: It was confirmed. There was not a possibility—

The CHAIR: Dr Bach, please let her answer the question.

Dr BACH: But the language in the report was that it was confirmed. Dr Sutton also verbalised Mr Christy earlier on in his testimony. He said it was ‘suggested’ she was on a soft diet. The language of the official report that you received and you discussed on 22 February 2019 was that it was ‘confirmed’. So please do not misrepresent the evidence that you are referring to.

Dr BONE: Again, if I could finish, then you would understand what I am trying to say to you. It was raised at the IMT, but I did not receive an email that said it was confirmed. That was sent to the staff, not me. I did not see that email. What was raised at the incident management team was that there was a suggestion. The incident management team was at 1.00 pm. The confirmatory email arrived at 12.41 pm. I am not even sure it had been read at that point, but regardless, what was raised was that there was a suggestion of a soft diet and that some of the soft diet items were made in the hospital. When we followed that up we were told again that it was a full diet, and I had understood from the team—and that may be my misunderstanding—that it had also been discounted, that not only was she not on a soft diet but that the food was not supplied by the hospital. So when we came to prepare statements last time, my own understanding had been that it had been concluded that they were the sole caterer. So when all of these emails were raised, having gone through back through all of the records and my own notes, I was reminded of this situation, and that is all that that situation was. It was no deliberate attempt to mislead. It was a misunderstanding. And as Brett has said, and as I would have said if I had been able to continue my statement, that component of the information did not mean that any of the decisions hinged on that particular component of the information. I hope that is clear for you.

Dr BACH: Well, let us get to that, then, because time and time again in our hearing on 24 June last year we were told that I Cook Foods was the sole caterer. Professor Sutton said that on multiple occasions, and you were sat next to him, Dr Bone, and he was not contradicted. As a former official in the Department of Human Services, I have got to say that the idea that this critical information was not escalated either to you, Dr Bone, or to Professor Sutton simply does not scan. But nonetheless both of you say that you knew nothing about it.

Can I ask you about the radical shift in what you have presented today regarding the need to investigate other food sources. On multiple occasions today we have heard that there is only a need to investigate high-risk food sources. That has been the language that you have used. That is utterly different from what you told us, Dr Sutton and Dr Bone, last year. I have got the transcript here. Dr Sutton, you told us—this is a direct quote from you, Sir:

... all the other potential sources of food for the deceased patient were investigated for the presence of any listeria whatsoever ...

That is the polar opposite of what you, Dr Bone, and you, Professor Sutton, have told us today—that you would only focus on high-risk foods. Dr Bone, you said the same thing:

... we were following up a large number of different potential leads—so not only investigating I Cook Foods but also all of the food that the patient had eaten ...

What has led to this radical change, utter change, complete change of position from the department? Because I have got to tell you, it is very convenient for you.

Dr BONE: I would disagree that there has been a radical change. I think really what we are trying to do—

Dr BACH: You would.

Dr BONE: It has always been the case that it is high-risk food only, because that is exactly what is in our protocols and that is how these investigations happen across the world—

Dr BACH: It is the opposite of what you said last time.

The CHAIR: Dr Bach, please let the witness respond.

Dr BONE: Yes. The reason that we have emphasised it this year time is because it became clear that perhaps the committee did not understand fully that we focus only on high risk, so that is why we have emphasised it this time—

Dr BACH: Because you told us the opposite.

The CHAIR: Dr Bach!

Dr BACH: Do not blame us.

Members interjecting.

The CHAIR: I am sorry. You are out of time, Dr Bach. Had you actually let the witness answer the question, you may have got your answer, instead of interrupting.

Members interjecting.

The CHAIR: Thank you. Dr Kieu.

Dr KIEU: Thank you. I have a question for Professor Sutton, but before I go there, I just had a quick look at the statement provided by Mr Christy to the police. The exact quote is that it was unlikely that the patient was on anything but a soft diet. So whether that is confirmation or not, because it is not a very definite statement.

Now, let me go back to Professor Sutton. Last year when we had our inquiry the committee concluded that the closure of I Cook Foods enacted by you, then the acting Chief Health Officer:

... was prepared and served on valid grounds and for a proper purpose.

So in your view what constitutes 'valid grounds' and 'proper purpose', Professor Sutton?

Prof. SUTTON: It is that I make my judgements on the basis of protecting public health and according to the principles indeed of the *Food Act* and similarly of the *Public Health and Wellbeing Act*. They have been raised in part today. They relate to lack of absolute certainty and the precautionary principle but also that of proportionality and making a reasonable and rational decision that is based on evidence. And so those are the elements that came together in that decision-making.

Dr KIEU: The reason I would like confirmation from you is because there are people who offer different views of that conclusion. Now, going to the proper position, as you were acting Chief Health Officer, could you explain to the committee, for our benefit, the differences in the statutory responsibilities between the *Public Health and Wellbeing Act* and the food safety Act in relation to the closure of I Cook Foods.

Prof. SUTTON: In terms of the statutory powers, they can be effected in the same way. The *Food Act* relates to the entire regulatory scheme in relation to food safety and all of the elements of food production and food service. The *Public Health and Wellbeing Act* is broad and covers all of those protections that you want to ensure with respect to all public health threats. They cut across communicable disease, environmental health threats and those in food safety, and they are, as you would be aware with COVID, broad and flexible in terms of being able to be applied to any particular risk. The *Food Act* has other statutory position holders who have powers enabled under that Act, including the authorised officers under that Act and, as I have said, the CEOs of

local council. But the Chief Health Officer is clearly referenced in that Act as well for some of those important actions, such as the closure of a business or, for example, preventing access to a site or gaining evidence from a site.

Dr KIEU: Thank you. And my next question is to Dr Bone. You mentioned earlier that there were some staff from the department who came to the I Cook Foods facility to inspect it after the closure order was served. Before then were there any staff who visited the place in relation to the concerns raised by the city council environmental health officers? Could you verify the situation there?

Dr BONE: Certainly. I understand that the first time that any of our staff visited I Cook Foods was on 22 February, so the information preceding the closure order, about the food safety program, food safety processes et cetera and the conditions of the premises, was coming to us via City of Greater Dandenong environmental health officers.

Dr KIEU: Okay. Those are all the questions I have. Thank you.

The CHAIR: Thank you. Mr Limbrick.

Mr LIMBRICK: Thank you, Chair. Professor Sutton, the decision to close down I Cook Foods and name them publicly in interviews and in the press—what informs that decision on whether to name a company or not? Because one of the concerns that has been raised is that the idea they would be able to reopen after that sort of publicity is nearly impossible. What informs that decision?

Prof. SUTTON: Clearly the naming of a company makes it the object of focus for media and for the general community. We are acutely aware of that. One of the issues that I consider, certainly, is the likelihood that that information will become public and whether we will be seen as trying to hide information that the public is entitled to know and would seek and be entitled to know. We clearly prompted Knox to send that out to all of the recipients of food—for example, the Meals on Wheels recipients—to make sure that they did not consume that food. It would have been immediately understood where that food was coming from and would have been immediately known to media, and so it was for the sake of transparency that that decision was made.

Mr LIMBRICK: But I mean, if we were acting in an abundance of caution, it seems clear from Mr Christy's testimony that for at least part of the patient's stay in hospital she was on a soft food diet and preferred sandwiches and then likely had eaten something that was prepared at the hospital. It seems strange to me still—I still do not really understand why swabs were not taken earlier at the hospital on the sandwiches being prepared at the hospital as well.

Prof. SUTTON: I am not sure what to add beyond what Dr Bone has said in relation to that - and Ms Atkinson. I mean, the abundance of caution is about closing a food premises when there is a significant risk to very large numbers of vulnerable individuals. The soft diet, as you have heard from Mrs Painter's next of kin, related to a subsequent readmission out of rehab, which was after her illness and was likely related to her confusion because of the beginning of her meningoencephalitis and a risk of aspiration should she be on a normal diet.

Mr LIMBRICK: Okay. Yes. Understood. Thank you.

The CHAIR: Thank you. Thank you to all of you for appearing today and for taking the time. It has been very valuable. As I mentioned at the outset, you will receive a transcript of today's hearing. Please do have a look at it. Make sure we have not misheard or misrepresented you in any way. The committee will just take a short break to bring on the next witness. Thank you.

Prof. SUTTON: Thank you, Chair. Thanks, committee.

Witnesses withdrew.

WITNESS (*via videoconference*)

Ms Jenny Mikakos.

The CHAIR: Welcome back. This is the Legal and Social Issues Committee's public hearing into the Inquiry into the Closure of I Cook Foods Pty Ltd. We are joined for this part of the hearing by former health minister Ms Jenny Mikakos. Ms Mikakos, just for the sake of time I will not reintroduce the committee. I think most of the members of the public who are watching have also had time to get to know these committee members.

Just by way of explanation, all evidence taken is protected by parliamentary privilege. As you know, this is under our *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 actions for what you might say at this hearing, but if you were to go elsewhere and repeat the same things, those comments may not have the same privilege. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

As you would be aware, this hearing is being recorded, and you will receive a transcript of the hearing. I encourage you to have a look at that to make sure that we have not misheard you or misrepresented you.

If you would like to make some opening remarks, we will then open it up to committee discussion. Thank you, and thank you for appearing today.

Ms MIKAKOS: Thank you, Ms Patten. Can I just check, firstly, that you can see me, because I understand from your secretariat—

The CHAIR: No. We cannot see you, Ms Mikakos.

Ms MIKAKOS: It says the video is on, so I am not quite sure what the issue is.

The CHAIR: To us it says, 'Your camera is off'.

Ms MIKAKOS: Okay.

The CHAIR: We can hear you loud and clear. That is the most important thing.

Ms MIKAKOS: Right. Okay. All right. Look, perhaps I might proceed and perhaps there might be some technical solution. Can I firstly begin with an opening statement, and I want to do so because I want to incorporate my written submission to the committee for the public record but I also wanted to add some additional comments.

The CHAIR: I appreciate this will be 5 minutes.

Ms MIKAKOS: Yes, I hope so. As the committee is aware, this committee decided last year not to call me before the inquiry when I was the Minister for Health as all relevant information was able to be obtained directly from departmental officials. This remains the case now. I have been invited to comment about matters almost a year after my resignation as the minister in circumstances where I no longer have access to departmental officials to brief me in this matter. I have no hesitation in urging the committee to seek from Minister Foley any departmental documentation that may be relevant to this matter. In my 21 years as a member of Parliament I am unable to recall a situation in which a former minister was asked to appear before a parliamentary inquiry relating to their previous portfolio. The convention is that the minister of the day is required to respond to any request for information for their predecessors. Having said that, I indicated my willingness to assist the committee in this matter as best as I am able, bearing in mind all the limitations I have indicated. I requested questions, and when they were not forthcoming I provided a written submission.

As is apparent from his own evidence last year and was reaffirmed in his evidence today, the decision to close I Cook Foods was made by the then acting Chief Health Officer Professor Brett Sutton under the *Food Act*. In making my previous public comments in this matter, including in the Parliament, I relied on advice provided to me by Dr Sutton and other departmental officials. If there are any questions about what evidence Dr Sutton or

other departmental officials relied on or what process they undertook in issuing their closure order, then those questions should be put directly to those officials, and I am unable to comment on such operational issues.

I undertook my role as a minister to serve the people of Victoria and their interests very seriously and with integrity. The first finding of the committee's report last year was that the Chief Health Officer's decision was made validly and for a proper purpose. In respect of the I Cook closure I do not believe that my former departmental officials acted with any improper purpose or motive in issuing the closure notice. I am expressing a personal belief or opinion here because I am not aware of anything that would suggest otherwise.

I want to make some final points. First, I want to express my condolences to the family and friends of Mrs Jean Painter and in particular to her daughters who gave evidence today. I am pleased you were given a voice. I also want to express my sympathy to the Cook family and to the former staff of I Cook Foods. I am sorry if anything I said in Parliament offended you. As I explained earlier, in making my previous public comments in this matter, including in the Parliament, I relied on advice provided to me by Dr Sutton and other departmental officials.

To my great surprise I received some text messages from Ian Cook soon after I resigned last year, and there were repeated attempts to contact me. They were supportive messages, and I want to thank Ian Cook for what he said, but I want to make it clear to Mr Cook that I did not respond to him because I considered it inappropriate to do so and I consider it inappropriate for a current or a former minister to speak with a party who is currently suing the state of Victoria. It was not from a lack of sympathy or because I wanted to protect anybody. I am here to assist the committee to find the truth. I have nothing to hide and no-one to protect.

Today's hearing comes at a terrible time for our state and for our nation in responding to the pandemic, and I want to send my best wishes to all Victorians. I want to thank, also, everyone who has reached out to me over the past year. It is much appreciated. Thank you.

Ms CROZIER: Chair, could I just ask something here. We do not have a camera on Ms Mikakos. Why are we proceeding? I mean, it is highly irregular that we would have a hearing of this nature without being able to properly engage with a witness. I do not think this is satisfactory.

The CHAIR: Ms Crozier, we have today to conduct this hearing. If you want to stop the hearing, I—

Ms CROZIER: Well, I appreciate Ms Mikakos—

The CHAIR: Due to the fact that we have got some technical issues at Ms Mikakos's end—her camera is not working, and we cannot postpone—we can end it now, or I would suggest we proceed.

Ms CROZIER: Well, could we understand exactly why the camera is not working? I mean, this is highly irregular. It makes it almost impossible to conduct a proper—

The CHAIR: I would not say it is irregular for a camera not to work during a Zoom conference.

Ms CROZIER: No, this hearing, Chair. I mean, this is not the proper process that a public inquiry of this nature should be undertaken in, and I find it unsatisfactory.

The CHAIR: Ms Mikakos, do you have any idea why your camera is not working?

Ms MIKAKOS: No, I do not, but I will try and—

Ms CROZIER: Have you got a phone?

Ms MIKAKOS: We can switch to another device. I am just getting text messages, sorry. Can you hear me still?

The CHAIR: Yes, we can hear you loud and clear.

Ms MIKAKOS: I am getting text messages from your secretariat. Sorry, we did a test run earlier, and everything was working fine. I cannot offer a solution here.

Ms CROZIER: Could we have a short break, Chair, just while we sort this out?

The CHAIR: We will adjourn for a couple of minutes.

Ms CROZIER: Thank you, everybody.

Ms MIKAKOS: Thank you.

Hearing suspended.

The CHAIR: Thanks, everyone. As I am sure anyone watching this knows—best laid plans on Zoom. Ms Mikakos, thank you very much for bearing with us, and thank you for providing us with vision of you.

Look, my only question—a short question—would be: in light of everything that has happened, do you think that naming I Cook Foods at the time was the right decision?

Ms MIKAKOS: Look, as I said in my opening statement—and I am sorry you could not see me whilst I made that opening statement—this decision to close I Cook Foods was made by the acting Chief Health Officer at the time, Professor Brett Sutton. That was his decision. These powers do not sit with the Minister for Health—I want to be really clear about that for those watching at home—they are powers that sit with the Chief Health Officer. So he has clearly sought advice from his colleagues in the public health team and has considered what was appropriate in the circumstances. So it is not for me to comment on the appropriateness or otherwise of what transpired. I was briefed about these issues from time to time, and there was nothing that came to light that raised alarm bells as far as I was concerned. And this is why I expressed the view in my opening statement and in my written submission to the committee that I have no reason to believe that my former departmental officials have acted improperly in this matter.

The CHAIR: Thank you. Dr Kieu.

Dr KIEU: Thank you, Chair. Thank you, Ms Mikakos, for assisting us with the inquiry. When you were the minister, would you have been comfortable with allowing I Cook Foods or any other entity to continue production, given that, in particular for the case at hand, I Cook Foods provided food for 10 hospitals, eight Meals on Wheels council programs and two aged-care facilities? Would you have been comfortable with allowing that to be continued?

Ms MIKAKOS: Dr Kieu, that would not have been my decision to make. It was Dr Sutton's decision under the *Food Act* as to whether there needed to be a closure order issued or there were other steps that needed to be taken. Certainly in the briefings that I recall receiving at the time and during the course of my time as the Minister for Health there were very concerning issues that came to light.

Clearly we had the death of an elderly woman, Mrs Painter. At the time I respected her and her family's privacy and she was not named. But there was clearly advice linking her death with this particular business. I know that that has caused a great deal of distress to the Cook family. I understand what it is to have your integrity questioned and the efforts that they have made to clear their name. I can respect that and understand that. But there was nothing that I became aware of that led me to have concerns about the conduct of my officials, or certainly not to have any concerns about anyone acting for an improper purpose or motive.

Dr KIEU: Thank you. Thank you, Chair.

The CHAIR: Thank you. Ms Crozier.

Ms CROZIER: Thank you very much, Chair. And thank you very much, Ms Mikakos, for being before us. We really do appreciate you doing that and persevering with those issues you have just had. You have just spoken about some briefing papers. I presume you still do not have those; they will be in the department. That was at the time when you were minister. Is that the case?

Ms MIKAKOS: So the only paperwork that I have that relates to this issue are what are called PPQs, and Ms Lovell would be well aware of those. They are possible parliamentary questions. I am not sure if I have an accurate or complete set of those. I would suggest that if the committee would like to see those that they request those from the department. I certainly have no problem at all with those being made available to the committee and would certainly hope that they are made available to the committee. There will be aspects of those documents that would need to be redacted due to legal privilege. There obviously was a legal proceeding

started by I Cook Foods—I think it was approximately in the middle of last year—and obviously the department’s lawyers would have some issues about that information being released. So that is why I am not proposing volunteering it myself. But I do not have formal briefing papers. You understand that those sit with the department.

Ms CROZIER: Okay. We can ask for those, then.

Ms MIKAKOS: I would encourage the committee to ask Minister Foley to release those. I have got no problem with them being released.

Ms CROZIER: Thank you, Ms Mikakos. Can I just go to the issue around Community Chef. As you are aware, I have asked a number of questions in the Parliament around the Pitcher Partners report and board minutes from Community Chef dated 15 April. There is reference to a site visit by Minister Melissa Horne where she speaks about a future plan, a transition strategy in fact. The minutes state:

Melissa conveyed that she was prepared to speak with her fellow cabinet member, Jenni Mikakos, to encourage her to approve the transition strategy.

In these same minutes, they talk about an \$800 000 drawdown of the \$1 million loan facility. Can you enlighten the committee on that \$800 000: why it was required, what the strategy was that Ms Horne was talking about from these board minutes and what you recall from those discussions you had with her?

Ms MIKAKOS: Firstly, I know this issue came up in last year’s hearings as I have had a quick look at the transcripts in recent days. I do not recall having a conversation with Melissa Horne about this matter, but that is not to say that it did not happen. But I certainly do not recall it, and she is not a person that I spoke to a great deal despite being a cabinet colleague so I imagine I would recall if that conversation happened. She is of course a local member in the western suburbs and I can understand why she would have taken an interest in the future viability of Community Chef. As to issues around funding and drawdown, you have just had Greg Stenton, the relevant departmental secretary, appear before you. I think they would be questions best directed to him.

Ms CROZIER: Unfortunately we did not get a chance to do that, so I am just wanting your recollection.

Ms MIKAKOS: I am sure, Ms Crozier, you can still make some further requests of the department for any clarification. Look, the point I would make about Community Chef, because there have certainly been some very serious allegations made over the course of the last two years about this issue—I want to stress that I have got no information that would suggest that Dr Sutton was in any way influenced in issuing his closure order of I Cook Foods by the department’s financial support over more than a decade by successive governments, including by the Baillieu government. Both Greg Stenton and Brett Sutton have addressed this issue about a purported link between the two issues today and also last year as well.

The CHAIR: I am sorry. We have run out of time for that. I will move on to Mr Limbrick.

Mr LIMBRICK: Thank you, Chair, and thank you, Ms Mikakos, for appearing today. It is good to see you again. I have probably got lots of questions but not many related to this particular topic. One of the things that we are talking about and the reason that the inquiry was reopened was around these new emails, and one of the recommendations of the last inquiry was to amend the *Food Act* and improve the lines of reporting and communication. Do you think that the fact that these emails came out after the fact is some sort of validation of that recommendation and that there is room for improvement, as was recommended by the inquiry, that you witnessed during your time as health minister?

Ms MIKAKOS: Look, I recall the report last year came out in the midst of the second wave. I recall having a look at the findings and the recommendations and having some discussions with my staff about the report. I would not have any hesitation in supporting a review of the *Food Act*. I think any piece of legislation that has been around for a long time needs continuous updating and it needs to be fit for purpose for the modern times. I know there were some issues raised about a report being issued essentially through email. There was some discussion last year around the report and emails being used and the fact that the Act did not really acknowledge emails perhaps at the time that the Act was framed. So I think it is important that legislation be reviewed from time to time and that would also include the *Public Health and Wellbeing Act*. We are in the midst of a pandemic. We had issues around the duration of the state of emergency that came up from time to

time. It is time for all of these pieces of legislation that have been in existence for some time to be looked at. They really need to be fit for purpose.

Mr LIMBRICK: I could not agree more. We are actually attempting to amend the *Public Health and Wellbeing Act* ourselves right now through a private members Bill. But thank you very much.

The CHAIR: Thank you.

Ms MIKAKOS: Good luck with that.

The CHAIR: Ms Vaghela.

Ms VAGHELA: Thanks, Chair. And thanks, Ms Mikakos, for your time today to appear in front of the committee, and also good to see you again. My question to you is: I am aware that I Cook Foods previously made an application for preliminary discovery for documents from the department in the Supreme Court and these were offered by the department on a confidential basis but that offer was rejected by I Cook Foods. Did the Supreme Court recommend that these documents be provided to I Cook Foods subject to confidentiality provisions?

Ms MIKAKOS: Look, that is my recollection, because this issue came up, I recall, in the Parliament. Look, the department is required to be a model litigant, and when these issues come up from time to time, you know, these are decisions made by departmental lawyers—and it is in-house lawyers, and sometimes it uses external law firms as well. They are not decisions made by ministers, and certainly I had no involvement in those types of decisions. But, you know, I would express my frustration that things might have been slow to move on some of these occasions, because I do not believe that the department had anything to hide, and I would expect the department to be cooperating fully with any litigant in any matter and making sure that the interests of justice are served. And there is still litigation on foot, as I understand it, in this matter. Despite whatever the committee might find, the Cook family still have the opportunity to pursue their claims through a court of law, and they may choose to do so—and good luck to them. But there is certainly no role for a minister to be interfering in those processes. I would expect that the department was a model litigant, and if it was not or it delayed or took too long in responding to any requests made by a court, then I would be disappointed by that.

The CHAIR: Thank you.

Ms VAGHELA: Thanks, Chair.

The CHAIR: Ms Lovell.

Ms LOVELL: Thanks very much. And hi, Jenny.

Ms MIKAKOS: Hello.

Ms LOVELL: Jenny, this morning we heard from Professor Sutton and Dr Bone that they made the decision to close I Cook Foods without having all of the information they could have had at their fingertips, in particular a report or an investigation that they had requested that the Knox City Council undertake—they did not have that information when they made the decision. Also in your opening statement you made an apology to the Cook family for what they have been through in this saga. Is that an admission that you now doubt the advice that you received from the department and Professor Sutton was correct?

Ms MIKAKOS: Well, firstly, what I did say to the Cook family is I expressed my sympathy to them for their circumstances and also to the former staff of their business for the stress and anxiety that they have felt. Clearly it is very deeply felt. And I expressed my, you know, apology if there was any offence taken. I know that Mr Cook referred to that last year in some comments he made in his evidence. He seemed to take offence at some comments I had made in the Parliament where I essentially was responding to questions I was asked about this matter and I was conveying the advice that I had been given by my department about what had transpired.

There are essentially two trains of evidence or allegations that have been made. One is about whether the decision was validly made, and then the other issue is around whether it was made for a proper purpose. And I have expressed an opinion around my view that I have no information to suggest that the decision was made for

an improper purpose. I do not believe I can express a view around whether it was validly made if these facts are in contention now, and I think that is for the department to respond to those particular questions. I know that there was some evidence given—I think it is by Mr Christy; have I got the name correct?—

Ms LOVELL: Yes, Mr Christy. That is right. Mr Ray Christy, from Knox, yes.

Ms MIKAKOS: the other day around what reports went to the department and when. That was certainly interesting to me, to hear his evidence. That is really for Dr Sutton, as the decision-maker, to respond to these matters, and I believe he did earlier, as did Dr Bone.

Ms LOVELL: Thank you. Do you think that the department should issue an apology to the Cook family?

Ms MIKAKOS: Well, that implies, Ms Lovell, that the decision that was made was made improperly or invalidly. I think that is for a court of law to make that determination. I really think that that will be for the courts to determine.

The CHAIR: Thank you.

Ms LOVELL: Thank you. And just one last question—

The CHAIR: Ms Lovell, I am sorry, your time has expired.

Ms LOVELL: Thank you. Thanks, Jenny.

The CHAIR: Ms Watt.

Ms WATT: Thank you, Chair, and thanks, Ms Mikakos, for appearing before us today and for your patience with the technology. It is never easy.

I just had a question following up from the discussion at the hearing last week about the role of the department and local councils in administering the *Food Act 1984* and the Australia New Zealand Food Standards Code. What is your understanding of how the department and local governments work together to ensure that food sold in Victoria is safe for the community?

Ms MIKAKOS: Thanks for that question. Look, these issues were canvassed in considerable detail last year. I do not think it serves any great purpose to go through that again. Obviously the two levels of government need to cooperate closely, typically. There are powers set for both local government and the department in the *Food Act*. It will typically be the council that will be making such a closure order, rather than the department, and the circumstances of why that did not occur in this case were canvassed at great length last year.

I was asked to participate around the so-called new evidence. I did not believe that there was any additional light that I could add to the new evidence that we have heard this year, but I indicated my willingness to assist the committee.

Ms WATT: Thank you, Ms Mikakos. Thank you, Chair.

The CHAIR: Thank you. Mr Ondarchie.

Mr ONDARCHIE: Hello, Ms Mikakos. I am with you: I think that we need to find the truth, and I also acknowledge that people's integrity has been questioned along the journey, and you have expressed that yourself, and I think we need to sort that out.

In 2020, when you were asked a question by Ms Crozier in the house relating to this I Cook Foods matter, you said:

... I have every confidence in Dr Sutton ...

Do you still maintain that position?

Ms MIKAKOS: Firstly, what my view is now is really not relevant, given that I am no longer the minister. But what I would say is I would refer you to my resignation statement, which is pinned to my Twitter account,

in which I expressed my disappointment that there were clearly matters that my departmental officials should have briefed me on. This relates to issues around the pandemic response and our state's response. Clearly when I was referring to departmental officials I also had Dr Sutton in mind in that, and there were clearly circumstances where I felt very frustrated and disappointed, but they are not relevant to the matter that we are here to discuss today.

Mr ONDARCHIE: The only reason I ask that is that it was in relation to a question around I Cook Foods, and I just wanted to confirm what your view was of Dr Sutton at the moment. But given that you have mentioned your response on Twitter in your statement, under the protection of Parliament we really have not had a chance to give you a chance to have a say about that—after you were unceremoniously dumped by the Premier. Who ultimately decided on private security guards at hotel quarantine?

The CHAIR: Mr Ondarchie. I mean, it is cheeky, but let us stick to the inquiry at hand.

Mr ONDARCHIE: Well, I did not bring up her resignation statement.

The CHAIR: Mr Ondarchie, if you would like to stick to the inquiry at hand.

Mr ONDARCHIE: But she has a chance to set the record straight now and make sure her integrity is no longer questioned.

The CHAIR: You are very generous, Mr Ondarchie.

Ms MIKAKOS: Mr Ondarchie, what I would say is that this committee, the same committee that you are a member of, had an inquiry late last year into contact tracing and chose not to call me as a witness. There has not been any re-examination of issues related to the Coate inquiry either. I am mindful of the fact that there is currently litigation on foot relating to the state's pandemic response and it is yet to be resolved, and I do bear that in mind in terms of what I say about these matters. But I am committed to the people of Victoria knowing the truth in all matters, and I believe that there will come a time when that might be able to occur, whether that is in a court of law or—

Mr ONDARCHIE: You can do it now, if you like.

Ms MIKAKOS: potentially a federal royal commission. And I would support such a royal commission because I think there is a need for a thorough examination of the entire pandemic response by the federal government and by state governments, not just in terms of hotel quarantine—vaccine rollouts, hospital preparedness and also to look at the lessons to be learned for the future, because these pandemics will keep occurring. So I think that needs to occur at some point in the future, and I have seen some federal Labor MPs support that. I know there has been a view expressed by Jeff Kennett and others. There are clearly some people across the political divide who think these issues need to be looked at more deeply, and I would certainly support those moves and be happy to participate in any such royal commission.

Mr ONDARCHIE: Thank you.

The CHAIR: Thank you.

Mr ONDARCHIE: The shame in all this is that you were such a loyal supporter of Daniel Andrews and he threw you under a bus.

The CHAIR: Mr Ondarchie, I am sorry, your time has expired. Ms Vaghela.

Ms VAGHELA: Thanks, Chair. Ms Mikakos, one of the principles underpinning the administration of the *Public Health and Wellbeing Act 2008* is the precautionary principle whereby if a public health risk poses a serious threat, lack of scientific certainty should not be used as a reason for postponing measures to prevent or control the public health risk. Why do you think it is important to protect the public from a public health risk?

Ms MIKAKOS: Look, the pandemic that we are experiencing at the moment is your case in point of why public health measures need to be put in place to protect Victorians, and I am proud of the work that I and others did, including members of the public health team and officials in my department, to protect Victorians. Clearly mistakes were made, and they have been made by many jurisdictions across our country, and those

lessons need to be learned. And that precautionary principle is one of course that needs to guide the actions and the advice led by the Chief Health Officer.

Ms VAGHELA: So are you saying it is necessary for these powers to be exercised by the Chief Health Officer and authorised officers under the Act?

Ms MIKAKOS: Well, they are important powers, but they are for him to decide the circumstances in which he exercises them.

Ms VAGHELA: Thanks, Ms Mikakos. Thanks, Chair.

The CHAIR: Thank you. Ms Watt.

Ms WATT: Thank you. I have got no further questions. You actually covered off what was my question in your opening remarks, Ms Mikakos. Thank you very much.

Ms MIKAKOS: Thank you.

The CHAIR: Thank you. Dr Bach.

Dr BACH: Thanks, Chair. And thanks so much, Ms Mikakos, for being with us. I noted your comments just before about your disappointment and your frustration at not being properly briefed by some of your officials through the period of the pandemic when you were the health minister. We heard earlier today from officials in your old department about the fact that they misled us, albeit they say inadvertently, when they met with us on 24 June last year. There were two key issues on which we were not told the truth—and again officials say they told us this inadvertently—firstly, regarding the fact that we were told I Cook Foods was the sole supplier of foods to Knox hospital. Dr Sutton said that time and time again to our inquiry. That was wrong, and he admitted that today. And, secondly, we were told time and time again that all suppliers of foods had been investigated, and it came out in evidence today that, again, that was incorrect. Can you please share with us when you were briefed as minister about the fact—the fact, as admitted by your former officials earlier today—that they had misled our inquiry?

Ms MIKAKOS: Look, to the best of my recollection I do not recall any advice that my former departmental officials had in any way provided incorrect information to your committee. And I think the allegations that you are making are really for them to respond to.

Dr BACH: Thank you very much for clearing that up, Ms Mikakos. As a former official within the Department of Human Services myself, as a former ministerial adviser to the chief minister in the Department of Human Services, I find it staggering and utterly unacceptable that the lead minister in the department would not be briefed upon this. And ultimately, of course, this rests upon the shoulders of the Chief Health Officer, who continues to have enormous control over our day-to-day lives. You made some comments in your other evidence about him.

Given the fact that you were not briefed about this incredibly serious matter, you were sent into the Parliament to answer hostile questions from members of the opposition—like me, like Ms Crozier—about these matters, without full information, indeed without truthful information. Based upon that and your earlier evidence, do you have faith and trust in Brett Sutton as the Chief Health Officer?

Ms MIKAKOS: Look, I think the issues that you are posing really are relating to the pandemic response now, and I think we are really straying away from dealing with the matters relating to I Cook Foods. But what I would say is that there is no information that came to light whilst I was the Minister for Health that had me concerned about the reliability of the advice that I was given in relation to the closure of I Cook Foods. Some matters that did not relate to I Cook Foods but related to the pandemic response led me to seek reassurances about these issues prior to Dr Sutton and Dr Bone appearing before your committee last year. There were a lot of allegations, a lot of issues, swirling around in the media, and I sought a very detailed briefing from them to go through these issues, because I wanted to be reassured. And I recall receiving that verbal briefing in some detail, and I—

Dr BACH: But they did not tell you, Ms Mikakos, in that briefing, that there were multiple suppliers of food. There were six. They did not tell you in that briefing. Is that right?

Ms MIKAKOS: Look, this briefing was in the midst of many other things going on. I cannot recall now the exact precise details of exactly what was discussed, but there was certainly nothing that came to light that led me to be concerned that something improper had occurred.

Dr BACH: Thank you.

The CHAIR: Thank you. Thank you, Dr Bach. Dr Kieu.

Dr KIEU: Thank you. In your opening statement and also as a minister you said that you did not involve yourself in the day-to-day matters or interfere with their operations, so I have no further questions to ask. Thank you.

The CHAIR: Thank you, Dr Kieu. Well, that actually concludes the questions, and that concludes today's hearing. Thank you very much, Ms Mikakos, for bearing with us and for the hearing today.

Mr ONDARCHIE: On a point of order, Chair, we had an hour allocated to this. We have only gone 37 minutes.

The CHAIR: Mr Ondarchie, some people did not have questions, including me, and that has—

Mr ONDARCHIE: There could be more questions, though.

The CHAIR: brought us to the end of this inquiry.

Ms CROZIER: Could we have one more?

The CHAIR: You were all given the time that you had for questions.

Mr ONDARCHIE: But we are still 23 minutes short of our—

The CHAIR: We are not 23 minutes short of this inquiry, Mr Ondarchie, by any means. We were supposed to conclude at 4.00 pm, and it is now 4.15. You were all allocated a certain amount of time for questions. You have all either used that full time—in fact I have been more generous with that time—or, as with some members, did not use that time. The time has concluded. Thank you.

I appreciate all of the members. I appreciate Ms Mikakos and all of the witnesses that have appeared before us. This concludes the hearing today. Thank you very much.

Committee adjourned.

Appendix C

Timeline of events

During the Inquiry, the Committee received additional evidence in relation to the investigation undertaken by the Department of Health into the source of *Listeriosis Monocytogenes*. The timeline below provides an overview of the interrelated events of this Inquiry as provided by stakeholders, in particular:

- The hospitalisation of Ms Jean Painter and the detection of *Listeriosis Monocytogenes*
- The Department of Health investigation into the source of *Listeriosis Monocytogenes*
- The City of Greater Dandenong’s investigation, and subsequent closure, of I Cook Foods.

The Committee notes that the actions undertaken as part of the investigation into the I Cook Foods premises was covered extensively in the first report of this Inquiry and as such has only been summarised in this timeline.

| | | | |
|---|--|-------------------------|----------------------|
| Initial investigation into the source of Listeria | Focusing investigation on I Cook Foods | Closure of I Cook Foods | Other related events |
|---|--|-------------------------|----------------------|

13 January 2019

Ms Jean Painter was admitted to Knox Private Hospital presenting with regional abdominal pain, nausea and diarrhoea.

Ms Painter was placed on a full ward diet, including the consumption of sandwiches on several occasions.

16 January 2019

Testing identified that Ms Painter was suffering from gastroenteritis associated with ulcers.

Ms Painter remained on a full ward diet.

23 January 2019

Ms Painter was discharged from Knox Private Hospital to Donvale Rehabilitation Hospital.

However, she returned to Knox Private Hospital later that evening, presenting to the emergency department with a fever, confusion and dysphagia.

Whilst in the emergency department, Ms Painter consumed pre-made sandwiches provided by hospital staff.

Upon admission, Ms Painter had a blood culture test taken.

25 January 2019

Ms Painter's blood culture test returned positive for *Listeria monocytogenes*.

Due to her worsening condition, she was placed on a soft food diet.

Ms Painter's treating doctor obtained a four-week food history prior to the detection of the Listeriosis, including the food selections made while in hospital.

The Department of Health (DOH) was notified of the case of *Listeria monocytogenes* by Dorevitch Pathology.

29 January 2019

DoH commenced its investigation into the source of *Listeria monocytogenes*. The Communicable Disease Prevention and Control Unit conducted interviews with:

- Ms Painter's treating doctor at Knox Private Hospital
- Ms Painter's next of kin to collect a four-week record of Ms Painter's food history, including hospital meals, other foods regularly consumed, and locations regularly visited (shops and cafes).

At 12.51 pm, DoH emailed Healthscope and Healthcare Infection Control Management Resources (HICMR) requesting a list of food and menu items provided to Ms Painter at Knox Private Hospital.

At 4.29 p.m. the Principal Infection Control Consultant at HICMR responded to DoH with the following details:

- Food at Knox Private Hospital is provided by I Cook Foods Pty Ltd., including cooked and chilled meals, texture modified foods, salads, sandwiches and soups.
- Ms Painter was on a full ward diet from 13 January 2019 to 23 January 2019.
- No record of the food items she selected were accessible as electronic record were not kept. However, a Diet Monitor staff member from Knox Private Hospital stated the patient mainly ordered cooked meals or ham sandwiches
- I Cook Foods Pty Ltd prepared and provided sandwiches to the hospital the night before consumption.
- Any 'high risk' food items served during Ms Painter's stay were provided by I Cook Foods Pty Ltd.

The Microbiological Diagnostic Unit at the Public Health Laboratory received the isolate sample of the 86-year-old woman taken from Knox Private Hospital.

The Public Health Laboratory also notified DoH that it had received a human isolate of *Listeria monocytogenes*.

| | | | |
|---|--|-------------------------|----------------------|
| Initial investigation into the source of Listeria | Focusing investigation on I Cook Foods | Closure of I Cook Foods | Other related events |
|---|--|-------------------------|----------------------|

31 January 2019

At 10:23 am DoH emailed HICMR to clarify whether any cut fruit or desserts were provided to Ms Painter.

At 11:11 am HICMR advised DoH of the following:

- Ms Painter preferred dessert items such as jelly, ice cream and custard
- Desserts were provided by I Cook Foods
- Cake items were commercial Sara Lee products
- Ice cream was commercially purchased
- Jelly was made daily by food service staff
- Fruit was typically served whole, unless otherwise requested.
- Any cut fruit was prepared approximately one hour prior to service and underwent a sanitation process.

DoH contacted the City of Greater Dandenong and Manningham City Council.

Manningham City Council was directed to undertake environmental swabs at:

- Aveo Domainé Retirement Village
- Coles, Tunstall Square, Doncaster East
- Woolworths, The Pines, Doncaster East
- Mirabella Bros Grocer, Doncaster East.

The City of Greater Dandenong was directed to undertake environmental swabs at I Cook Foods Pty Ltd.

The City of Greater Dandenong was informed of the DoH investigation into the case of Listeriosis. DoH advised that food supplied by I Cook Foods was identified as a potential source and directed the Council to undertake environmental swabs from I Cook Foods' Zenith Road premises in Dandenong South.

1 February 2019

Manningham City Council undertook environmental swabs at all locations directed by DoH.

Ms Kim Rogerson took 25 samples at the I Cook Foods premises and sent to the Public Health Laboratory.

4 February 2019

Ms Painter died, and her death certificate listed *Listeria* as a contributing cause, with the duration of the illness listed as 2 weeks.

The Public Health Laboratory processed the samples taken by the City of Greater Dandenong and Manningham City Council.

11 February 2019

The Public Health Laboratory issued a full identification of the *Listeria* isolated from Ms Painter's blood and isolate sample, including the binary type and serotype.

14 February 2019

The results of the food samples taken at Coles, Tunstall Square, Doncaster East by Manningham City Council results were received. No presence of *Listeria monocytogenes* was detected.

15 February 2019

I Cook Foods pest controller, Hayes Pest Control, attended the premises and did not identify any slug or other insect activity.

| Initial investigation into the source of Listeria | Focusing investigation on I Cook Foods | Closure of I Cook Foods | Other related events |
|---|--|-------------------------|----------------------|
|---|--|-------------------------|----------------------|

18 February 2019

The DoH contacted the City of Greater Dandenong to advise that six of the 25 samples obtained on 1 February from I Cook Foods had tested positive for *Listeria monocytogenes*.

Four of those were linked to the human source.

The Council was informed that Ms Painter had died.

Ms Elizabeth Garlick inspected the I Cook Foods premises due to samples testing positive for Listeria.

Ms Garlick was sent as Ms Rogerson was on leave at the time.

During the inspection Ms Garlick observed, in her opinion, poor food handling and cleaning practices. She also found a live slug on the floor. Ms Garlick reported this to Ms Leanne Johnson.

Ms Johnson directed that two Orders under the *Food Act 1984* be prepared and issued to I Cook Foods the next day.

The results were received for the food samples taken by Manningham City Council at:

- Aveo Domaine Retirement Village
- Woolworths, The Pines, Doncaster East.

No presence of *Listeria monocytogenes* was detected.

19 February 2019

The DoH contacted the City of Greater Dandenong and requested the Council obtain specific information from I Cook Foods for the purposes of the Listeria investigations and require the business to undertake a specific clean for *Listeria monocytogenes*.

Ms Garlick attended the I Cook Foods premises with a Senior Environmental Health Officer and served I Cook Foods with orders under the Food Act as follows:

- 37 items for corrective action (under s 19(1) and (2))
- directions relating to staff training and audits to be undertaken (under s 19W).

The s 19 Order further stated that Ms Garlick was satisfied that the premises was in an unclean and unsanitary state of disrepair and that remedial actions should be undertaken.

The food samples taken at Mirabella Bros Grocer, Doncaster East by Manningham City Council results were received. No presence of *Listeria monocytogenes* was detected.

20 February 2019

Ms Garlick attended I Cook Foods to verify the actions ordered the day prior had been carried out. It was her view that the actions had not been conducted to a satisfactory standard and reported this to Ms Johnson.

Ms Johnson and Ms Garlick attended the premises later in the day to raise concerns over the quality of cleaning. It was their view that food safety was still compromised and directed I Cook Foods to engage a specialist to conduct a deep clean.

I Cook Foods undertook the instructed deep clean.

21 February 2019

Mr David Clarkson, the Co-ordinator - Health Compliance at Knox City Council, received a phone call from DoH requesting the Council to:

- Inspect Knox Private Hospital's kitchen
- Gather information on food supplied by I Cook Foods and the hospital's food processes and procedures for handling food products.

Mr Ray Christy, an Environmental Health Officer from Knox City Council (who was allocated the surveillance duties for the geographic area Knox Private Hospital was located) was provided with the instructions noted from DoH.

Around 1.00 pm or 2.00 pm Mr Christy attended Knox Private Hospital.

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| Initial investigation into the source of Listeria | Focusing investigation on I Cook Foods | Closure of I Cook Foods | Other related events |
|---|--|-------------------------|----------------------|
|---|--|-------------------------|----------------------|

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During the assessment, Mr Christy was advised that Ms Painter was ‘likely’ placed on a soft diet and that sandwiches provided to patients on a soft diet were made on site in the hospital’s kitchen.

Mr Christy did not take any food samples or obtain a food history for Ms Painter.

Mr Christy completed his inspection, noting all suppliers and taking photographs. On returning to his place of work, Mr Christy uploaded photographs taken to the Knox City Council record management system.

At 1.30 pm DoH held a meeting in relation to the Listeria outbreak.

Ms Johnson telephoned DoH to raise concerns identified through the Council’s investigation. DoH advised Ms Johnson that I Cook Foods needed to make immediate changes to food safety practices and engage a quality assurance specialist.

Ms Garlick and Ms Johnson attended the I Cook Foods premises to:

- Inspect the deep clean that occurred overnight
- Take new food samples
- Review food safety measures.

The Council provided DoH with a copy of I Cook Foods’ Food Safety Program for review around 1.45 pm.

At approximately 2.45 pm DoH notified the Council of concerns relating to the I Cook Foods premises and requested the Council consider ordering them to cease all production.

Ms Johnson initiated an onsite meeting with Mr Ben Cook. During this meeting it was established I Cook Foods did not have an accredited food safety supervisor.

Mr Ben Cook was informed that I Cook Foods should cease production.

In the late afternoon DoH commenced drafting a Closure Order.

Mr John Bennie, was informed that the Closure Order was being drafted and met with colleagues to determine he was unable to sign the Closure Order due a conflict of interest. Mr Bennie’s conflict of interest arose from his position as a member of the Board of Community Chef.

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DoH prepared and sent emails at 8.00 p.m. to notifying clients of I Cook Foods of the Closure Order. The communication also instructed the clients not to eat any of the food that had been delivered them and to dispose of it.

This was communicated to eight Councils, 10 hospitals and two aged care services.

At around 9.00 p.m. Mr Bennie and Ms Johnson telephoned the Acting Chief Health Officer, to explain the conflict of interest that prevented Mr Bennie from signing the Closure Order.

The Acting Chief Health Officer instead used his own delegated authority under the Food Act to sign the Closure Order.

I Cook Foods undertook a chlorine fogging at its premises overnight.

22 February 2019

At 10:34 a.m. Mr Christy emailed his findings to DoH.

DoH called and requested Mr Christy return to Knox Private Hospital to:

- confirm Ms Painter was on a soft food diet
- obtain food temperature records for cold storage and reheating temperatures for the period Ms Painter was in the hospital
- instruct the hospital staff to do a precautionary Listeria clean-up.

At 11.00 a.m. Mr Christy attended Knox Private Hospital and met with three representatives:

- Mr Bernard 'Ofamo'oni, Catering Manager
- Mr John Sweeney, Support Services Manager
- Ms Lauren Cullen, Infection Control representative.

During Mr Christy's interviews with the staff, Ms Cullen confirmed hospital records showed Ms Painter was on a soft food diet.

Mr Christy sighted food temperature records between 13 January and 23 January 2019 and made a written request for a copy to be provided.

Mr Christy did not take any food samples or obtain a four-day food history for Ms Painter.

At 12.42 p.m. Mr Christy emailed his report detailing the findings of his follow up inspection of Knox Private Hospital.

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| Initial investigation into the source of Listeria | Focusing investigation on I Cook Foods | Closure of I Cook Foods | Other related events |
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DoH held an Incident Management Meeting in relation to the closure of I Cook Foods. Representatives of the Food Safety Team raised the contents of the emails sent by Mr Christy. DoH determined that this information did not impact on the decision to close I Cook Foods as the weight of evidence provided directly by Knox Private Hospital was more credible.

DoH contacted the Infection Control Nurse at Knox Private Hospital to clarify the inconsistency in information regarding Ms Painters diet. It was confirmed she was on a full ward diet for the period between 13 January and 23 January 2019.

The Acting Chief Health Officer released a public health alert at approximately 2.00 p.m. relating to the temporary closure of a Dandenong South commercial caterer identified as the potential source of a confirmed case of Listeria.

Ms Johnson attended the premises at 4.00 a.m. and served Closure Order dated 21 February 2019 under s 19 of the *Food Act 1984*. The Order had been signed by the Acting Chief Health Officer.

The Closure Order stipulated that I Cook Foods must:

- immediately cease the production of food on the premises
- destroy all food produced since 13 January 2019.

A report from DOH' Food Safety Unit that informed the decision to close the business was not supplied to I Cook Foods.

The Closure Order included several conditions that had to be met within 14 days.

Ms Garlick and another Council officer attended the I Cook Foods premises with two DOH authorised officers. During this visit, the DOH officers proposed a variation to the Closure Order to enable I Cook Foods to re-commence lower-risk product lines.

Community Chef held a board meeting at 9.30 a.m. at which Mr Bennie was present. Shortly after 12.45 p.m. Mr Bennie briefed the Board in relation to the closure of I Cook Foods.

During the board meeting, Community Chef resolved to write to I Cook Foods clients to offer its services.

23 February 2019

A variation to the Closure Order was issued signed by the Acting Chief Health Officer.

The variation implemented additional testing programs requiring all food to be tested for *Listeria monocytogenes* prior to distribution.

I Cook Foods described this process as 'problematic' as its products had a shelf life of five days, while Listeria testing processes take 10 days to complete.

C

25 February 2019

Health Spectrum undertook a gap audit at I Cook Foods. It concluded that there had not been a fulsome review of the Food Safety Program in some time and that there were some serious concerns with hazard and risk processes.

26 February 2019

The Public Health Laboratory prepared an interim OzFoodNet genomics report that reported the relationship between the four food isolates of Listeria taken from I Cook Foods and the human isolate of Listeria.

The report identified the four food samples taken from I Cook Foods were 'highly related' to one another as there were fewer than 5 differences out of 2.8 million.

The four food samples from I Cook Foods and the human sample were found to be 'possibly related' as there were 9 differences out of 2.8 million.

27 February 2019

Gourmet Guardian undertook a food safety audit of I Cook Foods' food safety practices. As there was no food production at the time of the audit, the audit found that:

- some operations and compliance activities could not be observed
- I Cook Foods had done what was legally required of them
- I Cook Foods had not deliberately tried to short cut their legal responsibility.

1 March 2019

The Public Health Laboratory made a full genomics report to OzFoodNet. This report showed the levels of *Listeria monocytogenes* detected in the food samples were under the microbiological limit set by Food Standards Code.

| Initial investigation into the source of Listeria | Focusing investigation on I Cook Foods | Closure of I Cook Foods | Other related events |
|---|--|-------------------------|----------------------|
|---|--|-------------------------|----------------------|

13 March 2019

The City of Greater Dandenong met with Knox City Council to seeking assistance and information in preparation of the prosecution brief for the prosecution of I Cook Foods.

All information, including both of Mr Christy’s reports, were provided to Ms Johnson.

The City of Greater Dandenong requested Mr Christy to ask Healthscope, Knox Private Hospital, if it would be willing to be interviewed by the City of Greater Dandenong.

Mr Christy received a response a week later declining.

28 March 2019

The Acting Chief Health Officer revoked the Closure Order as he was satisfied that the Order had been complied with.

A media statement was published on the Health Victoria website explaining the reason for I Cook Foods closure and detailing the steps that had been taken to rectify the issues identified.

I Cook Foods reopened and contacted all non-Council customers to obtain business. However, those businesses declined I Cook Foods services. 41 employees of I Cook Foods were subsequently made redundant.

14 June 2019

I Cook Foods was served with a charge-sheet in relation to 48 charges under the *Food Act 1984*. The presence of the slug was the basis of two of the charges.

3 October 2019

A pre-trial ‘contest mention’ took place at the Magistrates’ Court regarding the 48 charges brought against I Cook Foods. At this session the Council withdrew all charges, citing costs of up to \$1.2 million to ratepayers.

Appendix D
***Food Act 1984 (Vic): Secretary's
Instrument of Delegation under
section 19 of the *Public Health
and Wellbeing Act 2008 (Vic)****

D

Food Act 1984

Instrument of delegation

Interpretation

In this instrument:

Act means the *Food Act 1984*.

duties, functions and powers means the duties, functions and powers of the Secretary to the Department of Health and Human Services under the provisions of the Act specified in column 1 of the Schedule.

Officers means the person(s) occupying or acting in the positions in the Department of Health and Human Services that are specified in column 3 of the Schedule.

Schedule means the Schedule attached to this instrument.

Description

The descriptions in column 2 of the attached Schedule are for ease of reference only. They do not affect the interpretation nor limit the duties, functions and powers contained in each of the provisions identified in column 1 of the Schedule.

Delegation

I, **Kym Peake**, Secretary to the Department of Health and Human Services, acting under section 19 of the *Public Health and Wellbeing Act 2008*:


- (a) **DELEGATE** my duties, functions and powers to the Officers specified in column 3 of the Schedule; and
- (b) **REVOKE** the previous instrument of delegation made by the Secretary to the Department of Health and Human Services under the Act dated 1 January 2015.

Commencement

This instrument commences on the date it is signed.

Signed at Melbourne in the State of Victoria

This 6th day of May 2017.


Kym Peake
Secretary
Department of Health and Human Services

Food Act 1984

Instrument of delegation

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Signed at Melbourne in the State of Victoria

This 6th day of May 2017.

Kym Peake

Secretary

Department of Health and Human Services

Schedule

| COLUMN 1 Statutory/Administrative provisions | COLUMN 2 Description | COLUMN 3 Delegates |
|---|--|--|
| Section 4H | Power in Food Standards Code as appropriate enforcement agency | <ul style="list-style-type: none"> Deputy Secretary, Regulation, Health Protection and Emergency Management Director, Health Protection Operations & Strategy Senior Manager, Food Safety |
| Section 5(5) | Power to exempt a person or specified class of persons from complying with a requirement of the Food Standards Code | <ul style="list-style-type: none"> Deputy Secretary, Regulation, Health Protection and Emergency Management |
| Section 7BA | Power to enter into arrangements with the Secretary to the Department of Primary of Industries | <ul style="list-style-type: none"> Deputy Secretary, Regulation, Health Protection and Emergency Management |
| Section 7D(1) | Power to declare information required to be provided by councils | <ul style="list-style-type: none"> Deputy Secretary, Regulation, Health Protection and Emergency Management Deputy Chief Health Officer (Environment) Deputy Chief Health Officer (Communicable Disease)Senior Manager, Food Safety |
| Section 7D(2) | Duty to consult with body that represents local government before making or amending a declaration under section 7D(1) | <ul style="list-style-type: none"> Deputy Secretary, Regulation, Health Protection and Emergency Management Deputy Chief Health Officer (Environment) Deputy Chief Health Officer (Communicable Disease)Senior Manager, Food Safety |

| COLUMN 1 Statutory/Administrative provisions | COLUMN 2 Description | COLUMN 3 Delegates |
|---|--|--|
| Sections 19(1) and (2) | Power to direct that premises be cleaned, or steps taken to ensure food is safe etc, on being satisfied about unsatisfactory nature of the premises or food | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) |
| Section 19(3) | Power to direct the closure of food premises or restrictions on purposes for which premises can be used, etc | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) |
| Section 19(4)(a) | Power to direct that a copy of order made under section 19(3)(a) or (3)(b) be affixed to premises, and/or publish a notice in a newspaper or other means, informing the public about the order | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) |
| Section 19(4)(c) | Duty to notify other registration authority of an order made under section 19(3)(a) or (b) | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 19(6) | Duty to revoke order when defects remedied by proprietor | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) |
| Section 19AA(2) | Power to direct premises on which primary food production and related activities are carried out | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) |

| COLUMN 1 Statutory/Administrative provisions | COLUMN 2 Description | COLUMN 3 Delegates |
|---|--|--|
| Section 19AA(4) | Power to direct a relevant person | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) |
| Section 19AA(7) | Duty to revoke order | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) |
| Section 19BB(1) | Power to accept a written undertaking | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Deputy Secretary, Regulation, Health Protection and Emergency Management • Senior Manager, Food Safety |
| Section 19BB(3) | Power to consent to withdrawal or variation of undertaking | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Deputy Secretary, Regulation, Health Protection and Emergency Management • Senior Manager, Food Safety |

| COLUMN 1 Statutory/Administrative provisions | COLUMN 2 Description | COLUMN 3 Delegates |
|---|---|--|
| Section 19BB(5) | Power to authorise Director of Consumer Affairs to accept an undertaking | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Deputy Secretary, Regulation, Health Protection and Emergency Management • Senior Manager, Food Safety |
| Sections 19BB(6) and (7) | Power to authorise a council to accept an undertaking including with conditions and limitations | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Deputy Secretary, Regulation, Health Protection and Emergency Management • Senior Manager, Food Safety |
| Section 19BC(1) | Power to apply for a consent order directing compliance with an undertaking | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Deputy Secretary, Regulation, Health Protection and Emergency Management • Senior Manager, Food Safety |

| COLUMN 1 Statutory/Administrative provisions | COLUMN 2 Description | COLUMN 3 Delegates |
|--|---|--|
| Section 19BC(3) | Power to apply for an order where undertaking is considered to have been breached | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Deputy Secretary, Regulation, Health Protection and Emergency Management • Senior Manager, Food Safety |
| Section 19C | Power to declare classes of food premises and what is required of food premises in each class | <ul style="list-style-type: none"> • Deputy Secretary, Regulation, Health Protection and Emergency Management • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Sections 19CB(1) and (3) | Power to declare minimum record-keeping requirements | <ul style="list-style-type: none"> • Deputy Secretary, Regulation, Health Protection and Emergency Management • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 19CB(4)(b) | Power to require proprietor to provide copy of minimum records within the time specified | <ul style="list-style-type: none"> • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety • Manager, Regulation and Incident Management |

| COLUMN 1 Statutory/Administrative provisions | COLUMN 2 Description | COLUMN 3 Delegates |
|---|--|--|
| Section 19DB | Powers regarding registration of food safety program template | <ul style="list-style-type: none"> • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 19DD | Power to declare specified QA system or code may be used to develop a food safety program | <ul style="list-style-type: none"> • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 19E(1)(d) | Power to require copy of food safety program for the premises within the time specified | <ul style="list-style-type: none"> • Deputy Chief Health Officer (Environment) Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety • Manager, Regulation and Incident Management |
| Section 19EA(3) | Registration authority to be provided with a copy of significant revisions made to food safety program | <ul style="list-style-type: none"> • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 19G(2) | Power to approve a food safety competency standard | <ul style="list-style-type: none"> • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |

| COLUMN 1 Statutory/Administrative provisions | COLUMN 2 Description | COLUMN 3 Delegates |
|---|--|--|
| Section 19GB | Power to make written request for details of the name and qualifications of the current food safety supervisor for the premises within 7 days of being asked in writing to do so | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety • Manager, Regulation and Incident Management |
| Sections 19H(4)(b) and (5) | Power to specify the range of frequencies and intervals for assessments or audits that may be applied to a specific premises, instead of the default requirements | <ul style="list-style-type: none"> • Deputy Chief Health Officer (Environment) Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety • Manager, Regulation and Incident Management |
| Section 19H(5)(b) | Power to issue guidelines about when to apply audit or assessment requirements other than default requirements | <ul style="list-style-type: none"> • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 19I | Power to conduct of food safety assessment | <ul style="list-style-type: none"> • Deputy Chief Health Officer (Environment) Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety • An authorized officer who is authorised by the Secretary under section 20(1) of the Act |

| COLUMN 1 Statutory/Administrative provisions | COLUMN 2 Description | COLUMN 3 Delegates |
|---|---|--|
| Sections 19/A(1) and (2) | Power to take certain actions where deficiencies are identified in food safety assessment by registration authority | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety • An authorized officer who is authorised by the Secretary under section 20(1) of the Act |
| Sections 19N(3) and (4) | Receipt of notification from food safety auditor of deficiencies identified in audit | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 19NA | Power to request copies of reports prepared by food safety auditor from proprietor of a food premises | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety • Manager, Regulation and Incident Management |
| Section 19P | Certify a natural person competent to conduct a food safety audit, and impose conditions | <ul style="list-style-type: none"> • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |

| COLUMN 1 Statutory/Administrative provisions | COLUMN 2 Description | COLUMN 3 Delegates |
|---|--|--|
| Section 19T | Revoke a person's certification as an approved food safety auditor | <ul style="list-style-type: none"> • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 19V | Exempt a proprietor of a food premises from certain requirements relating to food safety | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 19W(1) | Direct the proprietor of a food premises to comply with food safety requirements under the Act | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 19W(3) | Direct the proprietor of a food premises to have staff undertake training and have details incorporated into minimum records | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Sections 20(1), (1A) and (2) | Authorise a person to be an authorized officer, limit or particularise the authority or impose conditions | <ul style="list-style-type: none"> • Deputy Secretary, Regulation, Health Protection and Emergency Management • Chief Health Officer |
| Sections 20(3) and (3A) | Issue an identity card for an authorised officer and sign the card | <ul style="list-style-type: none"> • Deputy Secretary, Regulation, Health Protection and Emergency Management • Chief Health Officer |

| COLUMN 1 Statutory/Administrative provisions | COLUMN 2 Description | COLUMN 3 Delegates |
|---|--|--|
| Section 21(2) | Certify that sale or handling of any food is likely to be in contravention of, or fail to comply with, the Act | <ul style="list-style-type: none"> • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Chief Health Officer • Senior Manager, Food Safety |
| Section 21(3) | Requirement to produce any relevant books to the Secretary for inspection etc | <ul style="list-style-type: none"> • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Chief Health Officer • Senior Manager, Food Safety |
| Section 26(5) | Direct disposal of seized articles that have become the property of the Secretary under this section | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 29(d) | Offences with respect to authorised officers and articles: failure to produce any book, etc when required by the Secretary | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 30 | Powers in relation to analysts | <ul style="list-style-type: none"> • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Chief Health Officer • Senior Manager, Food Safety |

| COLUMN 1 Statutory/Administrative provisions | COLUMN 2 Description | COLUMN 3 Delegates |
|---|---|--|
| Section 32(3) | Receive report from an analyst about food samples submitted by councils | <ul style="list-style-type: none"> • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 32(5) | Exempt a council from compliance with requirement to submit food samples for analysis | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 32A | Make a declaration specifying sampling and reporting requirements | <ul style="list-style-type: none"> • Deputy Secretary, Regulation, Health Protection and Emergency Management • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 35A(3) | Permit proprietor of temporary food premises, mobile food premises or food vending machine to register or notify under Divisions 2 or 3 | <ul style="list-style-type: none"> • Deputy Secretary, Regulation, Health Protection and Emergency Management • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |

| COLUMN 1 Statutory/Administrative provisions | COLUMN 2 Description | COLUMN 3 Delegates |
|---|---|--|
| Section 35A(4) | Permit each proprietor of temporary food premises, mobile food premises or food vending machine belonging to a specified class to register or notify under Divisions 2 or 3 | <ul style="list-style-type: none"> • Deputy Secretary, Regulation, Health Protection and Emergency Management • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 36 | Declare the information and documents required to be given to the registration authority by the proprietor of a food business | <ul style="list-style-type: none"> • Deputy Secretary, Regulation, Health Protection and Emergency Management • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 38(1) | Exempt a food premises or class thereof from registration requirement | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 38(3) | Secretary to be consulted by council about proposed exemption | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |

| COLUMN 1 Statutory/Administrative provisions | COLUMN 2 Description | COLUMN 3 Delegates |
|---|--|---|
| Sections 38AA(4) and (5) | Determination of a notification | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Sections 38AB(1) - (3) | Declare maximum fee that may be charged by registration authority for receipt of notification under section 38AA | <ul style="list-style-type: none"> • Deputy Secretary, Regulation, Health Protection and Emergency Management • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 38AB(4) | Fix a fee for the receipt of a notification under section 38AA | <ul style="list-style-type: none"> • Deputy Secretary, Regulation, Health Protection and Emergency Management |
| Section 38A(4) | Request completed food safety template from proprietor | <ul style="list-style-type: none"> • Deputy Secretary, Regulation, Health Protection and Emergency Management • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety • Manager, Regulation and Incident Management |

| COLUMN 1 Statutory/Administrative provisions | COLUMN 2 Description | COLUMN 3 Delegates |
|--|---|---|
| Section 38A(5) | If a QA food safety program is intended to be used for the premises, proprietor must provide registration authority a certificate from a food safety auditor if a QA food safety program is intended to be used | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 38A(6) | Proprietor of food premises must provide certain information to registration authority if a non-standard food safety program other than a QA food safety program is intended to be used for the premises | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 38B (other than paragraph (c) of subsection (1)) | Decide whether to register or transfer registration, and things that must be done before making this decision (other than inspection) | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 38B(1)(c) | Inspection of premises prior to registration or transfer of registration | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Manager, Regulation and Incident Management • An authorized officer who is authorised by the Secretary under section 20(1) of the Act |

| COLUMN 1 Statutory/Administrative provisions | COLUMN 2 Description | COLUMN 3 Delegates |
|--|--|---|
| Section 38D (other than paragraph (b) of subsection (1)) | Decide whether to renew registration, and things that must be done before making this decision (other than inspection) | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 38D(1)(b) | Carry out an annual inspection of a food premises before the registration of the premises is renewed | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Manager, Regulation and Incident Management • An authorized officer who is authorized by the Secretary under section 20(1) of the Act |
| Sections 38E(1)-(4) | Conditional registration powers | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 38E(5) | Declare a longer time period for the purposes of s.38E (conditional registration) | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |

| COLUMN 1 Statutory/Administrative provisions | COLUMN 2 Description | COLUMN 3 Delegates |
|---|---|---|
| Section 38F(3) | Matters relating to change of operations that may affect the classification of a premises | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 39(2) | Carry out an inspection of a food premises within 12 months before the registration of the premises renewed | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Manager, Regulation and Incident Management • An authorized officer who is authorised by the Secretary under section 20(1) of the Act |
| Section 39(3)(d) | Issue guidelines in relation to inspections | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Sections 39A(1), (2) and (3) | Register, renew or transfer registration despite minor defects | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |

| COLUMN 1 Statutory/Administrative provisions | COLUMN 2 Description | COLUMN 3 Delegates |
|---|--|--|
| Section 39A(4) | Direct a council not to exercise power | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) |
| Section 40(1) | Provide a certificate of registration | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 40C(2) | Grant or renew the registration of a food premises for a period of less than 1 year at the request of the proprietor | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 40D | Revoke or suspend the registration of a food premises | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 40E | Direct a council to revoke or suspend a registration | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) |

| COLUMN 1 Statutory/Administrative provisions | COLUMN 2 Description | COLUMN 3 Delegates |
|---|---|--|
| Section 43(3) | Provide access to registration information about a particular premises to a person on request | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 43E | Declare requirements for notification or registration under Division 4 | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Deputy Secretary, Regulation, Health Protection and Emergency Management • Senior Manager, Food Safety |
| Section 43F(6) | Registration authority to be satisfied requirements met before registering, transferring or renewing component of a food business | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 43F(7) | Registration authority may register those components of a food business that meet requirements | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |

| COLUMN 1 Statutory/Administrative provisions | COLUMN 2 Description | COLUMN 3 Delegates |
|---|--|--|
| Section 43H | Declare requirements for statement of trade | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Deputy Secretary, Regulation, Health Protection and Emergency Management • Senior Manager, Food Safety |
| Section 44 | Make order to prevent or reduce serious danger to public health | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) |
| Section 44A(1)(a) | Approve form of publication of warnings | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) |
| Section 44A(2) | Vary or revoke order made under s.44 | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) Deputy Chief Health Officer (Communicable Disease) |
| Section 44B(4) | Sign certificate stating costs incurred in any proceedings for recovery of a debt. | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |

| COLUMN 1 Statutory/Administrative provisions | COLUMN 2 Description | COLUMN 3 Delegates |
|---|---|--|
| Section 44C(2) | Publish details of order made under Part VII | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) |
| Section 44D | Compensation | <ul style="list-style-type: none"> • Chief Health Officer • Director, Health Protection Operations & Strategy |
| Section 44G | Apply to Supreme Court for an enforcement order | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) |
| Section 45AC | Bring proceedings for an offence (prosecutions) | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 46(5) | Institution of certain proceedings | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |

| COLUMN 1 Statutory/Administrative provisions | COLUMN 2 Description | COLUMN 3 Delegates |
|---|---|---|
| Section 48(4) | Direct destruction or disposal of forfeited articles | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 50AA | Evidentiary certificates about decisions made under the Act signed by Secretary | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 50AC | Evidence of signature of Secretary | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety • Manager, Regulation and Incident Management |
| Section 53D(2) | Consider the appropriate form in which the register of convictions may be kept | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |

| COLUMN 1 Statutory/Administrative provisions | COLUMN 2 Description | COLUMN 3 Delegates |
|---|---|--|
| Section 53F(1)(b) | Information must not be included on the register of convictions if the Secretary is satisfied that to do so would be contrary to the purpose of an order under the Family Violence Protection Act 2008 or other similar order under any other law | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 53F(3) | Consult with Victorian Privacy Commissioner if Secretary considers inclusion of an address in the register may raise privacy issues | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 53G | Receive information relevant to register of convictions | <ul style="list-style-type: none"> • Director, Health Protection Operations & Strategy • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety • Manager, Regulation and Incident Management • Manager, Systems and Program Development |

| COLUMN 1 Statutory/Administrative provisions | COLUMN 2 Description | COLUMN 3 Delegates |
|--|---|---|
| Section 53H | Correct any error or omission in information in the register of convictions | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety • Manager, Regulation and Incident Management • Manager, Systems and Program Development |
| Section 53I | Remove information from register relating to a conviction | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety • Manager, Regulation and Incident Management • Manager, Systems and Program Development |
| Section 53J(1) | Add information to the register of convictions | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety • Manager, Regulation and Incident Management • Manager, Systems and Program Development |

| COLUMN 1 Statutory/Administrative provisions | COLUMN 2 Description | COLUMN 3 Delegates |
|---|---|--|
| Section 54A | Receive confidential information about food | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Deputy Chief Health Officer (Environment) Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 58(1) | Notify Liquor Licensing Commission about an order made under s. 19 | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 58(2) | Notify Liquor Licensing Commission of result of certain proceedings if holder of licence or permit is found or pleads guilty and a conviction is not recorded | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |

| COLUMN 1 Statutory/Administrative provisions | COLUMN 2 Description | COLUMN 3 Delegates |
|---|--|--|
| Section 58B | Take action in relation to things done or not done at a temporary or mobile food premises or food vending machine, and take into account inspections or other action taken by another registration authority | <ul style="list-style-type: none"> • Chief Health Officer • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety • Manager, Regulation and Incident Management • Manager, Systems and Program Development • An authorized officer who is authorised by the Secretary under section 20(1) of the Act |
| Section 59 | Offence of giving false or misleading information to the Secretary | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety • Manager, Regulation and Incident Management • Manager, Systems and Program Development |
| Section 59C(2) | Take, or authorise a person to take, actions necessary to ensure compliance with a direction referred to in subsection (1) | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) |

| COLUMN 1 Statutory/Administrative provisions | COLUMN 2 Description | COLUMN 3 Delegates |
|---|--|--|
| Section 59C(3) | Take, or authorise a person to take, actions necessary to ensure compliance with an order referred to in sub-section (1) | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) |
| Section 59C(8) | Incur other costs or expenses which are reasonable costs for the purposes of section 59C | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) |
| Section 60A(b) | Functions of Food Safety Council | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 63(5) | Publish codes of practice in relation to matters which may become the subject of regulations | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 63(6) | Matters regarding whether requirement to provide copies of proposed regulations to municipal councils applies | <ul style="list-style-type: none"> • Director, Health Protection Operations & Strategy • Senior Manager, Food Safety |

| COLUMN 1 Statutory/Administrative provisions | COLUMN 2 Description | COLUMN 3 Delegates |
|---|--|--|
| Section 71(a) | Revoke or suspend registration of food premises under Part IIIB or section 40D, if, immediately before commencement date, a ground for the revocation or suspension of the premises exists under Part IIIB or section 40D of the unamended Act and the matter giving rise to that ground has not been dealt with under the unamended Act | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 71(b) | Give a direction under section 40E if, immediately before the commencement date, a ground for the revocation or suspension of the premises exists under Part IIIB or section 40D of the unamended Act and the matter giving rise to that ground has not been dealt with under the unamended Act | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |
| Section 73 | Include in the register of convictions under section 53D a conviction for an offence committed before 1 July 2010 if the conviction for the offence is recorded after that date | <ul style="list-style-type: none"> • Chief Health Officer • Deputy Chief Health Officer (Environment) • Deputy Chief Health Officer (Communicable Disease) • Senior Manager, Food Safety |

Appendix E
**Emails received from Knox City
Council ('Knox Report')**

[REDACTED]

From: Ray Christy
Sent: Friday, 22 February 2019 10:34 AM
To: [REDACTED]@dhhs.vic.gov.au
Cc: [REDACTED]@dhhs.vic.gov.au [REDACTED]
Subject: Knox Private Hospital - Healthscope - Food Services - Inspection on 21 February 2019
Attachments: SoftDietMenuKnoxPrivateHospital2019-02-21.pdf

Hi Paul

Further to the Department's instructions regarding the Listeriosis incident involving the food services at Knox Private Hospital, I wish to confirm the following:

- A food safety assessment was conducted on the food service activities provided by Healthscope Ltd (who operates Knox Private). The assessment included a check of the hospital's food safety program and records.
- A list of food suppliers was obtained
- Information on the food processes was obtained
- Details of the menu was obtained for patients who are placed on a soft diet (the subject patient had been identified as being on a special diet).

I have also attached a link to photographs of documents, food product items, etc. I haven't had the chance to organise the photos yet. The link can be found on my OneDrive Cloud account here:
<https://1drv.ms/f/s!AhNbwB1jh-xzgYsdOz1cfp-cetSAng>

I will be returning to the facility later this morning to obtain further information, as requested, and to provide instructions and advice to the catering manager.

Food Processes

The hospital receives pre-packaged meals and desserts from iCook. The process of receipt, storage, reheating and distribution:

- Receipt - food product is received prepackaged/wrapped/bagged from iCook in pallets and stored immediately in cold storage.
- Reheating – ready-to-eat lunch and dinner meals are placed in baking trays and reheated in combi ovens for required time and temperature.
- Plating – once reheated, food product is transferred to bain maries and then plated up. Each plate of food is placed on trays with other items (drinks, condiments, desserts, etc).
- Distributions – trays of each food order/patient is placed on trolleys and then distributed to each ward.
- Sandwiches – pre-prepared by iCook are delivered pre-cut in wrapped gastronorm pans.
- Desserts – all dessert and cake items are supplied premade/prepackaged and are plated up at the same time as main meals and sandwiches.
- Drinks – all drinks such as juices and milk are supplied in prepacked single-use packages and plated up at the same time as main meals and sandwiches.

The hospital kitchen undertakes their own food preparation/processing, including (and limited to):

- Preparation of sandwiches for soft diet patients (see below)

- Preparation of breakfast menu items such as cereal and toast
- Coffee/tea

Soft Diet Menu

During my visit yesterday, I was advised that the patient in question was more than likely on the hospital's soft diet (copy of menu attached).

Patients on a soft diet are provided with:

- Modified main course items and soups supplied by iCook (see photos in link)
- Soft diet sandwiches without crusts, that are prepared by the catering in-house services in the hospital kitchen in a dedicated area. Processing includes cutting of vegetables/salad items and cooking/processing of eggs. The suppliers of the ingredients for sandwiches are provided by other suppliers (see below).
- Desserts provided for soft diet include mousse, fruit compote, custard, ice cream, custard, jelly and ice-cream (not provided by iCook but other suppliers – see below).

Food Suppliers

In addition to iCook supplying Knox Private Hospital with ready-to-eat meals, including soft diet/vitamised meals, other suppliers were also identified, including:

- Juice & Co Pty Ltd T/As Just Delicious Fruit Juices and The Juice Farm – supply of juices
- Bidfood Australia Ltd – supply of ham, cheese, margarine
- GWF Tip Top – supply of bread
- SAJ – supply of vegetables and salad mix
- RediMilk – supply of milk, cream, custard
- Mr Donut – supply of tiramisu cake (additional supplier of desserts/cakes to iCook).

I will be obtaining further information from Knox Private Hospital, as requested, and will forward as soon as possible.

Please do not hesitate to contact me if you need me to clarify anything that I've provided to you in this email.

Yours sincerely,

Ray Christy | Environmental Health Officer

511 Burwood Highway
Wantirna South
Victoria 3152
Knox.vic.gov.au



SOFT DIET

BREAKFAST

Name: Room:

Serve: Normal Small

♥ Denotes healthy choice for cardiac/diabetic patients

- Cereal**
- ♥ Cornflakes
 - ♥ Weetbix
 - ♥ Rice Bubbles
 - ♥ All Bran
 - ♥ Porridge

- Dairy**
- Milk
 - Hot
 - Low fat Milk
 - Cold

- Fruits**
- ♥ Two Fruit Compote
 - ♥ Fruit Yoghurt
 - ♥ Prunes

- Bakery**
- ♥ Fruit Bread **no crust**
 - Fresh Bread White **no crust**
 - Fresh Bread Wholemeal **no crust**

- Preserves**
- Honey
 - Marmalade
 - Jam
 - Vegemite

- Beverages**
- ♥ Tea - Herbal - Decaf
 - ♥ Coffee
 - ♥ Low Fat Milk
 - Full Cream Milk
 - Orange Juice
 - Apple Juice

Special Diet

SOFT DIET

LUNCH

Name: Room:

Serve: Normal Small

♥ Denotes healthy choice for cardiac/diabetic patients

Soup Soup of the Day

Main Courses served with vegies- select 1

1. Fish of the Day
2. Roast Turkey & Gravy
3. Spinach Ricotta Cannelloni
4. Chicken Breast & Gravy
5. Zucchini Pattie
6. Vegetable Tagine
- 7.

Sandwich Soft Sandwich **no crust**

- Desserts** ♥ Mousse flavour variety
- Two Fruit Compote
 - Yoghurt
 - Ice Cream
 - Sorbet

Thickened Ice Cream

- ♥ Custard
- Jelly

Beverages Orange Juice Apple Juice

Special Diet

SOFT DIET

DINNER

Name: Room:

Serve: Normal Small

♥ Denotes healthy choice for cardiac/diabetic patients

Soup Soup of the Day

Main Courses served with vegies- select 1

1. Vindaloo Meat balls
2. Fish of the Day
3. Roast Chicken and Gravy
4. Macaroni Cheese
5. Arancini Sundried Tomato & Fetta (NO SAUCE)
6. Beef Lasagne

Sandwich Soft Sandwich **no crust**

Desserts ♥ Mousse flavour variety

- Two Fruit Compote
- Yoghurt
- Ice Cream
- Sorbet

Thickened Ice Cream

- ♥ Custard
- Jelly

Beverages Orange Juice Apple Juice

Special Diet

[REDACTED]

From: [REDACTED]
Sent: Friday, 22 February 2019 10:50 AM
To: Ray Christy; [REDACTED]@dhhs.vic.gov.au
Cc: [REDACTED]@dhhs.vic.gov.au
Subject: RE: Knox Private Hospital - Healthscope - Food Services - Inspection on 21 February 2019

Hi Paul or [REDACTED]

Further to Ray's note below, our "Delivered Meals" service is holding 150 fresh meals that were delivered from iCook Foods yesterday.

The instruction is to discard the product, but before we do, I wanted to check if you wanted any of these meals for analysis. They are currently under cold storage.

If you could let me know please.

Thanks

[REDACTED] | Coordinator Health Compliance

511 Burwood Highway
Wantirna South
Victoria 3152
Knox.vic.gov.au

knox your city



From: Ray Christy
Sent: Friday, 22 February 2019 10:34 AM
To: [REDACTED]@dhhs.vic.gov.au
Cc: [REDACTED]@dhhs.vic.gov.au; [REDACTED]@knox.vic.gov.au
Subject: Knox Private Hospital - Healthscope - Food Services - Inspection on 21 February 2019

Hi Paul

Further to the Department's instructions regarding the Listeriosis incident involving the food services at Knox Private Hospital, I wish to confirm the following:

- A food safety assessment was conducted on the food service activities provided by Healthscope Ltd (who operates Knox Private). The assessment included a check of the hospital's food safety program and records.
- A list of food suppliers was obtained
- Information on the food processes was obtained
- Details of the menu was obtained for patients who are placed on a soft diet (the subject patient had been identified as being on a special diet).

I have also attached a link to photographs of documents, food product items, etc. I haven't had the chance to organise the photos yet. The link can be found on my OneDrive Cloud account here:

<https://1drv.ms/f/s!AhNbwB1jh-xzgYsdOz1cfp-cetSANG>

I will be returning to the facility later this morning to obtain further information, as requested, and to provide instructions and advice to the catering manager.

Food Processes

The hospital receives pre-packaged meals and desserts from iCook. The process of receipt, storage, reheating and distribution:

- Receiving - food product is received prepackaged/wrapped/bagged from iCook in pallets and stored immediately in cold storage.
- Reheating – ready-to-eat lunch and dinner meals are placed in baking trays and reheated in combi ovens for required time and temperature.
- Plating – once reheated, food product is transferred to bain maries and then plated up. Each plate of food is placed on trays with other items (drinks, condiments, desserts, etc).
- Distributions – trays of each food order/patient is placed on trolleys and then distributed to each ward.
- Sandwiches – pre-prepared by iCook are delivered pre-cut in wrapped gastronorm pans.
- Desserts – all dessert and cake items are supplied premade/prepackaged and are plated up at the same time as main meals and sandwiches.
- Drinks – all drinks such as juices and milk are supplied in prepacked single-use packages and plated up at the same time as main meals and sandwiches.

The hospital kitchen undertakes their own food preparation/processing, including (and limited to):

- Preparation of sandwiches for soft diet patients (see below)
- Preparation of breakfast menu items such as cereal and toast
- Coffee/tea

Soft Diet Menu

During my visit yesterday, I was advised that the patient in question was more than likely on the hospital's soft diet (copy of menu attached).

Patients on a soft diet are provided with:

- Modified main course items and soups supplied by iCook (see photos in link)
- Soft diet sandwiches without crusts, that are prepared by the catering in-house services in the hospital kitchen in a dedicated area. Processing includes cutting of vegetables/salad items and cooking/processing of eggs. The suppliers of the ingredients for sandwiches are provided by other suppliers (see below).
- Desserts provided for soft diet include mousse, fruit compote, custard, ice cream, custard, jelly and ice-cream (not provided by iCook but other suppliers – see below).

Food Suppliers

In addition to iCook supplying Knox Private Hospital with ready-to-eat meals, including soft diet/vitamised meals, other suppliers were also identified, including:

- Juice & Co Pty Ltd T/As Just Delicious Fruit Juices and The Juice Farm – supply of juices
- Bidfood Australia Ltd – supply of ham, cheese, margarine
- GWF Tip Top – supply of bread
- SAJ – supply of vegetables and salad mix
- RediMilk – supply of milk, cream, custard
- Mr Donut – supply of tiramisu cake (additional supplier of desserts/cakes to iCook).

I will be obtaining further information from Knox Private Hospital, as requested, and will forward as soon as possible.

Please do not hesitate to contact me if you need me to clarify anything that I've provided to you in this email.

Yours sincerely,

Ray Christy | Environmental Health Officer



511 Burwood Highway
Wantirna South
Victoria 3152
Knox.vic.gov.au



[REDACTED]

From: Ray Christy
Sent: Friday, 22 February 2019 12:42 PM
To: [REDACTED]@dhhs.vic.gov.au
Cc: [REDACTED]@dhhs.vic.gov.au [REDACTED]
Subject: RE: Knox Private Hospital - Healthscope - Food Services - Inspection on 21 February 2019

Dear Paul

Further to my previous email, I wish to provide the following information as a result of another visit to the food services of Knox Private Hospital this morning:

Food Temperature Records

The catering manager has been instructed to provide cold storage and re-heating temperatures for the period of 13/1/19 to 23/1/19. They will be forwarded to me ASAP.

Food History

The hospital is unable to provide a full food history for the patient, however they confirmed that she was on a soft diet.

Clarification of Suppliers of Certain Food Products

Referring to the soft diet menu - Desserts are provided by several suppliers:

Mousse – is made from a mousse flavoured powder and mixed with milk – product supplied by Bidfood
Two fruit compote – single serve sealed cups provided by Bidfood
Sorbet – single serve sealed cups from Bidfood
Yoghurt, thickened cream, custard – supplied by RediMilk
Icecream – provided by Bidfood

I can confirm that the soups are provided by iCook.

I can also confirm that sandwiches made to order for soft diet patients do not contain salad, lettuce or tomato.

Clean-up

The facility has been instructed to undertake, as a precaution, a clean-up of the kitchen as per DHHS's guidelines for *Listeria monocytogenes* detection.

A copy of the guidelines has been provided to the catering manager.

The hospital's infection control personnel have advised that they will undertake environmental swabbing to verify efficacy once the clean-up has been done.

Please do not hesitate to contact me if you need any further clarification of the information provided.

Yours sincerely,

Ray Christy | Environmental Health Officer

511 Burwood Highway
Wantirna South
Victoria 3152
Knox.vic.gov.au

knox
your city



From: Ray Christy

Sent: Friday, 22 February 2019 10:34 AM

To: [REDACTED]@dhhs.vic.gov.au

Cc: [REDACTED]@dhhs.vic.gov.au; [REDACTED]@dhhs.vic.gov.au; [REDACTED]@knox.vic.gov.au

Subject: Knox Private Hospital - Healthscope - Food Services - Inspection on 21 February 2019

Hi Paul

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Soft Diet Menu

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Food Suppliers

In addition to iCook supplying Knox Private Hospital with ready-to-eat meals, including soft diet/vitamised meals, other suppliers were also identified, including:

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Yours sincerely,

Ray Christy | Environmental Health Officer

511 Burwood Highway
Wantirna South
Victoria 3152
Knox.vic.gov.au

knox your city



[REDACTED]

From: [REDACTED]
Sent: Friday, 22 February 2019 1:51 PM
To: [REDACTED]@dhhs.vic.gov.au
Cc: [REDACTED]@dhhs.vic.gov.au; Ray Christy
Subject: RE: Knox Private Hospital - Healthscope - Food Services - Inspection on 21 February 2019

No worries Paul will do.

I am likely to get a few samples of varying batch dates from our delivered Meals clients. I will send those in too, in the state I get them back

Cheers

[REDACTED] Coordinator Health Compliance
[REDACTED]

511 Burwood Highway
Wantirna South
Victoria 3152
Knox.vic.gov.au

knox your city



From: [REDACTED]@dhhs.vic.gov.au <[REDACTED]@dhhs.vic.gov.au>
Sent: Friday, 22 February 2019 12:34 PM
To: [REDACTED]@knox.vic.gov.au
Cc: [REDACTED]@dhhs.vic.gov.au; Ray Christy [REDACTED]
Subject: RE: Knox Private Hospital - Healthscope - Food Services - Inspection on 21 February 2019

Hi [REDACTED]

I would be worth analysing some of the products just in case. So if you can keep five samples in storage and arrange those to be sent to MDU for Listeria testing.

Please send through the samples details i.e what products and photos please.

Ta Paul

Paul Goldsmith | Acting Manager Regulation & Incident Management
Food Safety Unit | Health Protection Branch
Department of Health and Human Services | 50 Lonsdale Street Melbourne Victoria 3000
p [REDACTED] | e [REDACTED]
w. www.health.vic.gov.au/foodsafety



| | |
|----------|--|
| From: | [REDACTED] |
| To: | Ray Christy <[REDACTED]>," @dhhs.vic.gov.au" <[REDACTED]> @dhhs.vic.gov.au>. |
| Cc: | [REDACTED] |
| Date: | 22/02/2019 10:50 AM |
| Subject: | RE: Knox Private Hospital - Healthscope - Food Services - Inspection on 21 February 2019 |

Hi Paul or [REDACTED]

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To: [REDACTED] @dhhs.vic.gov.au
Cc: [REDACTED] @dhhs.vic.gov.au; [REDACTED]
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Ray Christy | Environmental Health Officer

+ [REDACTED]

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Wantirna South
Victoria 3152
Knox.vic.gov.au

knox your city



This email may contain privileged and confidential information intended only for the use of the addressee named above. Privacy should be respected at all times. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, or reproduction of this email is strictly prohibited. If you have received this email in error, please notify Knox City Council immediately by telephone (03-9298-8000) and destroy the original message.

KNOX CITY COUNCIL
511 Burwood Highway, Wantirna South. 3152. Australia

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| | | | | | |
|--------------------------|--|----------|-------------|----------------|---|
| Business name: | Knox Private Hospital | Ref No: | 823/F | Scheduled | X |
| Proprietor name: | Healthscope Ltd | Date: | 21-Feb-2019 | Follow up | |
| Premises address: | Knox Pvt Hospital, 262 Mountain Highway, WANTIRNA VIC 3152 | Time: | 2:30 p.m. | Complaint | |
| Business phone: | [REDACTED] | Officer: | Ray Christy | Transfer/Final | |
| Mobile phone: | | FSS: | [REDACTED] | Other: | |
| E-mail address: | [REDACTED]@healthscope.com.au | | | | |
| Correspondence Delivery: | Post | | Email | X | |

It is the responsibility of the proprietor to ensure all contact information is kept up-to-date on Council's database. If any information above is incorrect, please send changes to health.services@knox.vic.gov.au

Comments / Actions to be taken

I, Ray Christy, Environmental Health Officer with Knox City Council, conducted a food safety assessment of the Class 1 food premises located at 262 Mountain Highway, WANTIRNA VIC 3152, to determine if the premises are being operated in accordance with the Food Act 1984.

The premises were assessed against the Food Standards Code.

I am of the opinion that the inspection revealed no major deficiencies that need to be addressed.

| | | | | | |
|--------------------|-------------|---|---------------------|------------|--------------------|
| Inspection Result: | Compliant | | | | |
| Further Action: | Nil | X | Reinspection | | Reinspection date: |
| Officer Name: | Ray Christy | | | | |
| Officer Signature: | [REDACTED] | | Officer Contact No: | [REDACTED] | |

Appendix F
**Emails received from the
Department of Health**

Sent: Thursday, 21 February 2019 4:21 PM
 To: [REDACTED]@hicmr.com.au
 Cc: [REDACTED]@dhhs.vic.gov.au
 Subject: General food provision follow up re Food Supply within the Hospital
 Hi [REDACTED]

Thank you for all the menu information you provided recently in relation to the Listeria Case Jean Painter.

Further follow up information is needed in relation to the food supplied to other areas of the hospital and general numbers of patients per area/ unit.

Could you please confirm all the different types of units/ wards the hospital has, ie:

ICU
 Renal
 Oncology
 Maternity
 Paediatrics

Could you please also advise the number of beds per unit.

In relation to food supplied to each unit, I presume that is up to each individual to order their own food whilst in hospital.

However are there any units such as renal/ maternity where a patient may attend for day visits and be served food such as sandwiches?

Can you please confirm numbers of patients being admitted to each ward from 13/01/2019 till 21/02/2019

Thank you for all your assistance with this information.

Kind Regards
 Sally

Sally Atkinson

Public Health Officer | Communicable Disease Prevention & Control | Health Protection
 Department of Health and Human Services
 50 Lonsdale Street Melbourne Victoria 3000
 p. [REDACTED] | 1300 651 160 | f. 1300 651 170
 e. [REDACTED]@dhhs.vic.gov.au | www.dhhs.vic.gov.au
 CD&RR@health.vic.gov.au

Please note that I work Mondays, Tuesdays, Thursdays and Fridays.

IMPORTANT - Please note that the content of this fax / this email is for the addressee's use only. It is confidential and may be legally privileged. It must not be copied or distributed to anyone outside DHHS without the permission of the author. If you are not the intended recipient, any disclosure, copying or use of this information is prohibited.

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RE: 7 day menu plans

From: [REDACTED]@hicmr.com.au>
To: Sally Atkinson (DHHS) [REDACTED]@dhhs.vic.gov.au>, [REDACTED]@healthscope.com.au
Cc: [REDACTED]@healthscope.com.au>
Date: Thu, 31 Jan 2019 11:11:56 +1100
Attachments: Scanned Menus 7 Days.pdf (1.36 MB)

Hi Sally,

Apologies if you did not receive the attached above however, I did send these through yesterday morning @0900 hrs to the global dhhs email address you sent us CDI&R@health.vic.gov.au
 As stated in my email to you on Tuesday 29th, Knox Private Hospital does not purchase any pre-chopped fruit or pre-prepared salads which have been associated with Listeriosis outbreaks.

As far as the Menu monitor is aware the case ate very minimal food and was attracted to soft easy to eat items which included desserts such as jelly, ice cream, custard.

However, desserts are all provided by 'i Cook' or are 'Sarah Lee' dessert / cake items. Custard is purchased in Tetra packs. Commercially bought ice cream.
 Fresh fruit on menu is provided whole to the patient, i.e whole apple, orange banana. If requested by the patient this is cut up approximately 1 hour prior to patient delivery by Food Services Staff. Such food items that don't receive any further heat treatment undergo sanitising process using 'SureShot' 50-100ppm of available chlorine prior to preparation consumption by patient.

Jelly is made by the food services staff daily, this is set within small disposable containers for individual patient consumption.

I hope this is of assistance, if you require further information please don't hesitate to contact me.

Kind Regards,



Principal Infection Control Consultant



Quality
 ISO 9001
 HICMR Pty Ltd
 (Healthcare Infection Control Management Resources)
 Level 1, 123 Camberwell Road Hawthorn East VIC 3123
 Ph: (03) [REDACTED] Fax: (03) [REDACTED]
 Pager: [REDACTED] www.hicmr.com.au

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From: [REDACTED]@dhhs.vic.gov.au [REDACTED]@dhhs.vic.gov.au>
Sent: Thursday, 31 January 2019 10:23 AM
To: [REDACTED]@healthscope.com.au; [REDACTED]@hicmr.com.au>
Subject: 7 day menu plans

Good morning [REDACTED]

Thank you for the food history information you provided. Could you please send through the menus ASAP so I can check if there may be any other foods I might need to take into consideration.

Are you able to check if the case consumed cut up fruit or generally ordered desserts as well please?

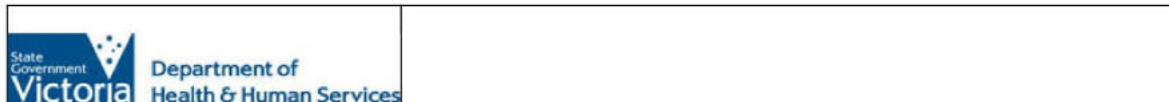
Thank you for your assistance with this investigation, I will also be investigating foods consumed prior to being admitted to hospital.

| | |
|-----------------------|--|
| Kind Regards Sally | |
|-----------------------|--|

Sally Atkinson
Public Health Officer | Communicable Disease Prevention & Control | Health Protection
Department of Health and Human Services
50 Lonsdale Street Melbourne Victoria 3000
p. [REDACTED] | 1300 651 160 | f. 1300 651 170
e. [REDACTED]@dhhs.vic.gov.au | www.dhhs.vic.gov.au
CDI&R@health.vic.gov.au
Please note that I work Mondays, Tuesdays, Thursdays and Fridays

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Monday Breakfast

Monday Lunch

Monday Dinner

Name _____

Room No. _____ Diet _____

Cereal

- Cornflakes
- Rice Bubbles
- Porridge
- Weetbix
- Natural Muesli
- All Bran

Milk

- Low Fat
- Full Cream
- Lactose free
- Soy
- Cold
- Hot

Bakery

- White Baguette
- M/Grain Baguette
- Fruit Loaf Bread
- Croissant

Spreads

- Jam
- Marmalade
- Honey
- Vegemite

Fruit & Yoghurt

- Compote of Fruit
- Prunes
- Fruit Yoghurt

Drinks

- Tea
- Herbal Tea
- Decaf Tea
- Coffee
- Decaf Coffee
- Apple Juice
- Orange Juice
- Pear Juice
- Cranberry Juice

Name _____

Room No. _____ Diet _____

Main meal

Please select one item from this category

- Roast Pork with Apple Sauce & Gravy GF
- Moroccan Chicken Casserole
- Spinach & Ricotta Cannelloni O

Chicken Salad Small

Ham and Cheese Sandwiches

Assorted Sandwiches

Sweets

- Ice Cream GF
- Jelly
- Custard
- Fresh fruit

Drinks

- Apple Juice
- Orange Juice
- Diet Lemonade

Name _____

Room No. _____ Diet _____

Soup of the day

- Spring Vegetable GF
- Bread Roll

Main meal

Please select one item from this category

- Salmon Patties with Hollandaise Sc
- Vindaloo Meat Balls with Rice GF

Macaroni Cheese

Ham and Cheese Sandwiches

Assorted Sandwiches

Sweets

- Strawberry Cheesecake with Cream
- Ice Cream GF
- Jelly
- Custard
- Yoghurt

Drinks

- Apple Juice
- Orange Juice
- Diet Lemonade

Tuesday Breakfast

Tuesday Lunch

Tuesday Dinner

Name _____
 Room No. _____ Diet _____

Name _____
 Room No. _____ Diet _____

Name _____
 Room No. _____ Diet _____

Cereal

- Cornflakes
- Rice Bubbles
- Porridge ♡
- Weetbix ♡
- Natural Muesli ♡
- All Bran ♡

Milk

- Low Fat ♡
- Full Cream
- Lactose free
- Soy
- Cold
- Hot

Bakery

- White Baguette
- M/Grain Baguette
- Fruit Loaf Bread ♡
- Croissant

Spreads

- Jam
- Marmalade
- Honey
- Vegemite

Fruit & Yoghurt

- Compote of Fruit ♡
- Prunes ♡
- Fruit Yoghurt ♡

Drinks

- Tea
- Herbal Tea
- Decaf Tea
- Coffee
- Decaf Coffee
- Apple Juice
- Orange Juice
- Pear Juice
- Cranberry Juice

Main meal

Please select one item from this category

- Shepherds Pie
- Beef Stroganoff with Mashed Potato ♡ GF
- Braised Leek and Fetta Tart 0
- Seafood Salad Small
- Ham and Cheese Sandwiches
- Assorted Sandwiches ♡

Soup of the day

- Potato and Leek ♡
- Bread Roll ♡

Main meal

Please select one item from this category

- Roast Chicken with Gravy ♡ GF
- Italian Beef Lasagne ♡
- Vegetable Fried Rice ♡ GF
- Ham and Cheese Sandwiches
- Assorted Sandwiches ♡

Sweets

- Custard Cake and Cream
- Ice Cream GF
- Jelly
- Custard ♡
- Yoghurt ♡

Drinks

- Apple Juice
- Orange Juice
- Diet Lemonade

Wednesday Breakfast

Wednesday Lunch

Wednesday Dinner

Name _____

Room No. _____ Diet _____

Cereal

- Cornflakes
- Rice Bubbles
- Porridge
- Weetbix
- Natural Muesli
- All Bran

Milk

- Low Fat
- Full Cream
- Lactose free
- Soy
- Cold
- Hot

Bakery

- White Baguette
- M/Grain Baguette
- Fruit Loaf Bread
- Croissant

Spreads

- Jam
- Marmalade
- Honey
- Vegemite

Fruit & Yoghurt

- Compote of Fruit
- Prunes
- Fruit Yoghurt

Drinks

- Tea
- Herbal Tea
- Decaf Tea
- Coffee
- Decaf Coffee
- Apple Juice
- Orange Juice
- Pear Juice
- Cranberry Juice

Name _____

Room No. _____ Diet _____

Main meal

Please select one item from this category

- Veal Schnitzel with Gravy
- Satay style Chicken
- Vegetarian Lasagne
- Pork Salad
- Ham and Cheese Sandwiches
- Assorted Sandwiches
- Small

Sweets

- Ice Cream
- Jelly
- Custard
- Fresh fruit

Drinks

- Apple Juice
- Orange Juice
- Diet Lemonade

Name _____

Room No. _____ Diet _____

Soup of the day

- Chicken and Vegetable
- Bread Roll

Main meal

Please select one item from this category

- Grilled Fish Plain
- Grilled Fish w/ Lemon Bearnaise Sauce
- Italian Beef Rolls w/ Tom Onion Sauce
- Vegetarian Tagine with Cous Cous
- Ham and Cheese Sandwiches

Sweets

- Assorted Sandwiches
- Meringue with Fruit and Cream
- Ice Cream
- Custard
- Jelly
- Yoghurt

Drinks

- Apple Juice
- Orange Juice
- Diet Lemonade

Thursday Breakfast

Thursday Lunch

Thursday Dinner

Name _____

Room No. _____ Diet _____

Cereal

- Cornflakes
- Rice Bubbles
- Porridge
- Weetbix
- Natural Muesli
- All Bran

Milk

- Low Fat
- Full Cream
- Lactose free
- Soy
- Cold
- Hot

Bakery

- White Baguette
- M/Grain Baguette
- Fruit Loaf Bread
- Croissant

Spreads

- Jam
- Marmalade
- Honey
- Vegemite

Fruit & Yoghurt

- Compote of Fruit
- Prunes
- Fruit Yoghurt

Drinks

- Tea
- Herbal Tea
- Decaf Tea
- Coffee
- Decaf Coffee
- Apple Juice
- Orange Juice
- Pear Juice
- Cranberry Juice

Name _____

Room No. _____ Diet _____

Main meal

Please select one item from this category

- Chicken Breast with Herb Cream Sauce
- Osso Bucco
- Vegetable Pattie w Tomato & Onion Sauce
- Chicken Caesar Salad Small
- Ham and Cheese Sandwiches
- Assorted Sandwiches

Name _____

Room No. _____ Diet _____

Soup of the day

- Pumpkin
- Bread Roll

Main meal

Please select one item from this category

- Roast Beef with Shiraz Sauce
- Chicken Chasseur w Mashed Potato
- Gnocchi Italiano
- Ham and Cheese Sandwiches
- Assorted Sandwiches

Sweets

- Tiramisu
- Ice Cream
- Jelly
- Custard
- Yoghurt

Drinks

- Apple Juice
- Orange Juice
- Diet Lemonade

Friday Breakfast

Friday Lunch

Friday Dinner

Name _____

Room No. _____ Diet _____

Cereal

- Cornflakes
- Rice Bubbles
- Porridge
- Weetbix
- Natural Muesli
- All Bran

Milk

- Low Fat
- Full Cream
- Lactose free
- Soy
- Cold
- Hot

Bakery

- White Baguette
- M/Grain Baguette
- Fruit Loaf Bread
- Croissant

Spreads

- Jam
- Marmalade
- Honey
- Vegemite

Fruit & Yoghurt

- Compote of Fruit
- Prunes
- Fruit Yoghurt

Drinks

- Tea
- Herbal Tea
- Decaf Tea
- Coffee
- Decaf Coffee
- Apple Juice
- Orange Juice
- Pear Juice
- Cranberry Juice

Name _____

Room No. _____ Diet _____

Main meal

Please select one item from this category

- Roast Turkey with Cranberry & Gravy GF
- American BBQ Pork with Savoury Rice
- Chickpea Casserole with Cous Cous O
- Roast Beef Salad
- Ham and Cheese Sandwiches Small
- Assorted Sandwiches

Sweets

- Ice Cream GF
- Jelly
- Custard
- Fresh fruit

Drinks

- Apple Juice
- Orange Juice
- Diet Lemonade

Name _____

Room No. _____ Diet _____

Soup of the day

- Minestrone
- Bread Roll

Main meal

Please select one item from this category

- Crumbed Fish with Chips & Tartar Sauce
- Chicken Cacciatore with Pasta
- Vegetarian Quiche
- Ham and Cheese
- Assorted Sandwiches

Sweets

- Mango Cheesecake
- Ice Cream GF
- Jelly
- Custard
- Yoghurt

Drinks

- Apple Juice
- Orange Juice
- Diet Lemonade

Saturday Breakfast

Saturday Lunch

Saturday Dinner

Name _____
Room No. _____ Diet _____

Cereal

- Cornflakes
- Rice Bubbles
- Porridge
- Weetbix
- Natural Muesli
- All Bran

Bakery

- White Baguette
- M/Grain Baguette
- Fruit Loaf Bread
- Croissant

Fruit & Yoghurt

- Compote of Fruit
- Prunes
- Fruit Yoghurt

Drinks

- Tea
- Herbal Tea
- Decaf Tea
- Coffee
- Decaf Coffee
- Apple Juice
- Orange Juice
- Pear Juice
- Cranberry Juice

Milk

- Low Fat
- Full Cream
- Lactose free
- Soy
- Cold
- Hot

Spreads

- Jam
- Marmalade
- Honey
- Vegemite

Name _____
Room No. _____ Diet _____

Main meal

Please select one item from this category

- Silverside w/ Dijon Mustard Cream Sauce
- Smoked Salmon Pasta w/ Dill Cream Sauce
- Dutch Vegetable Croquettes
- Virginian Ham Salad
- Ham and Cheese Sandwiches
- Assorted Sandwiches

Sweets

- Ice Cream
- Jelly
- Custard
- Fresh fruit

Drinks

- Apple Juice
- Orange Juice
- Diet Lemonade

Name _____
Room No. _____ Diet _____

Soup of the day

- Scotch Broth
- Bread Roll

Main meal

Please select one item from this category

- Roast Pork w/ Apple Sauce & Gravy
- Moroccan Beef Casserole
- Spanish Omelette w/ Vegetables
- Ham and Cheese
- Assorted Sandwiches

Sweets

- Black Forrest Cake
- Ice Cream
- Jelly
- Custard
- Yoghurt

Drinks

- Apple Juice
- Orange Juice
- Diet Lemonade

Sunday Breakfast

Sunday Lunch

Sunday Dinner

Name _____

Room No. _____ Diet _____

Cereal

- Cornflakes
- Rice Bubbles
- Porridge
- Weetbix
- Natural Muesli
- All Bran

Milk

- Low Fat
- Full Cream
- Lactose free
- Soy
- Cold
- Hot

Bakery

- White Baguette
- M/Grain Baguette
- Fruit Loaf Bread
- Croissant

Spreads

- Jam
- Marmalade
- Honey
- Vegemite

Fruit & Yoghurt

- Compote of Fruit
- Prunes
- Fruit Yoghurt

Drinks

- Tea
- Herbal Tea
- Decaf Tea
- Coffee
- Decaf Coffee
- Apple Juice
- Orange Juice
- Pear Juice
- Cranberry Juice

Name _____

Room No. _____ Diet _____

Main meal

Please select one item from this category

- Roast Spring Lamb with Mint Jus
- Chicken Breast Schnitzel with Gravy
- Zucchini Pattie
- Turkey Salad
- Small
- Ham and Cheese Sandwiches
- Assorted Sandwiches

Sweets

- Ice Cream
- Jelly
- Custard
- Fresh fruit

Drinks

- Apple Juice
- Orange Juice
- Diet Lemonade

Name _____

Room No. _____ Diet _____

Soup of the day

- Chicken and Sweetcorn
- Bread Roll

Main meal

Please select one item from this category

- Penne Pasta with Bolognese Sauce
- Fillet of Fish Plain
- Fillet of Fish w Coconut Tumeric Sauce
- Arancini with Sundried Tomato & Fetta
- Ham and Cheese Sandwiches

Sweets

- Assorted Sandwiches
- Apple & Berry Crumble with Custard
- Ice Cream
- Jelly
- Custard
- Yoghurt

Drinks

- Apple Juice
- Orange Juice

Fw: Listeriosis Food History Request UR Number:295930 [PHESS ID: 320192705523] - DHHS

From: [REDACTED] (DHHS)
To: Sally Atkinson (DHHS) [REDACTED]@dhhs.vic.gov.au>
Date: Wed, 30 Jan 2019 09:06:01 +1100
Attachments: Scanned Menus 7 Days.pdf (1.36 MB)

Regards,

| Communicable Disease Prevention & Control | Health Protection
Department of Health and Human Services
50 Lonsdale Street Melbourne Victoria 3000
p. [REDACTED] f. 1300 651 170
e. CD&R@health.vic.gov.au | www.dhhs.vic.gov.au

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----- Forwarded by [REDACTED] on 30/01/2019 09:05 AM -----

From: [REDACTED]@hcmr.com.au>
To: "CD&R@dhhs.vic.gov.au" <CD&R@dhhs.vic.gov.au>, [REDACTED]@healthscope.com.au", [REDACTED]@healthscope.com.au>,
Cc: [REDACTED]@dhhs.vic.gov.au", [REDACTED]@dhhs.vic.gov.au>, [REDACTED]@dhhs.vic.gov.au", [REDACTED]@dhhs.vic.gov.au>
Date: 30/01/2019 09:04 AM
Subject: RE: Listeriosis Food History Request UR Number:295930 [PHESS ID: 320192705523] - DHHS

Dear Sally,
Please find attached scanned Menus for Knox Private Hospital for the seven days (weekly cycle).
If you require any further information or require any further assistance please do not hesitate to contact me.
Kind Regards,

[REDACTED]

Principal Infection Control Consultant



Quality ISO 9001
HICMR Pty Ltd
(Healthcare Infection Control Management Resources)
Level 1, 123 Camberwell Road Hawthorn East VIC 3123
Ph: [REDACTED]
Pages: [REDACTED] www.hicmr.com.au

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From: [REDACTED]@dhhs.vic.gov.au [REDACTED]@dhhs.vic.gov.au> On Behalf Of [REDACTED]@dhhs.vic.gov.au
Sent: Tuesday, 29 January 2019 12:51 PM
To: [REDACTED]@healthscope.com.au; [REDACTED]@hcmr.com.au>
Cc: [REDACTED]@dhhs.vic.gov.au; [REDACTED]@dhhs.vic.gov.au
Subject: Listeriosis Food History Request UR Number:295930 [PHESS ID: 320192705523] - DHHS

Dear [REDACTED]
As discussed, the Communicable Disease Prevention and Control Unit are investigating an **86 year old female** who has recently been diagnosed with Listeriosis.
The case recently spent some/all of their incubation period in **Knox Private Hospital Chesterfield ward, dates unsure, approximately 2.5 - 3 weeks ago** .

Can you please provide the department with a full list of foods or menu items provided to this patient while they were either admitted to hospital or during any identified day visits.

The blood sample was collected on the 23/01/2019 which was the approximate date the case had been sent to Donvale Private but was then readmitted back to Knox Private shortly after.

Your assistance in this investigation is appreciated.

If you have any questions or concerns please contact me on the details below.

With regards,

Kind Regards
Sally

Sally Atkinson
Public Health Officer | Communicable Disease Prevention & Control | Health Protection
Department of Health and Human Services
50 Lonsdale Street Melbourne Victoria 3000
p. [REDACTED] | 1300 651 160 | f. 1300 651 170
e. [REDACTED]@dhhs.vic.gov.au | www.dhhs.vic.gov.au
CD&R@health.vic.gov.au
Please note that I work Mondays, Tuesdays and Thursdays

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<<...>>

Monday Breakfast

Name _____

Room No. _____ Diet _____

Cereal

- Cornflakes
 Rice Bubbles
 Porridge
 Weetbix
 Natural Muesli
 All Bran

Milk

- Low Fat
 Full Cream
 Lactose free
 Soy
 Cold
 Hot

Bakery

- White Baguette
 M/Grain Baguette
 Fruit Loaf Bread
 Croissant

Spreads

- Jam
 Marmalade
 Honey
 Vegemite

Fruit & Yoghurt

- Compote of Fruit
 Prunes
 Fruit Yoghurt

Drinks

- Tea
 Herbal Tea
 Decaf Tea
 Coffee
 Decaf Coffee
- Apple Juice
 Orange Juice
 Pear Juice
 Cranberry Juice

Monday Lunch

Name _____

Room No. _____ Diet _____

Main meal

Please select one item from this category

- Roast Pork with Apple Sauce & Gravy GF
 Moroccan Chicken Casserole
 Spinach & Ricotta Cannelloni O

* Chicken Salad Small*

Ham and Cheese Sandwiches

Assorted Sandwiches

Sweets

- Ice Cream GF
 Jelly
 Custard
 Fresh fruit

Drinks

- Apple Juice
 Orange Juice
 Diet Lemonade

Monday Dinner

Name _____

Room No. _____ Diet _____

Soup of the day

- Spring Vegetable GF
 Bread Roll

Main meal

Please select one item from this category

- Salmon Patties with Hollandaise Sc
 Vindaloo Meat Balls with Rice GF

 Macaroni Cheese Ham and Cheese Sandwiches Assorted Sandwiches

Sweets

- Strawberry Cheesecake with Cream
 Ice Cream GF
 Jelly
 Custard
 Yoghurt

Drinks

- Apple Juice
 Orange Juice
 Diet Lemonade

Tuesday Breakfast

Tuesday Lunch

Tuesday Dinner

Name _____
 Room No. _____ Diet _____

Name _____
 Room No. _____ Diet _____

Name _____
 Room No. _____ Diet _____

Cereal

- Cornflakes
- Rice Bubbles
- Porridge
- Weetbix
- Natural Muesli
- All Bran

Milk

- Low Fat
- Full Cream
- Lactose free
- Soy
- Cold
- Hot

Bakery

- White Baguette
- M/Grain Baguette
- Fruit Loaf Bread
- Croissant

Spreads

- Jam
- Marmalade
- Honey
- Vegemite

Fruit & Yoghurt

- Compote of Fruit
- Prunes
- Fruit Yoghurt

Drinks

- Tea
- Herbal Tea
- Decaf Tea
- Coffee
- Decaf Coffee
- Apple Juice
- Orange Juice
- Pear Juice
- Cranberry Juice

Main meal

Please select one item from this category

- Shepherds Pie
- Beef Stroganoff with Mashed Potato GF
- Braised Leek and Fetta Tart O
- Seafood Salad Small
- Ham and Cheese Sandwiches
- Assorted Sandwiches

Soup of the day

- Potato and Leek
- Bread Roll

Main meal

Please select one item from this category

- Roast Chicken with Gravy GF
- Italian Beef Lasagne
- Vegetable Fried Rice GF
- Ham and Cheese Sandwiches
- Assorted Sandwiches

Sweets

- Custard Cake and Cream
- Ice Cream GF
- Jelly
- Custard
- Yoghurt

Drinks

- Apple Juice
- Orange Juice
- Diet Lemonade

Wednesday Breakfast

Wednesday Lunch

Wednesday Dinner

Name _____

Room No. _____ Diet _____

Cereal

- Cornflakes
- Rice Bubbles
- Porridge
- Weetbix
- Natural Muesli
- All Bran

Milk

- Low Fat
- Full Cream
- Lactose free
- Soy
- Cold
- Hot

Bakery

- White Baguette
- M/Grain Baguette
- Fruit Loaf Bread
- Croissant

Spreads

- Jam
- Marmalade
- Honey
- Vegemite

Fruit & Yoghurt

- Compote of Fruit
- Prunes
- Fruit Yoghurt

Drinks

- Tea
- Herbal Tea
- Decaf Tea
- Coffee
- Decaf Coffee
- Apple Juice
- Orange Juice
- Pear Juice
- Cranberry Juice

Name _____

Room No. _____ Diet _____

Main meal

Please select one item from this category

- Veal Schnitzel with Gravy
- Satay style Chicken
- Vegetarian Lasagne
- Pork Salad
- Ham and Cheese Sandwiches
- Assorted Sandwiches
- Small

Sweets

- Ice Cream
- Jelly
- Custard
- Fresh fruit

Drinks

- Apple Juice
- Orange Juice
- Diet Lemonade

Name _____

Room No. _____ Diet _____

Soup of the day

- Chicken and Vegetable
- Bread Roll

Main meal

Please select one item from this category

- Grilled Fish Plain
- Grilled Fish w/ Lemon Bearnaise Sauce
- Italian Beef Rolls w/ Tom Onion Sauce
- Vegetarian Tagine with Cous Cous
- Ham and Cheese Sandwiches

Sweets

- Meringue with Fruit and Cream
- Ice Cream
- Custard
- Jelly
- Yoghurt

Drinks

- Apple Juice
- Orange Juice
- Diet Lemonade

Thursday Breakfast

Thursday Lunch

Thursday Dinner

Name _____

Room No. _____ Diet _____

Cereal

- Cornflakes
- Rice Bubbles
- Porridge
- Weetbix
- Natural Muesli
- All Bran

Bakery

- White Baguette
- M/Grain Baguette
- Fruit Loaf Bread
- Croissant

Fruit & Yoghurt

- Compote of Fruit
- Prunes
- Fruit Yoghurt

Drinks

- Tea
- Herbal Tea
- Decaf Tea
- Coffee
- Decaf Coffee
- Apple Juice
- Orange Juice
- Pear Juice
- Cranberry Juice

Milk

- Low Fat
- Full Cream
- Lactose free
- Soy
- Cold
- Hot

Spreads

- Jam
- Marmalade
- Honey
- Vegemite

Name _____

Room No. _____ Diet _____

Main meal

Please select one item from this category

- Chicken Breast with Herb Cream Sauce
- Osso Bucco GF
- Vegetable Pattie w Tomato & Onion Sauce
- Chicken Caesar Salad
- Ham and Cheese Sandwiches Small
- Assorted Sandwiches

Name _____

Room No. _____ Diet _____

Soup of the day

- Pumpkin
- Bread Roll

Main meal

Please select one item from this category

- Roast Beef with Shiraz Sauce GF
- Chicken Chasseur w Mashed Potato GF
- Gnocchi Italiano
- Ham and Cheese Sandwiches
- Assorted Sandwiches

Sweets

- Tiramisu
- Ice Cream GF
- Jelly
- Custard
- Yoghurt

Drinks

- Apple Juice
- Orange Juice
- Diet Lemonade

Friday Breakfast

Friday Lunch

Friday Dinner

Name _____

Room No. _____ Diet _____

Cereal

- Cornflakes
- Rice Bubbles
- Porridge
- Weetbix
- Natural Muesli
- All Bran

Bakery

- White Baguette
- M/Grain Baguette
- Fruit Loaf Bread
- Croissant

Fruit & Yoghurt

- Compote of Fruit
- Prunes
- Fruit Yoghurt

Drinks

- Tea
- Herbal Tea
- Decaf Tea
- Coffee
- Decaf Coffee
- Apple Juice
- Orange Juice
- Pear Juice
- Cranberry Juice

Milk

- Low Fat
- Full Cream
- Lactose free
- Soy
- Cold
- Hot

Spreads

- Jam
- Marmalade
- Honey
- Vegemite

Name _____

Room No. _____ Diet _____

Main meal

Please select one item from this category

- Roast Turkey with Cranberry & Gravy GF
- American BBQ Pork with Savoury Rice
- Chickpea Casserole with Cous Cous
- Roast Beef Salad
- Ham and Cheese Sandwiches
- Assorted Sandwiches

Sandwiches

- Small

Sweets

- Ice Cream GF
- Jelly
- Custard
- Fresh fruit

Drinks

- Apple Juice
- Orange Juice
- Diet Lemonade

Name _____

Room No. _____ Diet _____

Soup of the day

- Minestrone
- Bread Roll

Main meal

Please select one item from this category

- Crumbed Fish with Chips & Tartar Sauce
- Chicken Cacciatore with Pasta
- Vegetarian Quiche
- Ham and Cheese
- Assorted Sandwiches

Sweets

- Mango Cheesecake
- Ice Cream GF
- Jelly
- Custard
- Yoghurt

Drinks

- Apple Juice
- Orange Juice
- Diet Lemonade

Saturday Breakfast

Saturday Lunch

Saturday Dinner

Name _____
Room No. _____ Diet _____

Cereal

- Cornflakes
- Rice Bubbles
- Porridge
- Weetbix
- Natural Muesli
- All Bran

Bakery

- White Baguette
- M/Grain Baguette
- Fruit Loaf Bread
- Croissant

Fruit & Yoghurt

- Compote of Fruit
- Prunes
- Fruit Yoghurt

Drinks

- Tea
- Herbal Tea
- Decaf Tea
- Coffee
- Decaf Coffee
- Apple Juice
- Orange Juice
- Pear Juice
- Cranberry Juice

Main meal

Please select one item from this category

- Silverside w Dijon Mustard Cream Sauce GF
- Smoked Salmon Pasta w Dill Cream Sauce
- Dutch Vegetable Croquettes
- Virginian Ham Salad Small
- Ham and Cheese Sandwiches
- Assorted Sandwiches

Sweets

- Ice Cream GF
- Jelly
- Custard
- Fresh fruit

Drinks

- Apple Juice
- Orange Juice
- Diet Lemonade

Name _____
Room No. _____ Diet _____

Soup of the day

- Scotch Broth
- Bread Roll

Main meal

Please select one item from this category

- Roast Pork w Apple Sauce & Gravy GF
- Moroccan Beef Casserole GF
- Spanish Omelette w Vegetables GF
- Ham and Cheese
- Assorted Sandwiches

Sweets

- Black Forrest Cake
- Ice Cream GF
- Jelly
- Custard
- Yoghurt

Drinks

- Apple Juice
- Orange Juice
- Diet Lemonade

Sunday Breakfast

Sunday Lunch

Sunday Dinner

Name _____

Room No. _____ Diet _____

Cereal

- Cornflakes
- Rice Bubbles
- Porridge
- Weetbix
- Natural Muesli
- All Bran

Milk

- Low Fat
- Full Cream
- Lactose free
- Soy
- Cold
- Hot

Bakery

- White Baguette
- M/Grain Baguette
- Fruit Loaf Bread
- Croissant

Spreads

- Jam
- Marmalade
- Honey
- Vegemite

Fruit & Yoghurt

- Compote of Fruit
- Prunes
- Fruit Yoghurt

Drinks

- Tea
- Herbal Tea
- Decaf Tea
- Coffee
- Decaf Coffee
- Apple Juice
- Orange Juice
- Pear Juice
- Cranberry Juice

Name _____

Room No. _____ Diet _____

Main meal

Please select one item from this category

- Roast Spring Lamb with Mint Jus
- Chicken Breast Schnitzel with Gravy
- Zucchini Pattie
- Turkey Salad
- Small
- Ham and Cheese Sandwiches
- Assorted Sandwiches

Sweets

- Ice Cream
- Jelly
- Custard
- Fresh fruit

Drinks

- Apple Juice
- Orange Juice
- Diet Lemonade

Name _____

Room No. _____ Diet _____

Soup of the day

- Chicken and Sweetcorn
- Bread Roll

Main meal

Please select one item from this category

- Penne Pasta with Bolognese Sauce
- Fillet of Fish Plain
- Fillet of Fish w Coconut Tumeric Sauce
- Arancini with Sundried Tomato & Fetta
- Ham and Cheese Sandwiches

Sweets

- Assorted Sandwiches
- Apple & Berry Crumble with Custard
- Ice Cream
- Jelly
- Custard
- Yoghurt

Drinks

- Apple Juice
- Orange Juice

Diet Lemonade

[The following text is extremely faint and largely illegible. It appears to be a form with multiple sections, possibly containing a list of items or a checklist. The text is mirrored across the page, suggesting it might be bleed-through from the reverse side.]

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[Section 2]

[Section 3]

[Section 4]

[Section 5]

[Section 6]

[Section 7]

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[Section 94]

[Section 95]

[Section 96]

[Section 97]

[Section 98]

[Section 99]

[Section 100]

Fw: Listeriosis Food History Request UR Number:295930 [PHESS ID: 320192705523] - DHHS

From: [REDACTED]
 To: Sally Atkinson (DHHS) [REDACTED]@dhhs.vic.gov.au
 Date: Tue, 29 Jan 2019 17:10:34 +1100

Regards,

| Communicable Disease Prevention & Control | Health Protection
 Department of Health and Human Services
 50 Lonsdale Street Melbourne Victoria 3000
 p. [REDACTED] f. 1300 651 170
 e. CDi&R@health.vic.gov.au | www.dhhs.vic.gov.au

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----- Forwarded by [REDACTED] HeadOffice/DHS on 29/01/2019 05:10 PM -----

From: [REDACTED]@hicmr.com.au
 To: "CDi&R@dhhs.vic.gov.au" <CDi&R@dhhs.vic.gov.au>, [REDACTED]@healthscope.com.au
 [REDACTED]@healthscope.com.au
 Cc: [REDACTED]@dhhs.vic.gov.au", [REDACTED]@dhhs.vic.gov.au", [REDACTED]@dhhs.vic.gov.au"
 [REDACTED]@dhhs.vic.gov.au", [REDACTED]@healthscope.com.au
 Date: 29/01/2019 04:29 PM
 Subject: RE: Listeriosis Food History Request UR Number:295930 [PHESS ID: 320192705523] - DHHS

Dear Sally,

Regarding Patient UR 295930, 86 yrs, who isolated *Listeria monocytogenes* from blood culture on 23/01/2019. Patient was admitted to Knox Private hospital via Emergency Department on 13/1/2019 from independent retirement village, with generalised abdominal pain, nausea and diarrhoea.

A gastroscopy and colonoscopy was performed on 16/1/19 which identified gastritis associated with ulcers. Patient has a past history of breast Ca with Left mastectomy, CABGs 2005, leg ulcers and has a weight of 40 Kgs. Discharged to Donvale rehabilitation Hospital on 23/1/2019, however returned to Knox Private Hospital later that same evening via ambulance and emergency department with confusion, dysphagia and a fever. *Listeria monocytogenes* was isolated as stated above.

Incubation period for *Listeria* is from 3 to 70 days, with mean of 31 days, as a consequence the source of *Listeriosis* is difficult to determine.

Patient Food History :

Food at Knox Private Hospital is provided by 3rd party 'i Cook Foods', this includes cook / chill meals, texture modified foods, salads, sandwiches and soups.

'i Cook Foods' are registered and assessed routinely by Dandenong City Council, independent 3rd party auditor and are HACCP Certified.

The patient in question during admission from 13/1/19 - 23/1/19 was on a full ward diet.

There is a weekly (7 Days) menu.

Unfortunately, food items ordered by the patient are not on a computerised system, therefore a record is not maintained.

However, the Diet / Menu Monitor staff member from Food Services was familiar with the patient's ordering preferences and stated these were mainly cooked meals or ham and cheese sandwiches or assorted sandwiches which can include chicken, ham, turkey roll or silverside. Salads, such as 'chicken Caesar', 'pork salad', 'beef salad' or 'ham salad' were not to their recollection ever ordered. However cannot be confirmed.

Sandwiches are prepared and provided by 'i Cook' these are delivered the evening before, patient consumption the following day. Food Services staff then plate and place that day's 'use by' date on each portion of sandwiches. Those not consumed are discarded at the end of every day.

There are no pre-prepared salads and pre-chopped fruit purchased from an alternate supplier.

The patient was on nutritional drinks, however these were all commercially provided, pre-packaged single use disposable units.

Any potentially 'high risk' food items in terms of *Listeria* are supplied through 'i Cook'.

An actual food history from the patient was unable to be obtained due to current medical condition, (a little confused).

The patient is currently being managed by an Infectious Diseases Physician.

When [REDACTED] - IPC Coordinator, returns from leave tomorrow, I will ask her to scan and send a copy of the menus for the 7 days from Sunday to Saturday.

If you require any further information to assist you with this investigation please do not hesitate to contact me.

Kind Regards,

[REDACTED]
 Principal Infection Control Consultant



Quality
ISO 9001

HICMR Pty Ltd
(Healthcare Infection Control Management Resources)
Level 1, 123 Camberwell Road Hawthorn East VIC 3123
Ph: [REDACTED] Fax: [REDACTED]
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From: [REDACTED]@dhhs.vic.gov.au [REDACTED]@dhhs.vic.gov.au > **On Behalf Of** CDI&R@dhhs.vic.gov.au

Sent: Tuesday, 29 January 2019 12:51 PM

To: [REDACTED]@healthscope.com.au; [REDACTED]@hicmr.com.au >

Cc: [REDACTED]@dhhs.vic.gov.au; [REDACTED]@dhhs.vic.gov.au

Subject: Listeriosis Food History Request UR Number:295930 [PHESS ID: 320192705523] - DHHS

Dear [REDACTED]

As discussed, the Communicable Disease Prevention and Control Unit are investigating an **86 year old female** who has recently been diagnosed with Listeriosis.

The case recently spent some/all of their incubation period in **Knox Private Hospital Chesterfield ward, dates unsure, approximately 2.5 - 3 weeks ago**.

Can you please provide the department with a full list of foods or menu items provided to this patient while they were either admitted to hospital or during any identified day visits.

The blood sample was collected on the 23/01/2019 which was the approximate date the case had been sent to Donvale Private but was then readmitted back to Knox Private shortly after.

Your assistance in this investigation is appreciated.

If you have any questions or concerns please contact me on the details below.

With regards,

| | |
|-----------------------|--|
| Kind Regards Sally | |
|-----------------------|--|

Sally Atkinson

Public Health Officer | Communicable Disease Prevention & Control | Health Protection

Department of Health and Human Services
50 Lonsdale Street Melbourne Victoria 3000

p. [REDACTED] | 1300 651 160 | f. 1300 651 170

e. [REDACTED] www.dhhs.vic.gov.au

CDI&R@health.vic.gov.au

Please note that I work Mondays, Tuesdays and Thursdays.

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Appendix G
**Department of Health's protocol
for the investigation of cases
of Listeriosis**

LISTERIOSIS

Group B disease

| | |
|--|---|
| Responsible section: Investigation and Response Section | Last updated: 16/02/2011 Date valid to: 16/02/2013 |
|--|---|

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Version control

| Version no. | Comment | Date |
|--------------------|---|---------------|
| v 1 | [REDACTED] approved | February 2011 |
| v 1.1 | Case definition updated (protocol not reviewed) | January 2017 |

1 Summary: Listeriosis, Group B disease

Public health priority:

Moderate

CDPCU response time:*Case Management:*

Respond to suspected and confirmed cases within one working day.

Data entry:

- Medium level data entry (within six hours of receipt) and referral to responsible officer on same day of receipt.

Case management:

All cases should be interviewed using the listeriosis questionnaire. The majority of cases are pregnant women and their foetuses, newborn babies, people who have immunocompromising illnesses (such as cancer, leukaemia or diabetes) and/or taking immunosuppressive drugs, and the elderly.

Exclusion of cases from the workplace, primary schools or children's services centres is not applicable as listeriosis is transmitted by consumption of contaminated food, or from mother to foetus, via the placenta or at birth. It is generally not transmitted person-to-person.

[<Hyperlink to disease questionnaire>](#)

Contact management:

Active identification of contacts is not routinely required, unless exposure to a common food source is suspected to be the source of the index case. No exclusions apply for contacts.

Communication/Escalation criteria:

The Assistant Director CDPCU should be advised of the notified case in the following situations:

- If the notified case is suspected to have acquired their illness in a healthcare facility
- If the notified case has died from the notifiable disease and is linked to a healthcare facility
- A food source is suspected to be the cause of illness in two or more cases
- If an outbreak is detected
- If the notified case is likely to attract media attention
- At the discretion of the manager and/or team leader Investigation & Response Section

Liaison with the department's Policy Instruments and Compliance Unit, Quality, Safety and Patient Experience Unit and/or Quality Improvement Unit Aged Care Branch will be undertaken by the Assistant Director CDPCU for cases where an investigation at a healthcare setting is initiated. Liaison with the department's Food Safety & Regulatory Activities Unit will be undertaken by the Assistant Director CDPCU for cases where a local food source is suspected or if a food product has tested positive for *L. monocytogenes*.

The Assistant Director CDPCU will ensure that the Chief Health Officer is briefed appropriately, and also the Minister for Health when necessary.

Supporting literature:

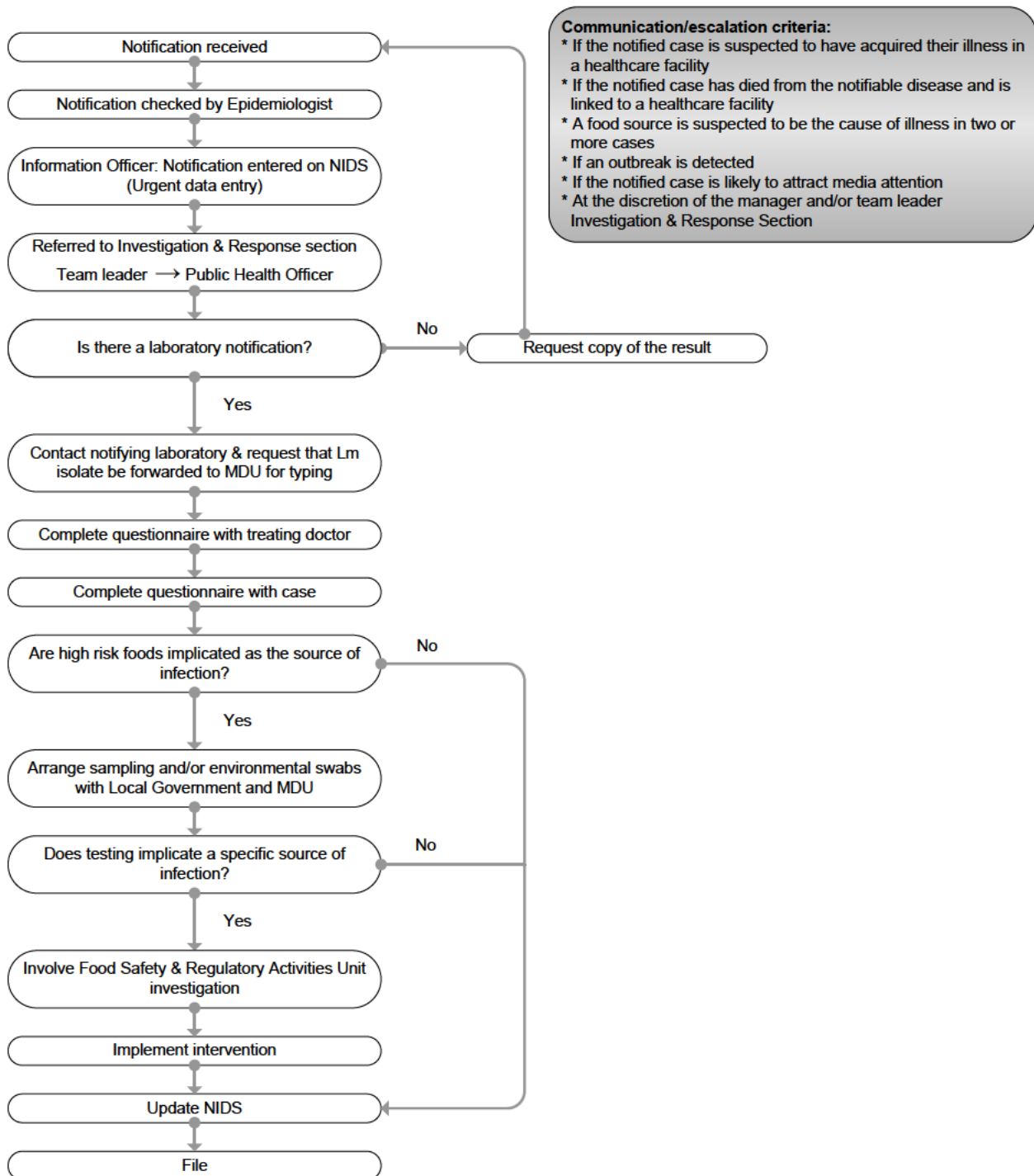
This document should be read in conjunction with the Guidelines for the Investigation of Gastroenteritis.

Commonwealth involvement:

Not applicable for routine case investigations.

1.1 Workflow

Listeriosis Investigation flowchart



2 Surveillance

2.1 Surveillance objectives

- Guide immediate action for cases of public health importance to prevent further transmission
- Detect and guide immediate action and control measures for outbreaks to prevent further transmission
- Monitor trends in listeriosis with respect to time, population groups, geography and other risk factors
- Guide the planning and implementation of policy, service provision, prevention strategies and other public health interventions
- Monitor and evaluate the impact of interventions

2.2 Routine surveillance

All notifications of listeriosis are reviewed on a daily basis by an epidemiologist, entered onto NIDS by the data entry team and allocated to the appropriate investigating officer within the Investigation and Response Section for investigation.

All notifications are also reviewed on a weekly basis at the Communicable Disease Prevention and Control Unit (CDPCU) surveillance meeting.

2.3 Changes to surveillance practice

None

3 Disease description

3.1 Infectious agent

Listeria monocytogenes is a gram-positive bacterium belonging to the genus *Listeria*. Of the seven recognised *Listeria* species it is currently the only one implicated in human cases.

3.2 Mode of transmission

L. monocytogenes is widespread in the environment and commonly isolated from sewage, silage, sludge, birds, and wild and domestic animals. The bacteria are commonly isolated from poultry. It is a common contaminant of raw food.

The main route of transmission is oral through ingestion of contaminated food. Other routes include mother to foetus via the placenta or at birth. The infectious dose is unknown.

3.3 Incubation period

The incubation period is mostly unknown. Outbreak cases have occurred 3-70 days after a single exposure to an implicated product. Median incubation is estimated to be three weeks.

3.4 Infectious Period

Mothers of infected newborns may shed the infectious agent in vaginal discharges and urine for seven to ten days after delivery.

Infected individuals can shed the organisms in their stools for several months.

3.5 Clinical presentation

Listeriosis predominantly affects

- people who have immunocompromising illnesses such as leukaemia, diabetes and cancer
- people on immunosuppressive drugs such as prednisone or cortisone
- the elderly
- pregnant women and their foetuses
- newborn babies

Healthy adults are usually not affected but may experience transient, mild to moderate flu-like symptoms.

In non-pregnant cases listeriosis usually presents as an acute meningoenzephalitis or septicaemia. Focal infections such as pneumonia, endocarditis, infected prosthetic joints, localised internal abscesses and granulomatous lesions in the liver and other organs have been described. Symptoms may have a sudden onset. Fever, severe headache, nausea and vomiting, diarrhoea and abdominal cramps can lead to prostration (extreme exhaustion) and shock.

Infection in pregnant women may be mild, and a temperature before or during birth may be the only sign. However the infection can be transmitted to the foetus through the placenta, which can result in stillbirth or premature birth. Babies may be severely affected with conditions such as septicaemia or meningitis (early-onset neonatal listeriosis).

3.6 Complications

Late onset neonatal listeriosis generally affects full-term babies who are usually healthy at birth. The onset of symptoms in these babies occurs several days to weeks after birth (a mean of 14 days), possibly as a result of infection acquired from the mother's genital or gastrointestinal tracts during delivery or postnatally through cross-infection.

The reported case fatality rate has been around 30 per cent in both pregnancy and non-pregnancy related groups.

Infection does not confer immunity.

4 Risk assessment

4.1 Routine prevention activities

No vaccine is available. Education is the primary prevention method. No prevention strategies have been implemented for the general Victorian population.

The listeriosis pamphlet has been distributed to obstetricians and gynaecologists to ensure that pregnant women in Victoria receive information regarding foods they should avoid during pregnancy. This campaign has resulted in a decrease in the notification of perinatal cases of listeriosis since the late 1990s. The majority of cases are now in the other high risk groups. In the mid-2000s, the elderly were targeted in a campaign to give information on listeriosis to aged care facilities and food services catering for these facilities, including meals-on-wheels.

Foods are regularly tested for the presence of *L. monocytogenes*. Processed, packaged ready to eat foods found to be contaminated with *L. monocytogenes* are recalled from sale.

The department's Food Safety and Regulatory Activities Unit conducted a survey with the North Western, Eastern and Southern regions in 2009 of ready to eat deli meats in delicatessens. The results indicated that the food handling overall was very good. *Listeria* spp was detected in four per cent of samples and *L.monocytogenes* was detected in only one per cent of the samples. Of the samples detected with *L.monocytogenes*, most samples had fewer than 10 colony forming units which is classified as marginal according to the FSANZ microbiological guidelines.

4.2 Threat and vulnerability / epidemiology / trends and statistics

Listeriosis is an uncommon disease in humans.

In Australia, there are approximately 69 cases of listeriosis notified each year (5 yearly mean 2006-2010) which represents a disease rate of 0.3 cases per 100,000 population. In Victoria, approximately 18 cases are notified each year (5 yearly mean 2006-2010), representing a disease rate of 0.3 cases per 100,000 population.¹

Although most human cases appear to be sporadic, three large outbreaks reported overseas have clearly established *L. monocytogenes* to be a food-borne pathogen. These outbreaks in the Maritime Provinces (1981), Massachusetts (1983) and Los Angeles County (1985) involved a total of 232 cases. The overall case fatality rate was 36 per cent. The implicated foods were coleslaw, pasteurised milk and Mexican-style soft cheese respectively. In Australia in 2009, a multi-state outbreak of *L. monocytogenes* was associated with consumption of chicken wraps served on an airline. *L. monocytogenes* was found in samples of the cooked frozen chicken product collected from the manufacturer's premises.

4.3 Risk mitigation

It is important to educate people in high risk groups about the foods at higher risk of contamination and about safe food handling and storage. People in high risk groups for listeriosis should avoid the following high risk foods:

- ready to eat seafood such as smoked fish and smoked mussels, oysters or raw seafood such as sashimi or sushi
- pre-prepared or stored salads, including coleslaw and fresh fruit salad

- drinks made from fresh fruit or vegetables where washing procedures are unknown (excluding canned or pasteurised juices)
- pre-cooked meat products which are eaten without further cooking or heating, such as pate, sliced deli meat including ham, strassburg and salami and cooked diced chicken (as used in sandwich shops)
- any unpasteurised milk or foods made from unpasteurised milk
- soft serve ice creams
- soft cheeses, such as brie, camembert, ricotta and feta (these are safe if cooked and served hot)
- ready-to-eat foods, including leftover meats which have been refrigerated for more than one day
- dips and salad dressings in which vegetables may have been dipped
- raw vegetable garnishes.

5 Case verification

This section should be read in conjunction with the CDPCU Cross Border Notification Protocol 2009.

Listeriosis is a Group B notifiable disease under the Public Health and Wellbeing Regulations 2009. i.e. suspected or confirmed cases must be notified within five days of the original diagnosis or result of the test.

5.1 Case definition (CDNA, 2017 version)

Only confirmed cases should be notified. Where a mother and fetus (≥ 20 weeks gestation)/neonate are both confirmed, both cases should be notified.

A confirmed case requires either:

1. Laboratory definitive evidence
- OR
2. Clinical and epidemiological evidence

Laboratory definitive evidence

Isolation or detection of *Listeria monocytogenes* from a site that is normally sterile, including fetal gastrointestinal contents.

Clinical evidence

1. A fetus/neonate where the gestational outcome is one of the following:
 - a) Stillbirth
 - b) Premature birth (<37 weeks gestation)
 - c) Diagnosis (within the first month of life) with at least one of the following:
 - Granulomatosis infantiseptica
 - Meningitis or meningoencephalitis
 - Septicaemia
 - Congenital pneumonia
 - Lesions or skin, mucosal membranes or conjunctivae
 - Respiratory distress and fever at birth

AND

In the absence of another plausible diagnosis

OR

2. A mother has experienced at least one of the following conditions during pregnancy:
 - a) Fever of unknown origin
 - b) Influenza like illness
 - c) Meningitis or meningoencephalitis
 - d) Septicaemia
 - e) Localised infections such as arthritis, endocarditis and abscesses
 - f) preterm labour/abruption

AND

In the absence of another plausible diagnosis

Epidemiological evidence

A maternal/fetal pair where one of either the mother or fetus/neonate is a confirmed case by **laboratory definitive evidence** (up to 2 weeks postpartum).

Note:

1. The clinical **and** epidemiological evidence criteria for a confirmed case means that if the mother is a confirmed case by laboratory definitive evidence, then the fetus/neonate is also a confirmed case if they have the defined (fetus/neonate) clinical evidence, and vice versa.
2. Laboratory definitive evidence in a fetus <20 weeks gestation means the mother only is a confirmed case.

A perinatal or materno/foetal case is defined as a baby or the mother from whom *Listeria monocytogenes* was isolated from a site that is normally sterile. Perinatal or neonatal infections refer to onset of disease resulting from uterine infection of the baby during pregnancy, or infection from the mothers faeces or genital tract during the birth process. Neonatal infections are usually recognised soon after birth, with late onsets occurring up to two weeks after birth. For a perinatal case the birth mother is interviewed regarding her own risk factors, as if she were the 'case'. The infant is the 'marker'; the mother's risk factors are the focus of concern. Patients over three months of age are treated like other cases, i.e. all questions asked about the patients themselves.²

6 Case investigation

This section should be read in conjunction with the CDPCU Data Management Guidelines 2010 and the relevant NIDS Quick Entry Guide.

6.1 Notifications requiring follow up

Case investigation is carried out for all cases of listeriosis, and follow up should commence within one working day of receipt of notification.

Laboratory follow-up

The notifying primary laboratory should be contacted without delay, and requested to forward the *Listeria* isolate to the Microbiological Diagnostic Unit (MDU) for comprehensive typing.

6.2 Information required from treating doctor

The notifying doctor should be contacted before contacting the case. Using the listeriosis questionnaire <[hyperlink to listeriosis questionnaire](#)>, establish the history of the illness, possible exposure history, relevant medical history and/or conditions and if the case has been advised of the diagnosis with the doctor. Obtain consent to contact the case, if not already provided by the doctor on the notification.

If the patient is deceased, obtain details from the treating doctor as to the date and cause of death.

For a perinatal case, request the date of delivery and the expected date of delivery. If the baby is deceased, determine from the doctor whether the death was due to listeriosis or another cause and record the date the death.

When a case or a baby has deceased, ascertain from the doctor if it is appropriate to contact their next of kin. The doctor may advise if the mother of the baby or the next of kin do not wish to be contacted. In this instance complete the listeriosis questionnaire with the doctor as described above. If the next of kin is to be interviewed, obtain their name and contact details.

Occasionally, it is not possible for the doctor to complete the relevant sections of the questionnaire over the phone. The investigating officer may offer to fax the questionnaire for the doctor to complete and return. <[hyperlink to fax cover sheet for doctors](#)>

6.3 Case follow up

Ensure that the privacy statement at the beginning of the listeriosis disease questionnaire is read to the case or next of kin at the outset of the interview. Additional privacy information is available at: <http://www.health.vic.gov.au/ideas/notifying/privacy>.

Complete the remaining sections of the questionnaire with the case or next of kin.

If the case is unable to be contacted (three attempts made at different times of the day over a week) a contact letter and factsheet should be sent to the case by registered mail. All attempts to contact the case are to be recorded on the questionnaire.

At the completion of the questionnaire if high risk foods are identified, refer to environmental evaluations (Section 8) as necessary.

At the completion of the case follow-up, update all fields within NIDS. It is important that disease specific questions under the disease tab are completed. No field should be left blank. If information is not known then this must also be recorded in NIDS as missing/not stated or unknown.

6.4 Treatment

Listeriosis is generally treated with antibiotics, but specific treatment advice should not be given to a case by CDPCU. Cases should be advised to direct treatment queries to their treating doctor.

6.5 Exclusion, restriction and isolation

Not applicable – as listeriosis is transmitted by consumption of contaminated food, or from mother to foetus, via the placenta or at birth. It is generally not transmitted person-to-person.

6.6 Education

Discuss with the case, parent/guardian or next-of-kin how listeriosis is transmitted, the high risk foods usually implicated with listeriosis, and how they can avoid listeriosis infection in the future.

Send a listeriosis disease fact sheet or direct to website:

http://www.health.vic.gov.au/ideas/diseases/listeria_facts

Information is available in English and the following languages: Arabic, Cambodian, Chinese, Greek, Italian, Laotian and Vietnamese.

Also provide website address for further general information and offer CDPCU contact details.

6.7 Further case finding

Active case finding is not routinely conducted. However, where a case has been a resident of an aged or healthcare facility during their entire incubation period, the facility should be contacted to ascertain if there have been other residents/patients with similar symptoms. Refer to section 9 for further details.

7 Control of contacts to prevent transmission

7.1 Identification and definitions of contacts

Not applicable. Listeriosis is transmitted by consumption of contaminated food, or from mother to foetus, via the placenta or at birth. It is generally not transmitted person-to-person.

7.2 Prophylaxis

None. Close contacts of cases should be encouraged to seek medical attention if they develop any symptoms of listeriosis which they may acquire from the same source as the case.

7.3 Exclusion, restriction and isolation

No exclusions apply to contacts.

7.4 Education

See Section 6.6.

8 Environmental evaluation

Foods are regularly tested for the presence of *L. monocytogenes*. Processed, packaged ready to eat foods found to be contaminated with *L. monocytogenes* may be recalled from sale.

If high risk foods are identified in the interview with the case or next of kin, consider arranging sampling from the implicated food premises (such as sliced meats or soft cheeses from a deli at a supermarket), and/or leftover food from the cases home. Liaise with the department's Regional Environmental Health Officer (EHO) and/or local government EHO to assist with sample collection and submission to MDU. Liaise with the department's Food Safety and Regulatory Activities Unit (FSRAU) if a food product has tested positive for *L. monocytogenes*, as they will also request any necessary clean-up of a facility.

Further sampling and/or environmental swabs may be required if *L. monocytogenes* is detected in initial food samples. Advice from MDU, OzFoodNet and/or FSRAU should be sought if there are questions regarding sampling or swabbing for listeriosis.

CDPCU will arrange for local government EHOs to inspect food premises or aged care facilities, and to visit the cases home to collect food samples as required. In healthcare facilities the infection control consultant will generally undertake this role, or assist the EHO. Assistance from OzFoodNet, FSRAU and MDU will be determined on a case by case basis by the Assistant Director CDPCU.

9 Circumstances requiring further attention

In addition to the generic case and contact follow-up requirements above, additional actions are required in the following instances.

An outbreak may be defined as the occurrence of a disease or health event in excess of the expected number of cases for a given time or place. A suspected gastroenteritis outbreak in care facilities is defined as two or more residents / staff having onset of symptoms within 72 hours of each other (that cannot be explained by medication or other medical conditions) in a setting that makes epidemiological sense.³

At the completion of the case investigation, NIDS records for each case must be updated, and associated cases linked based upon transmission. If an outbreak has been identified, an outbreak NIDS record must also be completed, and linked to associated cases.

9.1 Case is a resident in an aged care facility or inpatient in hospital

- Ascertain if there have been other residents or inpatients within the facility with symptoms of listeriosis by liaising with the Director of Nursing or the Infection Control Consultant.
- Establish if the transmission is likely to be high risk food or nosocomial.
- Review the case's food history and identify foods at high risk of listeriosis. Determine if food is produced on-site or off-site.
- Request the Director of Nursing or Infection Control Consultant to review processes for any suspected nosocomial case.
- Request local government to sample any foods that are high risk for listeriosis.
- If *L. monocytogenes* is detected in food prepared/served at the facility, request council to supervise discarding of the food and a clean-up according to the listeriosis cleaning guidelines. Refer to FSRAU for further advice. Further investigation into the premises food preparation may be warranted if there is evidence of contamination of the food by the facility.
- The assistance of OzFoodNet, FSRAU and MDU with onsite investigations will be assessed on a case by case basis.
- Provide the facility with information on listeriosis and high risk foods.
- Conduct information sessions on listeriosis for the appropriate staff at the facility (e.g. dieticians, food service) if requested.

9.2 Implicated food source

Further case investigations and escalation of investigation may be required if multiple cases are linked to an identified common food source and/or facility.

An implicated food source is unlikely to be determined based on one case and is generally discovered as a result of an outbreak investigation. If food is implicated, or if the suspected food is in the marketplace, notify FSRAU who can arrange trace back, and further sampling of suspected food. Depending upon the food distribution network, interstate health authorities, OzFoodNet, Food Standards Australia New Zealand (FSANZ) and/or Australian Quarantine and Inspection Service (AQIS) may also need to be notified.

Additional actions will need to be determined on a case by case basis by the Assistant Director CDPCU in consultation with OzFoodNet, FSRAU and MDU.

10 Communication / Escalation criteria

10.1 Internal

The Assistant Director CDPCU should be advised of the notified case in the following situations:

- If the notified case is suspected to have acquired their illness in a healthcare facility
- If the notified case has died from the notifiable disease and is linked to a healthcare facility
- A food source is suspected to be the cause of illness in two or more cases
- If an outbreak is detected
- If the notified case is likely to attract media attention
- At the discretion of the manager and/or team leader Investigation & Response Section

The Assistant Director CDPCU will ensure that the Chief Health Officer is briefed appropriately, and also the Minister for Health when necessary. It may be necessary to also escalate communication quickly should urgent public health action be required. This will be determined and managed by the team leader Investigation and Response Section in consultation with the Assistant Director CDPCU.

Liaison with the department's Policy Instruments and Compliance Unit, Quality Safety and Patient Experience Unit and/or Quality Improvement Unit Aged Care Branch will be undertaken by the Assistant Director CDPCU for cases where an investigation at a healthcare setting is initiated. Liaison with the department's Food Safety & Regulatory Activities Unit will be undertaken by the Assistant Director CDPCU for cases where a local food source is suspected or if a food product has tested positive for *L. monocytogenes*.

Communication may occur through email, an incident report, internal briefing meeting and/or a Ministerial briefing. This will be determined by the team leader Investigation & Response Section. For guidelines for completing incident forms and the recipient list, refer to:

F:\PH\CDC\Common\Forms&Letters\Emergency Incident Report Distribution List.pdf

It is also important that the on-call public health officer is briefed about any possible cases that may require action/advice out of business hours. This may occur verbally or via email by the investigating officer. The on-call public health officer must report all suspected, probable and confirmed cases of listeriosis to the team leader Investigation & Response Section and/or Assistant Director CDPCU on the next working day.

10.2 External

No external government departments need to be notified of every case of listeriosis.

The following government departments may need to be notified, in consultation with the Assistant Director CDPCU if the escalation criteria in section 10.1 are met, if case investigation warrants further investigation or purely for information purposes only.

- Department of Health and Ageing (DoHA incorporating OzFoodNet and Commonwealth Aged Care Complaints Investigation Scheme)
- State Coroner's Office (for deaths associated with an outbreak)
- Dairy Food Safety Victoria
- Primesafe

- Department of Primary Industry
- Department of Justice
- Food Standards Australia New Zealand (FSANZ)
- Local government (e.g. site inspections, sampling)

Liaison with relevant food authorities and external government departments responsible for food safety issues will be undertaken by FSRAU on behalf of the department. In all other instances, the investigating officer (or their manager) should contact relevant department(s) by phone then a follow-up email. Provide details of case, discussions and agreed actions. Face to face meetings or teleconferences may assist or expedite investigation processes. It is important that accurate notes are taken of all discussions and agreed actions.

11 Laboratory liaison

For all notified cases of listeriosis, the primary pathology laboratory must be contacted by the investigating officer and requested to forward the *L. monocytogenes* isolate to MDU. MDU will complete an isolate characterisation by PFGE (pulsed field gel electrophoresis), binary type, molecular serotype and MLST (Multilocus sequence typing).

12 Data storage and management

This section should be read in conjunction with the CDPCU Cross-border Notification Protocol 2009, CDPCU Data Management Guidelines 2010 and the relevant NIDS Quick Entry Guide.

12.1 NIDS 2002 database

All notified cases of listeriosis disease are to be entered onto NIDS within six hours of receipt by data entry staff. All cases should be classified as confirmed when entered onto NIDS 2002 Database, and the status may be changed once further information on the case has been obtained. Supplementary data is to be added to NIDS by the investigating officer on a regular basis. Once the investigation is complete, the investigating officer is to ensure that the status of the case and any additional information has been updated. It is especially important that the disease specific questions under the disease tab are all completed. If an outbreak has been identified, an outbreak NIDS record must also be completed, and associated cases linked to the outbreak record. Case records may also be linked based upon identified person-to-person transmission.

12.2 Records storage (manual)

Record the results of all investigations in the case's questionnaire and on the NIDS 2002 Database. Update these regularly with any test results, correspondence, site visits, communication, and/or any other investigation reports. Case notes should include cross-references to other cases, which are involved in the investigation or to a Public Health Outbreak or Cluster file as appropriate.

Hard copies (original notification and questionnaires plus all other notes and information about a case) are to be filed in the Listeriosis disease investigation lever arch folder for that year, located at the current investigating officer's desk. Any variation to this (for example, storing all data in an outbreak or cluster file) must be documented in this folder and also on NIDS. The folder is to be placed in a lockable cupboard/drawer when not in use, and at the end of each business day. At the completion of the calendar year, this folder is to be made up into a public health file by central records, and retained in CDPCU storage cupboards until the completion of the respective year's annual report. The file is then to be archived.

12.3 External users of data

Only de-identified data should be provided to external agencies. A standard set of summary infectious diseases data are available on the IDEAS website (<http://www.health.vic.gov.au/ideas/>) and published quarterly in the Victorian Infectious Diseases Bulletin (VIDB). Any requests for more detailed data should be discussed with the Manager Epidemiology and Surveillance Section in consultation with the team leader Investigation and Response Section and approved by the Assistant Director. They will determine the appropriate level and method of data transfer. A data request form should be completed for all external data requests.

At a minimum, de-identified data on all confirmed cases of listeriosis disease is reported to the Commonwealth via automated NNDSS reporting on a daily basis, as per NNDSS core dataset specifications. Where a mother and foetus/neonate are both confirmed, both cases should be notified.

13 Additional sources of information

13.1 General information

Department of Health

- The Blue Book: Guidelines for the control of infectious diseases, 2005.
<http://www.health.vic.gov.au/ideas/bluebook>
- Listeriosis Fact sheet:
http://www.health.vic.gov.au/ideas/diseases/listeria_facts
Information is available in English and the following languages: Arabic, Cambodian, Chinese, Greek, Italian, Loatian and Vietnamese.
- Guidelines for the Investigation of Gastroenteritis, 2010
http://www.health.vic.gov.au/_data/assets/pdf_file/0006/512880/Gastro-guidelines-web.pdf
- School Exclusion Table.
http://www.health.vic.gov.au/ideas/regulations/phw_regs/exclusiontable
- Privacy factsheets for doctors and patients.
<http://www.health.vic.gov.au/ideas/notifying/privacy>
- Better Health Channel.
<http://www.betterhealth.vic.gov.au/>
- CDPCU Data Management Guidelines 2010
F:\PH\CDC\Epi\NIDS\DataManagement\CDPCUDataManagementGuidelines.pdf
- CDPCU Cross Border Notification Protocol draft 2009
F:\PH\CDC\Common\Forms&Letters\CrossborderNotificationProtocol2009.pdf

Other:

- Communicable Disease Control Network Australia. Australian National Notifiable Diseases Surveillance System Surveillance Case Definitions. 2008.
- Heymann, DL. Ed. Control of Communicable Diseases Manual 18th Edition, American Public Health Association, 2004.
- NHMRC Staying Healthy in Childcare – Preventing infectious diseases in childcare. (4th edition). 2006.
<http://www.nhmrc.gov.au/publications/synopses/ch43syn.htm>
- NHMRC. Australian Guidelines for the Prevention and Control of Infection in Healthcare. November 2010.
http://www.nhmrc.gov.au/files_nhmrc/file/publications/synopses/CD33_InfectionControlGuidelines2010.pdf
- Therapeutic Guidelines Ltd. Therapeutic Guidelines: Antibiotic version 13, 2006.
<http://etg.hcn.net.au/>
- American Academy of Pediatrics, Red Book, Report of the Committee on Infectious Disease 26th Ed, 2003.
- FSANZ Safe Food Australia 2001 2nd Ed, Food Standards Australia New Zealand, Available at
<http://www.foodstandards.gov.au/newsroom/publications/safefoodaustralia2nd519.cfm>

13.2 Relevant legislation

Victorian Public Health and Wellbeing Act 2008
Victorian Public Health and Wellbeing Regulations 2009
Victorian Health Records Act 2001
Commonwealth Privacy Act 1988

13.3 References

¹ Accessed from NNDSS 13/09/2010.

² Notes to accompany Listeria questionnaires – OzFoodNet

³ Department of Health. Guidelines for the Investigation of Gastrointestinal Illness. 2010.

Appendix H

Results of food sampling and environmental swabbing requested by the Department of Health as part of Listeriosis investigation

Results of food samples and blood culture results

| Date of collection | Premises | Results received | Food type | Listeria species detected | Listeria monocytogenes | Binary type | Serotype (molecular) | MLST type |
|--------------------|---|----------------------------------|--|---------------------------|-------------------------------|-------------|----------------------|-----------|
| 23 January 2019 | Patient (dec) | 11 February 2019 | | | <i>Listeria monocytogenes</i> | 158 | 1/2b, 3b, 7 | 3 |
| 1 February 2019 | Coles – Tunstall Square, Doncaster East (Manningham City Council samples) | 14 February 2019 (Final results) | South Cape Brie (wheel portion) ub: 4/2/19 | Not detected in 50g | Not detected in 50g | | | |
| | | | Coles 4 leaf blend salad mix (200g) ub: 5/2/19 | Not detected in 50g | Not detected in 50g | | | |
| | Aveo Domaine Retirement Village (Manningham City Council samples) | 18 February 2019 (Final results) | Bacchus Marsh Salad mix Tripod Farmers No ub recorded | Not detected in 50g | Not detected in 50g | | | |
| | | | KR Castlemaine Premium Shaved Leg Ham slices No ub recorded | Not detected in 50g | Not detected in 50g | | | |
| | Woolworths, The Pines, Doncaster East (Manningham City Council sample) | 18 February 2019 (Final results) | South Cape Brie (200g) ub: 4/3/19 | Not detected in 50g | Not detected in 50g | | | |
| | Woolworths, The Pines, Doncaster East (Manningham City Council samples) | | South Cape Camembert (200g) ub: 12/2/19 | Not detected in 50g | Not detected in 50g | | | |
| | | | Woolworths Mixed Leaf Leafy Mix Salad Mix – | Not detected in 50g | Not detected in 50g | | | |

| | | | | | | | | | |
|-----------------|---|--|--|---------------------|----|--|--|----------|-----|
| 1 February 2019 | I Cook Foods (City of Greater Dandenong Council sample) | | unopened 200g ub: 4/2/19 | Detected in 50g | | | | | |
| | 18 February 2019 (Final results) | | Ham – Batch Batch: 10/1/19, ub: 21/2/19 | Detected in 50g | | | | | |
| | 21 February 2019 (Supplementary results) | | | | 58 | | | 1/2a, 3a | |
| | 25 February 2019 (Supplementary results) | | | | | | | | 321 |
| | 28 February 2019 (Supplementary results) | | | <10cfu/g | | | | | |
| | 18 February 2019 (Final results) | | Egg & Mayo batch: 100-73212; ub: 6/2/19 | Not detected in 50g | | | | | |
| | 18 February 2019 (Final results) | | Cheese – Tasty Produced: 22/1/19 | Not detected in 50g | | | | | |
| | 18 February 2019 (Final results) | | Carrot – shredded batch: 051B; ub:7/2/19 | Not detected in 50g | | | | | |
| | 18 February 2019 (Final results) | | Tomato | Not detected in 50g | | | | | |
| | 18 February 2019 (Final results) | | Chicken – cooked and shredded | Not detected in 50g | | | | | |

| | | | | | | | | | | | | |
|--|--|--|--|--|---|---------------------|---------------------|-----|--|--|-------------|---|
| | | | | | | | | | | | | |
| | | | | 18 February 2019 (Final results) | Mayonnaise Batch: 318; ub:17/8/19 | Not detected in 50g | Not detected in 50g | | | | | |
| | | | | 18 February 2019 (Final results) | Silverside – sliced Batch: 17/2/18; ub: 14/4/19 | Detected in 50g | Detected in 50g | | | | | |
| | | | | 21 February 2019 (Supplementary results) | | | | 158 | | | 1/2b, 3b, 7 | |
| | | | | 25 February 2019 (Supplementary results) | | | | | | | | 3 |
| | | | | 28 February 2019 (Supplementary results) | | <10 cfu/g | <10 cfu/g | | | | | |
| | | | | 18 February 2019 (Final results) | Mixed sandwiches – egg & lettuce (Sample 1) | Detected in 25g | Detected in 25g | | | | | |
| | | | | 21 February 2019 (Supplementary results) | | | | 158 | | | 1/2b, 3b, 7 | |
| | | | | 25 February (Supplementary results) | | | | | | | | 3 |

| | | | | | | | | |
|------------------|---|------------------------------|--|---------------------|---------------------|--|--|--|
| 25 February 2019 | Meals on wheels service (Knox City Council samples) | 6 March 2019 (Final results) | Lime jellied fruit ub: 8/2/19 | Not detected in 50g | Not detected in 50g | | | |
| | | | Gluten free No onion carrot soup ub: 24/2/19 | Not detected in 50g | Not detected in 50g | | | |
| | | | Roast lamb ub: 31/1/19 | Not detected in 50g | Not detected in 50g | | | |
| | | | Tuna mornay ub: 21/2/19 | Not detected in 50g | Not detected in 50g | | | |
| | | | Two fruits ub: 19/2/19 | Not detected in 50g | Not detected in 50g | | | |
| | | | Steamed fish ub: 19/2/19 | Not detected in 50g | Not detected in 50g | | | |
| | | | Vegetable pie ub: 12/2/19 | Not detected in 50g | Not detected in 50g | | | |
| | | | Grilled fish & lemon ub: 22/1/19 | Not detected in 50g | Not detected in 50g | | | |
| | | | Friday beef salad ub: 23/2/19 | Not detected in 50g | Not detected in 50g | | | |
| | | | Friday meal vegetable satay with peanut garnish ub: 23/2/19 | Not detected in 50g | Not detected in 50g | | | |

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|------------------------|--|--|--|---|---------------------------|------------------------|----------|-----|--|
| | | | | Friday egg salad ub: 23/2/19 | Not detected in 50g | Not detected in 50g | | | |
| | | | | Saturday apricot sponge & custard ub: 24/2/19 | Not detected in 50g | Not detected in 50g | | | |
| | | | | Saturday Two fruits ub: 24/2/19 | Not detected in 50g | Not detected in 50g | | | |
| | | | | Saturday carrot cake & custard ub: 24/2/19 | Not detected in 50g | Not detected in 50g | | | |
| | | | | Saturday soup pea & ham ub: 24/2/19 | Not detected in 50g | Not detected in 50g | | | |
| 27 February 2019 | I Cook Foods (manufacturer's samples) | 6 March 2019 (Report of analysis – NMI) 20 March 2019 (Preliminary results – MDU) | Sliced Virginia Ham - Manuf date: 25/1/19 | | <10 cfu/g | 58 | 1/2a, 3a | 321 | |

Results of environmental samples

| Date of collection | Premises | Results received | Surface type | Listeria detected | Listeria monocytogenes | Binary type | Serotype (molecular) | MLST type |
|--------------------|---|----------------------------------|-------------------|-------------------|------------------------|-------------|----------------------|-----------|
| 1 February 2019 | Aveo Domaine Retirement Village (Manningham City Council samples) | 12 February 2019 (Final results) | Cutting bench | Not detected | Not detected | | | |
| | | | Food trolley rack | Not detected | Not detected | | | |
| | | | Wall above sink | Not detected | Not detected | | | |
| | | | Food container | Not detected | Not detected | | | |

| | | | | | | | | | |
|------------------|---|----------------------------------|--|--------------------------|--------------|--------------|--|--|--|
| | | | | Sandwich belt | Not detected | Not detected | | | |
| | | | | Handle of cutting knife | Not detected | Not detected | | | |
| | | | | Pest strip | Not detected | Not detected | | | |
| | | | | Surface of scale | Not detected | Not detected | | | |
| | | | | Equipment trolley | Not detected | Not detected | | | |
| | | | | Sandwich board | Not detected | Not detected | | | |
| | | | | Sealer with cutter | Not detected | Not detected | | | |
| 1 February 2019 | Aveo Domaine Retirement Village (Manningham City Council samples) | 18 February 2019 (Final results) | | Chopping board | Not detected | Not detected | | | |
| 1 February 2019 | Coles – Tunstall Square, Doncaster East (Manningham City Council samples) | 14 February 2019 (Final results) | | Cheese slicer | Not detected | Not detected | | | |
| | | 14 February 2019 (Final results) | | Preparation bench | Not detected | Not detected | | | |
| | | | | Container | Not detected | Not detected | | | |
| 22 February 2019 | Silver Grove (Whitehorse City Council samples) | 4 March 2019 | | Freezer 6 | | | | | |
| | | | | Dining area | Not detected | Not detected | | | |
| | | | | Cool room 3 | Not detected | Not detected | | | |
| | | | | Freezer 1 | Not detected | Not detected | | | |
| | | | | Esky | Not detected | Not detected | | | |
| | | | | Kitchen bench | Not detected | Not detected | | | |
| | | | | Cool room 5 | Not detected | Not detected | | | |
| 22 February 2019 | 1 Cook Foods, Dandenong (City of Greater Dandenong samples) | 4 March 2019 (Final results) | | Bench at hand wash basin | Not detected | Not detected | | | |
| | | | | Bench at curtains | Not detected | Not detected | | | |

| | | | | | | | | |
|------------------|---|------------------------------|--|-----------------------------------|--------------|--------------|--|--|
| | | | | Food preparation sink | Not detected | Not detected | | |
| | | | | Bench at food preparation sink | Not detected | Not detected | | |
| | | | | Leg of centre bench | Not detected | Not detected | | |
| | | | | Trief blade | Not detected | Not detected | | |
| | | | | Trief plate front | Not detected | Not detected | | |
| | | | | Trief track | Not detected | Not detected | | |
| | | | | Trief white guard | Not detected | Not detected | | |
| | | | | Trief hook | Not detected | Not detected | | |
| | | | | Trief hook handle | Not detected | Not detected | | |
| | | | | Washed stainless steel tray | Not detected | Not detected | | |
| | | | | Handle of drawer at bench at wall | Not detected | Not detected | | |
| | | | | Food preparation sink drain | Not detected | Not detected | | |
| | | | | Butcher area sink drain | Not detected | Not detected | | |
| | | | | White chopping board | Not detected | Not detected | | |
| | | | | Floor sandwich area | Not detected | Not detected | | |
| 25 February 2019 | Meals on Wheels, Silver Grove (Whitehorse City Council samples) | 1 March 2019 (Final results) | | Kitchen bench | Not detected | Not detected | | |
| | | | | Microwave shelf | Not detected | Not detected | | |
| | | | | Fridge shelf | Not detected | Not detected | | |
| | | | | Freezer shelf | Not detected | Not detected | | |
| | | | | Dining room table | Not detected | Not detected | | |
| | | | | Transport trolley | Not detected | Not detected | | |

| | | | | | | | | |
|------------------|--|------------------------------|-----------------------------|--------------|--------------|--------------|--|--|
| 25 February 2019 | Mountain view Cottage (Whitehorse City Council samples) | 1 March 2019 (Final results) | Esky interior | Not detected | Not detected | Not detected | | |
| | | | Main kitchen bench | Not detected | Not detected | Not detected | | |
| | | | Microwave turn table | Not detected | Not detected | Not detected | | |
| | | | Freezer shelf | Not detected | Not detected | Not detected | | |
| | | | Inside esky | Not detected | Not detected | Not detected | | |
| | | | Transport trolley | Not detected | Not detected | Not detected | | |
| 25 February 2019 | Community Chef -Box Hill (Whitehorse City Council samples) | 1 March 2019 (Final results) | Bench surface | Not detected | Not detected | Not detected | | |
| | | | Microwave tray - oven | Not detected | Not detected | Not detected | | |
| | | | Cool room shelf 1 | Not detected | Not detected | Not detected | | |
| | | | Freezer shelf | Not detected | Not detected | Not detected | | |
| | | | Dining room table | Not detected | Not detected | Not detected | | |
| | | | Trolley top surface | Not detected | Not detected | Not detected | | |
| | | | Esky bag - inside | Not detected | Not detected | Not detected | | |
| 26 February 2019 | Knox Private Hospital (Knox Private Hospital samples) | 5 March 2019 | Coolroom 1 left shelf | Not detected | Not detected | Not detected | | |
| | | | Coolroom 1 back shelf | Not detected | Not detected | Not detected | | |
| | | | Glass door fridge far right | Not detected | Not detected | Not detected | | |
| | | | Glass door fridge far left | Not detected | Not detected | Not detected | | |
| | | | Coolroom 3 shelf | Not detected | Not detected | Not detected | | |
| | | | Oven near office | Not detected | Not detected | Not detected | | |

Extracts of proceedings

Legislative Council Standing Order 23.27(5) requires the Committee to include in its report all divisions on a question relating to the adoption of the draft report. All Members have a deliberative vote. In the event of an equality of votes, the Chair also has a casting vote.

The Committee divided on the following questions during consideration of this report. Questions agreed to without division are not recorded in these extracts.

Committee meeting—6 October 2021

Chapter 2

FINDING 3: Ms Painter was on a full ward diet between 13 and 23 January 2019 during the suspected incubation period and a soft diet after 25 January 2019. The Committee notes that prior to 25 January 2019, Ms Painter underwent some medical procedures which required fasting.

Ms Vaghela moved that Finding 3 be adopted and stand part of the report.

The Committee divided.

| Ayes | Noes |
|------------|------------|
| Dr Kieu | Ms Crozier |
| Ms Patten | Ms Lovell |
| Ms Vaghela | |
| Ms Watt | |

Question agreed to.

FINDING 8: The findings of Knox City Council’s investigation into the Listeria infection and food safety processes and procedures at Knox Private Hospital did not affect the Department of Health’s decision to close I Cook Foods because:

- the findings were not received until after the closure order was issued to I Cook Foods
- the decision to close I Cook Foods was not solely based on the Listeria infection at Knox Private Hospital.

Dr Kieu moved that Finding 8, as amended, be adopted and stand part of the report.

The Committee divided.

| Ayes | Noes |
|------------|------------|
| Dr Kieu | Ms Crozier |
| Ms Patten | Ms Lovell |
| Ms Vaghela | |
| Ms Watt | |

Question agreed to.

Chapter 3

FINDING 14: In evidence initially provided to the Inquiry, Chief Health Officer Professor Brett Sutton and Deputy Chief Health Officer Dr Angie Bone failed to provide complete information that explained why only some suppliers were investigated as a part of the Listeriosis investigation. The Committee does not have sufficient reason to find this information was omitted for the purpose of deliberately misleading the Committee and takes no further action.

Dr Kieu moved that Finding 14, as amended, be adopted and stand part of the report.

The Committee divided.

| Ayes | Noes |
|------------|------------|
| Dr Kieu | Ms Crozier |
| Ms Patten | Ms Lovell |
| Ms Vaghela | |
| Ms Watt | |

Question agreed to.

Minority report

THE MINORITY REPORT

Legislative Council Standing Committee on Legal and Social Issues Inquiry into the Closure of I Cook Foods Pty Ltd

Contempt of the Parliament is a serious matter and for that reason it was important that the Inquiry into the Closure of I Cook Foods Pty Ltd was re-opened. This happened following public comments made by individuals who had additional evidence regarding the forced closure of the company, and subsequent to other additional information coming into the public domain.

It is also evident that not all information from the Department of Health has been made available to the Committee. A Freedom of Information request to the Department of Health on I Cook Foods submitted in May 2021 by the Liberals has been denied, and the matter is now before the Victorian Civil and Administrative Tribunal (VCAT).

Information provided to the Committee by the Department of Health just minutes before the public hearing on 2nd September 2021 did not give the Committee an opportunity to properly review the documents. At the time, a cursory glance could tell that only selective documents and emails were provided.

Due to the limited time in being able to question witnesses, the Liberals remain concerned that many aspects relating to the investigation undertaken by the Department of Health and Human Services or DHHS (as it was known then) into Mrs Painter's death, and subsequent issues involving the City of Greater Dandenong could not be sufficiently explored nor lead to definitive conclusions.

What is most concerning to the Liberal members was how the investigation was conducted, and contradictions in evidence as a result of the process of investigation undertaken by both DHHS and the City of Greater Dandenong.

The Liberals did not support 3 findings (Findings 3,8, & 14) in the final report as outlined below;

Finding 3: *Mrs Painter was on a full ward diet between 13 and 23 January 2019 during the suspected incubation period and as soft dies after 25 January 2019. The Committee notes that prior to 25 January 2019, Mrs Painter underwent some medical procedures which required fasting.*

The issue around whether Mrs Painter being on a full ward diet has been subject to significant discussion following public comments made by the Knox City Council Environmental Health Officer Mr Ray Christy. Mr Christy spoke of his concerns regarding information he sent to the Food Services Unit within DHHS. This was following a request by DHHS to the Knox City Council to undertake an investigation on the same day that the Closure Order was being prepared by DHHS.

It is clear from what the Committee has received from DHS that Mrs Painter had a significant medical history. It has not been possible for the Committee to fully assess the extent of Mrs Painter's medical history, surgical procedures, treatments, care and management relating to her physical condition or full pathology results during her admission to Knox Private Hospital. In addition, as confirmed by Professor Sutton in evidence to the Committee Mrs Painter did not undergo an autopsy.

The Committee was able to confirm no other patient in Knox Private Hospital contracted listeria. This was despite the fact that I Cook Foods Pty Ltd continued its operations, providing hundreds of meals each day between January 23rd and February 21st 2019.

Finding 8: *The findings of Knox City Council's investigation into the Listeria infection at Knox Private Hospital did not affect the Department of Health's decision to close I Cook Foods because the findings were not received until after the closure order was issued to I Cook Foods and the decision to close I Cook Foods was not solely based on the Listeria infection at Knox Private Hospital.*

The Liberal members don't dispute this as it is clear that the decision to close I Cook Foods was made prior to receiving all information including that from Mr Christy, but again it raises concerns about the process in investigation undertaken by DHHS when it involves closure of a business. The decision had been made by the Department to close I Cook Foods on the day Mr Christy was asked to investigate into the matter. Mr Christy had provided emails to DHHS confirming some evidence provided by Professor Sutton to the Committee in June 2020 was wrong.

Professor Sutton told the Committee in June 2020 "This was further reinforced by the knowledge that the patient had eaten food at Knox Private Hospital and that I Cook Foods was the sole food supplier."

Both Dr Bone and Professor Sutton, for example, told the Committee that they had been unaware of a report from Mr Christy confirming multiple suppliers of food when they testified to the Committee in June 2020, despite the fact the report had been received by DHHS on the 22nd February 2019. If this is true it represents a gross and actionable failure of communication and process within DHHS.

The Department of Health (and previously DHHS) has significant resources at its disposal. Furthermore, undoubtedly numerous staff assisted in the preparation of Professor Sutton's initial evidence and the subsequent checking of the transcript from the June 2020 hearing. It is noteworthy what all witnesses are instructed to check the accuracy of transcripts before an Inquiry's report goes to print.

It is a matter of great concern that Professor Sutton's incorrect evidence was allowed to stand as part of the record for 14 months. This is despite the fact that senior departmental officials had clear evidence that his testimony regarding food suppliers was inaccurate.

The Liberals are concerned that had Mr Christy not come forward, Professor Sutton's inaccuracies would have gone unchecked.

Finding 14: *In evidence initially provided to the Inquiry, Chief Health Officer Professor Brett Sutton and Deputy Chief Health Officer Dr Angie Bone failed to provide complete information that explained why only some suppliers were investigated as a part of the Listeriosis investigation. The Committee does not have any sufficient reason to find this information was omitted for the purpose of deliberately misleading the Committee.*

As a Freedom of Information request submitted by the Liberals into the matter remains outstanding and which is currently subject to a VCAT hearing, the Liberal members remain concerned why this information had not been provided by the Department. Incorrect evidence was provided to the Committee by the Department in June 2020 which was only corrected when Professor Sutton, Dr Bone and Department Officials appeared at a Hearing in the second inquiry.

Whilst the Committee heard contradictory evidence as to the reasons regarding why video evidence collected by Dandenong Environmental Officers was “edited”, the allegation of any tampering of evidence that was to be used as part of a criminal trial raises concerns for the Liberal members of the Committee.

When Departmental officials, other government officials, and individuals appear before Parliamentary Inquiries they must be truthful and open, including in the sharing of important and relevant documentation. When this does not happen the entire process is put at risk.

Liberal Party Members Finding 1: *Professor Sutton justified his decision to close I Cook Foods on a small number of grounds. These repeatedly included the assertion that I Cook Foods was the “sole” supplier to Knox Hospital. This, however, was wrong – and officials within the Department knew it was wrong as early as 22 February 2019.*

Liberal Party Members Finding 2: *Both Professor Sutton and his Deputy, Dr Bone, have said that they were unaware that these assertions were wrong at the time they were made. If this is correct, it is an indictment upon communication processes within the DHHS.*

The Liberal members were also extremely troubled to hear, during evidence provided to the Committee, claims that Dandenong Environmental Health Officers who were undertaking the investigation into I Cook Foods then tampered with video recordings. This was of particular concern as Mr Ian Cook faced criminal charges which could have precipitated a jail term, as well as millions of dollars in fines. All 96 charges were dropped by Dandenong Council, as has been previously reported.

Liberal Party Member Finding 3: *Serious allegations involving the tampering of evidence was provided during testimonies to the Committee.*

RECOMMENDATION:

That an agency external to government, with investigative powers, consider further examination of the serious allegations of impropriety by Environmental Health Officers of the City of Greater Dandenong Council and evidence provided to the Department of Health.

Ms Georgie Crozier MLC, Member for Southern Metropolitan Region



The Hon. Ms Wendy Lovell MLC, Member for Northern Victoria Region



Dr Matthew Bach MLC, Member for Eastern Metropolitan Region



