T R A N S C R I P T

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into the Closure of I Cook Foods Pty Limited

Melbourne—Wednesday, 25 August 2021

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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 receival 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 you 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.