

LEGISLATIVE COUNCIL

Legal and Social Issues Committee

Inquiry into the closure of I Cook Foods Pty Ltd

Government Response

February 2021

Introduction

Food regulation plays an important role in protecting public health and promoting confidence in Victoria's food industry. It operates within a complex, bi-national regulatory system between Australian jurisdictions and New Zealand and, involving multiple Victorian agencies - two government departments, two statutory agencies and 79 local councils. The system is underpinned by multiple legislative instruments. The principal Act governing the framework for food safety management in Victoria is the *Food Act 1984*, itself shaped by nationally agreed provisions that form its core.

The last major set of changes to the *Food Act 1984* were made in 2010 and since then demands on the food regulatory system have increased. Consumers expect a more responsive system that protects their health and safety by reducing risks related to food and enables them to make informed choices about food by ensuring that they have sufficient information and by preventing them from being misled. Public health advocates have increasingly sought the food regulatory system's support for public health objectives by promoting healthy food choices, maintaining and enhancing the nutritional qualities of food and responding to specific public health issues. International markets have become increasingly discerning thereby requiring an increased vigilance by industry and regulators to ensure that food produced and processed is compliant and therefore safe.

The Victorian Government remains committed to safe food and best practice regulation particularly as demands on both the food industry and regulators to ensure that food for sale is safe and suitable for human consumption increases, and the environment in which food is produced becomes more complex. However complex, all systems can be improved.

The report of the Inquiry into the closure of I Cook Foods Pty Ltd by the Legal and Social Issues Committee of the Legislative Council 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.

Terms of Reference for the review will be publicly released ahead of the review's commencement in the first half of 2021.

Response to Recommendations

Recommendation 1:

The City of Greater Dandenong implements all recommendations in the audit report, *Independent investigation into Council's regulation of iCook (sic)*, as a matter of priority.

Recommendation 2:

That the *Food Act 1984* be amended to establish a uniform escalation process for local councils to notify repeated non-compliance of businesses to the Department of Health and Human Services.

Recommendation 3

That the Department of Health and Human Services work with local councils to develop a uniform process for early identification of health risks, particularly relating to Listeria.

Recommendation directed to the City of Greater Dandenong.

Support in principle

The *Food Act 1984* vests in local councils' responsibility to administer various powers and functions as the registration authorities for food businesses and administering the various enforcement provisions available under the Act.

While the Act envisages that it is the role of councils to manage non-compliant food businesses without the need for the department to intervene, this recommendation points to a desire for the Department of Health to 'step in' and take action with, or instead of, a council.

This is a significant policy shift from the roles for local councils and the department set out in the Act and requires further review to fully assess the implications from all perspectives.

This recommendation will be the subject of a systemwide review of food safety management that will encompass several other recommendations of the Committee.

Support in full

The Department of Health has, for some time, been working with councils to develop and establish a risk-based approach to the administration of the *Food Act 1984*. To further assist councils in hazard and risk identification, comprehensive materials and training programs have been developed and delivered, including identifying Listeria risks in manufacturing environments, and helping food businesses to manage those risks.

While the department provides ongoing professional development for councils, formal training for Victorian food businesses is available from Registered Training Organisations. Currently,

the training undertaken by food safety supervisors does not address the issue of Listeria or allergen management; necessitating councils to provide that support to businesses.

It is proposed to amend the *Food Act 1984* to include provisions allowing the Department of Health to contribute to identifying and nominating food safety competencies required in industry training programs and require recertification of food business personnel every 5 years, as is the case in New South Wales.

Recommendation 4:

The Secretary of the Department of Health and Human Services, and his or her delegates, should be empowered to direct local councils to undertake specific investigative and enforcement actions to regulate food service providers.

Support in principle

Giving power to the department to direct a council with regard to undertaking powers that are currently the remit of councils as registration authorities is, like Recommendation 2, a significant policy shift from the roles for local councils and the department set out in the Act.

This Recommendation also requires further review to fully assess the implications from various perspectives such as provision of due process and legal liability and will be incorporated into the systemwide review of food safety management.

Recommendation 5

That the Government undertakes a review into the regulatory framework of food safety management with the intention of vesting oversight in the Department of Health and Human Services.

Support in principle

This is the most significant recommendation of the Committee in terms of legislative reform and provides an opportunity for a fundamental review of Victoria's approach to food regulation, some 14 years after the last substantial review was undertaken by the Victorian Competition and Efficiency Commission in 2007 (and referred to in Recommendation 11).

This Recommendation will be the subject of a systemwide review of food safety management that will encompass several recommendations of the Committee

Recommendation 6

Any request from the chief executive officer of a local council to the Chief Health Officer to sign a closure order be made in writing and form part of any formal report required under the *Food Act 1984*.

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.

Recommendation 8:

That the City of Greater Dandenong undertake the corrective actions relating to classifications of premises as outlined in the audit report, *Independent investigation into Council's regulation of iCook (sic)*, including:

- conducting an audit of the classification of other food premises which Council regulates

Support in full

Implementation of this Recommendation does not require an amendment to the *Food Act 1984*.

The Department of Health's Food Safety Unit will update its administrative processes accordingly.

Support in principle

Councils regulate many types of businesses and there may be circumstances where council decision-makers have private interests in any of those regulated entities.

The conflict of interest provisions in the *Local Government Act 2020* are designed to ensure the integrity of council decisions in circumstances where a council decision-maker may have a private interest in a council matter. Councillors, members of delegated committees and council staff are required to disclose any conflicts of interest in a council matter and remove themselves from the decision-making process.

There may also be circumstances where the council is both a service provider and a regulator of private providers capable of delivering the same service.

The systemwide review of food safety management can explore incorporating arrangements for circumstances where, under the *Food Act 1984*:

- a council decision-maker has a conflict of interest; and
- councils are both service provider and regulator.

Recommendation directed to the City of Greater Dandenong.

The Recommendation points to matters raised in the Inquiry about food premises classification, the effectiveness of the communication of independent third-party food safety audit outcomes between food safety auditors and councils, and the use of food safety programs by higher risk food businesses. These matters require broader

- reviewing and considering the rationale and risks associated with the additional sub-classifications of 2A and 2B, as introduced by the Council
- reviewing the registration renewal process

Recommendation 9

That the Department of Health and Human Services amends its notification process to prevent clients from being notified of a closure before a business has been informed that a closure order is to be served on it.

Recommendation 10

That the *Food Act 1984* be amended to allow for the addition of electronic transmission and publication of closure orders.

Recommendation 11

That the *Food Act 1984* be amended to align with developments in food safety regulation. In doing so the Government should consider the recommendations of the Victorian Competition and Efficiency Commission's Report, *Simplifying the Menu: Food Regulation in Victoria*, September 2007

Recommendation 12

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

consideration and will be incorporated into the systemwide review of food safety management.

Support in full

Implementation of this Recommendation does not require an amendment to the *Food Act 1984*.

The Department of Health's Food Safety Unit will update its administrative processes accordingly, subject to there being no impediments to the Department of Health fulfilling its primary obligation to protect the health and safety of the community.

Support in full

It is proposed to amend the *Food Act 1984* to implement this Recommendation, subject to there being no legal impediments to the serving of documents in this manner.

Support in principle

Also included in the systemwide review will be an exploration of the implementation of the recommendations of the Victorian Competition and Efficiency Commission's Report, *Simplifying the Menu: Food Regulation in Victoria*, September 2007 that were supported by the Victorian Government, led to changes to the *Food Act 1984* and are relevant to the recommendations of the Inquiry.

Support in principle

While the intent of the Recommendation is understood, enshrining a reporting structure in the *Food Act 1984* that formalizes an investigation that leads to the closure of a food businesses is potentially inflexible, is not timely in circumstances that are subject to often rapid and constant change and does not recognize the formal processes of an incident response (consistent with the requirements of the Australasian Inter-Service Incident Management System).

The incident response structure allows for a range of experts to contribute to the investigation using a

process that sees a structured gathering of information, formulation of hypotheses, directing actions and recording outcomes, formal reporting and stakeholder management.

Detailed protocols on the use of the incident response process for incident investigations that may lead to the closure of a food business and are already incorporated into the Department of Health's Food Safety Unit's administrative processes. These will be reviewed and, if necessary, updated.

Recommendation 13

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

Support in full

It is proposed to amend the *Food Act 1984* to implement this Recommendation, subject to there being no legal impediments to, for instance, the serving of documents by electronic means.