

The Hon Tim Mulherin  
Minister for Primary Industries,  
Fisheries and Rural and Regional Queensland  
8<sup>th</sup> Floor  
Primary Industries Building  
80 Ann Street  
Brisbane 4001

### **Safe Food Report Letter**

Dear Tim

Herewith a record as close as we can recall of dealings we have had with Safe Food as requested by Matthew Watson on your behalf.

An accurate record of phone conversations was not kept as we were unaware of what was to unfold and we were left with the feeling that it was just another person/organisation chasing us for money regarding food safety. We were confident because we **were and still are** accredited by Council under the Food Safety Act 2006, and in our opinion were not in breach of any food related laws (refer section (48) Food Act 2006). We believe that section (48) also prevents a secondary organisation from double dipping in charging extra fees i.e. being accredited and paying fees through local council precludes another organisation from enforcing accreditation and also charging fees.

To ensure this report was as accurate as possible I requested from Safe Food (David Wilkinson) a copy of their procedures and the reason for the investigation into our business. I was told this would be arranged but nothing has been received which I conclude is because they either do not believe you requested a report plus they know they are in breach of their own procedures. I will now demand this information through an **F.O.I.** but this according to their web site takes up to 60 days.

I appreciate the assistance given to us by Jason O'Brien, Gerard Byrne, Belinda Down, Sue Fairley and subsequently by your office.

The original contact to my son Geoff was by Wayne Bredden he believed he was on mobile as he could not understand the conversation and was eventually cut off.

The next call was around two (2) weeks later, once again by Wayne Bredden who confirmed he was the person who made the original call, said he was with Safe Food in the Townsville office and asked Geoff if we manufactured ice cream and were we accredited. Both questions were answered in the affirmative as we do manufacture Gelato and we **were and still are** accredited by our local Council. Geoff also said we sell our product to a wholesaler. Wayne said he was going to check this out. Our accreditation with council is up for renewal 30<sup>th</sup> June 2009.

Wayne Bredden rang (we think on the 6<sup>th</sup> April) and informed Geoff that we did not comply and that if we were retail we could remain accredited with Council but that if we continued to wholesale and distribute we would have to be accredited by Safe Food. Geoff confirmed we do not distribute. Geoff further informed Wayne that he would have to look into this as he was unaware of who Safe Food were and if this was indeed correct it could affect our working operation and the family would have to decide what direction the business then took. Wayne informed Geoff he could speak to Brisbane to get further information.

The next morning 7<sup>th</sup> April, a Roger from Safe Food in Brisbane rang and in a short conversation with Geoff, informed him that if we are retail we can stay accredited through council but if we wholesale and distribute (we do not distribute) we would have to be accredited by Safe Food. Also if we have accreditation with Safe Food we do not have to

have accreditation with local council. He then rattled off the fees, which in all conversations seems to be all Safe Food staff focus on.

The fees for this accreditation were:

\$116.60 – application fee

\$1166.75 – annual accreditation fee (at the time of the conversation Geoff did not know that this represented the category for a Processor.

\$225 + GST per hour for audits, one or more if needed.

When Geoff informed Roger we did not know about Safe Food and that we were accredited with local Council he assured Geoff we had to have accreditation if we wanted to wholesale and that we could get further information from their web site which was [www.safefood.gov.au](http://www.safefood.gov.au)

This short conversation is in contradiction to what is written in the compliance notice that would be faxed through. No admissions were made to Roger. The same paragraph in the fax interestingly mentions we manufacture ice cream and not that we process ice cream which is one of the points Geoff argued about with Roger in their next phone conversation.

Having downloaded some Safe Food documents, we became aware that the \$1165.75 accreditation was for a processor and we do not process gelato, we **manufacture** gelato. All the milk and cream we use has already been processed

When Roger from Brisbane rang (I believe the 21<sup>st</sup> April) and spoke to Geoff, he wanted a decision on what we were going to do. Having spoken to our local member Jason O'Brien and the our Environmental Health Officer from local council (the day before 20<sup>th</sup> April) as well as consultants in the Food and Hospitality Industry in Cairns, he was able to inform Roger that no one we had spoken to had heard of Safe Food regarding a dairy scheme and as such we had not made a decision. As we did not know our legal position, were not about to make a decision based on phone calls and we were still investigating the matter. Geoff pointed out that we manufactured gelato and under their accreditation fee table, there was no listing for manufacturing and as such that would put us under (2)(i) at \$198.25 not (2)(g) at \$1166.75 if we went with safe food. Geoff explained we buy milk off the shelf in a supermarket as with all our ingredients and we manufacture gelato. A differing of options ensued and Roger said he would email why we would have to comply if we wanted to continue to wholesale. Geoff believes what he was saying regarding "manufacturing" is covered in the Food Act 2006 **section (16)(1)(a)**.

Referring to the email sent by Roger 21<sup>st</sup> April 09 (see attached email). Geoff was now aware that he had been speaking to Roger "Sayce – Enforcement Officer". This is the first written correspondence from Safe Food.

Having searched Food Production (Safety) Act 2000 & Food Production (Safety) Regulation 2002 there is nothing written about processing ice-cream but there is one mention of manufacturing ice-cream in Food Production (Safety) Regulation 2002 (57)(2)(h).

The only person who had heard of them was a dairy farmer friend.

Geoff informed my daughter of what had been happening with phone calls and safe food and as she handles our food safety issues including food nutritional labels etc. she cut back her break to return early so that she could take over and emailed Roger Sayce.

Sharon also down loaded the regulations and it was our opinion that we did not come under the Safe Food regulation, something we still believe.

The reasons we believe we do not come under Safe Food are:

1. The terminology “production of primary produce”, which was boldly outlined in the compliance notice that we were to receive, we believe does not apply to our business operation. The compliance notice stated that we have engaged in the **production of primary produce** without accreditation siting section (11) under *Food Production (Safety) Act 2000*. Under section (14) Safe Food’s “function” is to regulate the “production of primary produce” for safe consumption.

In Emerald Creek Ice-Creamery’s situation, the primary produce being referred to by Safe Food is **milk**. Section (10)(1)(c) refers to the meaning of primary produce as “raw material taken from an animal, plant or other organism for food” eg milk from a cow. However we contend that under section (10)(2) the milk off a supermarket shelf is no longer “**substantially in the same condition**” as when the raw milk was taken from a cow and the example given in the Act is that of a “whole apple” taken from a plant.

The reason being:

- Raw milk from individual cows and from different dairies has different fat contents and so all milk is standardised to the same fat content. Milk is separated into skim milk and cream and then mixed back together to meet minimum fat levels. Milk must also meet minimum protein levels.
- The milk is homogenised, passing through a very small opening under high pressure to evenly dispense the cream throughout the milk as against forming a layer on top of the bottle. This breaks up the fat globules in the cream into tiny particles, which spreads them evenly throughout the milk.
- The milk is also pasteurised where it is heat treated to kill harmful bacteria.

This raw milk product has gone through the above process in a specialised processing factory with the specific purpose of turning this **once** raw product into a **variety** of safe dairy products for consumer consumption.

2. To have a “**production of primary produce**” milk being the product in question, you require a cow to get said product. To have a production of milk requires many cows and a dairy to facilitate the milking of those cows. Emerald Creek Ice-Creamery has neither. The *Food Production (Safety) Act 2000* reinforces this principle of raw milk being the production of primary product in a number of sections of their document:

- |    |                    |   |
|----|--------------------|---|
| a) | Section (11)(1)(a) | this is the cows and the dairy  |
|    | Section (11)(1)(b) | transporting raw milk to processing plant   |
|    | Section (11)(1)(c) | storage in processing plant   |
|    | Section (11)(1)(f) | processing raw milk into a variety of dairy products for commercial sale, including the many choices of milk, cream, butter etc |

*No mention of compliance for customers buying dairy products from retail outlets.*

- |    |                    |  |
|----|--------------------|--|
| b) | Section (16)(5)(b) | The example here with 1, 2 & 3 talks of the cow, the dairy, the processing factory and then “suppling processed dairy produce to a wholesaler” |
|----|--------------------|--|

*No mention of record keeping for customers buying dairy products from retail outlets.*

- c) Section (57)(1)(a) – (h) This best summarises all the steps of the raw milk as taken from the cow, through the dairy through to the factory for processing into the varieties of dairy products for safe consumption.

*Once again there is no mention in sub sections (i) – (k) relating to this processed dairy product going to or sitting on retail shelves or of customers buying dairy products from retail outlets.*

Emerald Creek Ice-Creamery buys a “secondary milk product”.

3. Another reason we maintain we do not process a dairy product, we manufacture a dairy product in gelato is:  
We purchase milk in 3lt containers off the shelf from either our local IGA or Coles. For us, there is no difference in the product or price that we purchase compared to anyone else. We then add other ingredients to **manufacture** our gelato, refer Food Act 2006 **section (16)(1)(a)** for meaning of manufacture.

Safe Food have said that by mixing ingredients which include milk and cream, this is a process and therefore that makes us a processor. Another example given to Geoff of a process is someone putting stickers on boxes linking this to a processor! If everything you do in life / business is a process why does Safe Food have a chart of accreditation fees of which there are 9 categories listed (a) to (i) of differing fees structures when all you need are the 2 costly categories, processor & exporter. To use process in this context demonstrates that every action you carry out in life is a process and this is not the context process is spoken of relating to “**processing milk**”. **This is nothing more than a play on words.**

4. We are accredited by our local Council under the Food Safety Act 2006, which is indicated, on our licence. For this reason we have since been reliably informed that under section (48) of the Food Act 2006 this prevents a secondary organisation from double dipping in charging extra fees i.e. being accredited and paying fees through local council precludes another organisation from enforcing accreditation and also charging fees.

On the 23<sup>rd</sup> of April, Geoff emailed Roger Sayce letting him know that Sharon would take over the Safe Food matter (refer attached email copy).

On the 28<sup>th</sup> April 2009 Geoff and I attended a forum at the Atherton International Club organised by Tablelands Futures Corporation on “Removing Rural Roadblocks” where you were the special guest speaker. We had spoken to Troy from your office to arrange a meeting with yourself. Due to your delay that reduced your available time at the forum, you asked us to speak to Gerald Byrne and inform him of what was happening. We also spoke to numerous other people at the forum re this matter:

- Tableland Councillors
- Advisers and consultants in the Food & Hospitality Industry
- Members of the Small Business Advisory Service
- Members of the Tablelands Futures Corporation
- Members of the Department of Employment, Economic Development & Innovation, Cairns centre

All of the above, without exception did not know who Safe Food were and advised us to ignore them and go about our business. What to do?

On evening of 30<sup>th</sup> April 2009, Sharon sent an email reply to Roger Sayce (refer attached email copy) informing him we were seeking independent legal and ministerial clarification.

The next day, the morning of 1<sup>st</sup> May 2009, Geoff who was in Cairns all day on business received a phone call from Jennifer Haines “Team Leader Enforcement” informing him that a

**Compliance Notice** was going to be faxed through requiring Emerald Creek Ice-Creamery to cease the production of our product (refer to attached compliance notice). An email from Roger Sayce followed later that morning confirming the compliance notice. Indeed, these were two very prompt and emphatic responses to our email and we believe way outside the Safe Food charter and procedures. Such tactics show that the only way Safe Food staff can handle any challenge to their authority is by resorting to “**jack boot tactics we’ll show you who is the boss**”. They forget they are Public Servants and as such paid by the public purse and should be doing everything in their power to assist those who pay their wages.

Mid afternoon on 1<sup>st</sup> May 09 my daughter Sharon Wilson made contact with Jennifer Haines and the conversation with Jennifer Haines, like her fax, left the business feeling threatened and intimidated.

Ms Haines was asked what processes Safe Food had for informing Local Councils about the role of Safe Food and their connection to local businesses, for it was our experience that Local Council was not aware of Safe Food in a dairy context.

Whilst these comments were “taken on board”, Ms Haines said she did not feel this issue was one for Safe Food but rather attributable to the high turnover of Environmental Health Officers at Local Councils. We have been dealing with the same officer for over 2 years and we are informed that the dairy scheme within Safe Food was made law in Jan. 2003 but only became mandatory in Oct. or Nov. 2008, approx 8 months ago.

Additionally when it was put to Ms Haines that there were significant issues surrounding how local businesses are informed about Safe Food, the response was: “It’s the Company owner’s responsibility to know”.

Ms Haines also added that they had a promotional section with a large budget who were very pro-active, I beg to differ on this point.

Sharon also asked Ms Haines for a copy of Safe Foods charter and procedures as also requested by our local member Jason O’Brien. To date we have not received any information.

I cannot believe that Safe Food do not have a charter and set of procedures similar to those that other Government bodies both State and Federal operate under which would have required Roger Sayce or Ms Haines to inform Emerald Creek Ice-Creamery **IN WRITING**

1. The nature of the infringement and how it became apparent
2. The time frame the business had to rectify the infringement and
3. The consequences of not rectifying the infringement

Nothing of this nature was ever received in writing or even mentioned in the phone conversations. In the main it was always about fees.

- Of course this should have been the second step. **The first step** would have been a site visit by Safe Food to actually see Emerald Creek Ice-Creamery and to gauge first hand what we do and how we make our Gelato. When Matthew Watson rang requesting this report he could not believe that during all this time we had never had a visit from a Safe Food employee.

Sharon also asked Ms Haines what we had to do to get the compliance withdrawn and was informed she had to write a food safety plan and that best turn around was 14 days. There was a defining silence when Sharon informed her we already had a food safety plan and a food recall plan. These plans were submitted by email on Tuesday 5<sup>th</sup> May 09.

On the Friday 8<sup>th</sup> May 09 I (Scott Dixon) received a call from a David Wilkinson and I asked his position to which he replied he was the “Senior Policy Manager”. I then posed the

question “if as I am told the dairy section relating to the manufacture of dairy products only became mandatory in Oct. or Nov. 2008 why was this not conveyed to our Council. This would have allowed them to inform all those currently operating legally under Council Regulation that they now had to be accredited with Safe Food”? David Wilkinson was vague and answered to the effect that he thought it was earlier than this as the act had been in for some years. This caught me a bit by surprise. David then informed me that the process of sorting out the paperwork to lift the notice would be finalised either later that day, Friday or definitely by Monday 11<sup>th</sup> May.

On Monday 11<sup>th</sup> May 09, David Wilkinson rang Sharon informing her that the documents submitted weren't acceptable by Safe Food. Issues were raised and we were asked to modify the food safety plan to reflect a more 1<sup>st</sup> person point of view rather than 3<sup>rd</sup> person so that we could take “ownership” of the document. Taking ownership of a liability is something we are not keen to do!

On Tuesday 12<sup>th</sup> May 09 the completely reworked document was emailed to Safe Food. David rang querying about our recall plan and Sharon informed him we had submitted it as a separate document because it was easier than combining the two into one document. Sharon re-sent all relevant documents. On Wednesday 13<sup>th</sup> May 09 David Wilkinson emailed and indicated the appropriate officer was reviewing the documents that he would have this completed by early in the following morning.

On Wednesday 14<sup>th</sup> May 09 David rang and requested that Sharon incorporate 2 types of cleaning test procedures which was queried as they are not mentioned in Food Production (Safety) Act 2000 or Food Production (Safety) Regulation 2002. The document was modified and emailed back (refer to email) with a note that if this was still unsatisfactory we will cease all operations. David rang up requesting a document signed and faxed to him. Exhausted and miss hearing him, Sharon informed him enough was enough and that we will close all operations with immediate effect. David quickly clarified his request and later that day a fax lifting the Compliance Notice was received.

The process of notifying clients and attempting to minimise the damage caused to our business by Safe Food began that afternoon after receiving the fax removing the compliance.

In my opinion and the many people I have spoken to, as an agency entrusted to carry out state legislation, it is the responsibility of Safe Food to provide all new relevant applicants with an acceptable template to short circuit the application and save businesses hours of totally wasted time. As Safe Food personnel are in the best position to know what applies and what doesn't, I would expect that it would be a Safe Food roll to assist businesses to the best of their ability not hinder businesses to the best of their ability.

My daughter Sharon sat up two nights in a row till all hours of the morning plus a full day from 8am to 3.30pm re writing our food safety plan only to be told it was unacceptable. At Safe Food rates that would equate to around \$6,000.00 + GST.

On reading the organisational structure of Safe Food I can understand why they are seen as an organisation that is totally besotted with paperwork.

The structure shows that the ratio of office staff to hands on face to face personnel is 5 – 1. That represents 5 paper shufflers to 1 verification staff. If this ratio was reversed and sensible policy introduced I believe we would have an organisation that could start ensuring Queenslanders receive “safe food” instead of ticking off a multitude of forms that have zero relevance as to how safe a business is operating.

What verification staff should be doing is checking that businesses through their business practices are in fact producing “safe food” for Queenslanders. Checking reams of paperwork

that the majority of small businesses cannot afford to do is a total waste of tax payers money and certainly does nothing to guarantee "safe food".

I also feel that what happened to my company is a direct reflection on the directors who have either not provided an ethical charter and set of procedures to Safe Food staff to follow or Safe Food staff are ignoring the directors directives.

Safe Food's "statement of affairs January 2008" document it is very clear that the emphasis of Safe Food is not in fact to take practical steps to ensure that Queenslanders are assured of receiving "safe food" but revenue raising through fees and justifying this with paperwork schemes which are both liabilities for small businesses.

*"Safe Food Production Queensland's core business is the development and implementation of food safety schemes that establish legislative controls for food safety risks for primary production and processing sectors where the level of risk warrants such controls."*

*"Safe Food funding comes from two sources: a shared funding agreement with the Queensland Government and charges for accreditations and other services."*

For a small family business like ours, the liability of time, energy and resources has a large financial cost over and above the fees that the small companies have to pay. An accreditation and the processes to be followed do not benefit small companies as in the main the person who owns and runs the company fixes whatever problem may arise. You don't delegate a problem, you sort it out yourself, a "process" which does not require paperwork.

The fee structure applied by Safe Food is totally unrealistic and is biased towards multi nationals and specifically designed to destroy small business, which the Queensland government keep telling us are the backbone of the country. A small boutique 3 man family business pays the same fee as a multi national company employing hundreds of staff and turning over \$millions. In addition the audit fees of \$225.00 + GST per hour I believe is to show contempt for Queensland business as in my calculation it would represent around 3 times what Australia's highest office holder, our Prime Minister earns. In reality it should be a Government service with no charge to business and the cost covered by the fees and subsidised by Government.

This report also serves as an official claim for compensation as during the two weeks our business was in our opinion illegally and certainly unethically shut down we incurred loss of sales of no less than \$10,000.00 plus it is impossible to quantify the ongoing losses we will incur through lost customers. It also does not take into account the ongoing costs we will incur in an attempt to regain the confidence of those customers whom we visited personally to inform them we had been closed down by Safe Food and could not supply.

How do you value the damage to our company's reputation as we had to inform our wholesaler that we had to stop all production and sale of our Gelato until we sorted out our accreditation. How do you assess what damage is caused if a rep or salesperson lets slip that they can't supply a product from us because we have been shut down by Safe Food. Those explosive few words, been "Shut Down" by "Safe" "Food" have visual connotations far more serious than just sorting out bureaucratic paperwork and paying a fee for accreditation. The words "Safe" "Food" are obvious, so how do we recoup our reputation and how do we quantify the damage caused by this intangible connotation.

I believe compensation of \$25,000.00 would in all probability still leave us out of pocket. This also does not reflect the stress and anguish our family was put through including cutting short my daughters holiday to return to try and sort out the mess. It also does not take into account the hour's researching, preparing, redrafting and modifying documents to suit Safe Food where it is my opinion Safe Food should be accommodating the particular business.

In conclusion there are obviously some very serious contradictions in the Safe Food regulations and in their operations that need to be addressed. I suggest that the government appoint a committee, which should not comply solely of Government personnel and academics but **must** include those effected by this regulation. It should be their task to make recommendations to yourself on how to remove the confusion from the regulations in order to make them fair and equitable to all concerned, this should also include the fee structure. To ensure this does not happen to any other small business I would be very willing to serve on such a committee.

The organisational structure of Safe Food should also be changed to reflect a ratio of office workers to verification staff from 5 – 1 to 1 – 5. The effect of this will be two fold because of the way it is reported, it would reduce the mountains of totally irrelevant paperwork that is currently generated. Secondly it would result in more verification personnel actually reporting on how businesses are operating in regards to ensuring **safe food** as against ticking off a multitude of forms that have zero relevance as to how the business is actually performing.

When the next election of directors takes place I would also like to put myself forward as a small business operator in an attempt to ensure our interests are addressed. Preferably however Safe Food should be disbanded and the responsibility of ensuring the food received by Queenslanders is safe should be returned to those on the ground and best qualified for the job, the Local Councils. Maybe you could mention this as budget cost saving measure to the Treasurer.

As of 25<sup>th</sup> May 09 **no member of Safe Food** has been to Emerald Creek Ice-Creamery to see our business but we have just been informed that someone will be visiting our business on Friday 29<sup>th</sup> May 2009.

We appreciate Matthew Watson asking us to give our account of our case and being able to send this to you.

Kind regards

Scott Dixon  
Emerald Creek Ice-Creamery  
Ph: (07) 4093 3373  
Fax: (07) 4093 3370