



Restaurant cops hefty fine for serving dumplings, causing an anaphylactic reaction

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Russell Kennedy Lawyers was recently engaged by Brimbank City Council to prosecute Gold Leaf (Sunshine) Restaurant Pty Ltd, the proprietor of a food business trading as the 'Gold Leaf Chinese Restaurant' (**Restaurant**) in Sunshine for a breach of the *Food Act 1984* (Vic) (**Act**). The business sold a dumpling which contained a mixture of pork and prawns to a customer who requested food that did not contain shellfish and who had alerted the wait staff to his seafood allergy. The staff member had not received adequate allergen training and served the incorrect dumpling to the customer who consumed it and had an anaphylactic reaction, resulting in him having to receive medical treatment at hospital.

The outcome of the case highlights the significant penalties that can be imposed when the proprietor of a food business sells food that is not of the nature or substance demanded by the purchaser. The case also demonstrates the need for food businesses to ensure that they are in compliance with the Act and the *Australia New Zealand Food Standards Code* (**Code**) which includes ensuring:

- that they have adequate policies and procedures in place for customers with allergies,
- that their menu and product labels include ingredients, particularly in relation to allergen advice;
- that they develop an allergen matrix for all food in the menu with allergens;
- that all staff are suitably trained, and attend refresher training, on food safety and allergens.

Charge

The Accused was charged with one breach of section 14(1) of the Act which provides:

Sale of food not complying with purchaser's demand

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1. *A person must not, in the course of carrying on a food business, supply food by way of sale if the food is not of the nature or substance demanded by the purchaser.*

The maximum penalty for the offence is \$200,000.00 in the case of a corporation.

Background facts

On 3 April 2022 a customer and his mother attended at the Restaurant for lunch. They were seated and provided menus. They noticed trolleys stacked with bamboo steamers being wheeled around the restaurant and called to one of the wait staff. The customer questioned the staff member if there were any dishes that did not contain shellfish and the staff member recommended a dish described as the 'Pork Siomai'. He queried if the food contained shellfish and his mother advised her son had a seafood allergy. The staff member advised him "no prawns, just pork". The customer then consumed three Pork Siomais.

The customer began to feel unwell and attended at a nearby pharmacy where he was provided with some initial medical care. The customer was then taken to the Sunshine Hospital emergency department where he received further medical care. He made a full recovery.

Upon receiving the anaphylaxis referral from the Department of Health, Brimbank City Council conducted an investigation which confirmed that the dumpling that had been served to the customer contained approximately 10% prawns. The investigation revealed that the food business lacked appropriate policies and procedures for customers with allergens and did not have any training documentation or records for staff training programs on food safety or allergens.

Magistrates' Court Decision

On 25 May 2023, the Accused appeared in the Sunshine Magistrates' Court and entered a plea of guilty to the charge.

The matter was heard before Her Honour Magistrate Grubissa who found the charge proven. The Accused had no prior matters. Russell Kennedy Lawyers submitted to the Court the following in relation to the charge:

- the offending was serious and could have had fatal consequences
- a strong message of general deterrence needed to be sent having regard to the purpose of the Act to ensure that food for sale is safe and suitable for consumption.
- it is the business of a proprietor of a food business to have in place suitable training and policies and procedures with respect to allergens to ensure the safety of customers with allergies and that the incident resulted from the Accused's complete absence of training and policies.

The Accused submitted that since the incident they had taken a number of steps to implement allergen training for staff members and create appropriate strategies to handle customers with allergies. The Accused also submitted they were remorseful for the incident.

Her Honour imposed a fine of \$35,000 without conviction and ordered that the Accused pay legal costs in the amount of \$4,700.

Owners of a Food Business need to ensure that they have appropriate strategies in place for serving customers with allergies and that their staff are fully trained in food safety and allergens.

Further information

Please contact our [Prosecution and Enforcement Team](#) should you require any further advice: [Daniel Silfo](#), [Marcus Heath](#), [Elizabeth Flanagan](#) and [Matt Taylor](#).

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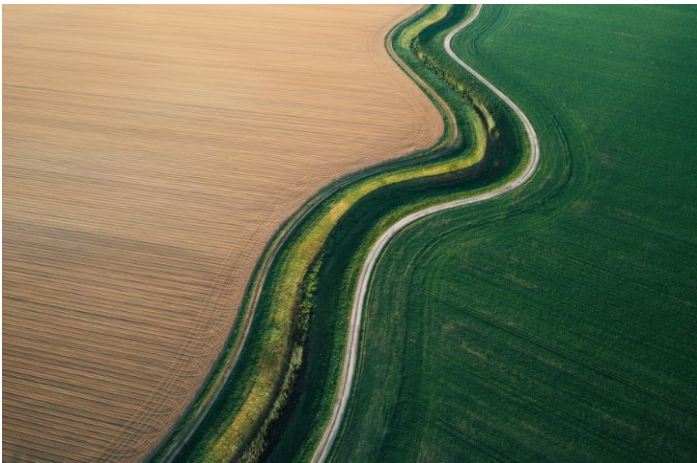
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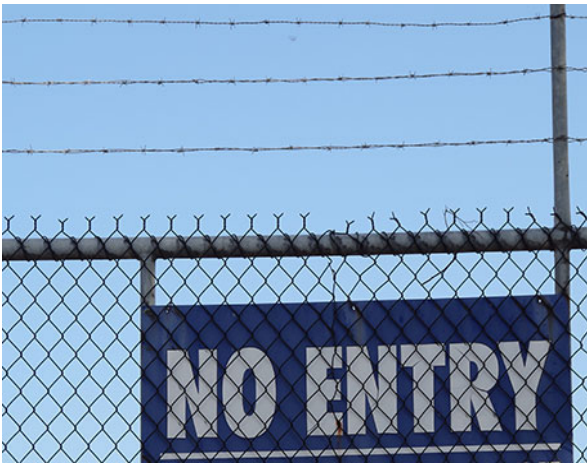


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