



# SUBMISSION ON THE ACCC DAIRY INQUIRY INTERIM REPORT

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## **Australian Dairy Farmers**

Australian Dairy Farmers Limited (ADF) is a not-for-profit organisation that provides a national voice for Australia's dairy farmers, representing their interests to government and the community on a broad range of issues.

ADF's mission is to provide strong leadership and representation to allow for the continued growth of internationally competitive, innovative and sustainable dairy farm businesses. Our members are those state organisations who represent the interests of dairy farmers in each state where dairying occurs. These member organisations are the United Dairyfarmers of Victoria, The NSW Farmers' Association, the Queensland Dairyfarmers' Organisation, WAFarmers, the South Australian Dairyfarmers Association and the Tasmanian Farmers and Graziers Association.

The ADF also carries out work on behalf of the Australian Dairy Industry Council (ADIC) when issues cover whole of industry.

## **The Report**

The ADF has considered the Australian Competition and Consumer Commission's (ACCC) 'Dairy Inquiry - Interim Report' (Interim Report). It is acknowledged that the ACCC has taken substantial steps in collating the information which they have included in their report. The ADF thanks the ACCC for their efforts in this regard.

The release of the Interim Report has confirmed what ADF has long been advocating; there is significant imbalance in market power with farmers having a weak bargaining position and carrying a high proportion of the risk. The Interim Report has rightly recognised the bargaining power imbalance between farmers and processors, and processors and retailers.

First, ADF urges the ACCC to pay particular attention to those submissions from ADF's six State Dairy Farmer Organisation (SDFO) members, as listed above. These submissions, with regionally-differing emphases, cover the broad range of concerns as outlined in the Interim Report. It is clear from these submissions that there are consistent themes throughout these States that clearly highlights the degree of heightened anxiety that exists at farm level.

Second, with regard to the producer-processor relationship, this submission will cover these matters under the next section, 'Code of Practice'.

Third, ADF is disappointed that the Interim Report did not adequately assess whole-of-supply-chain issues. This is particularly evident with regard to the behaviour of the retail sector and the impact this has on processors and retailers. Furthermore, the Interim Report has not successfully examined the impact of unreasonable discounting of milk and other dairy products by retailers. Put simply, such discounting starves the supply chain of additional (reasonable) returns that should be shared through the supply chain. The opportunity cost to the downstream supply chain of reduced investment by processors and lower farm incomes cannot be ignored. Dairy discounting by retailers has a direct impact on the capacity of the industry to grow and prosper into the future as reliable suppliers of safe, nutritious food.

## **Mandatory Code of Practice**

This is a complex and game-changing recommendation, with the implications of a mandatory code not widely understood.

ADF is concerned that consideration of a mandatory code comes at a time when farmers and processors are working collaboratively to self-determine a positive and fairer balance of risk and reward, through the adoption of a voluntary code.

It is the view of ADF that this is the most significant, contentious and complex component of the Interim Report.

In June 2017, the ADF and the Australian Dairy Products Federation (ADPF) through the Australian Dairy Industry Council (ADIC) launched the first Dairy Industry Code of Practice (the Code) for standard form contractual arrangements.

Through consultation with state member organisations, farmers and processors, the ADIC has developed the current Code to help ensure greater transparency and fairness in milk supply and pricing. It was anticipated at the time most of the milk produced in Australia will be covered by the Code, and this expectation has prevailed.

The development of the Code was an important step in building/rebuilding relationships and transparency between farmers and processors. Both farmers and processors worked together cooperatively and in good faith to establish this Code.

The Code seeks to address a range of contractual issues which farmer organisations have been endeavouring to rectify for a significant amount of time. Ultimately, the industry's goal is a Code that improves contracting arrangements between farmers and processors and offers greater transparency through earlier and clearer pricing signals for farmers, meaning less risk for farmers and more balance along the supply chain.

By incorporating these principles, the Code provides farmers, or their representatives, the opportunity to have a standard form contract or supply agreement which better reflects a balanced supply chain approach between farmers and processors and not simply an agreement which is a 'take it or leave it' approach to a farmer's milk supply arrangements.

The Code was initially drafted in September 2016 at a workshop attended by producers and processors as well as representatives from the Small Business and Family Enterprise Ombudsman. The ACCC also participated in this workshop.

Although the Code is voluntary, it is designed to set out minimum standards in terms of dairy contracts and will help ensure that supply agreements and contracts comply with the Unfair Contracts law that came into effect on 12 November 2016.

From the outset, a 12 month review of the Code was scheduled. Prior to the release of the Interim Report, the ADIC resolved to bring this review forward and is soon to commence. ADF is aware of producer concerns with regard to allegations of breaches to the Code, and these concerns will be considered during this review.

The ADIC is on the path to improve the voluntary Code, and the Interim Report provides useful insights into areas that could be improved for the benefit of the industry. Further, government support and contributions will assist industry continue to improve transparency, dispute resolution and other means as necessary to address the imbalance of power.

The Government should acknowledge the significant work already undertaken by the industry to improve conditions for farmers.

A mandatory code should ensure equity, without impacting innovation and investment along the supply chain. These matters are too significant, complex and far reaching to be determined at this stage, and via written submissions only.

A positive example of cross-industry collaboration with government is the process to consider the establishment of a Milk Price Index for the dairy industry. Again, a complex matter that has benefited from the involvement of numerous stakeholders where the relevant issues were explored and considered via a step-wise approach.

The ADF, through the ADIC, is committed to a similar journey regarding the review of the current voluntary Code for the dairy industry. ADF recognises this review must address a number of significant items as raised in this and other submissions.

ADF strongly recommends that Government not proceed with a determination on a Code of Practice for the dairy industry without full and frank engagement with ADF as well as ADIC and its members.