



Australian Dairy Industry Council Inc.

Hon. David Littleproud, MP
Minister Agriculture and Water Resources
Parliament House
Canberra ACT 2600

30 October 2018

Dear Minister

Re: Draft Clauses for a Dairy Industry Code of Practice

The Australian Dairy Industry Council (ADIC) is pleased to provide you with an industry-agreed draft set of clauses to facilitate development of a mandatory code of practice for the industry.

The *Draft Clauses for a Dairy Industry Code of Practice* has been developed as an outcome of the ADIC review of its voluntary code of practice in consultation with the Boards and Executive teams of Australian Dairy Farmers (ADF) and Australian Dairy Products Federation (ADPF). It is intended to address most of the recommendations and key findings arising from the Australian Competition and Consumer Commission's (ACCC) *Dairy Inquiry*, is consistent with the ACCC's *Guidelines for developing effective voluntary industry codes of conduct* and retains the strengths of the industry's current code. These are outlined in the attached *Rationale for key ADIC dairy code clauses*.

We are firmly of the view that these clauses will clarify and strengthen relationships between processors and farmers across all states of Australia. They address the information asymmetries that currently exist in the industry and strengthen bargaining power for farmers while respecting commercial realities and supporting innovation and market dynamics.

The *Draft Clauses for a Dairy Industry Code of Practice* is the result of a highly collaborative effort between processors and farmers. Overall, we have consensus on most items proposed, however areas of contention remain and these, highlighted in yellow in the document, are explained below.

Clause 6 (3) – This has been inserted in an effort to implement recommendations one, three and seven in the ACCC's *Dairy Inquiry*. While the clause will improve price and contract comparability and transparency and in turn farmer switch ability (i.e. bargaining power), we are concerned that it may compromise the ability of both farmer and processor to take advantage of innovative price and contract opportunities. It is requested that further analysis be undertaken, which should include industry consultation, to ensure resolving one issue does not create a new issue.

Clause 10 – There is agreement that a cooling-off period is appropriate for a Standard Form Agreement (greater than 90 days). However, we do not have agreement on how long this should be applied (the processors suggest three days whereas the farmers suggest 14 days) nor do we have clarity on whether the cooling off period should commence at time of signing or on 1 July (notional start date of contracts).

Clause 14 (5) – All parties recognise the undesirable nature of step downs and that should they occur it needs to be rational and justifiable. There is no such index as ‘the world price’ but several indexes do exist including the GDT Price Index (refer ACCC *Dairy Inquiry* p20), Chicago Mutual Exchange (CME) and a European index. The industry would like to see the most suitable option applied as a threshold limit for forward step downs in the future. Further consultation with industry on this is encouraged.

Clause 18 (3) – This has been inserted to provide a transition time for farmers with limited alternate supply options to seek alternate arrangements for their milk or exit farming after being informed their existing agreement will not be renewed or extended. The industry is yet to determine what an appropriate length of time should be.

Clause 24 – This seeks to implement recommendation five from the ACCC’s *Dairy Inquiry*. Clause 24 (1) has been inserted for the processor to implement their own complaints’ handling procedure, as the first step in an industry complaints management system. It has not been decided whether a standard complaints handling procedure e.g. ISO should be prescribed to all processors. While a generic standard ensures key processes are adhered to there are concerns about cost and compliance, particularly for smaller processors. Clause 24 (5) provides an independent mediation or arbitration process should the processor complaints system not resolve the issue. The reference to the *ADIC Dispute Resolution Rules* is highlighted as these are currently subject to stakeholder consultation.

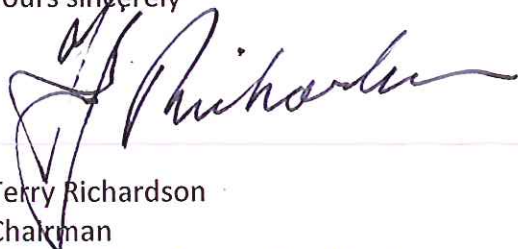
The ADIC requests that in addition to these issues being resolved during the code development process, a Regulation Impact Statement be developed based on our draft clauses. This will help to inform which clauses should be retained, removed or modified.

It is important to note that the industry is considering options to implement recommendations two and six in the ACCC *Dairy Inquiry* which largely fall outside scope of a mandatory code. This includes exploring opportunities to provide low cost legal advice to farmers and promoting adoption of a standardised and simplified contract template to augment the contract management process.

If you have any questions or follow up in relation to the above or any elements of the *Draft Clauses for a Dairy Industry Code of Practice*, please contact the undersigned.

We look forward to working with you and your department on developing the code further.

Yours sincerely



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