

29 August 2021

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Dear Sir/Madam,

Review of the *Competition and Consumer (Industry Codes—Dairy) Regulations 2019*

Thank you for the opportunity to provide input to the review of the *Competition and Consumer (Industry Codes—Dairy) Regulations 2019* (the code). As you are aware Australian Dairy Farmers Ltd (ADF) has provided a significant contribution to the development and implementation of this very important piece of legislation. The code, along with the government's dairy support (election) policies and Ag2030 agenda, the recommendations of the ACCC's Perishable Goods and Senate's Dairy inquiries, and our national Dairy Plan, are the pillars for enhancing industry competition, profitability, and fairness.

The code has, in the main, been considered successful by all stakeholders. It has:

1. synchronised and stimulated competition in pricing and market offerings
2. developed negotiation capability and equalised bargaining power between market participants
3. established the foundations for improved farm and financial planning
4. enabled professionalised contract management
5. enhanced accountability for and oversight of potential malpractice.

These outcomes validate a 'no substantive change' to the legislation.

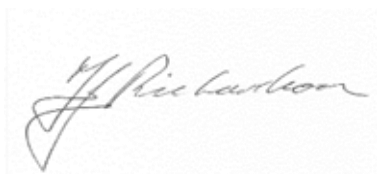
It is our view that only relatively minor adjustments are required in the interest of continuous improvement. These include:

1. adding a definition of 'material breach'
2. making minor changes to processor requirements on 1 June to help resolve pricing variation and MSA accessibility issues. Note further options to reduce price variation should be considered as part of the review.
3. including a clause to remove a barrier to participation in milk hedging markets
4. affording the option for MSA extension to all farmers in exceptional circumstances (as opposed to contract length)
5. requiring MSAs to specify volumetric milk quantities to ensure nonexclusive supply contracts are truly nonexclusive
6. merging various clauses to streamline the legislation.

Further detail on these proposed changes is provided in the attached table.

Should you have any questions in relation to our submission please contact Craig Hough, Director Strategy and Policy, Australian Dairy Farmers on 0437 057 022 or chough@australiandairyfarmers.com.au.

Yours faithfully,



Terry Richardson
President
Australian Dairy Farmers

Proposed changes to the *Competition and Consumer (Industry Codes – Dairy) Regulations 2019*

29 August 2021

Division	Issue / Comment	Recommendation
5 - Definitions	Under division 34 (2) and (3) a processor can terminate a contract unilaterally. (2) requires the circumstances for termination to be specified in the MSA but (3) says it is only when there is a 'material breach' can the termination be activated. 'Material breach' is not included in the definitions section. As a consequence, individual processors have to determine what this means on their own.	Include a definition of 'material breach'.
12 - Requirement to publish standard forms of agreements each 1 June	There have been some instances where farmers have found it difficult to access a milk supply agreement (MSA) by the publishing deadline. For example, UDC required farmers to fill in an online form before they could access the MSA and were fined \$10,000 as a consequence. Such processes alongside often lengthy and complex MSAs makes comparing MSAs across years burdensome for farmers. To some extent these are inconsistent with the ACCC's Dairy Inquiry recommendation that 'Processors should simplify their contracts where possible, including by minimising the number of documents and clearly indicating which documents contain terms and conditions of milk supply.'	Section (2) states 'The processor must, at or before the publication deadline, publish on its website in accordance with subsections (3) to (5): a) one or more standard forms of milk supply agreements; and b) for each standard form the processor publishes under paragraph (a) - a statement of the circumstances in which the processor would enter into a milk supply agreement in that form.
	The 1 June date was established in the code to synchronise opening (minimum) prices and standard form MSAs. This provides the foundation for competition (price step ups), MSA comparisons and negotiations and finalisation of agreements by 30 June (i.e., better conditions for budgeting and production planning). Some processors announced their opening prices weeks before the 1 June. In effect this set a market floor and resulted in significant differences between what was initially announced and what the final price was. While competition is welcome too much time and discrepancy increase complexity to the budgeting and contracting process.	Insert into this section: 1. a requirement that no additional steps or access barriers are to be placed on farmers when executing this requirement. 2. A requirement for processors to publish a 'summary of MSA changes from previous year' document. Remove the words 'at or before' and replace with 'on'. This ensures all MSAs and opening prices are announced on 1 June, not prior.

Division	Issue / Comment	Recommendation
25 - Quality and quantity of milk	<p>The Australian Government and ADF have sponsored the work of the Australian Milk Price Initiative (AMPI) to develop a financial hedging market that settles against a bi-monthly physical milk auction. This is currently pending commencement and approval by FEX and ASIC.</p> <p>For the market to operate farmers need some portion of their milk price to move up and down with the auction. Currently this is not considered in MSAs as the market is not yet operational. The absence of a consideration / allocation clause creates a barrier to uptake and maintains bargaining power with the processors.</p>	Insert a clause allowing a farmer to specify a quantity of their milk to be linked to a certified milk price indicator. This quantity would be exempt from minimum price requirements. The clause needs to include a provision that the farmer can only pursue this option upon mutual agreement with the processor.
<p>27 - Minimum price - retrospective step downs prohibited in all circumstances</p> <p>39 - Penalties for retrospective step downs</p>	These divisions relate to the same topic. This makes readability and navigation more difficult than if they were consolidated.	Merge divisions 27 and 39.
<p>31 - Combining exclusive supply and a maximum volume prohibited</p> <p>25 - Quality and quantity of milk</p>	Where a contract contains a volume requirement that is above a farmer's capacity it is essentially combining exclusive supply and maximum volume. If the contract is expressed as a percentage this can be difficult to interpret and can change during the operation of the contract if the farmer increases or decreases their milk production. Such issues were identified in the Senate Inquiry into the performance of Australia's dairy industry and the profitability of Australian dairy farmers since deregulation in 2000.	<p>Amend division 25 of the code to require contracts to specify the total volume capacity of the farmer and the total volume to be supplied to the processor in non-exclusive contracts.</p> <p>This would satisfy the recommendation from the Senate inquiry 'that the government in its 12-month review of the dairy code of conduct give consideration to amending the code of conduct to require that non-exclusive supply contracts be on a volume not percentage basis.'</p>
33 - Varying milk supply agreements unilaterally	These divisions relate to the same topic. This makes readability and navigation more difficult than if they were consolidated.	Merge divisions 33, 34 and 40.

Division	Issue / Comment	Recommendation
<p>34 - Terminating milk supply agreements unilaterally</p> <p>40 - Penalties relating to unilateral variations and terminations</p>		
<p>35 - Loyalty payments</p> <p>42 - Penalties for withholding loyalty payments</p>	<p>These divisions relate to the same topic. This makes readability and navigation more difficult than if they were consolidated.</p>	<p>Merge divisions 35 and 42.</p>
<p>36 - Extensions</p>	<p>This division allows a farmer with a MSA longer than 3 years to postpone the end date of the MSA by 12 months. To avoid this division potentially being activated processors have offered MSAs less than 3 years. The justification for inserting this division was to stimulate farm investment and protect farmers from being forced out of the industry where there is no alternate supply option (i.e., a processor monopoly) at potentially a fire sale price.</p>	<p>Remove the 3-year MSA term and supplement with a requirement to demonstrate exceptional circumstances for the 12-month extension to be activated. A definition of what comprises exceptional circumstances needs to include no alternate supply option can be found despite significant effort.</p>