

Independent Review of the Food and Grocery Code of Conduct 2023–24

Australian Dairy Farmers submission

February 2024

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Dr Craig Emerson
Grocery Code Review Secretariat
Market Conduct and Digital Division
The Treasury
Langton Crescent
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Dear Dr Emerson

Australian Dairy Farmers (ADF) is grateful for the opportunity to provide a submission to the Independent Review of the Food and Grocery Code of Conduct 2023-24.

ADF is the national industry representative body for dairy farmers across the six dairying states. We advocate to government and stakeholders for better outcomes for farmers and provide strong leadership and representation for the continued growth of internationally competitive, innovative and sustainable dairy farming in Australia.

ADF also plays an important 'industry good' role for the Australian dairy industry, tackling significant issues such as biosecurity, food safety, and research and development, which ADF delivers on behalf of all dairy farmers (not just ADF members).

Our central recommendation in this submission is to remake the Food and Grocery Code as mandatory.

Our additional recommendations are:

- That any changes to the Food and Grocery Code of Conduct (Grocery Code) do not have perverse outcomes that impact Australian consumption of dairy which is critical for our overall nutrition.
- That the existing Australian Competition and Consumer Commission (ACCC) Mandatory Dairy Code of Conduct is not conflated with the Food and Grocery Code; as this Dairy Code is subject to its own review, due for completion in 2026.
- That the Grocery Code inquiry avoids a simplistic focus on retail pricing without regard to the price of raw milk paid to dairy farmers as this could lead to further milk pool declines and further risk our food security.

Remaking the Code as mandatory

It is clear the Grocery Code as it stands holds insufficient power and does not provide the ACCC with the authority needed to force signatories to comply with its requirements.

We are supported in our view by the ACCC's findings from the 2020 Perishable Agricultural Goods Inquiry, that the Grocery Code should be mandatory, not voluntary.²

We believe a mandatory code offers significant benefits, including:

- a. Helping create a more transparent and competitive market place for farmers and consumers
- b. Creating more certainty and security with discipline applied to supermarkets with significant market power
- c. Allowing farmers to manage business with greater certainty in the face of increasing pressures

These points are expanded on below.

Helping create a more transparent and competitive market place for farmers and consumers

Dairy plays a significant role in a well-balanced and nutritional diet yet dairy product prices (and in particular raw milk prices) and other staple household food items are often the focus of the debate in inflationary periods.

Greater clarity on how prices are set, including farmgate versus retail price disparities, would support greater competition across the supply chain. ADF is concerned that supermarkets target milk prices as loss leaders in an effort to demonstrate their price competitiveness, especially when consumers are facing increased cost of living pressures. Ultimately, given milk is a staple product, it may unduly come under increasing pressure. This unintended focus on retail milk prices could ultimately further driving down farmgate milk prices and exacerbate the declining milk supply in Australia.

Any competitive and efficient market has price transparency to promote price discovery and healthy competition. A mandatory market would more effectively achieve and enforce these objectives.

Creating more certainty and security with discipline applied to supermarkets with significant market power

If there was ever any question about the power that Australian supermarkets hold and the concerning ways in which they wield it, recent media coverage has put this to rest.¹ Even the Prime Minister has raised concerns about the power of the supermarket duopoly in Australia with our two largest supermarkets – Coles and Woolworths – accounting for about 65 per cent of the market in Australia.²

ADF has long been concerned about the concentration of market power within Australian supermarkets, something we raised in our submission to the ACCC while it was considering Coles' proposed acquisition of Saputo in 2023. Chief among our concerns was that it would enhance Coles' already substantial market power through vertical integration and a lessening of price transparency and competition.

Without a mandatory Grocery Code that has real implications for Australian supermarkets, we are seriously concerned about how this market power could be abused. For dairy farmers – and the public more generally – to have confidence, the ACCC must have the power to discipline supermarkets if they do not uphold the Grocery Code.

Allowing farmers to manage business with greater certainty in the face of increasing pressures

Australian dairy farmers are managing their businesses in the face of increasing pressures, be they economic (input costs and supply such as workforce and water); consumer expectations; international market exposure; regulatory burden; and environmental restrictions. Having confidence that supermarkets are acting in the right way – and being held to account if they don't – is an important way they can feel more confident about planning for the future.

Recommendation 1: That the Food and Grocery Code be remade to be mandatory

¹ See for instance Nichols, Jennifer and Honan, Kim, 27 February 2024, "Farmer anger after Woolworths axes Norco milk from all of its 150 stores in metropolitan Sydney", ABC News, <https://www.abc.net.au/news/rural/2024-02-27/woolworths-stops-selling-norco-milk-metro-sydney-stores/103515582>; Barrett, Jonathan, 21 February 2024, "Woolworths CEO quits as supermarket giant increases half-year profit to almost \$1bn", Guardian Australia, <https://www.theguardian.com/business/2024/feb/21/woolworths-ceo-brad-banducci-quits-to-resign-september>; Paul, Sanjoy, 20 February 2024, "8 ways Woolworths and Coles squeeze their suppliers and their customers", *The Conversation*, <https://theconversation.com/8-ways-woolworths-and-coles-squeeze-their-suppliers-and-their-customers-223857>

² Evans, Jake, 23 February 2024, "Prime Minister Anthony Albanese says Coles and Woolworths market power 'excessive', but won't take a hammer to duopoly", ABC News, <https://www.abc.net.au/news/2024-02-23/albanese-coles-woolworths-duopoly-excessive/103502466>

Additional recommendations:

Nutritional value of dairy products

We are proud of the important nutritional role we play in the lives of Australians. Dairy, particularly liquid milk, remains a staple food item in most Australian households delivering one of the highest nutritional benefits to consumers for dollars spent. Numerous studies have demonstrated the health benefits of dairy products, with their daily intake being a recommended component of most dietary standards.

While it is well understood that dairy intake is associated with greater overall health and wellbeing, research continues to emerge demonstrating just how important it is to preserve health and wellbeing across the lifespan. For instance, a 2021 study published by researchers at Monash University credited an increase from 2 serves to 3.5 serves per day as being responsible for reducing all fractures by 33%, hip fractures specifically by 46% and falls by 11% in aged care residents³.

It is critical, then, that any changes to the Grocery Code do not have perverse outcomes that reduce Australian dairy intake.

Recommendation 2: That any changes to the Grocery Code do not have perverse outcomes that impact Australian consumption of dairy which is critical for our overall nutrition.

ACCC Dairy Code of Conduct

Dairy product prices (and in particular raw milk prices) and other staple household food items are often the focus of the debate in inflationary periods.

Therefore, ADF is concerned that certain groups are opportunistically endeavouring to utilise recent media surrounding the cost of living and the resultant inquiries, to suggest that the ACCC Australian Dairy Code of Conduct (Dairy Code) is a causal effect of higher retail milk prices or the cause of the differential between domestic Australian dairy prices and the price of cheaper dairy imports from overseas.

ADF considers this position to be misleading, explicitly misrepresenting and confusing multiple issues, including the purpose of the Dairy Code, how milk prices are set and underlying world supply and demand. Despite pressure in recent months to lower the cost of essential items such as raw milk, farmers and the Code are not responsible for setting the prices farmers receive for their product. Efforts by some parties to suggest the Dairy Code is responsible for inflating the market and high shelf prices for dairy products is misleading, as the Dairy Code does not set prices. It simply adds rigour to contracts.

Domestic milk prices were 'bid up' as Australian processors vied to fully utilise their excess processing capacity, as they (not the Dairy Code) set prices. Whereas, discounted international prices from the likes of New Zealand and the US are largely because these are major net exporters of dairy products. This domestic Australian shortage and the export surplus of our competitors is what causes a world price differential – not the Dairy Code.

The Dairy Code was introduced after the devastating behaviour of processors in 2016, when payments to farmers were 'clawed back', sparking one of the biggest industry crises and many farmers leaving the industry contributing to a reduced supply. Furthermore, supermarket driven price reductions of raw milk due to the \$1 a litre domestic milk campaign by the major retailers (and the flow on implications to farm businesses) in 2011, also resulted in many farmers exiting the industry. The \$1 a litre milk pricing (and the flow-on implications to farm businesses) in 2011

³ Luliano S., et al. 2021, 'Effect of dietary sources of calcium and protein on hip fractures and falls in older adults in residential care: cluster randomised trial', doi. <https://doi.org/10.1136/bmj.n2364>

also resulted many farmers exiting the industry. Hence, it is crucial that a reactionary or simplistic measures are not imposed, as they could exacerbate an already complex and multifaceted issue.

Recommendation 3: That the existing ACCC Mandatory Dairy Code of Conduct is not conflated with the Food and Grocery Code; as the Dairy Code is subject to its own review to be complete by 2026.

Declining milk supply and food security

ADF and the broader industry are already concerned regarding the decline in domestic milk production within Australia. This trend is observed despite strong consumer demand within Australia for Australian products. Figure 1 depicts the downward trend being observed over the past 10 years.

The Standing Committee on Agriculture's November 2023 report into the food security of Australia noted significant concern for stagnating or declining milk production.⁴ It was highlighted that dairy was one of two production sectors that the Committee considered needed particular attention from government. They recommended the:

*"Australian Government, as part of the National Food Plan, and in conjunction with industry, develop a specific strategy for reinvigorating the Australian dairy industry, one which lifts profitability and production while addressing the economic and environmental sustainability of the industry, and identifies the resources and pathways required to achieve this"*³

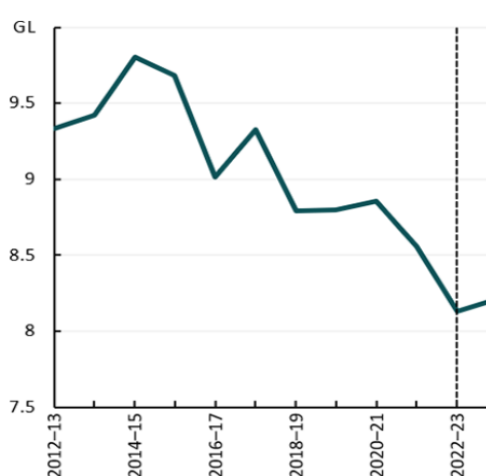


Fig. 1 – Average annual Australian milk production volumes (source ABARES; Dairy Australia). Data to the right of the dotted line indicate forecasts.

It is clear from this recommendation that the industry needs to be supported in a pursuit to maintain and grow domestic milk production.

ADF is concerned that a simplistic focus on retail pricing without regard to the price of raw milk paid to dairy farmers will exacerbate the decline in Australia's domestic milk supply. Put simply, this could hasten exits from the industry and further increase the country's dependence for imported dairy products – and with it an enhanced vulnerability to the vagaries of the international marketplace including demand from large overseas dairy importing countries, such as China.

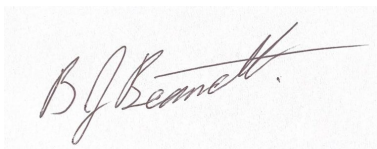
Recommendation 4: That the Grocery Code inquiry avoids a simplistic focus on retail pricing without regard to the price of raw milk paid to dairy farmers as this could lead to further milk pool declines and further risk our food security.

Dr Emerson, we thank you again for the opportunity to provide this submission in support of remaking the current voluntary Grocery Code into a mandatory one.

ADF believes there would be multiple benefits to a mandatory code, particularly in the improvement of price transparency and competition within the supermarket sector to the benefit of farmers through to customers.

For dairy farmers to run effective businesses, we need a strong, competitive and transparent marketplace to drive greater milk production and ensure milk capacity is fully utilised. We believe a carefully crafted mandatory Grocery Code would help deliver this.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'B. Bennett', with a long horizontal flourish extending to the right.

Ben Bennett
President
Australian Dairy Farmers Ltd