



ABN: 80 154 567 629

Dairy Connect Ltd  
CWA House  
Level 5/244 Coward Street  
Mascot NSW 2020  
+612 9661 3213  
[www.dairyconnect.org.au](http://www.dairyconnect.org.au)  
[admin@dairyconnect.com.au](mailto:admin@dairyconnect.com.au)

28 November 2019

Committee Secretary  
Senate Standing Committees on Rural and Regional Affairs and Transport  
PO Box 6100  
Parliament House  
Canberra ACT 2600

By email: [rrat.sen@aph.gov.au](mailto:rrat.sen@aph.gov.au)

Dear Secretary,

**Re: Submission - The performance of Australia's dairy industry and the profitability of Australian dairy farmers since deregulation in 2000**

I refer to the call for submissions by Senate's Rural and Regional Affairs and Transport References Committee (Committee) ([https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Rural\\_and\\_Regional\\_Affairs\\_and\\_Transport/DairyIndustry](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/DairyIndustry)) in relation to the performance of Australia's dairy industry and the profitability of Australian dairy farmers since deregulation in 2000.

By way of background, Dairy Connect is an industry body representing the value chain of the Australian dairy industry and other industry stakeholders. We also work cooperatively and collaboratively with other agricultural and dairy bodies to ensure that the best outcome is obtained for the dairy industry in NSW specifically and in Australia generally.

Prior to addressing the Committee's terms of reference, it is worth reviewing a number of general comments regarding the Australian dairy industry. Since deregulation in 2000, the dairy industry has seen a continual decline in production volume, the ongoing 'slumping' of fresh milk prices in major supermarkets, which has resulted in high numbers of farmers exiting the industry, as evidenced by the number of registered dairy farms as recorded by Dairy Australia (source: Australian Dairy Industry in Focus 2018 at page 6, Dairy Australia). These trends are exacerbated by record high energy cost and an ongoing and unremitting drought in the majority of production areas along the eastern states of Australia.

Stopping or reversing these trends will require a bold approach and what is at stake is nothing less than the core idea of the 'Australian dairy farmer', being the small to medium scale family run dairy farm.

### **Terms of Reference**

#### **The ability of Dairy Australia to act independently and support the best interests of both farmers and processors.**

The term 'dairy industry' is worth conceptualizing before answering the question of Dairy Australia's ability to support such an industry. The industry consists of 3 major conjuncts, each dependent on one another and hardly viable without the others. These conjuncts are dairy farmers, processors and retailers. Each of these entities have particular interests and, in some instances, these interests may conflict with one another. Indeed, the 2018 ACCC inquiry into the dairy industry concluded that power imbalances between different segments of the supply chain were a major obstacle for individual dairy farmers.

In regard to Dairy Australia's ability to support both the interests of farmers and processors, it might be the time to recognize that the interests of individual dairy farmers are somewhat unreconcilable with those of the major processors and may profit from a dedicated RD&E industry body, as would those of the processors.

In recent times, Dairy Australia's communicative strategy may be considered as passive, but this has changed in recent times with a number of marketing initiatives. Indeed, through their network of 'branches' in the States, they continue to communicate issues associated with RD&E to dairy farmers in the differing regions. Each region having its own set of parameters that they must engage with.

For example, NSW & Queensland (as a 'fresh milk States') have differing requirements as against the southern States, whose dairy produce is directed more towards dairy exports.

However, one matter that should be considered, is that of advocacy. Currently the governing legislation underpinning the creation, model and operation of Dairy Australia prevents it from being able to be involved in the development of policy and thereafter undertake its advocacy. The policy development that is undertaken by Dairy Australia is utilised by the state dairy industry bodies in their discussions with government and stakeholders.

There may be some sound grounds to consider that Dairy Australia should have a broader approach in relation to policy development and then advocacy as against merely policy development to be utilised by other bodies.

Such direction would require legislative change. However, this dual role has appeared to have been well received in the pork commodity area. Such opportunities could have played an important role in the development of the Mandatory Dairy Code of Conduct (Code) that the Federal government is currently seeking final submissions for the Code's implementation within the Australian dairy industry.

Of course, this could extend to other areas of dairy policy and how it would be implemented. Issues, such as opposing government policy, would need to be carefully balanced as the Federal government continues to provide matching funds for the ongoing operation of Dairy Australia. It is the submission of Dairy Connect that such proposals should be carefully considered and weighed as to the benefits that could flow to dairy farmers in the different States.

Given the conflicting interests between dairy farmers and processors policy matters may lend itself to the creation of separate bodies, as noted above.

The policy initiatives of Dairy Australia can be best highlighted by the campaign that they have been involved with industry bodies on plant-based beverages. They have been able to undertake research, both domestically and internationally, that is able to be used by industry bodies (such as Dairy Connect, which has been lobbying for 'truth in labelling' and protection of iconic dairy terms like 'milk' since January 2017) in their lobbying activities on this matter but having them available to run a policy campaign could provide benefits to the industry as a whole.

Dairy Connect would also submit that there must be a higher level of transparency and openness in the operations of Dairy Australia, with reflection upon the duties of the board and the senior staff. This would be seen as a benefit to those dairy farmers to contribute to the financial operation of Dairy Australia through the levy that is collected from the dairy farmer. This is particularly so with respect to the differing classes of membership of Dairy Australia, as defined by their constitution,

#### **The accuracy of statistical data collected by Dairy Australia and the Australian Bureau of Statistics.**

Dairy Connect does not question the accuracy of the statistical data collected by Dairy Australia and the Australian Bureau of statistics. Dairy Connect contends that they undertake the collection of such information in a diligent manner. However, again greater transparency in its collection would enable a clear understanding by the dairy industry (and particularly the dairy farmer) to better understand the reason for the collection of information and what it will be used for. Indeed, Dairy Australia must improve in the timely dissemination of such information, as and when collected.

**The funding of Dairy Australia and the extent of its consultation and engagement on the expenditure of levies revenue.**

During consultation with Dairy Connect members, respondents in general did not object to funding Dairy Australia through a levy model. Further, the education and training offered by Dairy Australia is a valuable contribution to the dairy value chain.

Regardless of this, the desire among dairy farmers in regard to Dairy Australia as an RD&E body, would be for it to take a more holistic approach to marketing dairy products and other activities that it is charged to do. Despite its policy development having to be balanced between different stakeholders, a more 'hands on' approach should be encouraged in ensuring dairy products receiving the recognition they deserve. Having the terms 'milk', 'cheese' and 'butter' watered down by ambiguous marketing for other alternatives is not in the interest of the dairy industry.

In that regard, consideration should be given by the Committee to recommending that Dairy Australia should act as an industry champion, rather than focussing exclusively on RD&E.

It is also to be regretted that the development of research and development has, in recent years, been declining. This is especially so in States such as NSW.

**Merits of tasking the ACCC to investigate how it can regulate the price of milk per litre paid by processors to dairy farmers to ensure a viable dairy industry.**

In its 2018 inquiry into the Australian dairy industry, the ACCC stated that there are power imbalances along the dairy supply chain. Thus, an asymmetric risk allocation was to blame for market failure within the dairy industry. However, the introduction of the Code is not intended to address this market failure but rather to restore the 'level playing field' between the dairy farmer and the processor.

Having the ACCC have increased powers to oversee the dairy market (beyond that provided for in the Code) may be a viable pathway, if a fair relationship between producer and processor is enabled and the ACCC has tools at its disposal to appropriately oversee this relationship. This may require legislative change to enable the ACCC to properly undertake this role.

There may be also merit in enabling the ACCC to provide a report to government as to the regulation and marketing of milk within the Australian dairy industry as well as internationally on a regular and on-going manner. The current market value that is being experienced by dairy farmers throughout the States illustrates the market failure that has encompassed the industry over the past years since deregulation. It may be said that the deregulation has not assisted in the development and growth of the dairy industry in Australia but rather hindered its growth.

This can be attributed to a number of causes, including the power imbalance between those players within the dairy value chain. This can be evidenced by the market bastardisation that can occur through low-priced dairy imports (e.g. cheese) sold by the retailers and the lack of accountability in ensuring that a sufficient amount of the profits flow through the processor to the producer through a higher farm-gate price.

In the view of Dairy Connect, the power evidenced by the retailers in, for example, the \$1/L milk needs to be considered and reviewed in light of commodity areas generally but dairy specifically. Dairy Connect has called upon the supermarkets, on a number of occasions, to raise the prices within the dairy cabinet generally. If such increases do occur, they would need to be overseen and monitored (perhaps by the ACCC) to ensure that sufficient amounts of the increased price are passed along the value chain to the dairy farmer.

The power imbalance between the different players within the dairy value chain has been clearly demonstrated by previous reports undertaken and made public, particularly by the Senate, over the past years.

It is the view of Dairy Connect that the ACCC can have a vital role to play in relation to oversight of the dairy industry value-chain and particularly so since deregulation occurred in 2000.

#### **Alternative approaches to supporting a viable dairy sector.**

Dairy Connect is aware that reregulating the Australian dairy industry may be inhibited by international trade agreements and Australia's WTO membership. The recently proposed 'dairy floor price' might be difficult to embed into a free trade framework, overseen by the ACCC. However, this should NOT be a hindrance to reviewing and considering such a floor price to ensure food security within the dairy industry and the long-term viability of dairy farming enterprises.

Viable alternatives could lie in extended cooperation with the not-for-profit sector, as recently seen in Victoria. The State of Victoria has entered into partnership with the NGO 'Foodbank', to serve dairy products as part of a pre-school breakfast program in some schools. This not only stimulates the Victorian dairy industry but also helps ensure a nutritious breakfast for school children. In recent times, New South Wales Government has provided similar support to 'Foodbank' within NSW.

Further, the Federal Government could consider subsidies for the industry. On a global scale, Australian dairy farmers receive minimal subsidies, yet must compete with for example European dairy farmers on the world market, which profit from EU-farm-subsidies.

In more recent times, the former Chairman of the ACCC Professor Allan Fels has publicly endorsed the return of Government funded levies to ensure a sustainable dairy industry. Professor Fels reported:

“To my mind, the levy was an adequate solution for that period following the deregulation of the dairy sector and it expired at a time when the industry had adjusted to the new way of operating ... obviously, times change and sometimes this form of assistance can be re-examined, particularly in light of the difficulties faced by farmers.” (source: <https://www.weeklytimesnow.com.au/agribusiness/dairy/former-acc-chairman-allan-fels-says-bring-back-milk-levy/news-story/c0f06f4129430a16ebbc3bbac565>)

### **The introduction of a mandatory industry code of practice (Code).**

Dairy Connect has previously indicated that the Code will not be a panacea for the Australian dairy industry, but rather a viable tool in its sustainability. The Code provides an opportunity for restoration of transparency and trust in negotiating milk supply agreements between processors and their dairy suppliers. In that regard, a ‘balanced playing field’ must be restored in negotiating milk supply agreements.

There should not be any doubt that introducing the Code as early as possible (and have it overseen by the ACCC) is the minimum viable option if a market-based solution is desired. The Code, in which the 2018 ACCC recommendations would be partly implemented, would help alleviate fundamental flaws in the producer-processor relationship.

It would, for instance, prohibit retrospective price changes and exclusivity clauses offered to farmers at this point in time, amongst other reforms that are required urgently within milk supply agreements. Ensuring this ‘even playing field’ for all the involved parties would mark a first step in revitalizing family dairy farms and support the small / medium businesses that rely on them.

Dairy Connect recently provided a submission in response to the most draft of the Code, which had been released for public comment (<https://haveyoursay.agriculture.gov.au/dairy-code-conduct>). This latest draft of the draft Code has, in the view of Dairy Connect, fatal fundamental flaws which we have brought to the attention of the Federal Government. Dairy Connect (at the time of writing this submission) is currently advocating fundamental changes to the draft Code, as distributed in October 2019.

It should be remembered that the Federal Department of Agriculture has published the principles of the Code as determined by its consultation with dairy farmers and dairy industry stakeholders (including processors) over 3 periods of consultation, commencing in October 2018 and concluding in November 2019. Yet the dairy industry is awaiting the

introduction of the Mandatory Code. The principles enunciated are:

“The code will cover nine principles to increase fairness and transparency between dairy farmers and processors:

1. require parties to deal with each other in good faith and to operate with fair dealing by having due regard to the other party’s legitimate business interests
2. prevent unilateral changes to agreements
3. require that annually on a set date processors publicly release a standard form agreement covering the terms of supply and a price (and if applicable a pricing mechanism for longer-term agreements) that covers the term of the agreement
4. prevent retrospective price step downs
5. prohibit prospective step downs unless in specific circumstances such as force majeure, or exceptional market circumstances or major changes in global market conditions
6. prohibit exclusive supply arrangements in combination with two-tier pricing
7. prohibit processors withholding loyalty payments if a farmer switches processors
8. introduce a dispute resolution process for matters related to contracts between farmers and processors, and
9. alleged breaches of the code, to be investigated by the Australian Competition and Consumer Commission, which may include penalties for breaches of the code.” (source: (<https://haveyoursay.agriculture.gov.au/dairy-code-conduct>))

It is to be regretted that the current draft Code differs manifestly from the previous incarnation of the Code that was released for public comment and the current draft Code fails disturbingly in complying with its own principles.

For the information of the Committee, please find attached and marked Annexure ‘A’ a copy of the submission provided by Dairy Connect to the Federal Department of Agriculture in relation to the most recent draft of the Code released in November 2019.

### **Concluding remarks**

The Australian dairy industry requires a strong national body representative of dairy farmers regardless of the membership of other bodies. An organisation that has a broader scope in relation to its remit and which may be funded through dairy farmer levies and supported by Government with matching funds. As Dairy Connect has stated, this could be one outcome that could be considered by the Committee in making its recommendations.

However, this will require careful consideration of the many varied and complex issues confronting the Australian dairy industry at the current time. It is vital that the necessary steps to ensure that retain a viable and sustainable Australian dairy industry into the future. This will, by necessity, raise issues and questions of ‘food security’ as well as the ongoing

availability of Australian produced fresh nutritious milk and dairy products.

As indicated, the Australian dairy industry is facing a crisis that it has not previously faced. The actions that are taken in the coming months will determine whether Australia continues to have a sustainable dairy industry, serving both the domestic and international markets, or become a larger net importer of dairy produce and fresh milk.

Matters need to be examined that once would not have been at the forefront of anyone's minds. Issues such as a minimum floor price for dairy farmers may provide one mechanism by which a fair and sustainable farmgate price could be achieved. While the implementation of a Code, overseen by the ACCC, will not be a panacea for the industry, it can restore trust, transparency and a balanced playing field.

It cannot be underestimated as to the crisis that the Australian dairy industry is facing. The dairy 'doomsday clock' is a minute to midnight and action is urgently needed to address the continuing market failure within the Australian dairy industry.

Dairy Connect looks forward to working with the Committee. Representatives of Dairy Connect would be willing to appear before the Committee to augment our submissions, if so requested.

Yours Faithfully,

Shaughn Morgan  
Chief Executive Officer



Annexure 'A'



ABN: 80 154 567 629

Dairy Connect Ltd  
CWA House  
Level 5/244 Coward Street  
Mascot NSW 2020  
+612 9661 3213  
[www.dairyconnect.org.au](http://www.dairyconnect.org.au)  
[admin@dairyconnect.com.au](mailto:admin@dairyconnect.com.au)

19 November 2019

Senator the Honourable Bridget McKenzie  
Minister for Agriculture &  
Leader of the Nationals in the Senate  
Parliament House  
Canberra ACT 2600

By hand & website

Dear Minister,

**Re: Submission - draft Dairy Mandatory Code of Conduct (released October 2019)**

I refer to your Department's call for submissions (<https://haveyoursay.agriculture.gov.au/dairy-code-conduct>) in relation to the October 2019 version of the draft Dairy Mandatory Code of Conduct (draft Code).

By way of background, Dairy Connect is an industry body representing the value chain of the Australian dairy industry and other industry stakeholders. We also work cooperatively and collaboratively with other agricultural and dairy bodies to ensure that the best outcome is obtained for the dairy industry in NSW specifically and in Australia generally.

The purpose of a draft Code as stated in your document entitled 'Dairy industry (farmer-processor transactions) code of conduct – Regulation impact statement' and taken from comments enunciated by the ACCC as a result of its inquiry:

"The current operation of the dairy industry has led to market failures because of the imbalance in bargaining power between farmers and processors. Addressing market failures in the dairy industry could improve the overall efficiency of the supply chain and improve the total welfare of supply chain participants (ACCC 2018)."

Prior to making specific comments on the draft Code, Dairy Connect wishes to make the following general points in relation to the draft Code. Firstly, Dairy Connect expresses our disappointment at this further draft Code. It is submitted that this further version of the draft Code has failed to continue the 'tenor and flavour' of the previous draft of the Code by

failing to ensure continuity and compliance with the previous comments of dairy farmers during the consultation with stakeholders in early 2019. These views were published by the Federal Department of Agriculture (Department) and may be viewed at [https://ris.pmc.gov.au/sites/default/files/posts/2019/04/2\\_ris\\_dairy\\_industry\\_code\\_of\\_conduct.pdf](https://ris.pmc.gov.au/sites/default/files/posts/2019/04/2_ris_dairy_industry_code_of_conduct.pdf).

Further, Dairy Connect considers this version of the draft Code has been badly drafted and fails to comply with the most common aspects of 'plain english' drafting principles. It is obtuse and unfortunately contains 'double negatives' in the document. It would be difficult for a person legally trained to go through and understand the cause and intent of the draft Code. It would therefore be extremely difficult for a large majority of dairy farmers (who do not have legal training) to comprehend the intention of the draft Code as distributed for public comment.

Dairy Connect strongly questions why the previous draft Code was discarded when it was generally easier to understand, was in plain english and (in general terms) followed the comments and intent of dairy farmers and stakeholders as collected by the Department.

We remain strongly of the view that the draft Code can and should commence on 1 January 2020 so as to ensure dairy farmers are afforded the protection that the draft Code can provide. However, the major flaws must be rectified prior to its introduction.

It has been suggested for example that the draft Code, as presented, may not have enabled the ACCC to have investigated and prosecuted those Murray Goulburn company officers who breached their fiduciary duties in 2016 as a consequence of the 'clawback' of the payments made to their suppliers and resulting insolvency of Murray Goulburn. We submit that this alone is reason for immediate review and amendment of those afflicted clauses in the draft Code.

As the Department notes in its document headed 'Dairy industry (farmer-processor transactions) code of conduct – Regulation impact statement':

"Dairy processors have significant bargaining advantage over farmers" (at page 10).

The Dairy Mandatory Code of Conduct is intended to regain trust, transparency and restoration of a 'balanced playing field' in negotiations for a milk supply agreement between processors and their suppliers. This draft Code is unfortunately deficient to achieve such an outcome.

It is not the intention of Dairy Connect to address those flaws which may be considered 'minor' in scope. Such 'minor' changes could be considered and recommended to Government for change after the first review of the draft Code, which (it is noted) is

currently intended to occur after 12 months of operation. At this time, the unintended consequences of clauses can be addressed and errors corrected by Government. The proposed ACCC Dairy Mandatory Code Consultative Committee (comprising all stakeholders in the dairy value-chain) would also assist in highlighting the unintended consequences of the Code and the 'minor' issues that need rectification.

Dairy Connect now turns to the major issues that it perceives with the draft Code:

### **Clause 27 Varying milk supply agreements**

The previous version of the draft (<https://haveyoursay.agriculture.gov.au/40871/documents/96088>) indicated under clause 6 that milk supply agreements could not be unilaterally changed or varied:

“Unilateral variation of an agreement

6) The unilateral variation of the terms of an agreement would be prohibited.”

Clause 27 of the draft Code indicates that milk supply agreements can be varied in certain circumstances.

27(1) states that a milk supply agreement can be unilaterally amended if the agreement entered into states how it is to be done, both as to circumstances and process.

27(2) states that any milk supply agreement may not be varied unilaterally for any reason other than **“circumstances that are beyond the reasonable control of the processor”**.

The example is given where government legislation is changed (eg food safety) which is clearly not within the reasonable control of the processor, however the term **“beyond reasonable control”** is not defined and as far as we are aware has only been judicially considered and has limited caselaw.

For instance, changes that could occur internationally or domestically (change in the protein or fat content of the milk the processor contracts for) which a processor could say that such changes are not within their 'reasonable control' and hence result in changes to the milk supply agreement. This could result, for instance, in the farmgate price being paid to the supplier being amended. This, in reality, would mean that there is no price certainty.

If the Federal Government does not wish to keep faith with their original commitment being no unilateral changes to a milk supply agreement, then Clause 27(2) must be redrafted and tightened to restrict any unilateral changes to only when relevant legislation impacting upon the Regulation occurs.

Hence Clause 27(2) should read to have effect that 'milk supply agreement cannot be unilaterally amended by the processor unless there is a change in the legislation overseeing/governing the Regulation.'

As was mentioned above, if this clause remains as drafted, Murray Goulburn officials may have been afforded protection against investigation and prosecution if this defense of 'beyond the reasonable control of the processor' was pleaded.

It is also noted that the term 'beyond the reasonable control of the processor' is also used in 'clause 23 Price – step downs' sub-clause (c). While it is only one component that would need to be met for any consideration by a processor for a 'step down', we submit that the term has no proper use in this clause and should be removed.

#### **Clause 26 Cooling off period**

The Regulation indicates that milk supply agreements must provide for a cooling off period of at least 7 days. However, Clause 26(2) indicates the 7-day cooling off period commences on the day the milk supply agreement is entered into.

As a milk supply agreement could be entered into verbally but not confirmed in writing until after 7 days cooling off period has lapsed, this may result in an injustice resulting to the supplier. For instance, what happens if the written terms do not correspond to what the dairy farmer believed that they had entered into? Dairy farmers would not be able to change the agreement as they would be bound by what is in the written agreement even though it may not be what they believed they agreed to.

As before (and with the clauses generally within a milk supply agreement), it would be onerous and expensive for a dairy farmer to take a processor to court to have the milk supply agreement either varied or voided.

The cooling off period should commence upon receipt of the written milk supply agreement by the dairy farmer from their processor.

#### **Clause 29 Loyalty payments**

This could impact upon a non-continuing supplier who would switch processors prior to 30 June.

This would occur where the royalty payment is announced in August/September (step up) and whether it should apply to those suppliers who have left the processor (as per the termination agreement within their milk supply agreement).

For example, this is currently being encountered involving an Australian corporate

processor, where their suppliers switched after 30 June on the belief that they would be entitled to the loyalty payment. This clause in the draft Code needs to be more closely examined.

**Clause 15 Written records of unwritten milk supply agreements**

Clause 14(4) should be more clearly defined to ensure that milk supply agreements are limited to a single document should and not be extended to documents such as 'farm manuals'.

**Clause 25 Combining exclusive supply and tier pricing prohibited**

If this is intended to prevent exclusivity supply clauses in milk supply agreements, it should not be contingent on tier pricing and vice versa.

Perhaps it should be 'and/or'. This is an example of 'bad drafting' and needs to be clarified to ensure that suppliers are able to sell their milk to more than 1 processor (once their contractual obligations are complete).

As is stated in the previous draft (at clauses 31 and 32):

"An agreement with a processor must not limit or prohibit a farmer from supplying to another processor, unless otherwise agreed by both parties.

The use of exclusive supply clauses in conjunction with two-tier pricing models is prohibited."

Attached hereto and marked Annexure 'A' is an 'open letter' prepared by the Australian Milk Price Initiative group, which Dairy Connect is pleased to support.

**Subdivision F – Complaints and Disputes**

Attached hereto and marked Annexure 'B' are comments provided to Dairy Connect by Derek Minus, Accredited Mediator/Barrister/Chartered Arbitrator, Principal of Dispute Resolvers.

Dairy Connect has reviewed the comments made and support these remarks. These concerns need to be addressed to ensure fairness and balance in dispute resolution mechanisms within the draft Code.

**Penalty Points**

The draft Code provides for penalty points in relation to breaches of the clauses within the draft Code. It is currently structured to be the same penalty for both the supplier and the processor. It is submitted that the draft Code should provide for discretion within the ACCC with respect to the penalty that is imposed (and indicated as such within the draft

Code). This is particularly so where the penalty imposed on the dairy farmer (and the size of their dairy farming enterprise).

This varies greatly amongst suppliers within the dairy industry. For instance, it could relate to their ability to pay a penalty that may be considered unreasonable and harsh; which would be extremely different to that penalty which is imposed upon a corporate processor or processor generally. This relates to their ability to pay the penalty and to be proportionate to the breach.

#### **Milk sampling, testing and calibration of testing equipment**

The draft Code should have inserted a clause regarding the implementation and compliance with the introduction of national standards for milk sampling, testing and calibration of testing equipment. This should be standardised throughout the Commonwealth, with the clause within the Code to commence once the standard has been agreed to by the responsible Ministers in the relevant States. This will ensure consistency with respect the collecting and treatment of milk and the fat/protein required.

This is particularly so with the practices and reporting structure that may be different from one processor to the next. This has created undue and ongoing uncertainty amongst dairy farmers. We understand that there have been a number of reported incidences of processor compensation to farmers who have received wide variances in volume calibration as milk is measured into new tankers.

Further, the reports of quality testing are typically owned by the processors and are not made directly available to the farmers. We would submit that this should be changed and the suppliers provided with such information immediately it is available. However specific standards would be part of the 'national standard' once agreed and not necessarily specified in the draft Code.

Dairy Connect would like to put forward the recommendation that the use of a nationally standardised system for the measuring and reporting of Australian milk, as an additional component of the draft Code.

#### **Concluding Remarks**

The Dairy Mandatory Code of Conduct will not be a panacea for the Australian dairy industry but it will ensure a restoration of balance and trust in negotiating milk supply agreements between the processor and supplier.

Let there be no doubt, failure to act and implement a fair, balanced Dairy Mandatory Code of Conduct (which is overseen by the ACCC) will result in the continuation of the market failure within the dairy industry. This will impact adversely on the dairy industry's

importance to the economic vitality within Australia and elsewhere throughout the world where Australian dairy produce provides sustenance to growing nations

Whilst we commend the initiative of the Federal Government in the introduction of a Dairy Mandatory Code of Conduct, on the recommendation of the ACCC, we submit that the current draft Code is detrimental to the interests of not only the dairy farmer but also the Australian dairy industry. To ensure its acceptance as a satisfactory Code, changes must be made to the draft Code and made now.

Dairy Connect looks forward to working with the Department and Minister McKenzie in the successful implementation of a Code that is fair and accepted by all.

Yours Faithfully,

~~Shaughn~~ Morgan  
Chief Executive Officer

**Australian Milk Price Initiative  
Open Letter of Support  
November 2019**

To Whom It May Concern,

***The Australian dairy industry is in crisis despite many natural competitive advantages***

Milk production has fallen from nearly 12 billion litres at the start of the century to expectations of just over 8 billion litres this year, despite having:

- A long-standing excellent reputation for top-quality produce being sent into China and South East Asia, a market of over 2 billion people
- A highly skilled and resilient farmer base that has proven it can produce milk competitively for the world market
- A large and high value domestic consumption market for dairy products

***Milk price structures have been identified as a core industry weakness by the ACCC***

The ACCC's Dairy Inquiry (2016) identified that "Processors have significant bargaining power over farmers...The bargaining power imbalance is reflected in farmgate prices, milk supply contract terms that favour processors and the extent to which processors can pass on risk to farmers."

***We support the core principle of farmers being able to sell to more than one processor. We believe this is central to the delivery of true bargaining power, price transparency, and price risk management***

A Mandatory Code of Conduct can remove the logistical, commercial and legal barriers that inhibit achieving these outcomes. This can deliver dairy farmers the same choices available to farmers in other Australian agricultural sectors.

***These changes can help the Australian dairy farmer return to growth***

Delivering more choice to dairy farmers when selling their milk enables:

- A fairer and more competitive milk price
- A more transparent milk price
- Access to innovative price risk management tools for farmers looking to grow supply

***We believe that milk buyers have much to gain from milk price reform***

Inflexible existing milk price structures leave buyers struggling to:

- Proactively manage price and volume risk in volatile markets including in-season milk sourcing
- Engage with downstream customers looking to manage their own price and volume risk
- Always ensure milk flows to the highest and best use
- Incentivise farmer suppliers into long-term growth to fill currently underutilised capacity

All of this comes at a time when our key global competition is implementing more transparent and risk-managed markets.



## **Australian Milk Price Initiative**

### ***These market reforms would be transformative for dairy***

Price transparency and risk management form the backbone of better planning, greater confidence and more investment for all dairy industry participants. Similar reforms in other Australian agricultural markets have demonstrably improved the investment sector's capability to provide capital into both the farm-gate and processing sectors.

### ***We call on the Australian Government to support the Australian Milk Price Initiative by:***

- a) Delivering a Mandatory Code of Conduct that enables farmers to sell to more than one buyer and includes the removal of logistical, commercial and legal barriers
- b) Supporting the establishment of an open and transparent national milk market
- c) Ensuring the commencement of operation of this market for the 2020/2021 milk season
- d) Investing in long-term risk management education for the dairy value chain