



Australian Government

Australian Government response to the Senate Standing Committees on Rural and Regional Affairs and Transport:

Performance of Australia's dairy industry and the profitability of Australian dairy farmers since deregulation in 2000

December 2021

INTRODUCTION

On 17 October 2019, the Senate referred an inquiry to the Rural and Regional Affairs and Transport References Committee into the Performance of Australia's dairy industry and the profitability of Australian dairy farmers since deregulation in 2000, with particular reference to:

- a. the ability of Dairy Australia to act independently and support the best interests of both farmers and processors;
- b. the accuracy of statistical data collected by Dairy Australia and the Australian Bureau of Statistics;
- c. the funding of Dairy Australia and the extent of its consultation and engagement on the expenditure of levies revenue;
- d. the 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;
- e. alternative approaches to supporting a viable dairy sector;
- f. the introduction of a mandatory industry code of practice; and
- g. any related matters.

On 18 March 2021, the Committee released its report. The Australian Government thanks the Committee for the time and effort put into the inquiry into the dairy industry and all those dairy forum and representative organisations who contributed to the inquiry. The government has considered the report and provides its response to the Committee's 14 recommendations.

The government notes the positive contributions to this inquiry by Senator Susan McDonald and Senator Gerard Rennick, and thanks Coalition Senators for their additional input. The government has considered the amended recommendations in developing its response to this committee, recognising that many of these amended recommendations align strongly with submissions provided by peak bodies within the industry.

Recommendation 1:

The committee recommends that the Department requires that Dairy Australia increase its research, development and extension activities into tropical and subtropical dairy regions.

The government notes this recommendation.

Dairy Australia has a number of processes in place to identify the needs of dairy farmer levy payers and how it can service those needs through its research, development and extension (RDE), trade and policy, and communication activities.

In particular, Dairy Australia's Regional Development Programs (RDP) help Dairy Australia identify the variable needs and priorities of dairy farmers in different geographical locations. This includes a subtropical program for Queensland and Far North New South Wales. The input provided by these RDPs informs Dairy Australia's planning processes and investment decisions and the RDPs were identified as a core strength and valuable asset in a recent Independent Performance Review of Dairy Australia's operations.

Following this Independent Performance Review, Dairy Australia is seeking to improve its communications by better demonstrating to farmers how regional RDE priorities are addressed, including relevance to regions, production systems, and short-term and longer-term gains.

The department has brought this recommendation to Dairy Australia's attention, since decisions about the allocation of research, development and extension funding are made by the board of directors of Dairy Australia. The department is not able to direct Dairy Australia's investment decisions.

Recommendation 2:

The committee recommends that the government amend the Primary Industries (Excise) Levies Act 1999 to require processors to pay a levy to fund Dairy Australia.

The government notes this recommendation.

The levy system is an industry-driven partnership that enables primary industries to collectively fund and invest in strategic activities by establishing levies on their products. It is up to each industry to decide all aspects of a levy – whether a levy is needed, how the levy will be charged and collected, and the levy rate.

The government will consider any levy proposal put forward by industry members, in line with the *Levy guidelines: How to establish and amend agricultural levies* available at agriculture.gov.au/sites/default/files/documents/levy-guidelines.pdf.

Recommendation 3:

The committee recommends that the government make the Food and Grocery Code of Conduct a mandatory code under the Competition and Consumer Act.

The government does not support this recommendation.

The government is committed to ensuring it has the right regulatory settings in place to foster fair and sustainable commercial dealings between the major supermarkets or wholesalers and their suppliers.

In 2018, the government appointed Professor Graeme Samuel AC to undertake a comprehensive review of the Food and Grocery Code which involved extensive consultation with stakeholders. In March 2019, the government released its response to Professor Samuel's final report – accepting 13 of the 14 recommendations, including his recommendation that the Food and Grocery Code remain voluntary. In October 2020, the government introduced amendments to strengthen the Food and Grocery Code to deliver better outcomes for farmers and suppliers.

Farmers and suppliers that deal directly with Australia's major supermarkets or wholesalers now have access to enhanced dispute resolution procedures under the Food and Grocery Code. ALDI, Coles, Woolworths and Metcash have each appointed Code Arbiters – who have the autonomy and authority to resolve complaints and make binding decisions, including up to \$5 million compensation settlements for suppliers. The government has also appointed Mr Chris Leptos AM as the Grocery Code Independent Reviewer to ensure suppliers and farmers are given due process when resolving their complaints.

The government will closely monitor the outcomes of these recent changes to the Food and Grocery Code and will be undertaking a review of the dispute resolution provisions within two years (October 2022) followed by a review of the remaining provisions by October 2023. This will provide an opportunity for the government to consider whether further amendments to the code are required.

The government notes the Australian Competition and Consumer Commission (ACCC) also recommended in its final report on the *Perishable agricultural goods inquiry* that the Food and Grocery Code should be strengthened, including by making it mandatory for retailers and wholesalers, and by introducing significant penalties for contraventions.

Recommendation 4:

The committee recommends that the government investigate price discrepancies between exclusive and non-exclusive milk supply contracts, processors circumventing collective bargaining groups, and the fairness of pricing for multi-year contracts.

The government notes this recommendation.

The Dairy Industry Code of Conduct (the code) is subject to a review to assess the role, impact and operation of the code. The government considers this review is the most appropriate means of assessing the effectiveness of the exclusivity provisions and fairness of pricing for multi-year contracts, where those issues are raised by stakeholders. The review commenced in May 2021, and the department released a discussion paper at haveyoursay.awe.gov.au/dairy-code-of-conduct-review to help stakeholders draft a submission to the review. The discussion

paper identified a number of matters stakeholders may wish to consider as part of this review, including milk supply agreements and milk pricing requirements. The public submission period for the review closed on 29 August 2021.

The government also notes the ACCC is responsible for monitoring and enforcing compliance with the code, and is checking Milk Supply Agreements released by processors on 1 June 2021 for compliance with the code.

The government does not support the recommendation to investigate processors circumventing collective bargaining groups. In line with the broader economy, processors are not legally required to enter negotiations with collective bargaining groups. Subject to the provisions of the code, such as the good faith provision, and the provisions of the *Competition and Consumer Act 2010*, a failure to engage with a collective bargaining group is not unlawful.

Recommendation 5:

The committee recommends 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; and**
- **arbitration be made mandatory.**

The government agrees with this recommendation.

The review of the code will consider a range of issues to improve the operation of the code, including contracting and arbitration matters. The review commenced in May 2021, and the department released a discussion paper at haveyoursay.awe.gov.au/dairy-code-of-conduct-review to help stakeholders draft a submission to the review. The discussion paper identified a number of matters stakeholders may wish to consider as part of this review, including non-exclusive milk supply agreements and the arbitration process. The public submission period for the review closed on 29 August 2021.

Recommendation 6:

The committee recommends that the government produce and distribute information for farmers on the bargaining advantages afforded by the code of conduct to assist in their negotiations with processors.

The government agrees with this recommendation.

The government supports the intent of this recommendation and notes a range of information is already produced and distributed to farmers on the code to assist farmers in their negotiations with processors.

The ACCC publishes specialist guidance material on the code on its website at acc.gov.au/business/industry-codes/dairy-code-of-conduct. These guidance materials are designed to provide farmers and processors with clear information about their rights and obligations under the code. The ACCC continued to promote these materials before the publication of milk supply agreements on 1 June 2021 for the 2021-22 milking season.

The Department of Agriculture, Water and the Environment publishes a *Farmer guide to the Dairy Industry Code* as well as frequently asked questions to support farmers understand the code at agriculture.gov.au/ag-farm-food/meat-wool-dairy/dairy-dairycode/farmer-guide.

Through a grant from the government, Dairy Australia has developed and published *A Farmer's Guide to Milk Supply Agreements and the Dairy Industry Code of Conduct* to help make farmers' contract negotiations with processors easier and more transparent, available at dairyaustralia.com.au/en/farm-business/milk-supply-agreements.

The government also provided a grant to Australian Dairy Farmers (ADF) to develop, in consultation with processors, a simple standard form contract that incorporates the requirements of the code, noting that the requirements of the code are mandatory. Following development of the contract template, a series of nine webinars to present and explain the template and code requirements were held by ADF in May 2020.

The government anticipates that the review of the code will also provide an opportunity for further distribution of information to farmers on the bargaining advantages afforded by the code.

Recommendation 7:

The committee recommends that the government introduces provisions for the ethical supply of milk to the Food and Grocery Code aimed at ensuring that supermarkets and their suppliers buy milk at a price that exceeds the regional cost of production.

The government notes this recommendation.

The government supports the ethical sourcing of products, including milk, by supermarkets and their suppliers and notes that major Australian supermarkets have ethical sourcing policies in place which extend throughout their supply chains.

These ethical sourcing policies apply in addition to government regulations, such as the Food and Grocery Code, that aim to lift the standard of business conduct between the major supermarkets and their suppliers (including dairy farmers that supply directly to the retailers and wholesalers).

On 3 October 2020, the Government introduced amendments to strengthen the Food and Grocery Code. This included enhancing obligations on the supermarkets to act in good faith, conduct price negotiations with suppliers in a timely manner and adhere to new dispute resolution procedures that can deliver binding outcomes for suppliers.

The government does not support the introduction of additional provisions to the Food and Grocery Code that would serve to set a fluctuating floor price for milk by region. It is not government policy to regulate or directly intervene in the setting of prices in a market, as this often leads to unintended consequences and inefficiencies that are not in the best interest of Australian consumers or farmers.

The provisions recommended by the committee may lead to retailers shifting from domestic dairy products to cheaper imported products, or to milk production from lower cost dairy regions being supplied into higher cost regions, pushing farmers out of the industry.

The government is also in the process of considering other reforms to promote fair contracting practices across the economy (see response to recommendation 8 below).

Recommendation 8:

The committee recommends that the government reforms the competition framework to make unconscionable conduct provisions in Australian Consumer Law more accessible to farmers, and to incorporate the principle of fairness into contractual dealings between supermarkets, processors and farmers.

The government notes this recommendation.

On 6 November 2020, Commonwealth and state and territory consumer affairs ministers agreed to several reforms which would strengthen the existing unfair contract term protections in the Australian Consumer Law (ACL). On 23 August 2021, the Government released exposure draft legislation, giving effect to the agreed reforms, for public consultation.

Key reforms include:

- prohibiting the use, application and reliance on an unfair term;
- providing courts with the power to impose a financial penalty for a contravention;
- creating a rebuttable presumption that a term is unfair if a court has already found a similar term used in similar circumstances is unfair;
- increasing eligibility for the protections by expanding the definition of small business and removing the requirement for a contract to be below a certain threshold; and
- improving clarity on when the protections apply, including on what is a 'standard form contract'.

The reforms will help reduce the prevalence of unfair contract terms in standard form contracts, and improve small business confidence when entering into contracts.

On 6 November 2020, consumer affairs ministers discussed concerns that there are some unfair business practices that are unlikely to be covered by the existing protections in the ACL, such as business models that are arguably oppressive, exploitative or contrary to standards of professional diligence or fair dealing. Ministers agreed that these issues warrant further exploration through a regulation impact assessment process.

The regulation impact assessment process will involve seeking further evidence on the types of unfair business practices that are unlikely to be covered by the existing protections in the ACL and the extent of consumer harm arising from any potential gaps. This will help determine whether there is a problem necessitating government intervention and the nature of any such intervention.

Recommendation 9:

The committee recommends that the government expand the representative sample of statistical information collected by Dairy Australia so that it better represents the population of Australian dairy farms.

The government agrees with this recommendation.

The government notes the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) has engaged with Dairy Australia to improve the coordination of the annual dairy farm business surveys that are currently run by the two organisations (ABARES' Australian Dairy Industry Survey and Dairy Australia's Dairy Farm Monitor Project).

A combined approach between ABARES and Dairy Australia would be expected to result in a survey sample that provides better representation of the Australian dairy farm population. This would reduce the survey burden on individual dairy farmers and remove duplication, while maintaining a statistically sound data collection.

Recommendation 10:

The committee recommends that the government maintain a single authoritative measure of the cost of production of milk for the eight regional milk districts.

The government does not support this recommendation.

The government does not support the establishment of a single authoritative measure on the cost of production of milk for the eight dairy regions. Dairy Australia, ABARES, and state agriculture departments already collect and publish a range of data about production costs for milk in the different dairy regions.

The government notes there can be significant differences in the cost of production of milk between dairy farms in the same regions, depending on factors such as the size of the farm or type of production system used. To assist dairy farmers and their advisers measure and compare farm business performance over time, Dairy Australia has established the online tool Dairy Base, which can be accessed at dairyaustralia.com.au/farm-business/dairybase. The Dairy Base tool supports dairy farmers decision making by generating comparative analysis according to farm size, region and production system.

Recommendation 11:

The committee recommends that the government consider approaches to improve the timely provision of milk production data to Dairy Australia by processors.

The government notes this recommendation

The government has supported investment in industry-specific digital levy payer registers, so that research and development corporations (RDCs) can identify and consult directly with the levy payers who fund their activities. The information collected for Dairy Australia's levy payer register is provided by processors through periodic levy returns and includes the amount of levy paid, production amounts and producer contact details.

The Department of Agriculture, Water and the Environment has developed a new, more automated, online levy payer register portal with an improved stakeholder interface for levy returns. The portal allows levy collection agents to submit information as part of their monthly levy return. In the case of dairy, the production data submitted by levy collection agents (processors) includes milk production data. More information on levy payer registers is available at agriculture.gov.au/ag-farm-food/levies/levy-payer-registers.

Recommendation 12:

The committee recommends that the government consider approaches to enhance the information processors provide Dairy Australia regarding the locations in which they source their milk.

The government notes this recommendation

The *Primary Industries Levies and Charges Collection Act 1991* includes provisions that enable industries to request the Secretary of the Department of Agriculture, Water and the Environment to approve the inclusion of additional information in a levy return. Such information could include, for example, the location of properties from which milk is sourced.

Considerations in requesting or agreeing to additional information to be incorporated in a levy return may include the additional regulatory burden imposed on the collection agent, whether regulatory burden is proportionate to the value of the data, and the level of support from the relevant industry for the provision of this information.

Recommendation 13:

The committee recommends that the ACCC be tasked with investigating a mandatory minimum farm gate price for milk in each dairy region.

The government does not support this recommendation.

The government does not support the establishment of a minimum farmgate price for milk. As mentioned in the response to recommendation 7, it is the government's policy not to regulate or directly intervene in the setting of prices in the market to avoid unintended consequences and inefficiencies that would not benefit Australian consumers or farmers.

Attempting to establish a minimum price for milk may lead to retailers shifting from domestic dairy products to cheaper imported products, or to milk production from lower cost dairy regions being supplied into higher cost regions, pushing farmers out of the industry.

Recommendation 14:

The committee recommends that the government consult with industry stakeholders to investigate a retail sales levy that would increase returns to farmers.

The government notes this recommendation.

The government supports retailers establishing voluntary dairy levies to increase returns to dairy farmers. In May 2020, the Minister for Agriculture, Drought and Emergency Management, the Hon. David Littleproud MP, called on supermarkets to implement a voluntary levy across the full dairy cabinet and branded fresh milk. However, the establishment and administration of a voluntary levy is a matter for individual retailers to consider.

The government does not support a mandatory levy. Such a levy would disadvantage the dairy industry overall. It would:

- slow investment in innovation and the gains made in productivity by industry since deregulation
- distort input costs and disadvantage other agricultural commodities
- risk sales to international markets as exporters would not be able to pass on the additional costs and maintain competitiveness
- encourage increased milk production in lower cost dairy regions to be supplied into higher cost regions, such as Queensland, pushing farmers from these regions out of the industry.

Any direct intervention by the government that has the effect of setting or enforcing a levy on dairy products would also trigger Australia's international trade obligations.