

UDV Wannon Branch submission to the ACCC interim report of the inquiry into the Australian dairy industry



24 January 2018

UDV Wannon Branch response

UDV Wannon Branch agree, in general, with many of the assessments made by ACCC in their interim report for their inquiry into the Australian dairy industry. Chiefly, the series of concerns outlined by ACCC regarding contracting practices between farmers and processors aligns closely with those identified by UDV Wannon Branch, the UDV, many Victorian farmers, and ADF. However, UDV Wannon Branch will present in its submission some key concerns regarding the interim report.

UDV Wannon Branch agree with the ACCC assessment that dairy farmers lack bargaining power when dealing with processors and agree that pricing information is complex to the point of impacting on transparency.

UDV Wannon Branch Key areas of concern

Mandatory Code

- Whilst UDV Wannon Branch accept that the adoption of a mandatory code for contract terms between suppliers and processors has always been a possible outcome, UDV Wannon Branch have agreed that a “Prescribed Voluntary Code” (Registered) is now the right code for the industry at this juncture.

The “Prescribed Voluntary Code” is preferred over the “Voluntary Code” because it is enforceable. The “Prescribed Voluntary Code” is preferred over “Mandatory Code” as due to the changeable nature of our industry there may be times when certain aspects of the selected code may need to be amended within short time frames, which will not be possible under a “Mandatory Code”.

UDV Wannon Branch believe that due to the practices of some processors within the time period of the “Voluntary Code” that we cannot continue with the “Voluntary Code” in its current guise.

With this in mind it is imperative that the UDV, ADF and other relevant state dairy advocacy bodies are involved in the development of the “Prescribed Voluntary Code”.

Upon review, UDV Wannon Branch demand stronger repercussions for processors in breach of the code.

Retail Sector Behaviour

- UDV Wannon Branch applaud the ACCC in identifying the imbalance of power in relation to interaction between the processor and retail sector, and the impact of this on the dairy farmers. We are disappointed that none of the recommendations presented deal with imbalance of bargaining power in the retail sector on the whole supply chain.
- The concept that the major supermarkets are using their bargaining power to force their suppliers to report their input costs, thus allowing any efficiency savings made by those processors to be usurped by the supermarkets during contract negotiations, is unreasonable abuse of their market power and must be addressed.
- The facts remain that the supermarkets are using their power in their promotional cost reduction exercises which reduce farmers' profitability and ultimately the viability of the Australian dairy industry. This must not be confused with loss leading exercises which involve the supermarkets bearing the cost of the discount. This involves the supermarket pushing the cost of the discount onto the producer. Examples of this are \$1 per litre milk and \$6 per kilo cheese.

ACCC Interim Recommendations

1. Processors and farmers should enter into written contracts for milk supply that are signed by the farmer.

UDV Wannon Branch agree that farmers should be presented with, and must sign, the terms and conditions of their agreement in a timely manner prior to entering into that agreement in any formal sense. Any alteration to these terms and conditions must be provided to the farmer, again in a timely manner, and the farmer must sign these alterations.

We note that there will be contractual differences depending on whether it is a cooperative or a proprietary limited company as the other party to the contract.

2. All 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.

UDV Wannon Branch believe that there should be industry led agreement on the standard terms and conditions in all contracts, leaving companies the ability to differentiate themselves with regard to incentives and special conditions where appropriate.

3. Milk supply contracts should not include terms which unreasonably restrict farmers from switching between processors.

UDV Wannon Branch agree that loyalty payments and exclusivity clauses represent barriers to change of supply for farmers. We support the minimisation of these clauses and look forward to these issues being reviewed in the voluntary code.

As a safe guard to farmers an appropriate cooling off period should be applied to all contracts.

4. The industry should establish a process whereby an independent body can administer mediation and act as a binding arbitrator or expert in relation to contractual disputes between farmers and processors.

UDV Wannon Branch agree and require that any consultation in the development of this process within the dairy industry be widely inclusive to reflect a variety of farmer perspectives.

5. Farmers should ensure they have properly considered the legal and financial implications of contracts with processors.

UDV Wannon Branch agree in principle. It is UDV Wannon Branch's belief that each farmer should be aware of the content of their contract and be able to negotiate where necessary. However, UDV Wannon Branch does recognise that to do so would impose a tangible cost to the farmer in terms of time and finances.

- The ability to provide legal counsel is not within the operational scope or funding of farmer representative bodies at this time.
- Additionally, due to the voluntary nature of state or national dairy farmer representative membership, any service providing tailored legal advice would be unavailable to a proportion of Australian farmers, resulting in an unfair balance.
- We acknowledge the ability to refer farmers to experienced independent legal counsel.

We stress however the need for standard terms and conditions whilst noting the responsibility of farmers to understand them and any variations.

6. Processors should publish information identifying how their pricing offers apply to individual farm production characteristics to enable better farm income forecasts.

UDV Wannon Branch want to see an industry led process to increase transparency by standardising the criteria for calculating the reported milk price; this should then allow a fair comparison of milk price offers.

7. The Voluntary Dairy Code should be strengthened

UDV Wannon Branch require a Prescribed Voluntary Code (Registered).

8. A mandatory code of conduct within the Competition and Consumer Act 2010 should be considered for the dairy industry.

UDV Wannon Branch disagree, we require a Prescribed Voluntary Code (Registered) for the reasons already detailed above.

Conclusion

UDV Wannon Branch recognise that whilst we cannot change the devastating impact of what has gone on in the past we can ensure that we never have repeat of such actions and fallout. A Prescribed Voluntary Code (Registered) provides an ability to bring stability and apply accountability when needed.

Applying other measures such as a contract cooling off period, industry standard terms and conditions, as well as simpler and, more timely information will also assist.

Key to all of this is the need for industry led development of standard criteria for calculating the reported milk price. Without this, the confusion around what milk prices mean for each farmer will continue. Processors can then build on this milk price in their individual offers of incentives to farmers.

Finally, it is crucial that the imbalance of power between supermarkets and the entire dairy supply chain be addressed, specifically the way in which this power is used to impose unreasonable conditions on processors, ultimately leading to farmers bearing the costs of supermarket promotional discounting.