



Commissioner Mick Keogh  
ACCC  
GPO Box 3131  
Canberra ACT 2601

February 7th, 2018

**Re: Dairy Inquiry Interim Report, November 2017**

Dear Mr Keogh

The Australian Dairy Products Federation (ADPF) is the dairy industry's peak policy body representing Australian registered processors, manufacturers and traders of milk and milk products. Members of the ADPF account for some 96% of the raw milk produced in Australia and includes small, medium and large companies in all dairy states.

As a Group B Member of Dairy Australia, the ADPF shares responsibility with Australian Dairy Farmers (ADF) in directing industry strategy and planning, and advocating on behalf of the industry domestically and internationally. This activity is delivered under the auspices of the Australian Dairy Industry Council (ADIC).

The ADPF values this opportunity to provide ACCC with feedback on the Dairy Inquiry Interim Report released in November 2017, particularly with reference to the recommendation around establishing a mandatory code of practice (Interim recommendation 8)

**Background to the dairy industry voluntary code of practice**

In response to well-publicised industry difficulties centred on milk pricing issues in 2016, the then Minister for Agriculture and Water Resources, Hon Barnaby Joyce MP, called for a consultative meeting of industry representatives to discuss opportunities to help resolve tensions between dairy farmers and the processing companies. The Minister made a very clear recommendation to the industry, and the industry made undertakings to work collaboratively. The Minister indicated this was the best way to avoid the "fat fingers of Government".

In response processor representatives and farmers, under the auspices of the ADIC, worked together to develop a Voluntary Code of Practice. Immediately, a planning workshop was convened and held on the 27<sup>th</sup> September 2016. This was attended by yourself (as Agriculture Commissioner at the ACCC), processors, farmers, and representatives of the Small Business and Family Enterprise Ombudsman.

What ensued was extensive consultation and dialogue that culminated in the launch, on 30<sup>th</sup> June 2017, of the first Dairy Industry Code of Practice (the Code) for standard form contractual arrangements. The voluntary Code, developed and owned by the industry, was painstakingly crafted to accommodate the broad and varied requirements of both farmers and processors. The original signatories to that code included all of the State Dairy Farmer Organisations and nine dairy processors. The nine dairy processors that are signatories to the voluntary code include the major

processors summarised on pages 44 and 45 of the interim report (namely Fonterra, Murray Goulburn, Lion, Parmalat, Warrnambool Cheese and Butter, and Bega), plus Burra Foods, Australian Consolidated Milk, and Freedom Foods<sup>1</sup>.

By consensus, the Code was prescriptive only to the point of enumerating the issues that a good supply contract would address. It was designed to facilitate the preparation of mutually beneficial commercial contracts between suppliers and processing companies. At its launch, the ADIC undertook to monitor the performance of the Code from the perspective of all stakeholders, with a view to review and improve the Code after 12 months of operation. It was agreed that the ADIC would collate details of problems of which it was informed, provide advice only where appropriate, and improve the Code as indicated.

The fact that the dairy industry has been able to come together and develop a voluntary Code in a short period of time needs to be acknowledged. We note in the interim report the comments attributed to the Small Business Ombudsman which state that overall they believe industry is best placed to address industry issues, which is something the ACCC in general also supports<sup>2</sup>.

### **The ACCC interim report.**

In light of the industry's demonstrable commitment to improve processor/farmer relations, it is ADPF's position that the arguments by the ACCC to support a mandatory code for the dairy industry are too hastily made. Notwithstanding support for a Mandatory Code by some farmer groups and individual farmers, the ADPF is especially concerned by this recommendation to so quickly dismiss the evolution of the voluntary Code, support for which is current ADIC policy.

At this juncture, promotion of a Mandatory Code has undone much of the goodwill generated around the soul-searching, debate and collaboration that were integral to the preparation of the voluntary Code. It is regrettable that due recognition has not been given to the symbolism of the Code and the considerable and sincere effort put in, from both sides of the farm fence, to develop a mutually acceptable and beneficial agreement.

The Code as it stands, is owned by the whole of our industry. It was always ADIC's intention to exercise the Code for a 12-month period to allow short-comings on both sides of the farm fence to come to light and be resolved. This commitment from industry is genuine and designed to address any areas of concern in a spirit of goodwill and mutual concern.

The consequences of implementing a mandatory code are likely to be as divisive as the circumstances that precipitated the need for the Code in the first place.

### **Specific Concerns**

The ADPF identifies the following specific concerns in relation to the interim report:

1. The report has not acknowledged, or accommodated the Minister's advice to industry to resolve its own problems. Nor has it appropriately acknowledged the support from signatories to the Code to ensure it delivers an appropriate level of self-regulation within the industry
2. The recommendation for a mandatory code has been made before the industry has had a chance to fully test the effectiveness of the newly implemented voluntary Code and

---

<sup>1</sup> ACCC (2017). *Dairy Inquiry interim report*. Pages 44-45.

<sup>2</sup> ACCC (2017). *Dairy inquiry interim report*. Page 190.

improve it. A mandatory code would effectively impose a return to a regulatory regime that was extinguished on the 1<sup>st</sup> of July, 2000.

3. The findings of the report undermine the implied authority of the industry's representative bodies, particularly those of the farmers, and especially ADF, and gives greater credence to regional groups. This poses a risk to the further fragmentation in relationships within the industry.
4. The report findings have fomented friction within the industry that has successfully worked together through various economic cycles and crises in a deregulated environment these past 18 years.
5. If the ACCC were to commit to a mandatory Code, it would cast the industry into a period of extended uncertainty (compounding the impact associated with market volatility) as the ACCC works to develop and implement the new code.
6. According to the interim report, "the compliance costs of a mandatory code can be significant"<sup>3</sup>. The setup and ongoing compliance costs incurred by processors will only erode our international competitiveness. The impact of this will not only be felt by dairy processors, but the supply chain as a whole.
7. To compound this further, we also note the ACCC suggests that to minimise the impact of the mandatory code, exemptions could be provided to smaller processors. This will only create further divisions within the industry. Not only would there be an expectation that larger processors compete internationally with this additional regulatory cost, but domestically it impacts the competitiveness to secure milk supply.
8. Applying an exemption also erodes the argument made by the ACCC against a prescribed voluntary code of practice. If the rationale put forward to support a mandatory code is to bind all processors to the code, then applying such an exemption will not achieve the objective behind the ACCC's recommendation.
9. A mandatory Code is a retrograde step for the industry creating a dependency on Government and denies processors and farmers the opportunity to stand on their own feet, building a strong and robust industry. It would also put the Australian industry in the unique position of being the only exporter of significance (>10% market share of global dairy trade) that operated under a mandatory code that many would see as a barrier to entry.

The ADPF would welcome the opportunity to discuss this issue more fully, and would strongly advocate that no further commitment be made to support a mandatory Code without first engaging formally with the ADIC and providing support to the industry to deliver its Voluntary Code. For further information, in the first instance, please communicate with the ADPF Executive Director, Dr Peter Stahle on [p.stahle@adpf.org.au](mailto:p.stahle@adpf.org.au), or 0419 356 404.

Yours Sincerely



Mr Grant  
President  
Australian Dairy Products Federation

Crothers

---

<sup>3</sup> ACCC (2017). *Dairy industry interim report*. Page 192.