

The Senate

Economics Legislation Committee

Saving Australian Dairy Bill 2019

March 2020

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Chapter 1

Introduction

Referral of the inquiry

- 11 On 5 December 2019, the Senate referred the Saving Australian Dairy Bill 2019 (the bill) to the Senate Economics Legislation Committee (the committee) for inquiry and report by 20 March 2020.¹
- 12 The bill was introduced in the Senate as a private senator's bill by Senator Hanson on 2 December 2019.²

Purpose of the bill

- 13 The bill seeks to promote the long-term sustainability of the dairy industry by amending the *Competition and Consumer Act 2010* (Competition Act) to empower the Australian Competition and Consumer Commission (the ACCC) to determine a base price for milk. The bill requires the relevant Minister (the minister) to:
 - refer to the Productivity Commission for inquiry the effectiveness of determining a base price for milk and of a divestiture regime for the dairy industry; and
 - to make regulations to prescribe a mandatory industry code for the food and grocery industry.

Background

- 14 The structure of the Australian dairy industry since its deregulation in 1999–2000 has given rise to circumstances that have affected the viability of dairy farms. In 2018–19 milk production dropped to less than 9 billion litres—the smallest volume since 1996—while the number of dairy farms dropped by nine per cent to 5213, forty per cent of the number operating in 2000.³
- 15 A significant factor in the profitability of dairy farms is the price of raw milk that farmers can obtain from processors. According to Dairy Australia, 'volatility in farmgate milk prices and farm incomes have impacted farmer confidence and the industry's ability to grow' and at 'times of low farmgate milk prices, farmers choose to leave the industry'.⁴

¹ *Journals of the Senate*, No. 35, 5 December 2019, p. 1122.

² *Journals of the Senate*, No. 32, 2 December 2019, p. 999.

³ Dairy Australia, *Situation and Outlook December 2019*, pp. 3, 7; Dairy Australia, *In Focus 2019: The Australian Dairy Industry*, p. 6; Dairy Australia, *In Focus 2014: The Australian Dairy Industry*, p. 3.

⁴ Dairy Australia, *In Focus 2019: The Australian Dairy Industry*, pp. 6, 14.

- 16 Farmgate milk prices are based on the milkfat and protein content of milk. Prices are determined by processors and incorporated into contracts entered into with farmers and can vary significantly around Australia.
- 17 Inquiries into the dairy industry have pointed to an imbalance in bargaining power between farmers and processors negotiating milk supply contracts. This power imbalance has allowed processors to use their market power to control the supply chain by transferring commercial risks onto farmers.⁵
- 18 Features of the industry contributing to these circumstances include:
- market dominance by a small number of large milk processors and supermarkets;
 - the perishability of milk which restricts the ability of farmers to hold stock or supply to more distant processors offering higher prices;
 - the lack of access by farmers to pricing, market and product information;⁶ and
 - contract terms that constrain the ability of farmers to switch processors.⁷
- 19 Several crises have highlighted market pressures within the dairy industry. In early 2011, Coles and its competitors commenced heavy discounting of milk and dairy products, including retailing one dollar per litre milk, reducing the profit margins of processors.⁸ In April 2016, two major processors, Murray Goulburn Cooperative and Fonterra Australia, cut farmgate milk prices in southern regions by 10 per cent, backdated to July 2015. This adversely affected farmers who had expected 2015–16 prices to be similar to the higher milk prices of previous years.⁹
- 110 The Economics References Committee inquiry *Australia's dairy industry: rebuilding trust and a fair market for farmers* (market fairness inquiry) in August 2017 noted that to many stakeholders in the industry, 'addressing the imbalance of power between retailers, processors and farms is of central importance to ensuring the sustainability and viability of the dairy industry in Australia'.¹⁰

⁵ Australian Competition and Consumer Commission, *Dairy Inquiry*, April 2018, p. xii.

⁶ Australian Competition and Consumer Commission, *Dairy Inquiry*, April 2018, p. xiii.

⁷ Australian Competition and Consumer Commission, *Dairy Inquiry*, April 2018, p. xiii.

⁸ Australian Competition and Consumer Commission, *Dairy Inquiry*, April 2018, p. xii.

⁹ Australian Competition and Consumer Commission, *Dairy Inquiry*, April 2018, p. xii; Economics References Committee, *Australia's Dairy Industry: Rebuilding Trust and a Fair Market for Farmers*, August 2017, para 1.13, p. 3.

¹⁰ Economics References Committee, *Australia's Dairy Industry: Rebuilding Trust and a Fair Market for Farmers*, August 2017, para 2.34, page 14.

- 111 In a concurrent inquiry, the ACCC observed that information and bargaining power asymmetry promote market failure and inefficiency in the dairy farming sector:

These features result in contracting and industry practices that are weighted in favour of processors and which make it difficult for farmers to make efficient investment decisions. Efficient investments are likely to be deterred if farmers do not have the certainty that they will be able to capture a sufficient share of the returns to make their investment profitable.¹¹

ACCC inquiry scope and findings

- 112 In August 2016, the government announced it would direct an inquiry into the national dairy industry by the ACCC (the ACCC inquiry).¹²

- 113 In April 2018, the ACCC published its final report, *Dairy inquiry*, into the competitiveness of prices, trading practices, supply chain, bargaining power and proposals for a mandatory code of conduct for the dairy industry.¹³

- 114 The majority of the recommendations of the ACCC inquiry related to improvements to contracting practices and access by farmers to legal and financial advice.¹⁴

- 115 The ACCC inquiry recommended that processors be required to publish information on contract pricing terms, allowing farmers to compare estimated milk prices that would broadly apply to the circumstances of their farm in given market conditions.¹⁵

- 116 The ACCC inquiry also recommended that a mandatory code of conduct within the Competition Act be established for the dairy industry. Such a code:

... should therefore be designed to improve transparency and certainty in contracts, set minimum standards of conduct and provide for dispute resolution processes. In particular, a mandatory code should contain obligations on processors to improve the timing and manner of processors' communication of price and other key information, and increase farmers' ability to switch in response to significant changes to their trading terms.¹⁶

¹¹ Australian Competition and Consumer Commission, *Dairy Inquiry*, April 2018, p. xxiii.

¹² The Hon. Barnaby Joyce MP, Minister for Agriculture and Water Resources, 'ACCC to undertake full examination of the dairy industry', *Media release*, 25 August 2016.

¹³ Australian Competition and Consumer Commission, *Dairy Inquiry*, April 2018, www.accc.gov.au/publications/dairy-inquiry-final-report.

¹⁴ Australian Competition and Consumer Commission, *Dairy Inquiry*, April 2018, recommendations 1–6, pp. xxv–xxvi.

¹⁵ Australian Competition and Consumer Commission, *Dairy Inquiry*, April 2018, recommendation 7, p. xxvi.

¹⁶ Australian Competition and Consumer Commission, *Dairy Inquiry*, April 2018, p. xxvii.

- 117 The ACCC also considered that ‘a mandatory code of conduct can be designed in a manner that improves the efficiency of the industry without substantial regulatory burden on processors’.¹⁷

Dairy industry codes of conduct

- 118 There are two regulatory codes of conduct prescribed under the Competition Act that govern dairy industry participants. These are the Competition and Consumer (Industry Codes—Food and Grocery) Regulation 2015 (Grocery Code) and the Competition and Consumer (Industry Codes—Dairy) Regulations 2019 (Dairy Code).

- 119 The relationship between supermarkets and processors is governed by the Grocery Code:¹⁸

The Food and Grocery Code of Conduct is a prescribed voluntary code regulated by the ACCC under the act, meaning that it is binding on, and enforceable against, industry participants who become (and remain) signatories ... Conduct governed by the code includes grocery supply agreements, payments, termination, dispute resolution and a range of other matters.¹⁹

- 120 The Grocery Code was created in ‘recognition of the significant imbalance in bargaining power between supermarkets and their suppliers, including processors’.²⁰ It applies to a wide range of defined products in the grocery supply chain, of which dairy products form a part.

- 121 The Grocery Code was independently reviewed in 2018.²¹

- 122 The Dairy Code is a prescribed mandatory code of conduct which sets out the minimum standards of conduct for the supply of milk by farmers to processors. The Dairy Code is intended:

... to help protect farmers against egregious conduct from processors, to improve transparency in the industry and to set enforceable minimum standards of conduct for business practices between farmers and processors.²²

- 123 The Dairy Code has its origins in the milk price reductions by Murray Goulburn and Fonterra Australia in 2016. In response, the peak national representative body of the Australian dairy industry, the Australian Dairy

¹⁷ Australian Competition and Consumer Commission, *Dairy Inquiry*, April 2018, p. xiv.

¹⁸ Australian Competition and Consumer Commission, Food and Grocery Code of Conduct, www.accc.gov.au/business/industry-codes/food-and-grocery-code-of-conduct.

¹⁹ Australian Competition and Consumer Commission, *Dairy Inquiry*, April 2018, p. 32.

²⁰ Australian Competition and Consumer Commission, *Dairy Inquiry*, April 2018, p. xv.

²¹ Treasury, *Independent Review of the Food and Grocery Code of Conduct: Final Report*, September 2018.

²² Senator the Hon. Bridget McKenzie, Minister for Agriculture, *Senate Hansard*, 5 December 2019, p. 5312.

Industry Council, drafted a voluntary code of practice (the voluntary code) for contractual arrangements between dairy farmers and processors.²³ The voluntary code was endorsed from 1 July 2017 by many, but not all, industry participants including processors and state-based dairy farmer organisations.²⁴

124 The April 2018, the ACCC inquiry recommended that a mandatory code of conduct be prescribed for the dairy industry within the *Competition and Consumer Act 2010* and administered and enforced by the ACCC.

125 In September 2018, the then Minister for Agriculture and Water Resources, the Hon. David Littleproud MP, announced his intention to work with dairy farmers industry body Australian Dairy Farmers on a mandatory code of conduct.²⁵ After public consultations in late 2018 and early 2019, an exposure draft was released on 28 October 2019.²⁶

126 The then Minister for Agriculture, Senator the Hon. Bridget McKenzie, in a statement to the Senate in December 2019 explained:

The code will cover seven of the eight recommendations made by the ACCC in its 2018 dairy inquiry. Recommendation 6 is covered by our election commitment of half a million dollars to Dairy Australia to provide financial and legal advice to farmers so that they can properly consider the implications of their contracts with processors. This means that by 1 January 2020 all of the ACCC recommendations will have been delivered ...²⁷

127 After further consultation, the mandatory code came into effect on 1 January 2020.

Previous Senate inquiries into the Australian dairy industry

128 In the last decade, three Economics References Committee inquiries have reported on competition and pricing in the dairy industry:

- *Milking it for all it's worth—competition and pricing in the Australian dairy industry*, reported May 2010;

²³ Economics References Committee, *Australia's Dairy Industry: Rebuilding Trust and a Fair Market for Farmers*, August 2017, appendix 3, pp. 115–216.

²⁴ Australian Competition and Consumer Commission, *Dairy Inquiry*, April 2018, p. 166.

²⁵ The Hon. David Littleproud MP, Minister for Agriculture and Water Resources, 'Agriculture Minister welcomes dairy's call for mandatory code of conduct', *Media release*, 10 September 2018.

²⁶ The Hon. David Littleproud MP, Minister for Agriculture and Water Resources, 'Mandatory code consultation begins', *Media release*, 31 October 2018; The Hon. David Littleproud MP, Minister for Agriculture and Water Resources, 'Dairy code out for comment', *Media release*, 15 January 2019; Senator the Hon. Bridget McKenzie, Minister for Agriculture, 'Dairy code of conduct exposure draft released', *Media release*, 28 October 2019.

²⁷ Senator the Hon. Bridget McKenzie, Minister for Agriculture, *Senate Hansard*, 5 December 2019, p. 5312.

- *The impacts of supermarket price decisions on the dairy industry*, reported November 2011; and
- *Australia's dairy industry: rebuilding trust and a fair market for farmers*, reported August 2017.

129 On 17 October 2019, the Senate referred an inquiry into the performance of Australia's dairy industry and the profitability of Australian dairy farmers since deregulation to the Rural and Regional Affairs and Transport References Committee. The terms of reference of the inquiry included 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 industry, the introduction of a mandatory industry code of practice and alternative approaches to supporting a viable dairy industry. The Rural and Regional Affairs and Transport References Committee had not reported prior to this report's finalisation.

Divestiture orders in the Competition Act (Part XICA)

130 The *Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Act 2019* (Market Misconduct Act) inserts new Part XICA into the Competition Act to provide processes and remedies to deal with energy companies engaged in certain conduct detrimental to competition or consumers.

131 Among other remedies for lesser prohibited conduct, Part XICA sets out procedures by which the Treasurer can apply to the Federal Court for a divestiture order requiring an energy company to dispose of interests in securities or assets that are part of its electricity business. The divestment provisions will commence on 10 June 2020.

132 The application of divestiture as a remedy for anti-competitive conduct for the food and grocery industries was considered in the Economics References Committee inquiry into supermarket price decisions and the dairy industry in 2011 and was the subject of a minority report recommendation.²⁸

Protecting Australian Dairy Bill 2019

133 This current bill is an amended form of the Protecting Australian Dairy Bill 2019, which was introduced into the Senate by Senator Hanson on 16 October 2019 and negatived at the second reading on 11 November 2019.²⁹

134 Differences in the bill compared to the Protecting Australian Dairy Bill are outlined below.

²⁸ Economics References Committee, *The impacts of supermarket price decisions on the dairy industry*, November 2011, pp. 107–10, 140.

²⁹ *Journals of the Senate*, No. 24, 11 November 2019, pp. 739–740.

Milk prices

- 135 Schedule 1 defines the base milk price as a price determined for a specified area.
- 136 Subsection 95ZRB clarifies that in determining a price per kilogram of raw milk solids, the Commission must not give preference to any State or part of a State.
- 137 Subsection 95ZRD clarifies that the offence committed by a processor who acquires milk for less than base price applies to a price per kilogram of raw milk solids produced in a specified area.

Regulations relating to industry codes

- 138 Subsection 51AE(4) clarifies that regulations made by the minister relating to mandatory industry codes must be made within six months of the commencement of the subsection.

Provisions of the Saving Australian Dairy Bill 2020

- 139 The bill contains two schedules:
- Schedule 1—Milk prices; and
 - Schedule 2—Encouraging competition in the food and grocery industries.

Schedule 1

Part VIIB: Milk prices

- 140 Schedule 1 inserts a new part into the Competition Act, Part VIIB—Milk prices. Part VIIB seeks to empower the ACCC to determine a base price per kilogram of raw milk solids for a specified area for a 12-month dairy season. The objective of the schedule is to ‘increase prices paid to farmers, which will be paid to consumers’, rather than to ‘involve a subsidy by the government paid by the taxpayer’.³⁰
- 141 Matters for the ACCC to consider in determining the base milk price are specified in section 95ZRC and include the costs of collecting and processing milk and selling dairy products, the long-term food security of Australia and the commercial viability of dairy farms and milk processors in all states and territories.
- 142 Section 95ZRB further provides that, in accordance with section 99 of the Constitution, while determining the base milk price, the ACCC must not ‘give a preference to one State or any part thereof’.
- 143 Processors who enter into an agreement to purchase milk for less than the base price for the dairy season for a specified area commit an offence under section 95ZRD, punishable by 2000 penalty units.

³⁰ Senator Pauline Hanson, *Senate Hansard*, 2 December 2019, p. 4635.

- 144 Schedule 1 also specifies definitions for interpretation and, under section 95ZRE, the constitutional basis for the bill under the trade and commerce and corporations powers of the Constitution.³¹

Schedule 2

Item 1: Productivity Commission inquiry

- 145 Schedule 2 seeks to encourage competition in the food and grocery industries.
- 146 Item 1 inserts a new section 46AA into the Competition Act requiring the minister to refer to the Productivity Commission an inquiry into the effectiveness of the amendments relating to milk prices made under Schedule 1.
- 147 Paragraphs 46AA(1)(b) and 46AA(1)(c) provide that the Productivity Commission inquiry consider whether legislation requiring divestiture by corporations who misuse market power, as enacted in Part XICA of the Competition Act applying to the electricity industry, would encourage greater competition in the food and grocery industries.
- 148 Further subsections in section 46AA specify details of the conduct of the inquiry and a clarification that the minister with responsibilities under item 1 is the minister responsible for administering the *Productivity Commission Act 1998*.

Item 2: Regulations relating to industry codes

- 149 Item 2 adds new subsections 51AE(3) and 51AE(4) to the Competition Act requiring regulations to prescribe a mandatory industry code for the food and grocery industry be made within six months of the commencement of the Saving Australian Dairy Act.
- 150 The existing Grocery Code³² is a voluntary code prescribed under the Competition Act to govern conduct by grocery retailers in their dealings with suppliers, including dairy processors.
- 151 A mandatory Grocery Code—when combined with the mandatory Dairy Code governing the supply of milk by farmers to processors introduced on 1 January 2020—is intended to complete ‘the supply chain from the farm-gate to the supermarket shelf in respect of the dairy industry’.³³

³¹ Sections 51(i) and 51(xx) of the *Commonwealth of Australia Constitution Act 1900* (UK).

³² Competition and Consumer (Industry Codes—Food and Grocery) Regulation 2015 (Food and Grocery Code of Conduct), <https://www.legislation.gov.au/Details/F2015L00242>.

³³ Explanatory Memorandum, Saving Australian Dairy Bill 2019, p. 2.

Legislative scrutiny

- 152 Neither the Senate Standing Committee on the Scrutiny of Bills nor the Parliamentary Joint Committee on Human Rights commented on the bill prior to this report's finalisation.
- 153 According to the Explanatory Memorandum (EM), the bill is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Conduct of the inquiry

- 154 The committee advertised the inquiry on its website and wrote to relevant stakeholders and interested parties inviting written submissions by 14 February 2020.
- 155 The committee received three submissions, which are listed at Appendix 1.

Acknowledgements

- 156 The committee thanks all individuals and organisations who assisted with the inquiry, especially those who made written submissions.

Chapter 2

Key Issues

Overview

- 21 The committee received three submissions to the inquiry, two confined comments to schedule 1 of the bill (milk prices). Both of these submitters broadly supported government intervention to support the viability of the dairy industry, but expressed concerns that the bill would not achieve this aim.
- 22 A late submission was also received from the Australian Dairy Farmers which addressed both schedules of the bill supporting neither proposal.

Submitter comments

Base price for milk

- 23 The bill seeks to empower the ACCC to determine a base price for milk for a specified area, having regard to the costs and commercial viability of farmers and processors.
- 24 As further explanation of the proposed regional variations in milk prices, the Explanatory Memorandum (EM) notes:

Dairy production systems vary between milk-producing regions with seasonal milk production systems common in South Australia, Tasmania and Victoria while in Queensland, northern NSW and WA farmers tend to use year-round milk production systems. These variations reflect different levels of rainfall, types of pasture and geographical influence and all these factors and others will be considered in determining a minimum or base farm-gate price for milk.¹
- 25 Mr Kevin Ashworth argued that there were potential difficulties for the ACCC in determining a base milk price ‘given the different business structures of Australian processors’ and queried how the price would be determined ‘if one specified area is serviced by two processors that market different products’.²
- 26 Mr Ashworth raised further issues with the veracity of the data available to the ACCC in determining base milk prices, suggesting instead the use of accountancy data from tax returns to establish the cost per unit to produce kilograms of solids, fat and protein and the profit margin required to ensure the survival of the industry.³

¹ Saving Australian Dairy Bill 2019, *Explanatory Memorandum*, p. 1.

² Mr Kevin Ashworth, *Submission 1*, pp. 1–2.

³ Mr Kevin Ashworth, *Submission 1*, p. 4.

- 27 According to Mr Ashworth, the requirement under the bill that processors only purchase milk for more than the base price 'is detrimental to the very concept of free market supply and demand'. Unintended consequences could include customers favouring cheaper imported dairy products or milk substitutes such as soy and almond as well as the over-production of milk by farmers seeking to take advantage of increased milk prices.⁴
- 28 Mr Ashworth also drew attention to the lack of support for minimum milk pricing among peak industry bodies, expressed particularly in the recommendation of the Joint Transition Team (JTT) established by the Australian Dairy Plan (ADP) Committee to examine reforms of dairy industry structure:
- Some ADP consultations and submissions received by the JTT raised the question as to where milk pricing would fit into the new model.
- The JTT considered this question carefully and believes that decisions about milk price are fundamentally a commercial matter between buyer and seller. Therefore, milk pricing issues are best resolved through negotiations between the businesses concerned.⁵
- 29 Consumer perspectives were raised in the submission by Mr Benjamin Cronshaw. Mr Cronshaw outlined his concerns about price cutting by supermarkets and the limited ability of farmers to secure better deals from processors, but concluded that setting a floor price 'may not necessarily be the answer'.⁶
- 210 Mr Cronshaw further submitted that while low priced milk is 'good for consumers', it 'creates misperception about the real value of milk' and 'indicates to some farmers that their work is not valued by the community'. To this end, Mr Cronshaw proposed that there be more information available to consumers on 'which milk brands support farmers'.⁷
- 211 Mr Cronshaw identified other issues that exacerbate the structural problems in the dairy industry and that are not addressed in the bill including 'extreme weather conditions causing property damage and raising costs of production' and the need for investment in new technology including water infrastructure.⁸
- 212 Australian Dairy Farmers (ADF) did not support the proposal to set a minimum [base milk] price above the market clearing rate, stating it would

⁴ Mr Kevin Ashworth, *Submission 1*, pp. 1–2.

⁵ Joint Transition Team, *A new national organisation for the Australian dairy industry*, January 2020, p. 12.

⁶ Mr Benjamin Cronshaw, *Submission 2*, p. 4.

⁷ Mr Benjamin Cronshaw, *Submission 2*, pp. 1–2.

⁸ Mr Benjamin Cronshaw, *Submission 2*, pp. 2–3.

diminish incentive to innovate and improve productivity across the supply chain. Specifically, ADF contend that if a minimum price was set:

1. it would incentivise producers to increase production to obtain more revenue
2. customers would lose by paying a higher price or dropping out of the market
3. producers would also lose because gains obtained from customers paying a higher price are offset by loss of sales (customers who dropped out will now be purchasing alternatives like cheaper imports) and increased capital costs (debt incurred from production expansion which can no longer be serviced from the loss of customers).⁹

213 ADF stated that 'more importantly' such a move 'would undermine profitability and international competitiveness as consumers and processors source alternate suppliers e.g. NZ dairy and substitute products e.g. plant-based alternatives.'¹⁰

214 ADF highlighted a number of what it characterised as 'market failures' that continue to exist in the dairy industry today:

1. The ACCC found farmers have a lack of information with regard to contracts and pricing. To address this deficit, it made eight recommendations to improve contract management behaviour and price transparency. The ADF has not only supported all of ACCC's recommendations it has been leading their implementation. This has been demonstrated in the development of an industry led ACCC Dairy Inquiry implementation plan, mandatory code of practice and other initiatives, in particular the government's \$22m Dairy Support Package.
2. Domestic support and other trade barriers are a negative externality. Australian dairy farmers are losing markets due to unfair foreign policy and competition. ADF, through the Australian Dairy Industry Council, released a Federal Election Policy Statement placing a significant focus on resolving these inequitable distortions.
3. Inappropriate setting of prices by Australia's major supermarkets are also a negative externality. This has led to farmers supplying the domestic market all year round having their margins squeezed to the point they are forced out of the industry. The Food and Grocery Code provides an opportunity for government to reposition the retailers towards market led regional pricing and appropriate value distribution across the supply chain.

⁹ Australian Dairy Farmers, *Submission 3*, p. 1.

¹⁰ Australian Dairy Farmers, *Submission 3*, p. 1.

- 215 Schedule 2—Encouraging competition in the food and grocery industries
- 216 ADF was the only submission to comment on Schedule 2.
- 217 Schedule 2 inserts two new items into the *Competition and Consumer Act 2010* (ACCC Act).
- 218 Item 1 inserts new section 46AA into the ACCC Act which requires the relevant Minister to establish an inquiry by the Productivity Commission into the effectiveness of the amendments made by Schedule 1 of the Bill in relation to milk prices. The inquiry must also consider whether a divestiture regime should be introduced in legislation.
- 219 Item 2 adds a new subsection 51AE(3) into the ACCC Act which requires that a mandatory industry code be established for the food and grocery industry which will include the supply chain from the farm-gate to the supermarket shelf in respect of the dairy industry.
- 220 The ADF does not support the proposal as set out in Schedule 2. ADF notes that there have been a number of inquiries and recommendations that languish, awaiting implementation, that would in their opinion address the issues facing the Australian dairy industry.
- 221 Furthermore, the ADF does not support the idea of a Productivity Commission inquiry into a possible divestiture regime for the food and grocery sector. Rather it suggests that the 'wording' needs to:
- (1) Abolish fixed pricing of dairy products; replacing it with prices determined according to demand and supply fluctuations.
 - (2) Establish a universally agreed percentage pass through margin for farmers to remain viable and sustainable.
 - (3) Enshrine the ACCC's 'Dairy Specialist' role as a position of oversight and advocate on the dairy farmers behalf.¹¹

Committee comment

- 222 The committee recognises the challenges facing the dairy industry in Australia and the importance of ensuring the viability of the dairy industry.
- 223 The committee considers that setting a base farm gate milk price will not fix the power imbalance between dairy farmers and processors and will not reduce input costs such as fodder, water, labour and electricity.
- 224 Raising the price of milk paid to dairy farmers may suppress initiatives to improve productivity, reduce the competitiveness of our export market, make

¹¹ Australian Dairy Farmers, *Submission 3*, p. 2.

-
- imported dairy products cheaper in comparison to domestic products and place international trade agreements at risk.
- 225 The committee considers that an insufficient case has been made for prescribing that the Grocery Code be mandatory.
- 226 The committee notes the introduction on 1 January 2020 of a mandatory Dairy Code and the government's announced additional funding for Dairy Australia to provide financial and legal advice to farmers.
- 227 The committee is confident that these existing measures will support market conditions to bring about efficient production and supply of dairy products, as recommended by the ACCC inquiry.
- 228 By comparison, this bill has significant potential to damage dairy farmers, the supply chain, international export markets and the viability of the dairy sector overall.
- 229 This bill would create a significant deterrent for processors to buy local milk from farmers in regions that would have artificially high farm gate base prices as a result of this bill. These areas would likely be those with low rainfall levels, different types of pasture and geographical influence, such as Queensland, Northern New South Wales and Western Australia.
- 230 The bill would disincentivise and remove rewards for innovative farmers in regions with high farm gate prices set by the bill in competing for local processor supply.
- 231 Additionally, in contravention to the stated purpose of the bill, this would not be 'Saving Australian dairy' across Australia. It would incentivise processors to purchase and transport milk from milk markets with lower input costs, typically southern milk markets to supplement higher cost markets.
- 232 Further, if the price of milk was set above a competitive level with international milk supply, it may incentivise imports of fresh milk to supply the domestic market.
- 233 If introduced, this bill has the potential to weaken the domestic dairy industry – particularly the fresh milk markets in QLD, Northern NSW and WA.

Recommendation 1

- 234 The committee recommends that the Senate not pass the bill.**

Labor Dissenting Report: Saving Australian Dairy Bill 2019

1. Labor Senators support the passage of the Saving Australian Dairy Bill. Too many Australian dairy farmers have already left the land and those remaining face an existential threat.
2. Dairy farmers remain stuck in a cost-price squeeze which has recently been compounded by drought.
3. The Saving Australian Dairy Bill has resulted because Australian Dairy Farmers have been abandoned for too long by the Liberal/National Government.
4. The critical failure by the Coalition Liberal/National Government was when it that stood by and did nothing when Murray Goulburn - back in April 2016 - cut farmgate milk prices and backdated the clawback of the price to July 2015.
5. It was estimated that the 'clawbacks' created average debts of \$120,000 for each dairy farmer.
6. In May 2016 the Shadow Minister for Agriculture, the Member for Hunter wrote to the then Minister asking for him to join with him in a bipartisan manner to put pressure on Murray Goulburn to deviate from its Profit Sharing Mechanisms. The Member for New England ignored the request and essentially ignored the plight of our dairy farmers.
7. The reckless actions and failed capital raising structure by Murray Goulburn fell disproportionately upon dairy farming families and it was not fair.
8. Murray Goulburn could have suspended the direct link between milk prices and money it pays to investors. They could have directed funds back to higher milk prices for farmers to provide a significant cash flow boost to farmers.
9. But there was no pressure from the then Agriculture Minister for Murray Goulburn to do the right thing. The Saving Australian Dairy Bill will provide a mechanism for Australia's Dairy farmers to be paid a fair price for their milk.
10. The problems in the market are structural and will only be fully addressed with Government intervention. While Labor welcomes the Government's belated embrace of a mandatory Dairy Industry Code of Conduct, alone it will not fully address the power imbalance which exists between producers and processors.
11. The Saving Australian Dairy Bill provides the Government with the opportunity ensure Australian dairy farmers are paid a fair price for the production of their milk. Any amendments the Government may care to make will be welcomed and Labor will provide favourable consideration of them.

12. However, the rejection of this Bill is the equivalent of doing nothing. Doing nothing is not good enough for the long term sustainable future of our struggling dairy farmers and their families.

Deputy Chair

Committee Member

Senator Kimberley Kitching

Senator Jenny McAllister

Additional Comments – Saving Australian Dairy Bill

Senator Susan McDonald

1. The Saving Dairy Australia Bill is well-intended, but is not the answer to resolving the ongoing issues within Australia's dairy industry.
2. The 2018 ACCC Dairy Inquiry found processors, often under pressure from supermarkets or export market competition, used their relative bargaining power to shift risks onto dairy farmers, further entrenching dairy farmers' weaker bargaining position and economic instability.
3. Unfair negotiating practices employed by downstream supply chain participants, like supermarkets and processors, have resulted in dairy producers receiving less than the cost of production for their milk and is threatening the ongoing sustainability of the industry, particularly in states where the cost of production remains higher. I am optimistic that the Coalition Government's mandatory Dairy Code of Conduct coupled with the dispute resolution services of the ACCC and the Australian Small Business and Family Enterprise Ombudsman, will address some of these practices and I look forward to the outcome of the Government's review of this Code, due to commence by December 2020.
4. It must also be noted that these supply chain practices in the agrifood industry are not unique to the dairy industry, and for that reason I am supportive of extending divestiture penalties to all corporations, including processors and supermarkets. With the precedent established in relation to the electricity market, I believe a divestiture penalty regime provides a stronger disincentive to breaches of our competition law. I acknowledge it is a hefty structural remedy, but in countries where the penalty already exists (United States, Canada and the United Kingdom) it provides a strong disincentive against anti-competitive behaviour and has only sparingly been used.
5. Issues around pricing remains a matter to be addressed. However, across the nation, these costs vary depending on access to water, pasture, and climate. The Dairy Code addresses transparency around prices paid to producers by processors, but more work needs to be done nationally to identify accurate costs of production to ensure dairy producers are paid fairly. Without this information it would be impossible to identify a fair and ethical price to be paid, much less set a floor price or similar mechanism.
6. The current challenges facing Australia underlines the importance of Australian food production and manufacturing, and the ongoing success of the Australian Dairy Industry is an important part of that food security.
7. There are additional unfair contract provisions which could be considered to further address market power imbalances in the dairy industry that could be considered.

Committee Member

Senator Susan McDonald

Appendix 1

Submissions

- 1 Mr Kevin Ashworth
- 2 Mr Benjamin Cronshaw
- 3 Australian Dairy Farmers Limited