

**Questions on Notice**  
**Australian Dairy Farmers**  
**Senate Economics References Committee**  
**Inquiry into the Australian Dairy Industry**  
**Thursday, 2 February 2017**

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**Senator Xenophon:** Yesterday in Perth, Mr Andrew Weinert, a dairy industry consultant – I do not know if either of you are familiar with Mr Weinert – described the situation that faces the dairy industry now as akin to market failure. He actually used the words ‘market failure’. Could you reflect on that? In fairness to both of you, you may want to look at Mr Weinert’s submission and at his evidence to the inquiry. He paints a pretty bleak picture about the imbalance. Could you reflect on that and let me know? Because there are people out there who say that the market has failed in a substantial way, and they are using the definition of market failure.

Milk production across Australia can be highly variable due to a number of factors including weather conditions, feed availability and price, global milk prices, supply and demand and volatility generally.

Western Australia is certainly not immune to this production variability and, due to the relatively small size of the industry and distance from other milk production regions, can experience significant variability in supply and demand from time to time. The Western Australian dairy industry is probably the most isolated dairy industry in the world with the nearest other dairy farms being approximately 3,000 km away.

The decision by processors in Western Australia to end contracts with farmers and the lack of ongoing contracts with any processor at all for some farmers is a matter of significant concern for ADF and the dairy industry generally.

A decision not to support farmers in the production of milk, particularly in such a small and isolated market, shows a lack of understanding of the variability of milk production, a lack of planning and is short-sighted in the extreme – this has been highlighted by the fact the milk is needed in Western Australia through summer with processors currently trucking milk across the Nullarbor Plain to meet demand.

The farms in question are of an ideal size for milk production and in a good location to service both processors and the market.

It is unprecedented in Australia for such farms to be refused a contract and not have their milk picked up by a processor.

ADF believes in the future of our industry as a whole and sees strong potential for the Western Australian dairy industry in particular given its proximity to key markets in South-East Asia.

With direct reference to the report, it only pertains to information relating to WA and, as stated in the report, it does not include research into the national or international issues which Victoria is more exposed to. Therefore, it is difficult to conclude a market failure for Victorian/national milk markets.

The dominant and duopolistic nature of supermarkets in the domestic market needs to be investigated as the price signals may not be allocating resources efficiently, something which ADF has been advocating for a significant period of time and which will form part of the current ACCC inquiry through several aspects of the terms of reference.

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**Mr Losberg:** No; certainly, ADF has pushed for a code of conduct for quite a long time. That morphed, if you like, into the grocery code of conduct between the retailers; it ended up there. That included a lot of clauses that Australian Dairy Farmers and particularly Queensland Dairyfarmers' were pushing. We can provide more information on that as a question on notice, if you like, Senator.

1. ADF has long advocated for a code of conduct across the value chain. In March 2015 the Competition and Consumer (Industry Codes – Food and Grocery) Regulation 2015 was announced.

ADF viewed this 'Supermarket Code' as a positive first step toward addressing the imbalance of market power between retailers and their suppliers.

At the time, ADF noted that many aspects of the dairy draft code of conduct, which ADF in collaboration with Queensland Dairyfarmers' Organisation began developing in 2011, had been adopted in the prescribed Supermarket Code.

The prescribed Supermarket Code is not perfect, but it does address several key imbalances with regard to major retailer power over suppliers.

ADF noted the review of the Supermarket Code three years from implementation, and stated it would be seeking the strengthening of regulations if necessary.

2. Through consultation with our state member organisations, farmers and processors, ADF and the Australian Dairy Industry Council have also developed a voluntary Dairy Industry Code of Practice for Contractual Arrangements between farmers and processors to help ensure greater transparency and fairness in milk supply and pricing.

At the Committee hearing in Shepparton on Thursday 2 February 2017 every dairy farmer who gave evidence highlighted the importance of ensuring greater transparency and fairness in contracting.

ADF believes that the dairy industry needs:

- Improved contracting arrangements between farmers and processors;
- Greater transparency through earlier and clearer pricing signals for farmers; and
- Less risk for farmers and more balance in risk along the supply chain.

ADF will continue to work with farmers, processors and our industry bodies to build a system that builds resilience, rather than leaving farmers vulnerable.

Incorporating these principles into a code of conduct will give farmers, or their representative, the opportunity to have a standard form contract or supply agreement which is truly negotiated and not simply an agreement which is a “take it or leave” it approach to farmer’s milk supply arrangements.

It is important that contracts are fair, simple, realistic and easily understood by both parties.

The code will include:

- ensuring pricing adjustments to farmers throughout a contract are clearly defined and that there will be no price changes made retrospectively;
- ensure all farmers receive payment entitlement that accrued over the term of a contract or supply agreement (including any ‘loyalty payments’) – the final payments of a contract should not be contingent on whether the farmer has continued being a supplier when, for example, the June payment is made in mid-July;
- ensuring a pricing formula or a price setting mechanism is clearly defined, and agreed, within a contract;
- while acknowledging step-ups do occur and step-downs have occurred in severe circumstances, as much notice as possible is necessary if a step-down has to occur;
- If a farmer produces more milk than required or contracted to their primary processor, then they have the right to negotiate other supply options for the additional milk produced;
- ensuring there is a clearly defined mechanism for giving notice of termination of a contract; and
- ensuring there is a clearly defined mechanism of how contract terms and conditions can be modified and the farmer having the right to a negotiated variation, not simply a request from the processor.

The Code of Practice will help ensure that supply agreements and contracts comply with the Unfair Contracts law that came into effect on 12 November 2016.

It is anticipated that the Code of Practice will be finalised in February/March 2017.