

10 March 2021

Committee Secretary
Senate Standing Committees on Rural and Regional Affairs and Transport
PO Box 6100
Parliament House
Canberra ACT 2600

www.australiandairyfarmers.com.au

ABN 76 060 549 653

Dear Sir/Madam,

Inquiry into the performance of Australia's dairy industry and the profitability of Australian dairy farmers since deregulation in 2000.

Response by Australian Dairy Farmers to allegations made during the inquiry.

I refer to your request to address allegations made against Australian Dairy Farmers (ADF) at the inquiry into the performance of Australia's dairy industry and the profitability of Australian dairy farmers since deregulation in 2000. These allegations are made in the Farmer Power submission (number 17) and during Farmer Power's testimonies to the Committee.

To satisfy your request, ADF has assessed the allegations made by Farmer Power, and a summary of responses is provided in the attached table. The table consolidates and supplements material previously provided to the Committee on 23 June 2020, which includes: a response to Farmer Power's written submission, ADF's submission to the Rural Development Corporation system review, Australian Dairy Industry Council (ADIC) investment plan and performance report, ADF's response to the Dahlsen Report, and several documents concerning the transfer to ADF of \$11 million in assets previously held by the ADIC. Please also find attached additional documents that may assist the inquiry with regard to outlining some of the work undertaken by ADF on behalf of dairy farmers and the wider dairy industry.

We consider that the allegations made against ADF are serious and therefore deserved of a comprehensive response. It is unclear to us on what basis Farmer Power purports to represent the interests of the Australian dairy industry in making these allegations.

We request that the Committee, before finalising their report, ask Farmer Power to provide details of their organisation's constitution, membership, audited accounts, annual reports, policy setting processes and outcomes achieved on behalf of the dairy industry. We believe this will assist the Committee to both determine the status of Farmer Power as a representative of the Australian dairy industry and assess the weight that should be given to their evidence.

As one of Australia's longest serving farmer representative organisations, ADF has for nearly 79 years successfully advocated on behalf of the Australian dairy industry and represented the interests of individual dairy farmers through periods of significant change, including deregulation in 2000. For example, I am proud of the work that this organisation and its members delivered as one of the partners in the development of the Australian Dairy Plan. I would urge all committee members to visit the Plan's website at www.dairyplan.com.au.

During 2019, significant and well-publicised industry-wide consultation was undertaken, with 25 workshops convened nationally, including workshops held in each of the six dairying states. In total, 1,500 dairy farmers and other industry stakeholders engaged in the process, either face-to-face or online. As a result of this initiative, there was a collective agreement to reform the dairy industry's organisational structures. ADF is now working with other industry partners to undertake a process of complex organisational reform to support a more profitable, confident, and united industry. It is our ambition to deliver the change sought by farmers to take the industry forward for success.

As evidenced in the attached documents, we have responded to the more serious accusations levelled at ADF. There were further comments contained in evidence throughout the inquiry where individuals and organisations accused ADF of not being representative of the dairy farmer voice and not listening; I reject such assertions.

Our federated structure, encompassing six state dairy farming organisations, has served this industry well, often through difficult and turbulent times. All of our member organisations are comprised of hard-working, grass roots dairy farmers who have chosen to dedicate their time towards building a better industry for all.

As outlined above, dairy farmers have spoken regarding the need to reform our structures, and I remain committed to delivering a process that can achieve this goal. I would urge all organisations and individuals who have provided evidence at this inquiry to engage in this reform process throughout 2021 and beyond.

I am confident that if we can build a more profitable, confident and united dairy industry, then the concerns expressed throughout this inquiry will have been addressed.

Yours sincerely,

Terry Richardson
President
Australian Dairy Farmers

Australian Dairy Farmers (ADF) response to allegations made in the inquiry into the Performance of Australia's dairy industry and the profitability of Australian dairy farmers since deregulation in 2000

TOPIC	ALLEGATION / QUESTION	SOURCE AND DATE	ADF RESPONSE	ADF COMMENT
Industry representation	ADF did not hold Dairy Australia (DA) to account for the outcomes of the Sustainable farm profitability reports from 2015 to 2019.	ASHWORTH, Mr Kevin, Member, Farmer Power p10 Hansard 2 March 2021	Do not support	<p>DA was commissioned by the Australian Dairy Industry Council (ADIC) to prepare the 2015 Sustainable Farm Profitability report. This report found that ‘over the past decade, Australian dairy farms have faced many challenges to profitability. With the exception of Tasmania, the industry has failed to show signs of consistent growth. Despite the challenges, better performing dairy farms across all regions have continued to generate profits that have allowed wealth creation comparable to, or exceeding, other agricultural industries and investment categories. To achieve consistently high results, farmers require a broad range of both farming and business management skills.’ Similar results were found in the analysis underpinning the Australian Dairy Plan, in particular the Appendix F - Measurement of Profitability on Australian Dairy Farms: https://www.dairyplan.com.au/about-the-dairy-plan/key-documents#.YEHKKEBul2w</p> <p>The Australian Dairy Plan also identified farm profitability as a priority and that further work is needed regarding productivity and industry competitiveness. ADF has consequently worked with DA to ensure funding is allocated for research in these issues during 2020/21.</p> <p>ADF and DA are also working together to deliver a Profitability Forum in 2021 as a means of engaging farmers, the broader industry, government and investors in discussions around profitability, productivity and competitiveness.</p>
	ADF have lost the confidence of the dairy farmer.	ASHWORTH, Mr Kevin, Member, Farmer Power	Do not support	All State Dairy Farming Organisations (SDFOs) are members of ADF. There has been no change in this arrangement.

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		p12 Hansard 15 September 2020		There has been no survey conducted assessing the confidence levels of dairy farmers in the role and performance of ADF. However, the Independent Performance Review of DA by Anwen Lovett Consulting (pp. 78, 79) suggested that “there seems to be a minority of highly vocal DA (and other industry structure) detractors who ensure that their counter views are heard. These small number of independent dairy farmer advocacy groups are not aligned with ADF, are not members of DA and use social media campaigns to promote their positions around industry issues with the intent to influence politicians or other industry groups.”
	There is clearly a disconnect between dairy farmers and their levy supported United Dairy Farmers of Victoria (UDV), ADF and DA representatives	ASHWORTH, Mr Kevin, Member, Farmer Power p9 Hansard 2 March 2021		
	Both DA and ADF know they have failed the dairy farmer. This was in their own (DA) independent report from 2016.	KERR, Mr Garry, Chief Executive Officer, Farmer Power p7 Hansard 2 March 2021		
Relationship with DA and processors	ADF has a conflict of interest with the dairy processors.	KERR, Mr Garry, Chief Executive Officer, Farmer Power p12 Hansard 15 September 2020	Do not support	ADF is a leader in the development of evidence-based policy and advocacy. Where there is a national industry problem or government policy or program impacting dairy farmers, it is our organisation who leads a response directly or via our membership organisation, the National Farmers’ Federation (NFF). ADF policy is developed by our farmer members through properly

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				<p>constituted Policy Advisory Groups and a National Council comprising farmers from all of Australia's dairying states.</p> <p>In many cases ADF comes together with the Australian Dairy Products Federation (ADPF), the peak body representing dairy processors, under an umbrella organisation called the ADIC, to advocate on behalf of the entire dairy supply chain. This occurs where interests and priorities on both sides of the farm fence are shared, for example free trade agreements.</p> <p>Where interests and priorities differ, ADF and ADPF undertake individual or separate policy and advocacy processes.</p>
	It's not the job of the ADF to form an alliance with Dairy Australia and the processors	ASHWORTH, Mr Kevin, Member, Farmer Power p10 Hansard 2 March 2021	Do not support	<p>Section 1.2 of ADF's Constitution (Attachment A) provides authorisation for ADF to form alliances with other organisations, providing such alliances are designed for making dairy farming more competitive, innovative and sustainable.</p> <p>There is also an expectation from the Australian Government that research and development corporations (RDC) like DA consult with industry representative bodies such as ADF. DA is required under the organisation's funding agreement with the Commonwealth to:</p> <ul style="list-style-type: none"> • consult with levy payers and industry representative bodies such as ADF; and • undertake an independent assessment of DA's performance, including an assessment of this consultation.
	Group B members control the selection of DA directors to the board	ASHWORTH, Mr Kevin, Member, Farmer Power p13 Hansard 15 September 2020	Do not support	<p>Under DA's Constitution (https://www.dairyaustralia.com.au/about/corporate-governance#.YEHnk0Bul2w), a third of the positions on the Board are vacated each year and an election held is to fill the vacancies.</p>

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				<p>Directors are nominated on a skills basis by an industry selection committee, in line with ASX Corporate Governance Principles recommendation 2.1). The selection committee comprises:</p> <ul style="list-style-type: none"> • a director or other person appointed by the Board to chair the committee; and • 4 other persons appointed by the Board. If there are 4 or fewer Group B members: (A) all the Group B members may, jointly, nominate up to 4 members of the Selection Committee. <p>The Group B members are ADF and the ADPF. The current Board Selection Committee has one DA director (non-milk producer) plus 2 representatives from ADF and ADPF.</p> <p>Section 11.1 of the DA Constitution states that Group B members not entitled to vote on a resolution at a general meeting. It is Group A members who vote for nominated Directors at Dairy Australia's Annual General Meeting, which is held in November.</p>
	ADF need to be removed from group B DA membership immediately	<p>ASHWORTH, Mr Kevin, Member, Farmer Power p13 Hansard 15 September 2020</p> <p>KERR, Mr Garry, Chief Executive Officer, Farmer Power P7 Hansard 2 March 2021</p>	Do not support	<p>There is no evidence to justify a termination of ADF's Group B membership of DA.</p> <p>Holding a group B membership of DA provides ADF with enhanced level of oversight, input and collaboration with DA's activities. For example, Section 18.7 of the DA Constitution states that 'the Board must not make a plan, or vary a plan in a significant way, unless it has given the Group B members a reasonable opportunity to consider and consult the Board in relation to the plan or variation and taken into account matters raised by the Group B members.' DA is also obligated, under its Commonwealth funding agreement, to consult with ADF as a Group B member.</p>

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Australian Dairy Plan	The current dairy reform is a farce. The plan is a disgrace. It shows the absolute contempt held by those in power for those who are supposed to represent dairy farmers.	KERR, Mr Garry, Chief Executive Officer, Farmer Power p15 Hansard 15 September 2020	Do not support	<p>ADF is determined to maintain a professional and transparent process during the delivery of structural reform and the Australian Dairy Plan more broadly.</p> <p>As stated on the Australian Dairy Plan website (https://www.dairyplan.com.au/about-the-dairy-plan/organisational-reform#.YEhCCS0RpQI), an Organisational Reform Steering Committee has been formed, comprising two Directors from three of the Dairy Plan partner organisations (ADF, ADPF and DA). This committee is tasked with overseeing the development of reform options, ensuring strong industry engagement and consultation.</p> <p>The Steering Committee is supported by an Engagement and Design Team, which will arrange to meet with industry representative bodies, individuals and interested parties. It is also expected that a series of public consultation meetings will be organised, although these efforts were hampered by COVID-19 travel restrictions during 2020.</p> <p>Levy-payers and other industry stakeholders are also sent regular electronic communication with updates regarding the reform process.</p> <p>The Australian Dairy Plan partners have also pledged to report progress against the Plan's five commitments twice a year to ensure transparency in the delivery of initiatives.</p>
\$11 million transfer from ADIC to ADF	Can ADF please supply the trust deed of the current \$11 million and the consolidated financial reports	ASHWORTH, Mr Kevin, Member, Farmer Power p13 Hansard 15 September 2020	Do not support	<p>ADF has previously provided all material relating to the transfer of funds from ADIC to ADF. The \$11 million was obtained after the ADIC sold its three Victorian investment properties in 2003. ADF and ADPF are ADIC's constituent organisations but the Heads of Agreement requires transfer of ADIC assets to ADF to perform secretariat functions. This was confirmed and approved the then Minister for Agriculture the Hon. Warren Truss in July 2003. The transfer of assets from ADIC to ADF was an acknowledgement that</p>

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	from inception of the fund to ascertain the opening balance, and all other consolidated financial reports up to and including the financial year ending 30 June 2019?	KERR, Mr Garry, Chief Executive Officer, Farmer Power p8 Hansard 2 March 2021		the transfer should have occurred in July 2003, and for reasons unknown to the current Board, management and staff at ADF, it did not occur at that time. When it was found the transfer had not occurred, both organisations (ADIC and ADF) agreed to complete the transfer.
	The \$11m is a replacement for the \$1.1m lost from the processors on an annual basis	KERR, Mr Garry, Chief Executive Officer, Farmer Power p12 Hansard 15 September 2020		
	Has the ADF complied with the undertakings and conditions set out in this letter?	ASHWORTH, Mr Kevin, Member, Farmer Power p13 Hansard 15 September 2020 KERR, Mr Garry, Chief Executive Officer, Farmer Power		

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		P7 Hansard 2 March 2021		
	ADF removed its financials from the charities register	ASHWORTH, Mr Kevin, Member, Farmer Power p14 Hansard 15 September 2020	Do not support	ADF's financials are included in its annual reports. These are available for viewing via the ADF and ACNC websites: https://australiandairyfarmers.com.au/media-corner/annual-reports/ https://www.acnc.gov.au/charity/b715de40adabc5c2cd757928b9bed8da#financials-documents
Governance	ADF recently had their elections and they couldn't even get their directors up. They ended up having to appoint someone, I think from Queensland, onto the ADF board because they couldn't get enough votes to get the number of directors they	KERR, Mr Garry, Chief Executive Officer, Farmer Power p11 Hansard 2 March 2021	Do not support	At the 2020 ADF AGM, members exercised their rights and chose not to re-elect the sitting Director of the Board. A casual vacancy position was filled, following a process prescribed in the ADF Constitution, by a candidate from NSW.

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	needed on the board.			
	The lack of transparency at all levels has never been stronger than now	KERR, Mr Garry, Chief Executive Officer, Farmer Power p15 Hansard 15 September 2020	Do not support	Section 1.5.1 of the ADF Constitution requires ADF to keep true and fair accounts and have its accounts audited each year in accordance with the Act. ADF is compliant with this requirement as its Annual Reports are tabled each year at its AGM and posted on its website at: https://australiandairyfarmers.com.au/media-corner/annual-reports/ In 2020, ADF completed a refresh of its website. This now includes a list of all its policies, submissions, projects and media releases.
Mandatory code	With regard to their reference about the mandatory code, they claim they were responsible. This is a fabrication, as they fought hard against the mandatory code initially and they did not support it.	KERR, Mr Garry, Chief Executive Officer, Farmer Power p14 Hansard 15 September 2020	Do not support	A mandatory code of practice for the dairy industry was one of several recommendations made by the ACCC in its April 2018 Dairy Inquiry report. ADF determined further analysis of the cost and effectiveness of a mandatory code was required before any decision could be made on the recommendation. Following a detailed consideration within the ADF membership, ADF announced its support for the mandatory code in early September 2018 (https://australiandairyfarmers.com.au/mediareleasespost/adf-supports-mandatory-dairy-code/).

**CONSTITUTION OF
AUSTRALIAN DAIRY FARMERS' LIMITED**

A.C.N. 060 549 653

A public company limited by guarantee

As at 29 November 2018

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Constitution of Australian Dairy Farmers' Limited, a public company limited by guarantee

1. PRELIMINARY

1.1 Name

1.1.1 The name of the Company is Australian Dairy Farmers' Limited.

1.2 Objects

1.2.1 The general object of the Company is to provide strong leadership and representation for the continued growth of internationally competitive, innovative and sustainable dairy farming.

1.2.2 The specific objects of the Company are:

- (a) to act where collective initiatives will lead to better outcomes for dairy farmers and/or State Dairy Farmer Organisations;
- (b) to promote the development of dairy farming and the dairy industry in Australia;
- (c) to co-operate with other primary producer bodies for the benefit of dairy farmers in Australia; and
- (d) to support research and farmer extension services, and delivery of appropriate educational resources through the publication of matters of significance and interest to the dairy farm sector to ensure necessary productivity gains are made on farms.

1.3 Capacity and Powers

1.3.1 The Company is a public company incorporated under the Act and limited by guarantee.

1.3.2 The Company may only exercise its powers for its objects.

1.4 Use of Income and Assets

1.4.1 The Company may only use its income and assets for its objects.

1.4.2 The Company may not distribute any profit to its Members.

1.4.3 Clause 1.4.2 does not prevent the Company from entering in good faith into contracts with Members on reasonable commercial terms and making payments to Members in accordance with those contracts. In this clause "contracts" includes contracts for the supply of goods and services, the borrowing of money, and the leasing of premises.

1.4.4 The Company may not make any payment or give any benefit to its Directors or National Councillors other than:

- (a) sitting fees for attending meetings or otherwise carrying out the duties of a Director, provided that the aggregate of all such fees paid or payable may not exceed the maximum amount determined by the Business Members and the State Members in general meeting;
- (b) sitting fees for attending meetings or otherwise carrying out the duties of a National Councillor, provided that the aggregate of all such fees paid or payable may not exceed the maximum amount determined by the Business Members and the State Members in general meeting;

- (c) for the payment of out-of-pocket expenses incurred in carrying out the duties of a Director or National Councillor, where the payments do not exceed an amount previously approved by a resolution of the Board;

1.5 Accounts and Audit

- 1.5.1 The Company must keep true and fair accounts and have its accounts audited each year in accordance with the Act.
- 1.5.2 The Company must allow its Members and Directors to inspect its accounts, subject to any reasonable conditions contained in this Constitution or any regulations made under clause 4.1.3.

1.6 Winding Up

- 1.6.1 In the event of the organisation being dissolved, the amount that remains after such dissolution and the satisfaction of all debts and liabilities shall be transferred to another organisation with similar purposes and which has rules prohibiting the distribution of its assets and income to its members.

1.7 Definitions and Interpretation

- 1.7.1 The following definitions apply in this Constitution unless the context requires otherwise:
 - (a) **Act** means the Corporations Act 2001 (Cth) as amended from time to time;
 - (b) **Board** means the Directors for the time being of the Company who are present at a meeting of Directors at which there is a quorum;
 - (c) **Business of Dairy Farming** means the commercial production of bovine milk from one or more farms;
 - (d) **Business Member** means a person or organisation who is eligible in accordance with clause 2.1.3, and is admitted to membership of the Company and recorded in the register of members as a Business Member in accordance with clause 2.3.3;
 - (e) **Business Director** means a Director who is or represents a Business Member and who conducts the Business of Dairy Farming in one of the Regions;
 - (f) **Chair** means the person who is appointed for the time being as chairman of the Board in accordance with clause 4.6.1;
 - (g) **Chief Executive Officer** means the person who is appointed for the time being as Chief Executive Officer in accordance with clause 4.13.1;
 - (h) **Company** means Australian Dairy Farmers' Limited ACN 060 549 653;
 - (i) **Director** means a person for the time being holding office as a Director in accordance with this Constitution and **Directors** means all such persons;
 - (j) **Independent Director** means an independent Director with expertise in a field or discipline determined by the Board to be important for its work. An Independent Director need not be or represent a Member;
 - (k) **Member** means a Business Member, a Life Member or a State Member;
 - (l) **National Council** means the council of persons appointed or elected as National Councillors in accordance with this Constitution who are present at a meeting of National Councillors at which there is a quorum;

- (m) **National Councillor** means a person for the time being elected or appointed as a National Councillor in accordance with this Constitution and **National Councillors** means all such persons;
- (n) **President** means the person holding office for the time being as president of the National Council in accordance with clause 5.5.1;
- (o) **Region** means any of the eight dairy producing regions of Australia referred to in clause 5.2.3 or such other dairy producing regions as may be determined by special resolution of the Company in general meeting and **Regions** means all of them;
- (p) **Secretary** means the person who is appointed for the time being as secretary of the Company in accordance with clause 4.14.1; and
- (q) **State** means a State or Territory of the Commonwealth of Australia and **States** means all of them; and
- (r) **State Member** means an organisation that is eligible and admitted to membership of the Company and recorded in the register of members as a State Member in accordance with clause 2.3.3.

1.7.2 Unless the context requires otherwise, a term used in this Constitution that is defined in the Act has the same meaning in this Constitution.

1.8 Replaceable Rules

1.8.2 The Replaceable Rules specified in the Act are expressly excluded and do not apply to this Constitution.

2. MEMBERSHIP

2.1 Membership Eligibility

- 2.1.1 There is no limit on the number of Members of the Company.
- 2.1.2 The Members are those persons or organisations admitted to membership of the Company whose names are entered into the Company's register of members as Business Members State Members or Life Members..
- 2.1.3 Any person or organisation that in the Board's opinion is engaged in whole or in part in the Business of Dairy Farming in Australia and is a member of the recognised State Member Dairy Farming Organisation is eligible to be a Business Member of the Company.
- 2.1.4 2.1.5 Any organisation which in the Board's opinion most represents the dairy farmers of a particular State and supports the objects of the Company is eligible to be a State Member of the Company, provided that there can only be one State Member for each State. As at the date of this constitution the current recognised State Members are:
 - (a) Victorian Farmers Federation, through its commodity group United Dairyfarmers of Victoria;
 - (b) N.S.W Farmers Association, through its Dairy Committee;
 - (c) Queensland Dairyfarmers' Organisation Ltd;
 - (d) South Australian Dairyfarmers Association;
 - (e) The Tasmanian Farmers and Graziers Association Ltd, through its Dairy Council; and

(f) The Western Australian Farmers Federation (Inc), through its Dairy Council.

2.1.6 The Board may appoint a person as a Life Member in recognition of their service to the Company of a very high order. The appointment may be made by the Board of its own volition or from names proposed by Members and must be made in accordance with any criteria determined by the Board. A Life Member has the same rights and entitlements as a Business Member but is only entitled to vote if they carry on the Business of Dairy Farming in Australia.

2.2 Liability of Members

2.2.1 The liability of the Members of the Company is limited.

2.2.2 If the Company is wound up while a Member is a Member, or within one year after a Member ceases to be a Member, that Member undertakes to contribute such amount as may be required not exceeding \$1.00 to the Company's property for payment:

- (a) of the Company's debts and liabilities contracted before the Member ceases to be a Member; and
- (b) of the costs, charges and expenses of winding up.

2.3 Admission as a Member

2.3.1 A person who is eligible and wishes to apply for membership must submit a written application for membership in the form determined by the Board.

2.3.2 The Board will consider applications for membership and determine whether to admit each applicant in its absolute discretion. If the Board decides not to admit an applicant to membership, it does not have to give any reason for its decision.

2.3.3 The Company must enter persons admitted to membership in the register of members, clearly distinguishing between those admitted as Business Members, Life Members and State Members.

2.4 Membership Fees

2.4.1 The Board may determine:

- (a) fees for membership of the Company and national formulae for calculating membership fees, both of which may be different for different classes of membership; and
- (b) the terms of payment of membership fees on any basis the Board reasonably determines

following consultation with the National Council and State Members.

2.4.2 Members must pay the relevant membership fees within the terms of payment determined by the Board from time to time.

2.4.3 The Board may suspend the voting and other rights of a Member who has not paid a membership fee within 90 days of it becoming payable until the fee is paid or the Member complies with another course of action as determined by the Board.

2.4.4 The Company must provide at least 90 days' written notice to each State Member of any material amendment to the formulae for calculating membership fees prior to the amendment coming into operation.

2.5 Rights and Obligations

- 2.5.1 Members must at all times comply with this Constitution and any regulations of the Company that may be determined by the Board under clause 4.1.3.
- 2.5.2 The rights of Members are not transferable, and terminate when the Member ceases to be a Member.

2.6 Cessation of Membership

- 2.6.1 A Member may resign by giving notice in writing to the Board. For Business Members, or Life Members the resignation will be effective 90 days after it is received by the Company, and for State Members the resignation will be effective 12 months after it is received by the Company.
- 2.6.2 The Board may in its absolute discretion recommend and refer for decision at a general meeting of the Company the removal of any member from membership of the Company who in the opinion of the Board:
- (a) is no longer eligible for membership under clause 2.1;
 - (b) has engaged in conduct prejudicial to the Company; or
 - (c) has failed to comply with this Constitution.
- 2.6.3 If at a general meeting of the Company, at least 75% of the votes cast of all Business Members and at least 75% of the votes cast of all State Members are in favour of a resolution for the removal from membership of a Member in accordance with the recommendation of the Board under clause 2.6.2 the Member will cease to be a Member of the Company on the passing of the resolution.

Where the Board has recommended the removal of a Member in accordance with clause 2.6.2:

the National Council may remove the Member from the Company for any of the reasons set out in clause 2.6.2 and must determine whether to remove the Member; and

before doing so, the National Council must give the Member a reasonable opportunity to explain their case.

- 2.6.4 Before a resolution for removal of a Member is voted upon at a general meeting in accordance with clause 2.6.3 the member must be given a reasonable opportunity at the general meeting to be heard in relation to the resolution. Subject to clause 2.6.5, a resolution of the National Council to remove a Member can only be passed if:

at least 75% of the National Councillors who are present and entitled to vote, vote in favour of the resolution; and

National Councillors representing at least 75% of the States also vote in favour of the resolution. Where more than one National Councillors representing a particular State are present and entitled to vote, the State will be deemed to vote in favour of a resolution only if a majority of those National Councillors votes in favour of the resolution. Where a State is not represented by any National Councillor being present and entitled to vote on the resolution, the State is excluded from the calculation of a majority of the States under this clause 2.6.4(b).

- 2.6.5 The member whose removal from membership is recommended by the Board pursuant to clause 2.6.2 is not entitled to vote at the general meeting on the resolution pursuant to clause 2.6.3 for removal of the Member.

Where the National Council is determining whether to remove a State Member:

the National Councillors appointed by the State Member are not entitled to vote on the resolution; and

the relevant State is excluded from the calculation of a majority of the States under clause 2.6.4(b).

- 2.6.6 A Member's membership of the Company will automatically cease if the Member:
- (a) being a natural person dies or becomes of unsound mind; or
 - (b) being a body corporate, is subject to the appointment of a liquidator or an order for the winding up or deregistration of the Member.
 - (c) in the case of a Business Member, any person or organisation that in the Board's opinion ceases to be engaged in the Business of Dairy Farming in Australia or ceases to be a member of a State Member.
- 2.6.7 A Member who ceases to be a Member must pay to the Company all membership fees or other amounts owing to the Company which are due and unpaid at the time the Member ceases to be a Member, and any amounts which the Member is liable to pay under clause 2.2.2. If the Member ceases to be a Member as a result of their resignation in accordance with clause 2.6.1, the membership fees owing will be calculated based on the formula for determining membership fees and the rate that apply on the date the Member's written notice of resignation is received by the Board. If the Member ceases to be a Member in accordance with clauses 2.6.3 or 2.6.6, the membership fees owing will be calculated based on the formula for determining membership fees and the rate that apply on the date of cessation of membership.

2.7 Registers

- 2.7.1 The Company must keep a register of Members in accordance with the Act.
- 2.7.2 Members must inform the Company in writing of any change to their address and the Company must enter the change in the register of Members. The latest address in the register of Members is deemed to be the Member's registered address.

3. GENERAL MEETINGS

3.1 Power to Call General Meetings

- 3.1.1 The Board may at any time convene a general meeting of the Company.
- 3.1.2 The Board must convene a general meeting as soon as practicable if a general meeting is requisitioned in accordance with the Act.

3.2 Notice

- 3.2.1 The Company must give notice of general meetings in accordance with the Act.

- 3.2.2 The fact that a person entitled to receive notice of a general meeting does not receive that notice or is accidentally not given notice does not invalidate any business conducted at the meeting.

3.3 Right to Attend General Meetings

- 3.3.1 All Members and their proxies or properly appointed representatives are entitled to attend and speak at any general meeting.
- 3.3.2 A Director or Secretary who is not a Member is entitled to attend and, at the request of the Chair, to speak at any general meeting.
- 3.3.3 Any other person (whether a Member or not) invited by the Board to attend any general meeting is entitled to attend and, at the request of the Chair, to speak at that general meeting.
- 3.3.4 Each State Member will by written notice given to the Company nominate a representative to attend general meetings on its behalf and to vote and exercise all other powers of the State Member at general meetings until further written notice appointing a substitute representative is given to the Company by the State Member.

3.4 Quorum

- 3.4.1 The quorum for general meetings is the presence in person or by proxy, or properly appointed representative of at least two thirds of the State Members. A person who is both a Member and the proxy, or representative of a Member or is the proxy, or representative of more than one Members counts only once toward the quorum.
- 3.4.2 If a quorum is not present within one hour after the time specified in the notice of meeting the meeting is dissolved unless the Chair adjourns the meeting to a date, time and place determined by the Chair. If no quorum is present at any adjourned meeting within one hour after the time appointed for the meeting, the meeting is dissolved.

3.5 Chair of General Meetings

- 3.5.1 The Chair is entitled to chair general meetings.
- 3.5.2 If the Chair is not present or does not wish to chair a general meeting, the Directors present may select one of their number to chair the meeting, and if none of the Directors present wishes to chair the meeting, the Members present may elect one of their number to chair the meeting.
- 3.5.3 The chairman of a general meeting has a deliberative vote but does not have a casting vote.

3.6 Conduct of General Meetings

- 3.6.1 The conduct of general meetings and the procedures to be followed at each general meeting are as determined by the chairman of the meeting.
- 3.6.2 The chairman of a general meeting may make rulings and determine procedural matters to ensure the orderly conduct of the meeting. Any determination by the chairman of the meeting is final.

- 3.6.3 Any challenge to a right to vote at a general meeting or to a determination to allow or disregard a vote may only be made at the meeting and may be determined by the chairman of the meeting whose decision is final.
- 3.6.4 If a person purports to cast a vote in contravention of the Act or this Constitution, the chairman of the general meeting may determine that the vote be disregarded and treated as not having been cast.
- 3.6.5 Nothing in this Constitution limits the powers conferred by law on the chairman of a general meeting.

3.7 Adjournments

- 3.7.1 The chairman of a general meeting may, and if so directed by the meeting must, adjourn the meeting or any business, motion, question, resolution, debate or discussion to a later time or a different place as determined by the chairman of the meeting.
- 3.7.2 The only business that may be transacted at any adjourned general meeting is the business left unfinished at the meeting from which the adjournment took place.

3.8 Voting

- 3.8.1 Only Business Members whose rights have not been suspended under clause 2.4.3 and their proxies and properly appointed representatives are entitled to vote on the election or removal of Directors. , State Members and their proxies, or representatives are not entitled to vote on the election of Directors.
- 3.8.2 On matters other than the election or removal of Directors only Business Members and State Members whose rights have not been suspended under clause 2.4.3 and their proxies and properly appointed representatives are entitled to vote. .
- 3.8.3 Resolutions on which both Business Members and State Members are entitled to vote can only be passed if a majority of the votes of Business Members and a majority of the votes of State Members are cast in favour of the resolution. Special resolutions on which both Business Members and State Members are entitled to vote, including a special resolution to amend or modify this Constitution, can only be passed if at least 75% of the votes of Business Members and at least 75% of the votes of State Members are cast in favour of the resolution.
- 3.8.4 Any resolution at a general meeting is to be decided by a show of hands unless a poll is validly demanded.
- 3.8.5 Unless a poll is validly demanded, a declaration by the chairman of the meeting following a vote on a show of hands that a resolution has been carried or lost is conclusive.
- 3.8.6 A poll may be demanded by the chairman of the meeting or by Members present in accordance with the Act. No poll may be demanded on the election of a chairman of the meeting or, unless the chairman of the meeting determines otherwise, the adjournment of a meeting. A demand for a poll may be withdrawn.
- 3.8.7 Any poll validly demanded must be conducted in accordance with the determinations of the chairman of the meeting. A demand for a poll does not prevent a general meeting continuing to transact any business except the question on which the poll is demanded.

- 3.8.8 On a show of hands each Business Member and each State Member or their proxy, or properly appointed representative present has one vote.
- 3.8.9 On a poll, a direct vote within the meaning of clause 3.8.10 or a ballot in accordance with clause 4.2.7:
- (a) each Business Member present personally or by proxy, has one vote; and
 - (b) each State Member present by their appointed representative or proxy has one vote.
- 3.8.10 The Board may determine that at any general meeting a Member who is entitled to attend and vote on a resolution at that meeting is entitled to a direct vote in respect of that resolution. A “direct vote” includes a vote delivered to the Company by post, fax or other electronic means approved by the Board. The Board may prescribe regulations and procedures for direct voting.

3.9 Proxies

- 3.9.1 A Member may appoint one proxy. A proxy need not be a Member.
- 3.9.2 An instrument appointing a proxy must be:
- (a) in the form determined by the Board from time to time; and
 - (b) correctly completed, executed and lodged with the Company in accordance with the Act and the requirements determined by the Board from time to time.
- 3.9.3 The Board has discretion to accept an instrument appointing a proxy notwithstanding that it does not comply with clause 3.9.2.
- 3.9.4 A proxy is not revoked if the Member who appointed the proxy attends and takes part in the general meeting unless the Member actually votes on a resolution.

4. THE BOARD AND DIRECTORS

4.1 The Board’s Powers

- 4.1.1 Notwithstanding clause 4.1.2, the Board is responsible for management of the Company and may exercise all powers of the Company subject to the Act, this Constitution and any regulations made under clause 4.1.3.
- 4.1.2 The Board determines the Company’s strategic direction and strategic plans as developed by the Chief Executive Officer in consultation with the National Council. The Board must consult with and seek input from the National Council prior to determining or amending the Company’s strategic direction or strategic plans. The National Council contributes to the development of the Company’s policy position and makes policy recommendations on matters of importance to dairy farmers, for approval by the Board.
- 4.1.3 The Board may make regulations to give effect to this Constitution.

4.2 Board Membership

- 4.2.1 The number of Directors must be five unless otherwise determined by the Company in general meeting.
- 4.2.2 The composition of the Board must be as follows:

- (a) at least four Business Directors who are or represent Business Members , provided that there may be no more than two Business Directors who are or represent Business Directors who conduct or are engaged in the Business of Dairy Farming in any one State; and
 - (b) no more than one Independent Director.
- 4.2.3 To be eligible for election as a Business Director, the candidate must be a Member of the recognised State based organisation, as defined in clause 2.1.5, and must be a Business Member of the Company;
- 4.2.4 The National Council may at any time appoint an eligible person to be a Business Director to fill a casual vacancy, provided clauses 4.2.1, 4.2.2 and 4.2.3 are complied with.
- 4.2.5 Where there is no Independent Director for the time being, the Board may appoint an eligible person to be the Independent Director provided clauses 4.2.1 and 4.2.2 are complied with
- 4.2.6 Any Director appointed under clause 4.2.4 or 4.2.5 holds office only until the next annual general meeting and is eligible for election at that meeting.
- 4.2.7 Except as provided in clauses 4.2.4 and 4.2.5, Directors shall be elected by an election conducted at a general meeting or by ballot in the manner determined by the Board from time to time.
- 4.2.8 Prior to an election of Business Directors:
- (a) the Board must advise Members of the deadline for receiving nominations from candidates for election as a Business Director and for election as the Independent Director
 - (b) the Board must inform the National Council of the candidates for the position of Business Directors and Independent Director and the Board’s criteria for assessing each candidate;
 - (c) the Board must seek from the National Council a statement in writing of the independent assessment of each candidate against the Board’s stated criteria;
 - (d) the National Council must appoint an independent panel to assess each candidate for the position of Business Director and each candidate for the position of Independent Director against the criteria specified by the Board. The independent panel must consist of people who are both suitably qualified and independent in the reasonable opinion of the National Council and must include at least one National Councillor who is not a Director and is not a candidate for the position of Director;
 - (e) the National Council must provide to the Company a statement in writing of the independent panel’s assessment of each candidate for the position of Business Director or Independent Director ; and
 - (f) the Company must distribute to Members copies of the written statement of the independent panel’s assessment of each candidate.
- 4.2.9 The Company in general meeting may remove Directors in accordance with the *Act*.

4.3 Directors’ Terms of Office

- 4.3.1 Subject to clauses 4.3.2 the maximum term:
- (a) a Business Director may serve is three years without submitting for re-election; and

(b) an Independent Director may serve is two years without submitting for re-election.

4.3.2

(a) a Business Director may not hold office for a period longer than three years or past the third annual general meeting following the Business Director's last election or re-election, whichever is longer, without submitting for re-election. A Business Director retires from office at the third annual general meeting after their appointment or last re-election (whichever is later) and is eligible for re-election; and

(b) an Independent Director may not hold office for a period longer than two years or past the second annual general meeting following the Independent Director's last election or re-election (whichever is longer) without submitting for re-election. An Independent Director retires from office at the second annual general meeting after their appointment or last re-election (whichever is later) and is eligible for re-election.

4.3.3 Subject to clauses 4.3.1, 4.3.2 and 4.3.5, at every annual general meeting one third of the Business Directors or, if their number is not a multiple of three, the number nearest to but not exceeding one third retire from office and are eligible for re-election. In calculating the number of Business Directors to retire under this clause:

(a) any Business Director appointed by the National Council to fill a casual vacancy under clause 4.2.4 and facing election at the annual general meeting; and

(b) any Business Director who has held office for nine years or longer and is facing annual re-election under clause 4.3.5;

is not counted in the total number of Business Directors to retire.

4.3.4 the Business Directors to retire at each annual general meeting will be those who have held office the longest since last being elected or re-elected. Between Business Directors who have held office for the same period, the Business Director to retire will be determined by lot unless they agree otherwise.

4.3.5 a Director who has held office for nine years or longer retires from office at each annual general meeting commencing from the next annual general meeting after the Director has served nine years in office. Any such Director is eligible for re-election at each annual general meeting.

4.3.6 A Director vacates office if the Director:

(a) resigns by notice in writing to the Company;

(b) is removed by resolution of the Company in general meeting in accordance with the Act;

(c) becomes of unsound mind or insolvent under administration;

(d) vacates office under the Act or is otherwise prohibited by the Act from holding office; or

(e) is absent or fails to attend meetings of the Board for a continuous period of six months without the consent of the Board.

4.3.7 Subject to there being not less than three directors, despite any vacancy in the office of the Director the Board may continue to act until appointments to fill any casual vacancies under clauses 4.2.4 or 4.2.5.

4.5 Meetings of the Board

- 4.5.1 The Directors will meet together as often as required and may adjourn and otherwise regulate their meetings as they see fit.
- 4.5.2 Any Director may, and the Secretary must on the request of a Director, call a Board meeting.
- 4.5.3 Reasonable notice must be given to every Director of the place, date and time of every Board meeting.
- 4.5.4 The quorum for Board meetings is the presence of three Business Directors.
- 4.5.5 The Board may meet by use of any technology consented to by all Directors. Each Director, by consenting to be a Director consents to the use of video, telephone and other technologies whereby each Director attending the meeting can clearly hear and be heard by all other Directors in attendance.

4.6 Chair

- 4.6.1 The Chair will be elected by a ballot in which:
 - (a) each Director has two votes;
 - (b) for each Region that is not represented on the Board by a Director who conducts the Business of Dairy Farming in that Region, the National Councillor or Councillors representing that Region have two votes. Where there is one National Councillor representing the Region, that National Councillor has two votes. Where there are two National Councillors representing the Region, each of them has one vote; and
 - (c) the Directors and National Councillors who are entitled to vote in accordance with this clause 4.6.1 will also determine the period for which the person elected as Chair will hold office, provided that no person may hold the office of Chair for longer than seven years over a lifetime.
- 4.6.2 The Chair:
 - (a) must be a Business Director;
 - (b) may not be the chairman or president of any State Member or the dairy committee, section or division of any State Member; and
 - (c) once elected, will also serve as the President in accordance with clause 5.5.1.
- 4.6.3 If at a Board meeting a Chair has not been elected, or if the Chair is not present or does not wish to chair part or all of the meeting, the Directors present may elect one of their number to chair that part or all of the meeting.

4.7 Voting at Board Meetings

- 4.7.1 Subject to clause 4.6.1, each Director is entitled to one vote at meetings of the Board.
- 4.7.2 At Board meetings the Chair has a deliberative vote but does not have a casting vote.
- 4.7.3 A resolution of the Board can only be passed if it receives a majority of the Directors present and entitled to vote voting in support.

4.8 Resolutions in Writing

- 4.8.1 A resolution in writing signed by all of the Directors for the time being entitled to vote on the resolution (not being less than the number required for a quorum for a Board meeting) has the same effect as a resolution passed at a meeting of the Board and is effective when signed by all Directors.
- 4.8.2 A resolution in writing may consist of more than one document in the same form each signed by one or more of the Directors.

4.9 Disclosure of Interests

- 4.9.1 Each Director must disclose any interest they have in a contract, proposed contract or arrangement with the Company and any actual or potential conflict of interest they may have in accordance with the Act. A Director's failure to disclose an interest does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.
- 4.9.2 Any Director with a conflict of interest in a matter that is before the Board may not vote on any resolution in respect of that matter unless permitted to do so by the Act but may nevertheless be counted toward a quorum for the meeting and may execute a document in respect of the matter on behalf of the Company as directed by the Board.

4.10 Defects in Appointment

- 4.10.1 All acts of the Board or a person acting as a Director are valid as if each person were duly appointed and qualified to be a Director, notwithstanding that it may be afterwards discovered that there was some defect in the appointment of a person to be a Director or to act as a Director or that a person so appointed was disqualified.

4.11 Expenses

- 4.11.1 Directors are entitled to sitting fees and to be reimbursed for all reasonable travel, accommodation and other expenses incurred in the performance of their duties, subject to clause 1.4.4.

4.12 Committees

- 4.12.1 The Board may establish standing and ad hoc committees with such membership and terms of reference as the Board thinks fit.
- 4.12.2 The Board may delegate any of its powers to a committee, one or more Directors or employees or any other person as the Board thinks fit and may at any time withdraw, suspend or vary any of those powers.
- 4.12.3 Any committee, person or group to which the Board has delegated powers must exercise those powers in accordance with any directions of the Board.

4.13 Chief Executive Officer

- 4.13.1 The Board may appoint a Chief Executive Officer of the Company for the period, on the terms and conditions and with such powers, duties and authorities as the Board thinks fit.
- 4.13.2 The Board may remove the Chief Executive Officer at any time, subject to the terms of any agreement with that person. A resolution to remove the Chief Executive Officer can only be

passed if at least two thirds of the Directors present and entitled to vote on the resolution vote in favour of it.

4.14 Secretary

- 4.14.1 The Board must appoint at least one secretary of the Company in accordance with the Act for the period, on the terms and conditions and with such powers, duties and authorities as the Board thinks fit.
- 4.14.2 The Board may remove the Secretary at any time, subject to the terms of any agreement with that person.

4.15 Public Statements

- 4.15.1 No person may make any public statement on behalf of the Company unless authorised by the Board or, in cases of urgency, by the Chair.

5. NATIONAL COUNCIL

5.1 National Council's Powers

- 5.1.1 The National Council is responsible for:
- (a) reporting national issues of importance to dairy farmers and participating in the Company's advocacy and other activities from time to time;
 - (b) providing a vehicle for Members to raise issues;
 - (c) developing the Company's policy position and advising the Board on issues of importance to dairy farmers;
 - (d) appointing an independent panel and reporting on the independent panel's assessment in accordance with clause 4.2.8; and
 - (e) providing input to the Board on the Company's strategic plan and other matters as requested.

5.2 National Council Membership

- 5.2.1 The number of National Councillors must be not less than twelve and not more than eighteen unless otherwise determined by the Company in general meeting.
- 5.2.2 Each National Councillor must be or represent a Business Member and must represent dairy farmers of one of the Regions. The Board, acting reasonably may determine the circumstances in which a person represents a Business Member and the circumstances in which a person represents dairy farmers of a Region.
- 5.2.3 The eight dairy producing Regions are:
- (a) Eastern Victoria;
 - (b) Northern Victoria;
 - (c) Western Victoria;
 - (d) New South Wales;
 - (e) Queensland;
 - (f) South Australia;

- (g) Tasmania; and
- (h) Western Australia.

5.2.4 The National Council must:

- (a) determine the number of National Councillors to represent each Region having regard to the proportional volumes of milk produced in each Region; and
- (b) periodically review the representation of Regions and determine the number of National Councillors to represent each Region having regard to the proportional volumes of milk produced in each Region.

5.2.5 National Councillors are appointed and removed by the relevant State Members. Each State Member may at any time appoint a person who is eligible to be a National Councillor to represent the Region or Regions that State Member represents, provided that clauses 5.2.1, and 5.2.2 are complied with.

5.2.6 Each State Member may determine the manner and circumstances in which it will appoint or remove National Councillors representing the Region or Regions that State Member represents.

5.3 National Councillors' Terms of Office

5.3.1 A National Councillor holds office until removed by the relevant State Member or vacating office in accordance with clauses 5.3.2 or 5.3.3.

5.3.2 A National Councillor immediately vacates office if the State Member that appointed them ceases to be a Member.

5.3.3 A National Councillor vacates office if the National Councillor:

- (a) resigns by notice in writing to the Company;
- (b) ceases to be a Member;
- (c) is removed by the State Member who appointed them; or
- (d) becomes of unsound mind or insolvent under administration

and a replacement National Councillor may be appointed by the relevant State Member in accordance with clause 5.2.5.

5.3.4 The National Council may continue to act despite any vacancy in the office of a National Councillor.

5.4 Meetings of National Council

5.4.1 The National Councillors will meet together at least three times each year and as often as required and may adjourn and otherwise regulate their meetings as they see fit.

5.4.2 Reasonable notice must be given to every National Councillor of the place, date and time of every National Council meeting.

5.4.3 The quorum for National Council meetings is the presence of National Councillors representing at least 75 % of the Regions that are currently represented on the National Council.

- 5.4.4 The National Council may meet by use of any technology consented to by all National Councillors. Each National Councillor, by consenting to be a National Councillor consents to the use of video, telephone and other technologies whereby each National Councillor attending the meeting can clearly hear and be heard by all other National Councillors in attendance.
- 5.4.5 All Directors are entitled to attend meetings of the National Council but only National Councillors are entitled to vote at those meetings.

5.5 President

- 5.5.1 The President is the person who holds the office of Chair in accordance with clause 4.6.1.
- 5.5.2 The President is entitled to chair meetings of the National Council.
- 5.5.3 If at a National Council meeting a President has not been appointed, or if the President is not present or does not wish to chair part or all of the meeting, the National Councillors present may elect one of their number to chair that meeting.

5.6 Voting at National Council Meetings

- 5.6.1 Subject to clause 4.6.1, each National Councillor is entitled to one vote at meetings of the National Council.
- 5.6.2 At National Councillor meetings the President has a deliberative vote but does not have a casting vote.
- 5.6.3 A resolution of the National Council can only be passed if:
- (a) a majority of the National Councillors present vote in favour of it; and
 - (b) National Councillors representing a majority of the States also vote in favour of it.
Where more than one National Councillors representing a particular State are present and entitled to vote, the State will be deemed to vote in favour of a resolution only if a majority of those National Councillors votes in favour of the resolution. Where a State is not represented by any National Councillor being present and entitled to vote on the resolution, the State is excluded from the calculation of a majority of the States under this clause 5.6.3(b).
 - (c) In the case of a deadlocked vote, the Board will be required to determine the position of the Company in supporting or rejecting the resolution.

5.7 Expenses

- 5.7.1 National Councillors are entitled to sitting fees and to be reimbursed for all reasonable travel, accommodation and other expenses incurred in the performance of their duties, subject to clause 1.4.4.

5.8 Committees of National Council

- 5.8.1 With the prior agreement of the Board, the National Council may establish standing and ad hoc committees with such membership and terms of reference as the National Council thinks fit, provided that the National Council may not delegate any of its powers to:

- (a) appoint an independent panel and report on the independent panel's assessment in accordance with clause 4.2.8; or
- (b) provide input to the Board on the Company's strategic plan and other matters as requested.

5.8.2 Any committee to which the National Council has delegated powers must exercise those powers in accordance with any directions of the National Council.

5.9 Public Statements

5.9.1 No person may make any public statement on behalf of the National Council unless authorized by the Board or, in cases of urgency, by the Chair.

6. FINANCIAL AND LEGAL

6.1 Cheques

6.1.1 All cheques, electronic funds transfers and negotiable instruments must be signed or authorised by any two persons authorised by the Board.

6.2 Common Seal

6.2.1 The Company may have a common seal and a duplicate common seal, which may only be used by the Company as determined by the Board.

6.2.2 The Board must provide for the safe keeping of any common or duplicate seal.

6.3 Notices

6.3.1 Members and Directors must notify the Company of their preferred address and any change in their preferred address.

6.3.2 The Company must enter any preferred address or change in preferred address notified by a Member or Director in the appropriate register.

6.3.3 Any Member or Director who fails to notify the Company of a preferred address or electronic mail address to which notices may be sent is not entitled to receive any notice.

6.3.4 Notice may be given to a Member or Director by delivering it personally, sending it by post or courier to the preferred address most recently notified to the Company, or sending it to the fax number or electronic mail address most recently notified to the Company.

6.3.5 A notice sent by post is deemed to be delivered on the day three days after posting.

6.3.6 A notice sent by fax or electronic mail is deemed to be delivered on the day it is received at the addressee's preferred fax number or electronic mail address.

6.3.7 Notices of meetings must include the time, day and place of the meeting, and the nature of the business proposed.

6.4 Indemnity

6.4.1 To the extent permissible under the Act, the Company indemnifies each of its Directors, National Councillors and officers against any liability incurred by them arising out of the

conduct of the business of the Company or the discharge of their duties in that capacity, including legal and other costs incurred in defending any proceedings or appearing before any court, tribunal, government authority or other body.

ADF and ADIC Submissions to Government

Natural Resource Management

2008

- ADIC submission to DCC Carbon Pollution Reduction Scheme Green Paper - 10 September 2008

2009

- Australian Dairy Industry submission into HoR Primary Industry & Resources Standing Committee Inquiry into the role of government in assisting Australian farmers adapt to the impacts of climate change - March 2009
- ADIC submission to DCC Carbon Pollution Reduction Scheme exposure draft legislation - 14 April 2009
- Australian dairy industry submission into Senate Select Committee on Climate Policy inquiry into climate policy - 15 April 2009
- Australian dairy industry submission into Senate Economics Legislation Committee Inquiry on Renewable Energy (Electricity) Amendment Bill 2009 - 24 July 2009
- Initial Submission - Productivity Commission Study on Market mechanisms for Recovering Water in the Murray-Darling Basin - 2 October 2009
- Initial Submission - Murray-Darling Basin Authority on the Development of Sustainable Diversion Limits for the Murray-Darling basin Issues Paper – 18 December 2009

2010

- Submission - Murray-Darling Basin Authority Guide and Technical Background volumes – 14 December 2010
- Submission - House of Representatives Standing Committee on Regional Australia - Inquiry into the impact of the Murray-Darling Basin Plan in regional Australia – 14 December 2010
- Submission - Senate Standing Committee on Rural Affairs and Transport – Inquiry into the management of the Murray-Darling Basin – 14 December 2010

2011

- Australian Dairy Industry submission into DCCEE Carbon Farming Initiative - 20 January 2011
- ADIC Supplementary Submission to the House of Representatives Standing Committee on Regional Australia Inquiry into the impact of the Murray-Darling Basin Plan in Regional Australia - 1 March 2011
- ADIC submission to Senate Committee on the Scrutiny of New Taxes Inquiry into Carbon Tax Pricing Mechanisms - 29 April 2011

- ADIC supplementary submission to Senate Committee on the Scrutiny of New Taxes Inquiry into the Carbon Pricing Mechanism - 23 August 11
- ADIC submission to Joint Select Committee Inquiry into Australia's clean energy future - 22 September 2011

2012

- ADIC submission in response to the Murray Darling Basin Authority's proposed Basin Plan - 10 April 2012
- ADIC submission in response to the Commonwealth Environmental Water Holder discussion paper on Commonwealth Environmental Water Trading Arrangements - 11 May 2012
- ADIC submission to House of Representatives Regional Australia Committee inquiry into proposed MDBA plan - 15 June 2012
- ADIC submission on Murray-Darling Ministerial Council Section 43(A) notice on revised draft Basin Plan consensus document and separate State comments - 23 July 2012
- ADIC Submission regarding inquiry into the Water Amendment (Long-term Average Sustainable Diversion Limit Adjustment) Bill - 29 September and 26 October 2012
- ADIC Submission regarding inquiry into the Water Amendment (Water for the Environment Special Account) Bill - 8 and 15 November 2012

2013

- ADIC Draft Environmental Water Recovery Strategy for the Murray-Darling Basin - 28 February 2013
- ADIC Submission on the review of the moratorium on genetically modified organisms (GMOs) in Tasmania - October 2013
- ADIC submission on Draft Clean Energy Legislation Amendments - 14 August 2013
- ADIC submission on the draft Constraints Management Strategy issued by the Murray-Darling Basin Authority (MDBA) - 30 October 2013
- ADIC submission on Emissions Reduction Fund - 18 November 2013

2014

- ADIC submission on the Inquiry into The Government's Direct Action Plan - 17 January 2014
- ADIC Submission for Energy White Paper – Issues Paper 2 - February 2014
- ADIC submission in response to the Emissions Reduction Fund Green Paper - 21 February 2014
- ADF submission regarding Inquiry into Streamlining Environmental Regulation, 'Green Tape', and One Stop Shops - 30 April 2014
- ADIC – DA Submission in response to the Review of the Water Act 2007 - 7 July 2014
- ADIC submission to the Basin-wide Environmental Watering Strategy - 26 September 2014

2015

- ADIC Submission – Water Amendment Bill – July 2015
- AHA BJD Framework Document - Dairy Submission - 23 November 15
- Australian Dairy Industry Council Submission to Post-2020 Emissions Reduction target - 24 April 2015
- Australian Dairy Industry submission, Murray Darling Basin Inquiry - 15 October 2015
- Dairy industry submission - Senate Inquiry into Unconventional Gas Mining - 15 March 2016
- Dairy industry submission on Victorian Inquiry into Unconventional Gas - 24 July 2015

2016

- ADIC Submission - Water Amendment Bill 2015 - 25 February 2016
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- ADIC response to DIBP industry engagement migration and temporary entry
- ADIC Response to Planning the 2016-17 Migration Programme - 4 December 2015
- ADIC Submission on the impact of Australia's temporary work visa programs on the labour market and on temporary work visa holders
- ADIC Submission to Skilled Occupation List
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- ADF submission to the prioritisation of Artificial Insemination (AI) Technicians to enter Australia for critical work – 6 July 2020
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- ADF submission to the Senate Standing Committee on Economics inquiry into the Reserve Bank Amendment (Australian Reconstruction and Development Board) Bill 2013 - 14 February 2014

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Inquiry into perishable agricultural products and the dairy industry code

18 September 2020

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Executive Summary

Australian Dairy Farmers (ADF) welcomes the Australian Competition and Consumer Commission's (ACCC) Inquiry into perishable agricultural products and the dairy industry code. Analysis of trading practices throughout supply chains, including relationships between farmers, processors and retailers, has been an area of significant concern for dairy farmers since \$1 litre milk was introduced by the major supermarkets in 2010/11. Implementation of the ACCC's Dairy Inquiry (2018) recommendations, in particular the *Competition and Consumer (Industry Codes—Dairy) Regulations 2019* (the Dairy Code), is helping to resolve power imbalances between farmers and processors. However further action is required, particularly in regard to the retailers, to reduce their bargaining power and deliver more value across the dairy supply chain.

Dairy farmers have been adversely impacted by two market failures in the dairy supply chain:

1. Farmers lack information and bargaining power in regard to contracts and pricing.
2. The major retailers have placed unsustainable price ceilings and terms on the industry.

A framework for dairy supply chain reform has been established by eight government and parliamentary inquiries that have occurred over the past ten years since \$1 litre milk was introduced in 2010/11. Recommendations arising from these inquiries have or are currently in the process of being implemented. This inquiry should build and leverage these initiatives by further recommending the following:

1. Deterring the misuse of market power by removing the word 'substantially' from Section 46(1) of the *Competition and Consumer Act 2010* (CCA).
2. Reducing the prevalence of unfair contract terms in small business contracts by making unfair contract terms illegal and imposing a penalty in the CCA.
3. Deterring unconscionable conduct by inserting an appropriate definition and penalty in the CCA.
4. Strengthening collective bargaining uptake by expanding the scope and rebooting the Starting Farms Cooperative Program and considering inserting a prohibition on companies undermining Collective Bargaining Groups (CBGs) in Section 93 of the CCA.
5. Increasing security of milk supply and promoting farm investment and innovation by determining options for incentivising longer-term contracts in the Dairy Code.
6. Ensuring the intent of the Dairy Code is honoured by scrutinising exclusive supply arrangements in the industry.

7. Validating farmers' agreement to terms of unwritten contracts by considering inserting a written confirmation clause in Section 18 of the Dairy Code.
8. Addressing the imbalance of bargaining power between retailers and processors by extending the Dairy Code to include retailers.
9. Ending nationalised fixed and heavily discounted pricing of dairy products by establishing a set of fair pricing clauses in the Dairy Code.
10. Avoiding market distortions and national policy breaches by recommending a minimum farmgate milk price not be progressed as a market intervention.
11. Confirming enhanced ACCC dairy supply chain oversight and enforcement by releasing a work plan with industry endorsement.

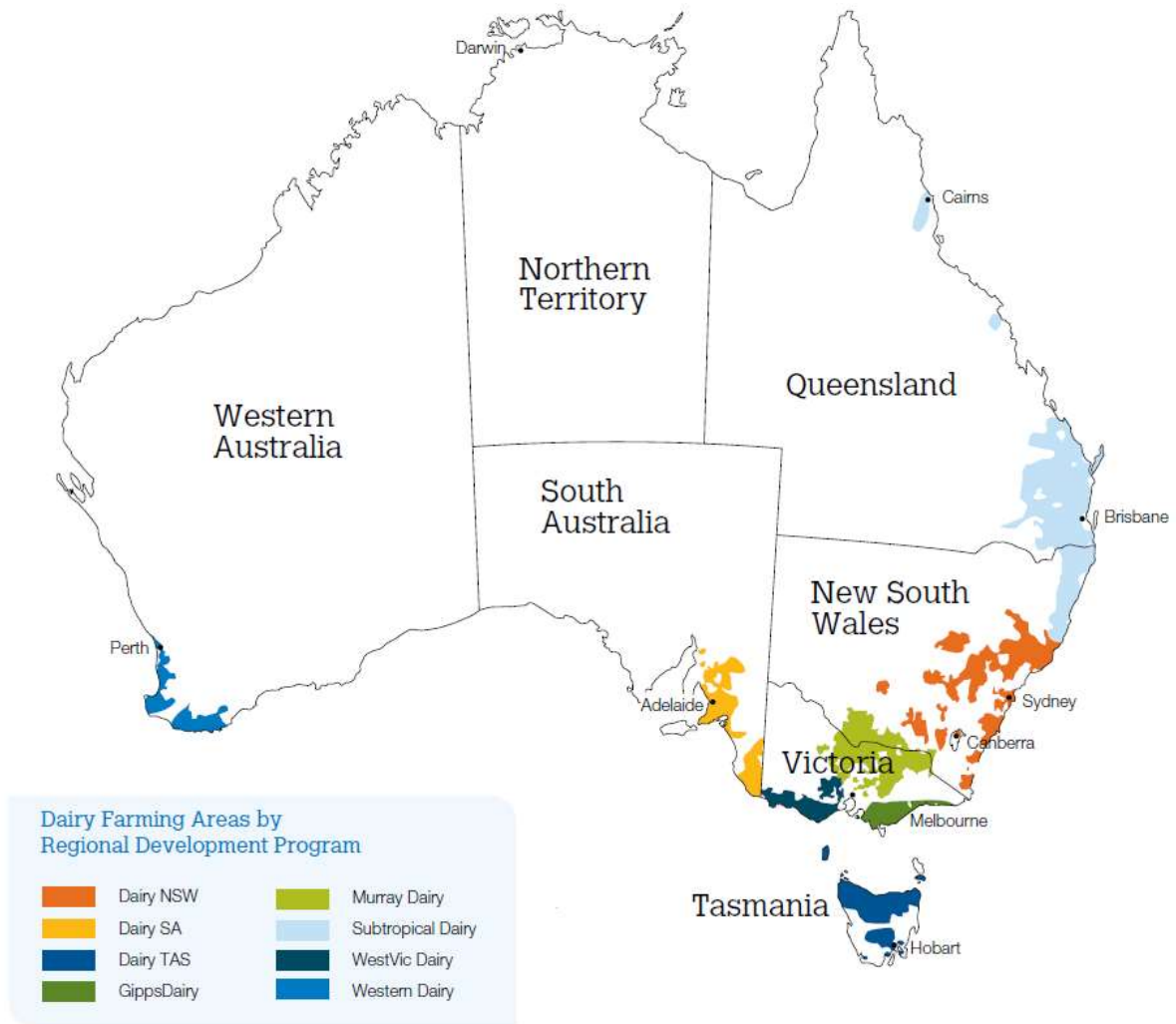
Dairy industry context

Overview

The Australian dairy industry comprises of 46,200 people working in over 5,213 farms producing around 9b litres of raw milk per annum and processing companies transforming the milk into high value dairy products. Around 65% of Australian dairy is sold on the domestic market. It is purchased from supermarkets and other retail or wholesale outlets for direct consumption or as ingredients in food and beverage. The total value of Australia's dairy exports is around \$2.8b per annum. This positions Australia as the fourth largest dairy exporter with 6% of global trade. Approximately 125 Australian companies export dairy products to over 100 countries. The largest markets are China, Japan, Singapore, Malaysia and Indonesia (Dairy Australia 2019).

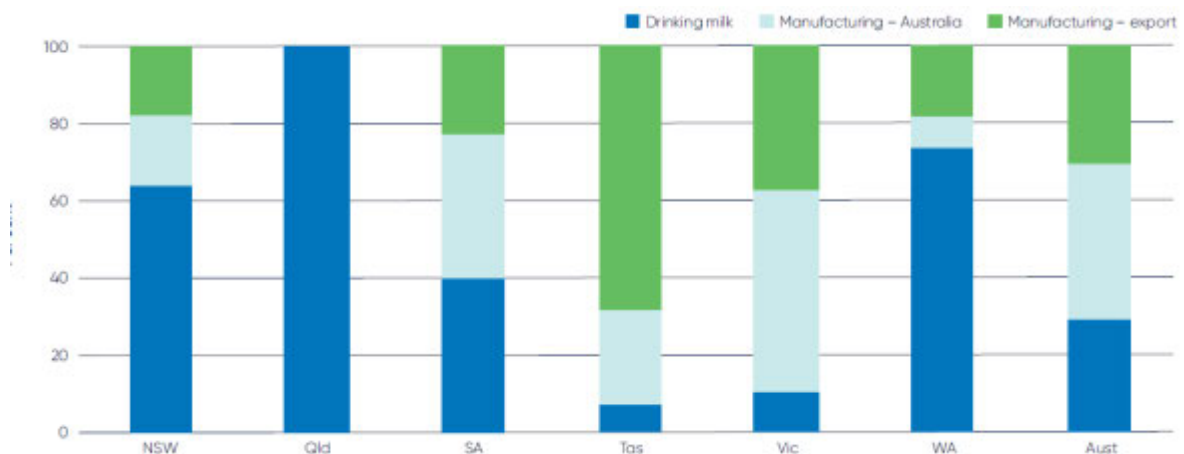
All Australian states produce milk and dairy products. Most of it occurs in Victoria, which accounts for 64% of Australia's national milk production (5.5b litres in 2018-19) and 79% of national dairy exports (Victorian Department of Economic Development, Jobs, Transport and Resources 2018). The remaining milk production comprises 12% in New South Wales, 10% in Tasmania, 6% in South Australia, 4% in Western Australia and 4% in Queensland.

Figure 1: Dairy farming regions in Australia



Dairy Australia (2018) *Australian Dairy In Focus*

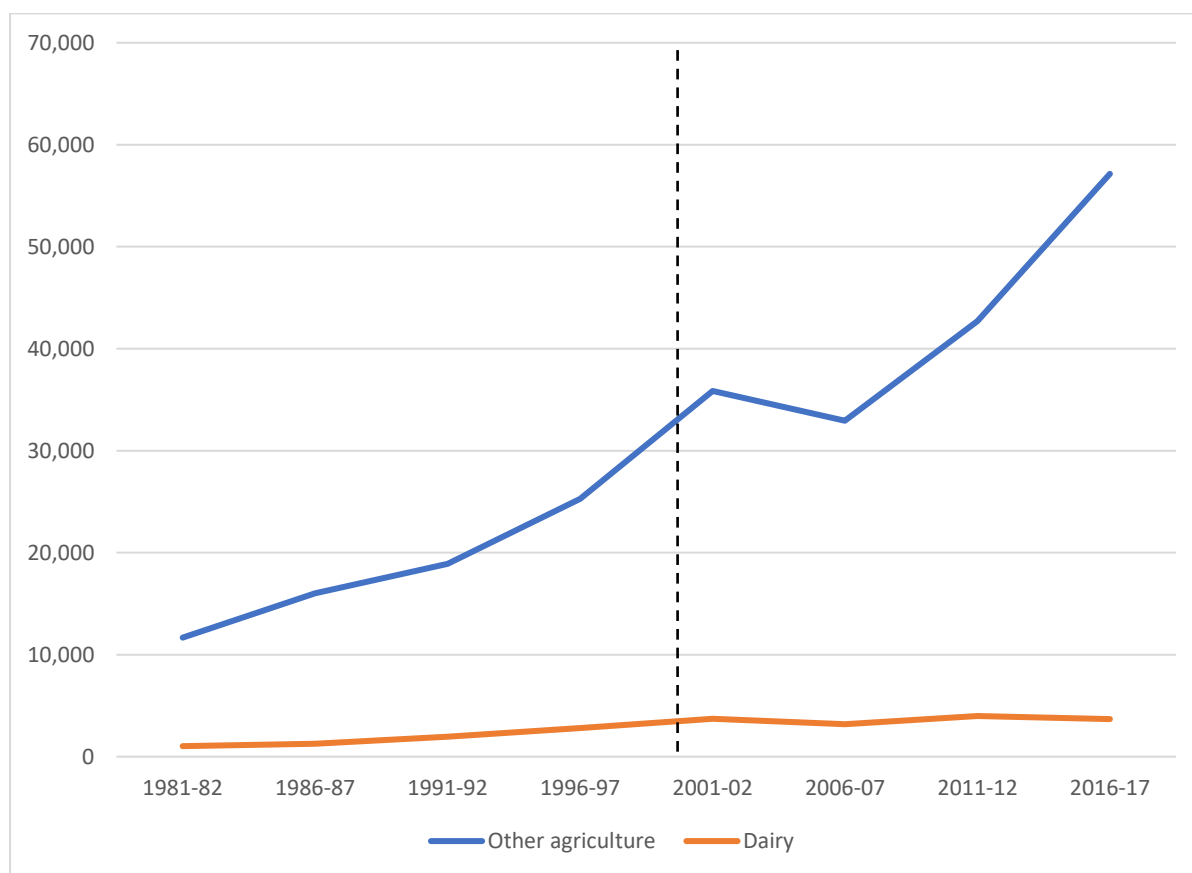
Figure 2: Use of Australian milk by state 2017-18



Source: Dairy Australia (2019) *Australian Dairy In Focus*

Dairy is Australia’s third largest agriculture sector with a gross value (output multiplied by price) of \$4.4b. Prior to 2000 when the industry was deregulated the sector recorded consistent increases as output increased at a greater rate than prices. Only marginal growth has occurred after 2000 due to prices increasing at a greater rate than output. The concern for the dairy industry is its share of Australian agriculture is declining. Other agriculture sectors are growing at a faster rate since the early 1990s.

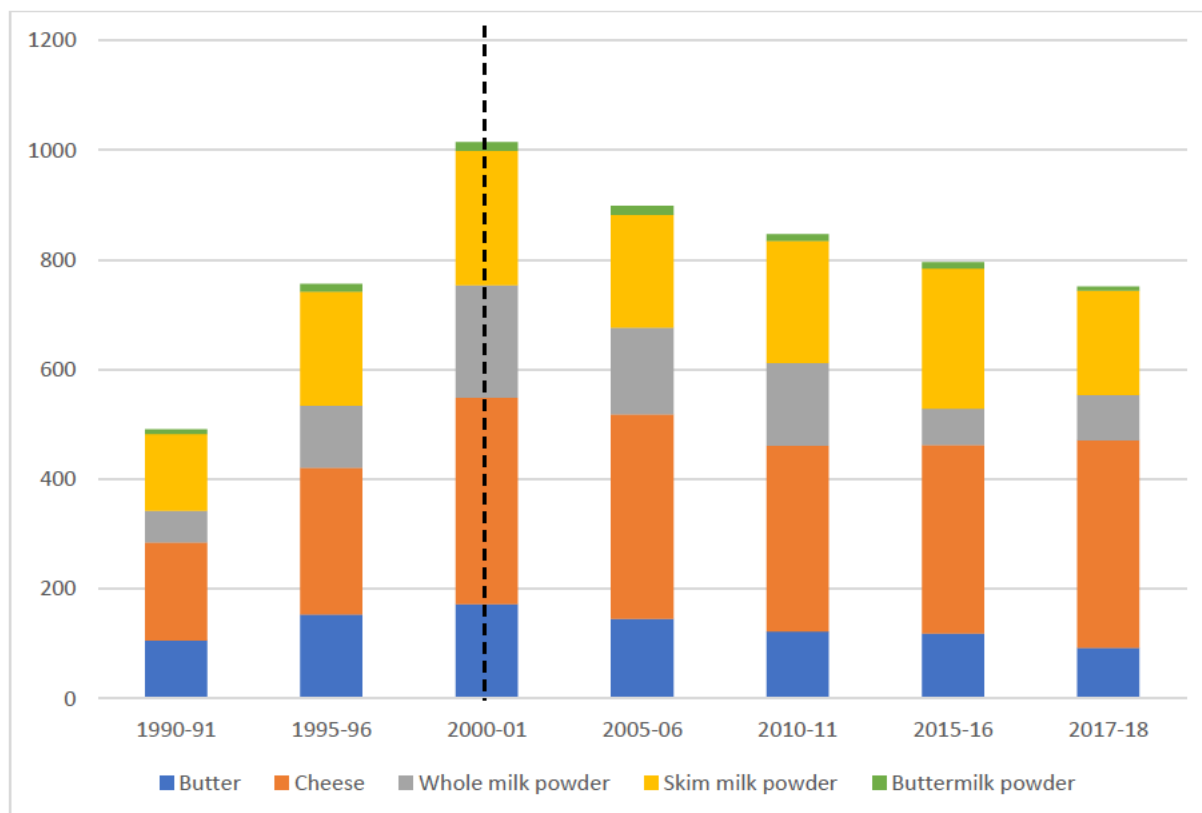
Figure 3: Gross value of dairy versus other agriculture production (\$m)



Source: ABS (2018) *Value of agriculture commodities produced*

Since 2000 Australia has been moving from an exporter of bulk commodity dairy products e.g. milk powders to high value/quality (differentiated) dairy products e.g. cheese. While the latter typically generates a higher price or revenue, it is lower on output.

Figure 4: Australian volume of manufactured dairy products (Mt)



Source: ABARES (2018) *Agriculture Commodity Statistics*

Figure 5: Milk production by state (million litres)

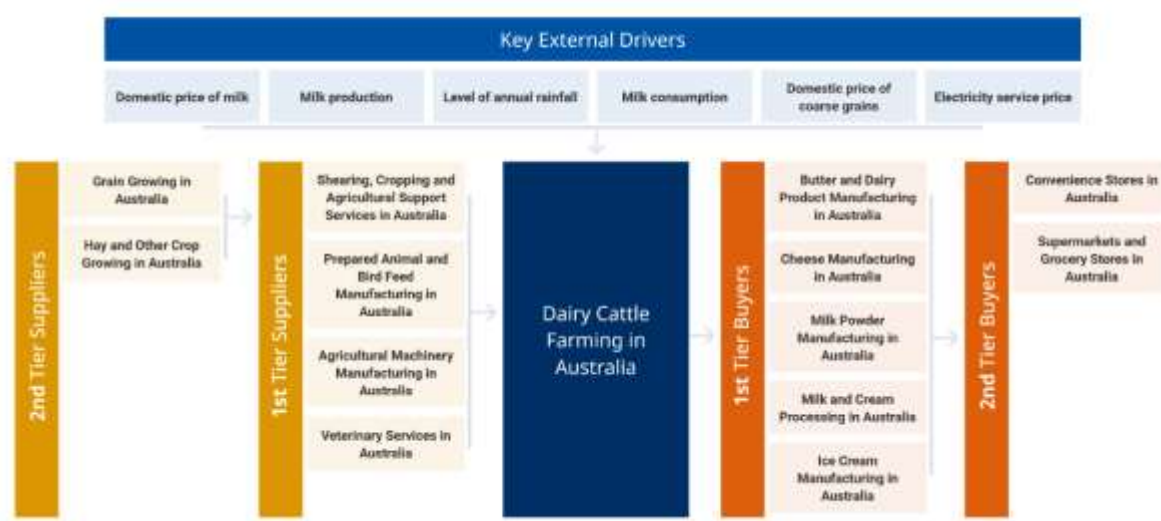
	NSW	Vic	Qld	SA	WA	Tas	Aust
2005-06	1,197	6,651	597	646	377	622	10,089
2006-07	1,104	6,297	537	655	349	641	9,583
2007-08	1,048	6,102	486	606	319	661	9,223
2008-09	1,064	6,135	513	628	340	709	9,388
2009-10	1,099	5,813	530	605	359	677	9,084
2010-11	1,087	5,936	487	572	372	726	9,180
2011-12	1,136	6,246	491	575	349	792	9,589
2012-13	1,137	6,076	465	542	349	765	9,334
2013-14	1,124	6,174	446	525	342	810	9,421
2014-15	1,184	6,411	422	530	367	891	9,805
2015-16	1,198	6,249	421	538	392	883	9,681
2016-17	1,141	5,732	425	497	385	836	9,016
2017-18 (r)	1,144	5,979	399	505	385	913	9,325
2018-19 (p)	1,082	5,574	359	496	374	910	8,795

Source: Dairy Australia (2019) *Australian Dairy In Focus*

Supply chain

The dairy farm supply chain is different to other perishable product supply chains. It is similar to other livestock industries with procurement of products and services dealing with animal needs e.g. veterinary services and export and sale of live cattle (which comprises around 14% of farm revenue). The main difference is the sale of raw milk. This is sold to processors for manufacturing of drinking milk (around 25% of industry revenue) or other dairy products (around 61% of industry revenue). Raw milk produced by dairy farmers in Victoria, Tasmania and South Australia mainly sell to the manufacturing of other dairy products that are sold to domestic retailers and export markets. This differs to dairy farmers in Queensland and Western Australia where most of their raw milk is sold to manufacture and sale as domestic drinking milk. These regions do not produce enough excess raw milk for it to be used in dairy product manufacturing. New South Wales is a combination of the two supply chains. A common feature across all regions are a set of external factors influencing farm production and profitability e.g. drought.

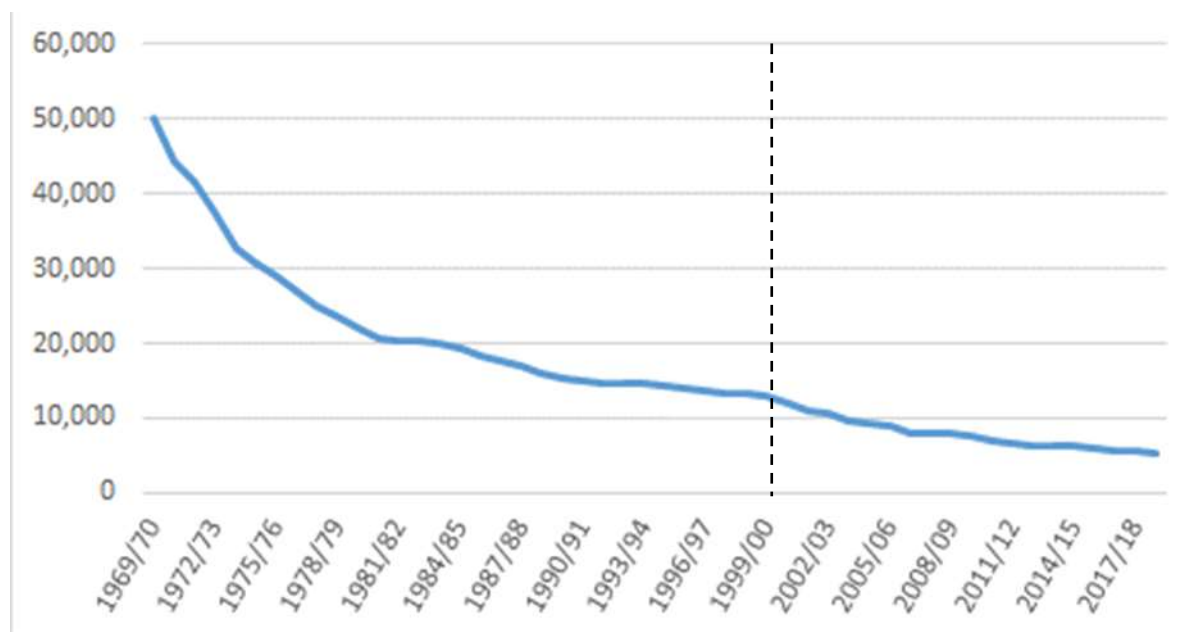
Figure 6: Dairy farm supply chain



Source: Barry, M. (2019) *Dairy Cattle Farming in Australia*, AU Industry Report A0160, IBISWorld, December.

Each section of the dairy supply chain is becoming more consolidated and rationalised. Generally, the number of businesses are reducing but the size of those businesses are increasing. This trend is not unique to dairy but for most perishable products across the western world.

Figure 7: Number of dairy farms in Australia by year



Source: Esposito, S. (2019) ABARES Australian Dairy Farm Statistics

The dairy manufacturing sector in Australia can be described as having a medium market share concentration. Generally, each of the five product areas are dominated by multinational food companies. These include:

1. Saputo Dairy Australia Pty Ltd, which is a subsidiary of the Canadian dairy company Saputo Inc. Its brand names in Australia include Sungold, Great Ocean Road, Devondale, Liddells and Table Cove. Coon, Cracker Barrel Cheese, Warrnambool Heritage, Mil Lel, Murray Goulburn Co-operative and Warrnambool Cheese and Butter.
2. Fonterra Co-operative Group Limited (Fonterra) is a public New Zealand-based multinational dairy company. Its brand names in Australia include Western Star, Mainland, Girgar, Perfect Italiano and Annum.
3. Lactalis Australia Pty Ltd, previously known as Parmalat Australia Pty Ltd, is a wholly owned subsidiary of France-based BSA S.A. Its brand names in Australia include Pauls, Farmhouse Gold, Vaalia, Ice Break, Oak, Breaka, Tamar Valley, Soleil and CalciYum.
4. Lion Pty Ltd is a foreign-owned proprietary Australian company wholly owned subsidiary of Kirin Holdings Company Limited, a Japanese conglomerate with worldwide interests in alcohol, soft drinks, pharmaceuticals, and health and functional foods. Its brand names in Australia include Dare, Farmers Union, Fruche, Big M, Moove, Dairy Farmers, Pura, Yoplait, Bornhoffen and Yogo.

These multi nationals seek to achieve economies of scale and leverage international brand awareness to increase market share. Mergers and acquisitions are helping to achieve this outcome. For example, in early 2014 Lactalis took over Harvey Fresh and more recently Saputo took over Australia's largest dairy manufacturer and farmer co-operative Murray Goulbourn. As a consequence, these companies comprise around 50% market share. The remaining 50% comprise over 100 smaller processors that are mostly Australian owned.

The supermarkets and grocery store industry is highly concentrated. There are four major players in the industry – Coles, Woolworths, Aldi and Metcash that account for over 80% of industry revenue. However, Coles and Woolworths alone account for 65%, making this industry one of the most concentrated in Australia (Youl 2020).

Representative and service structure

The dairy industry is serviced at the national level by ADF, Australian Dairy Products Federation (ADPF) and Dairy Australia (DA):

- ADF is the national policy and advocacy body representing dairy farmers across Australia's six dairying states. State bodies, known as State Dairy Farmer Organisations (SDFO), pay a membership fee to participate in ADF's national policy development and delivery. ADF, like other commodity groups, is a member of the National Farmers Federation (NFF).
- ADPF is the national policy and advocacy body representing dairy product manufacturers.
- DA is the industry owned Research Development Corporation (RDC). In 2018-19 it had an operating budget of \$56.5m (Dairy Australia 2018). This comprises \$40.8m (72%) in industry projects/services and \$15.7m (28%) in corporate administration. The breakdown of industry projects/services is \$23m for farm R&D, \$8.2m for farm extension, \$6.2m for industry and community marketing (includes \$1.5m for policy support) and \$3.4m for trade and international market development. Areas covered in the RD&E are pastures and forages, feedbase and animal nutrition, genetics and herd improvement, resource management, animal health and fertility, farm business and workforce management and advanced management technologies.

On occasions ADF and ADPF come together under the auspices of the Australian Dairy Industry Council (ADIC) to represent the whole of the dairy supply chain. DA supports the ADIC in addition to ADF, ADPF and SDFOs with policy research and technical advice. ADF and ADPF (i.e. ADIC) are Group B members of DA. This provides for consultation on key DA initiatives e.g. strategic and operational plans, collaboration/partnership on industry initiatives e.g. Dairy Plan and representation on the DA's Board Selection Committee (with no voting rights).

Figure 8: Australian dairy industry organisational structure



Source: Dairy Australia (2018) *Australian Dairy In Focus*

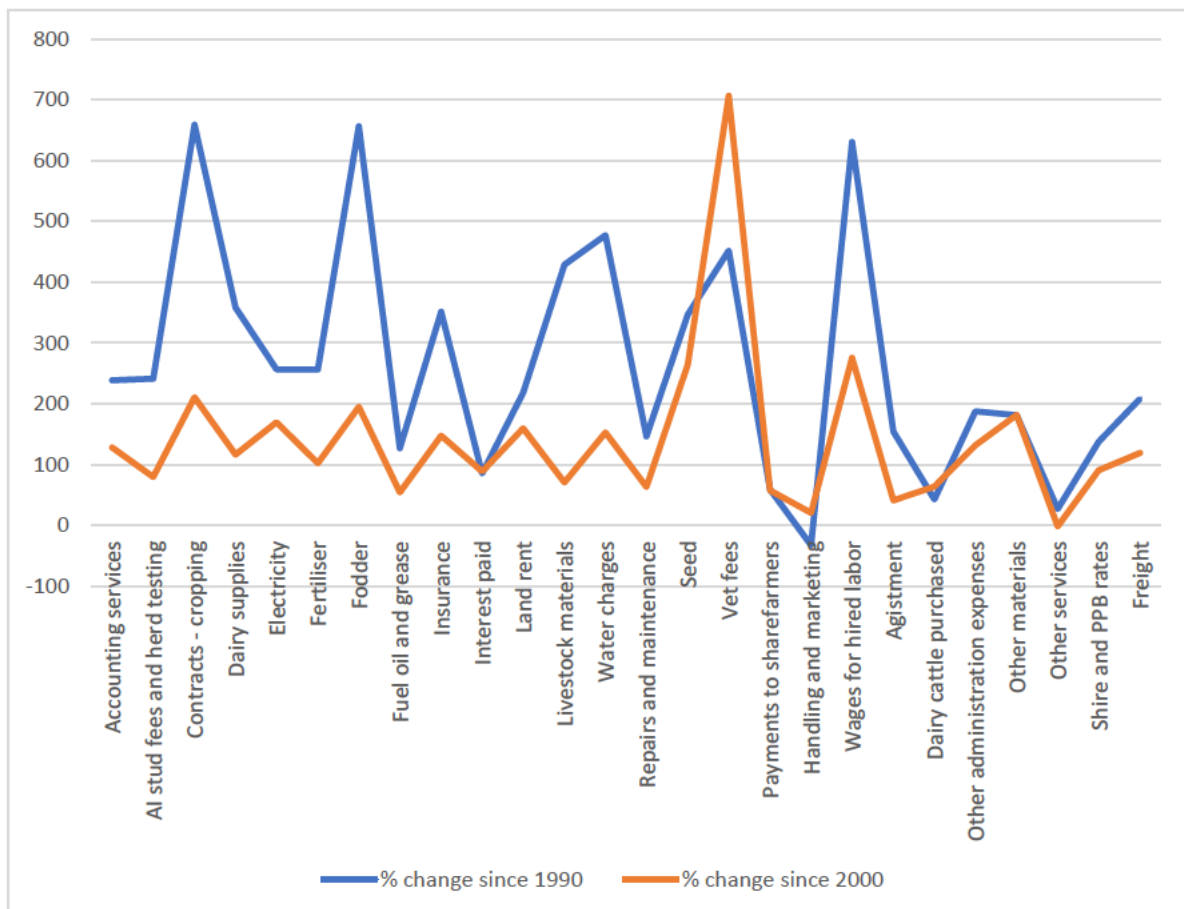
Dairy farm performance

Over recent years the dairy industry has received significant public attention and been the subject of much political debate. This has largely been due to low levels of farm profitability.

Costs

The significant gains made by dairy farmers in reducing inputs (the driver of productivity improvement since deregulation) has not translated to decreased production costs. This is due to significant price rises across the majority of the high cost items (above \$5k p/a). With the exception of handling and marketing none of these expenditure items on the Profit and Loss Statement has decreased since 1990 or 2000. In fact, they have increased by 142% for an average dairy farm since 2000 and 265% since 1990.

Figure 9: % change in average dairy farm production costs above \$5k p/a (2018-19 \$)

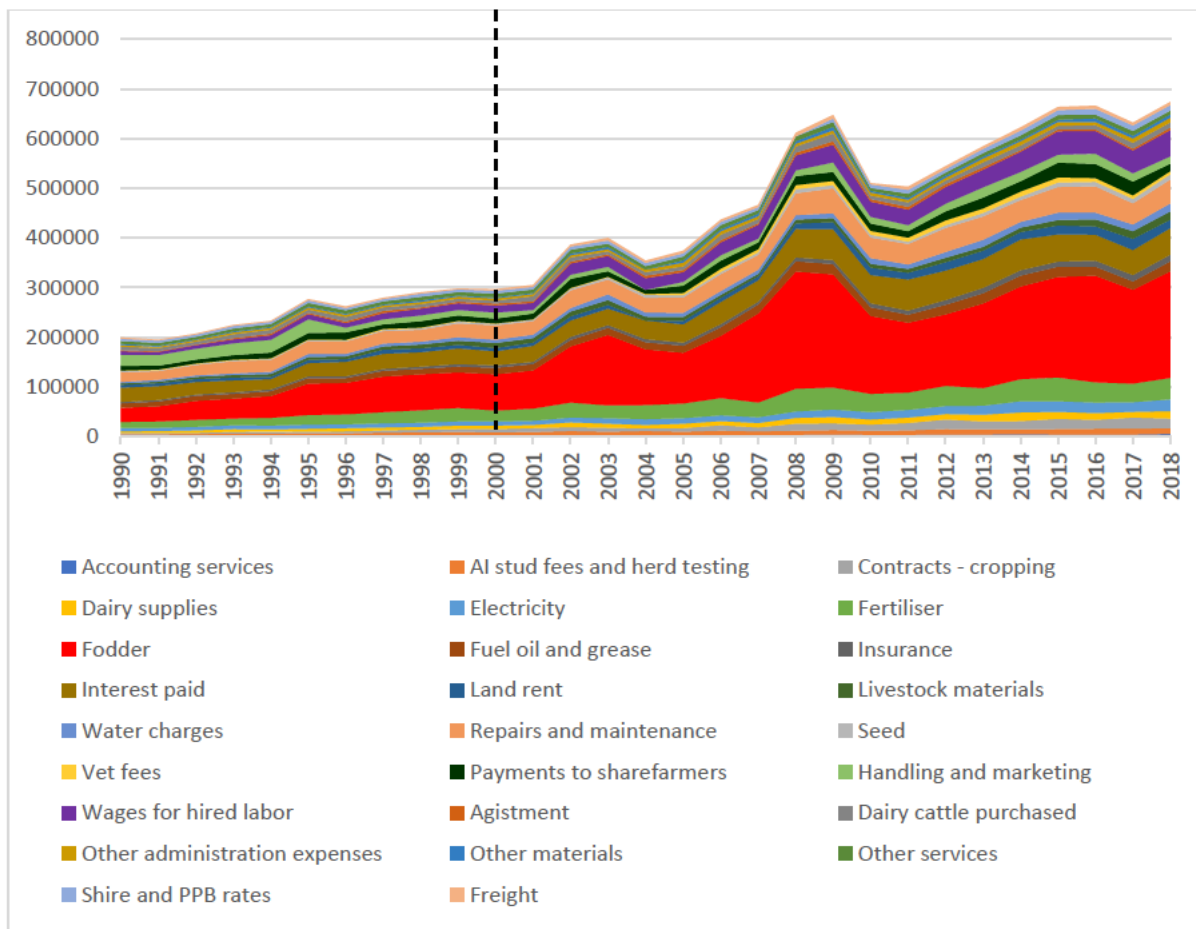


Source: Department of Agriculture and Water Resources (2018) Dairy AgSurf data

The cost rises have been driven by a number of factors, in particular the push to a flatter production curve, drought and climate change. This is seeing more farmers relying on higher cost crop production and bought-in feeds.

Fodder is by far the largest and growing expense. This is due to pasture consumption decreasing across the mainland. For example, Victoria’s pasture consumption now represents about 50% of a cows’ diet. This compares to 78% and 72% in New Zealand and Tasmania respectively (Beca 2018). There is pressure on purchased fodder costs. Factors like unfair freight subsidies by some states and drought handouts to farmers to purchase fodder are increasing the price to farmers in the states who have fodder and do not get subsidies. This is an unfair drought policy outcome. Other commodities, in particular beef and sheep, have seen a doubling to tripling return on their farmgate value. This demonstrates these commodities are more active in purchasing fodder because they can afford it. Dairy has not experienced this, so they are making a loss on purchasing fodder to survive.

Figure 10: Average dairy farm operating costs above \$5k p/a (2018-19 \$)



Source: Department of Agriculture and Water Resources (2018) Dairy AgSurf data

Price

The Australian farmgate milk price is set by the dairy processors based primarily on the global milk price. With the exception of Canada where there is significant government intervention, price trends of Australian farmers have generally mirrored the EU, US and NZ when compared in US\$ terms. The key issue for Australian dairy farmers is that their price is slightly lower than these competitors with the exception of NZ (Productivity Commission 2014). Traditionally this has been largely due to the low cost of raw milk production in Victoria and Tasmania and the absence of price support mechanisms.

Figure 11: International farmgate milk prices (USD/100kg)



Source: Dairy Australia (2018) *Australian Dairy In Focus*

The dairy processors adjust their farmgate milk prices according to local conditions. Key factors include cost of farm and processor production and competition. The processor's profit margin is also considered although often in the broader context of the total raw milk to be procured nationally. Generally, the prices paid are higher in states with a higher cost of production.

Dairy farmers across all states have been receiving consistent increases in the farmgate price since 2000. Over recent years these have been the highest they have ever been. This has largely been driven by a domestic supply shortage. The problem with these increases is they have not kept pace with the rising costs of production. Across Australia, the average dairy farm has experienced a 71% increase in their farmgate price since 2000. This compares to a 142% increase in their production costs over the same period (refer costs section). The term often used to describe this trend is a cost/price squeeze.

Figure 12: Factory paid milk prices (cents/litre)

	2000/01	2005/06	2010/11	2018/19	% increase 2000/01- 2018/19
NSW	29.10	34.30	48.30	54.70	88
VIC	29.30	32.90	42.00	48.20	65
QLD	30.60	36.60	53.10	61.00	99
SA	27.70	32.00	38.00	47.20	70
WA	26.60	29.00	43.40	50.20	89
TAS	25.00	33.60	43.15	50.30	101
AUST	29.00	33.10	43.20	49.70	71

Source: Dairy Australia (2019) *Australian Dairy In Focus*

Since the introduction of \$1 litre milk in 2010/11 ADF and SDFOs have consistently argued that using fresh milk as a discount marketing agent by the major supermarkets to increase sales of their own private label brands is unsustainable for the dairy industry. Retailers and ACCC have consistently emphasised the domestic retail price has minimal impact on farm gate price or exits. This is disputed by industry on the grounds that having fresh milk set at an extremely low (near cost) price and fixed for almost a decade significantly limits capacity for price increases back up the dairy supply chain. While retailers and a lesser extent, processors, bear the greatest profitability impact, they are able to offset these losses via margin gain on other products. Dairy farmers have no options. They are price-takers and only have a single perishable product to sell.

Over time processors have pushed farmers towards all year-round production to supply more of their domestic than international markets. This has increased farmers' production costs at a time when they are already confronted with increasing costs arising from climate change, drought and other drivers. The 10c per litre price increase by retailers to some of their home brand fresh milk varieties in February 2019 (a move from \$1 to \$1.10 per litre) was intended to provide temporary relief until broader structural reform occurs in the industry. The problem is this has had limited effect because:

1. the benefits of this increase only flow to a select group of farmers
2. it does not apply to other discounted dairy products on the retail shelf
3. it continues with fixed pricing, which doesn't reflect supply/demand or inflation changes
4. places trust in the retailers to pass the levy through to farmers. This is of concern to farmers based on the 5 December 2019 finding that Coles failed to pass on the 10c per litre increase in fresh milk to Norco dairy farmers. They were ordered to pay around \$5.25m following an ACCC investigation. Mr Rod Simms, ACCC Chairman said 'we were fully prepared to take Coles to court over what we believe was an egregious breach of the Australian Consumer Law. We believe we had a strong case to allege misleading conduct by Coles.'

This finding continues a similar pattern of behaviour that has occurred over recent years:

1. On 10 April 2015 Coles was fined \$2.5m by the Federal Court for making false or misleading representations and engaging in misleading conduct in relation to the promotion of its par baked bread products. The judge said 'the contravening conduct in this case is substantial and serious. Notwithstanding the absence of any specific evidence as to loss or damage by a consumer or a competitor, it is clear that the significant potential to mislead or deceive and thus to damage competitors, the duration of the conduct, and the fact that the goods in relation to which the impugned phrases were used were "consumer staples" indicate that the objective seriousness of the offending conduct was considerable.'

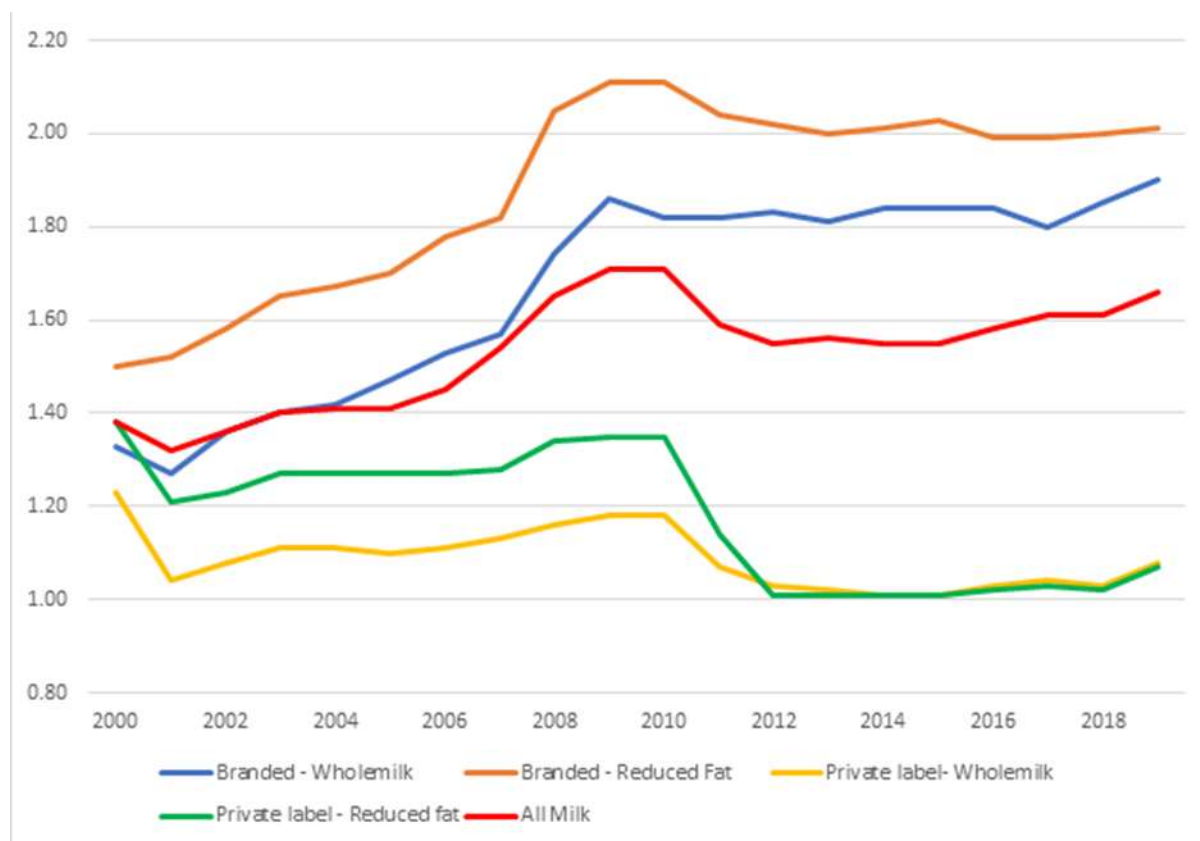
2. On 22 December 2014 Coles was fined \$10m by the Federal Court for engaging in unconscionable conduct. The judge said that ‘Coles treated its suppliers in a manner not consistent with acceptable business and social standards which apply to commercial dealings. Coles demanded payments from suppliers to which it was not entitled by threatening harm to the suppliers that did not comply with the demand. Coles withheld money from suppliers it had no right to withhold. Coles’ practices, demands and threats were deliberate, orchestrated and relentless.’
3. In early April 2014 the ACCC found that the ‘Our Coles Brand Milk Story’ video and cartoon are likely to have contravened Section 18 of the CCA which contradicts Coles’ key claim of ‘fully absorbing the price cut.’ Section 18 prohibits misleading or deceptive conduct. The ‘Our Coles Brand Milk Story’ video and cartoon was an exercise by Coles to convince consumers that farm gate prices had increased for dairy farmers when they had actually decreased.

The *Food and Grocery Code Review* (Samuel 2018) also found the retailers to have misused their market power over their suppliers. Statements supporting this position include:

1. ‘The Review received consistent complaints from suppliers in relation to the retailers’ process for negotiating an increase in the price of goods.’
2. ‘The retailer plays a significant role in controlling prices through their acceptance or rejection of the supplier’s price point. In practice, the retailer acts as the gatekeeper to pricing changes and will only purchase product at a price that has been approved or permitted by them.’
3. ‘With a lack of visibility of the sale transaction or access to market information, growers can find themselves vulnerable to ‘price skimming’ practices by traders.’
4. ‘Some suppliers reported instances where they have been unsuccessful in requesting a price rise for their product but later found that the retailer had increased the retail price on the shelves to capture additional profit for themselves.’
5. ‘Heightened retail price competition has limited suppliers from raising prices in line with their higher overheads.’
6. ‘The Review does not believe that the current verification process being used by retailers is leading to the best outcomes for suppliers or consumers.’
7. ‘Price rises were accepted by the retailer on the condition that the cost was off-set, in whole or in part, by some other means by the supplier.’

This situation places undue hardship on dairy farmers and processors. In 2010/11 when discounted fresh milk came into effect the retailers dropped their retail prices, particularly on their private label products, to near cost prices across the country. Since this time, they have essentially retained that same price despite inflation increases. Australia fresh milk prices are now very low by international standards.

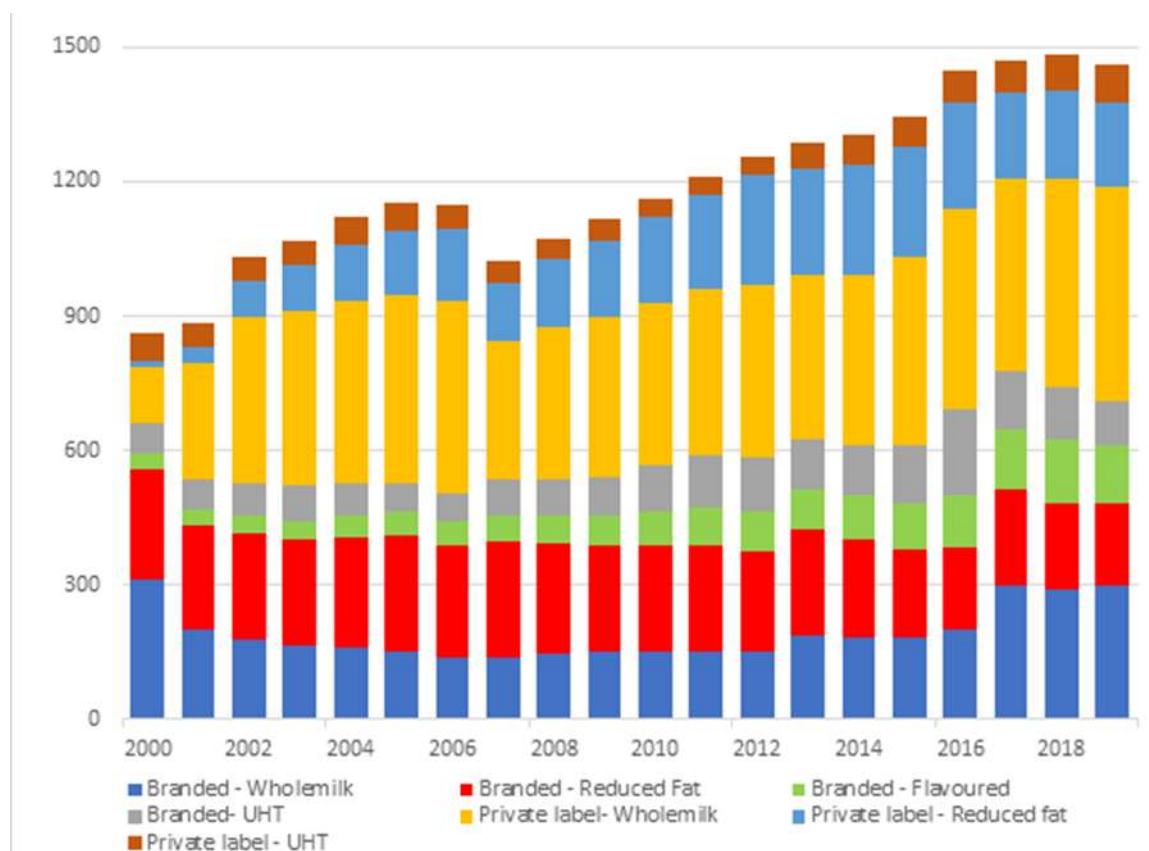
Figure 13: Supermarket milk prices (\$ per litre)



Source: Dairy Australia (various editions) *Australian Dairy In Focus*

Maintaining significantly lower prices for private label products over branded products coupled with prioritisation of shelf space and direct supply contracts with farmers are part of a broader strategy by the major retailers to increase market share for their own products. This is a major problem for dairy farmers because as retail sales and market share shift more towards private label products a lowering of price rise capacity occurs back up the chain. In a highly concentrated retail market like Australia, this inevitably translates to more dairy farms and processors becoming unprofitable, especially in times of drought and fire.

Figure 14: Supermarket milk sales by volume (million litres)



Source: Dairy Australia (various editions) *Australian Dairy In Focus*

A ‘race to the bottom’ in any sector shifts value from the producer to consumer. This is being demonstrated with reductions in net margins for food retailers (supermarkets and grocery stores). These have declined by around 1¼ percentage points since 2011/12 (Carter 2019). This has occurred alongside the expansion of foreign supermarkets into the Australian market as well as a period of aggressive price competition between the major domestic supermarkets.

Quantification of the value stripped out of the supply chain from discounted fresh milk can be calculated by analysis of consumer demand and supply relative to the retail price. Demand (sales) for fresh milk has increased by 21% since 2010/11 at the same time milk production (supply) has declined by 4% over the same period. Based on these figures, the current price for private label milk should be at least \$1.52 per litre (as opposed to \$1.26 per litre currently) and the average price for all milk should be \$2.07 per litre (as opposed to \$1.71 per litre currently). This undercutting of dairy supply chain value is inconsistent with free market dynamics (increasing demand and declining supply = increase in price) and is evidence of market failure.

Figure 15: Calculation of retail milk prices

Demand (sales)

1200m litres (2011) – 1450m litres (2019) = 250m litres increase over period

$250 / 1200 \times 100 = 21\%$ increase over period

Supply (raw milk production)

9,180m litres (2010/11) – 8,795m litres (2018/19) = 385m litres decrease over period

$385 / 9180 \times 100 = 4\%$ decrease over period

Private label wholemilk: 21% of \$1.18p/l (2010) = 25c

Private label reduced fat: 21% of \$1.35p/l (2010) = 28c

$25c + 28c = 53c / 2 = 26c$

$\$1.18 + \$1.35 = \$2.53 / 2 = \1.26

$\$1.26 + 26c = \mathbf{\$1.52}$ should be the current price for private label milk

All milk: 21% of \$1.71p/l (2010) = 36c

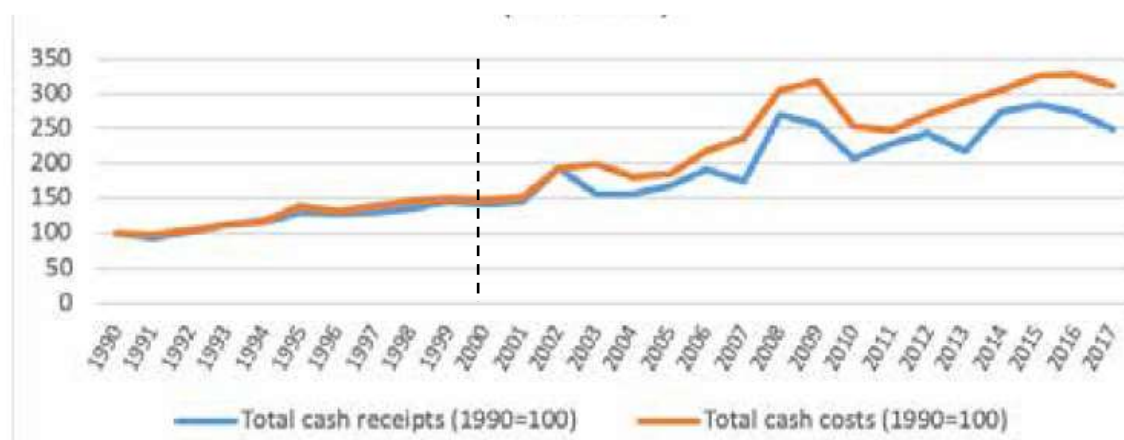
$\$1.71 + 36c = \mathbf{\$2.07}$ should be the average price for all milk

Source: ADF internal analysis

Profitability

Due to production costs rising at a greater rate than farmgate prices the best 25% of farmers are having their margins squeezed, while the other 75% of farmers are having their margins either flat or negative (ADSA 2018). These impacts are even greater in drought years like the current year when grain and other supplementary feeds such as hay and silage, as well as water, are harder to source and more expensive to purchase. This is a significant cash flow problem across all dairy states.

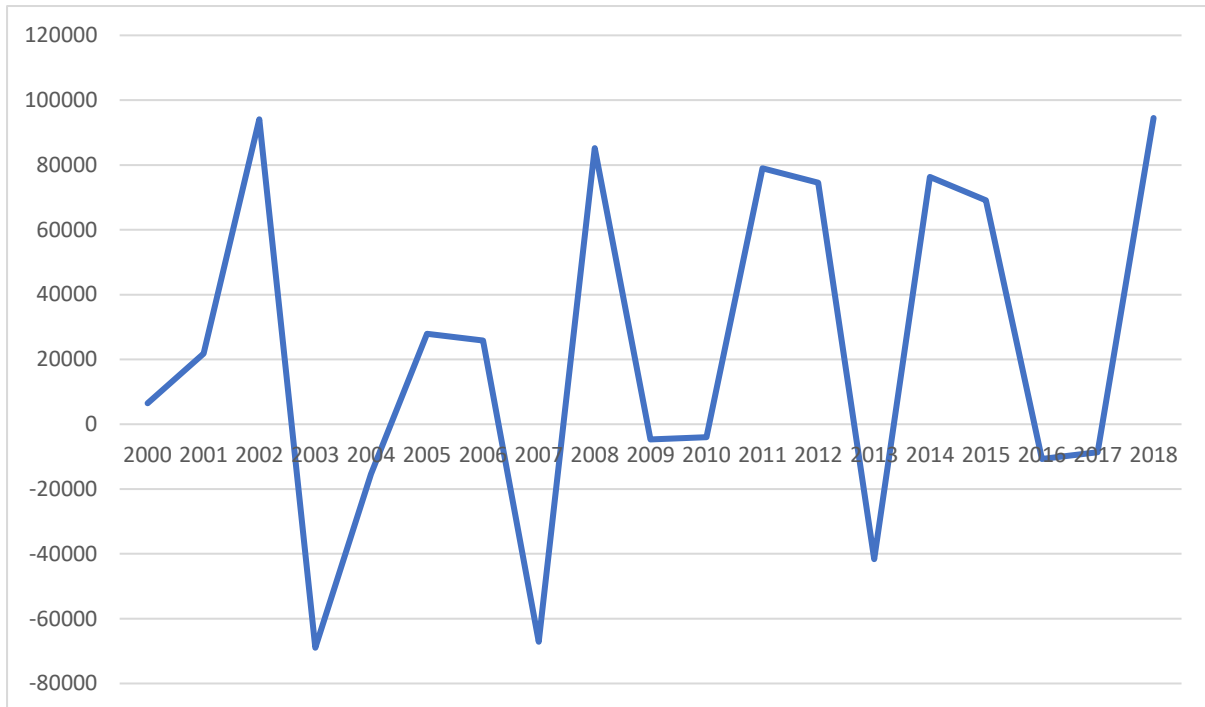
Figure 16: Dairy farm cash costs over cash receipts (1990=100)



Source: ABARES (2018) Dairy farm cash costs versus total cash receipts index

Since 2000 the average dairy farm profit has been \$22,818 per annum (Department of Agriculture and Water Resources 2018). This compares to the national minimum wage of \$38,512 per annum for a 38-hour week (Fair Work Ombudsman 2019).

Figure 17: Australian dairy industry profit results (\$)



Source: Department of Agriculture and Water Resources (2018) Dairy AgSurf data

Policy framework for dairy supply chain reform

Over the past ten years there have been eight parliamentary and government reviews focused to some extent on dairy supply chain reform. These include:

1. May 2010 - Milking it for all it's worth—competition and pricing in the Australian dairy industry by the Senate’s Economics Reference Committee
2. November 2011 - The impacts of supermarket price decisions on the dairy industry by the Senate’s Economics Reference Committee
3. March 2015 – Competition Policy Review by Professor Ian Harper
4. August 2017 - Australia's dairy industry: rebuilding trust and a fair market for farmers by the Senate’s Economics Reference Committee
5. April 2018 – Dairy Inquiry by the Australian Competition and Consumer Commission
6. October 2018 – Food and Grocery Code of Conduct Review by Professor Graeme Samuel AC.
7. Current – Inquiry into the performance of Australia's dairy industry and the profitability of Australian dairy farmers since deregulation in 2000 by the Senate’s Rural and Regional Affairs and Transport Committee.
8. Current – Inquiry into perishable agricultural products and the dairy industry code by the ACCC.

Extraction of recommendations relating to the dairy supply chain provides a framework for reform.

Table 1: Policy framework for dairy supply chain reform

Focus area	Recommendation	Inquiry
Equal and fair conduct	Misuse of market power, unfair contract terms and unconscionable conduct	
	<ul style="list-style-type: none"> • Reframe Section 46 of the Competition and Consumer Act to prohibit a corporation with market power from engaging in conduct that reduces competition 	Competition Policy Review
	<ul style="list-style-type: none"> • Review application of unfair contract laws for dairy 	Australia’s dairy industry: rebuilding trust and a fair market for farmers
	Collective bargaining	
	<ul style="list-style-type: none"> • Strengthen collective bargaining for farmers 	Australia’s dairy industry: rebuilding trust and a fair market for farmers Competition Policy Review

Focus area	Recommendation	Inquiry
		<p>The impacts of supermarket price decisions on the dairy industry</p> <p>Milking it for all it's worth—competition and pricing in the Australian dairy industry</p>
Dairy code of conduct		
	<ul style="list-style-type: none"> • Mandatory dairy code between farmers and processors • Parties to have written agreements • Processors to make offers at same time prior to start of season • Farmers to obtain legal and financial advice prior to entering 	Dairy inquiry
	<ul style="list-style-type: none"> • Agreements need to be simple • Terms cannot restrict farmers from switching • Dispute resolution process available 	<p>Dairy inquiry</p> <p>Milking it for all it's worth—competition and pricing in the Australian dairy industry</p>
	<ul style="list-style-type: none"> • Dairy code to have a cooling off period 	<p>Milking it for all it's worth—competition and pricing in the Australian dairy industry</p>
	<ul style="list-style-type: none"> • Dairy code to be evaluated independently 	<p>Australia's dairy industry: rebuilding trust and a fair market for farmers</p>
Food and Grocery code of conduct		
	<ul style="list-style-type: none"> • Enhance the current obligation to act in good faith (clause 28 of the Food and Grocery Code), including the addition of indicators of acting in good faith that are easy to understand and apply; and to introduce the concept of 'fair dealings' as guiding principles for the Code Arbiters. • The Grocery Code should be amended to give suppliers the right to request further details on the reasons for delisting decisions, following the initial receipt of a signatory's reasons. The protection and notification requirements for the delisting of a product should be extended to a significant limiting of distribution resulting from range reviews. • Amend clause 21 (of the Food and grocery Code) relating to fresh produce standards and quality specifications to make it clear that the requirements apply only to fruit and vegetables. 	Food and Grocery Code of Conduct Review

Focus area	Recommendation	Inquiry
	<ul style="list-style-type: none"> Food and Grocery Code to capture the entire supply chain 	The impacts of supermarket price decisions on the dairy industry
Price integrity	Price setting	
	<ul style="list-style-type: none"> Repeal the ‘price signalling’ provisions in Part IV, Division 1A of the Competition and Consumer Act Price discrimination not to be prohibited in the Competition and Consumer Act 	Competition Policy Review
	<ul style="list-style-type: none"> Reinstate specific anti-price discrimination provisions in the Competition and Consumer Act for dairy 	Milking it for all it's worth— competition and pricing in the Australian dairy industry
	Farmgate milk price	
	<ul style="list-style-type: none"> Introduce a minimum farm gate milk price (under consideration) 	Inquiry into the performance of Australia's dairy industry and the profitability of Australian dairy farmers since deregulation in 2000
	<ul style="list-style-type: none"> Processors to publish farmgate milk price calculations 	<p>Dairy inquiry</p> <p>The impacts of supermarket price decisions on the dairy industry</p> <p>Milking it for all it's worth— competition and pricing in the Australian dairy industry</p>
	<ul style="list-style-type: none"> Processors to set conservative opening farmgate milk prices 	Australia's dairy industry: rebuilding trust and a fair market for farmers
	<ul style="list-style-type: none"> Processors to make their pricing structures for sourcing drinking milk: <ol style="list-style-type: none"> reflect the volume they estimate they require to meet their total commitments offer more stability in prices rather than changing frequently not be dependent on the final retail sales of branded versus private label milk. 	The impacts of supermarket price decisions on the dairy industry
	<ul style="list-style-type: none"> Monitor pricing practices 	Milking it for all it's worth— competition and pricing in the Australian dairy industry
	Retail milk and other dairy product prices	
	<ul style="list-style-type: none"> More accurate estimates of the proportions of the retail price of milk that reflect (i) the 	Milking it for all it's worth— competition and pricing in the Australian dairy industry

Focus area	Recommendation	Inquiry
	costs and (ii) the profits, of farmers, processors and retailers	
	<ul style="list-style-type: none"> A new provision relating to price rise processes should be introduced to: 1. Prevent signatories from requiring a supplier to disclose commercially sensitive information; 2. Require that signatories take no longer than 30 days to consider a price rise request from a supplier, unless circumstances exist that justify a reasonable extension that is negotiated with and agreed to by the supplier; and 3. Require that signatories report on the times taken to make a price rise decision, to be published in the Code Arbiters’ annual reports. 	Food and Grocery Code of Conduct Review

Many of these recommendations have or are in the process of being implemented. For this inquiry to be effective it should leverage and augment these initiatives. Context, analysis and recommendations on how this can be achieved is outlined below.

Equal and fair conduct

Misuse of market power, unfair contract terms and unconscionable conduct

The CCA has three sections dealing with anti-competitive and predatory behaviour. This includes prohibition on the misuse of market power (Volume 1, Sections 45 and 46), unfair contract terms (Volume 3, Schedule 2, Chapter 2) and unconscionable conduct (Volume 3, Schedule 2, Chapter 2). While this provides an appropriate protection framework, all areas need to be strengthened to provide more effective deterrence.

Consider removing 'substantially' from V1 S46(1) of the CCA

Amendments to the prohibition on misuse of market power (Section 46) by the Harper Review (2014) was welcomed by ADF. It replaced the prohibition on a firm with substantial market power 'taking advantage of that power for an anti-competitive purpose' with a prohibition on such a firm engaging in conduct with 'the purpose, effect or likely effect of substantially lessening competition.' This simplified the section and separated purpose from effect to breach the section. Proving intent has been very difficult and a significant barrier to prosecution in the past.

Demonstrating that a misuse of market power was designed or actually caused a substantial lessening of competition is also extremely difficult in a court of law. The term 'substantial' is often considered in the market as a majority or substantial portion. This is a high-level threshold that can ignore unfair dealing upon small businesses, particularly those further up the supply chain where impacts are less obvious.

Make unfair contract terms illegal and impose a penalty in the CCA

In November 2016, unfair contract terms were extended to small business contracts in the CCA. At the time this change was welcomed by ADF as an initial response to price step downs imposed on dairy farmers by the two major dairy processors, Murray Goulburn and Fonterra. Despite the intention this policy change has not been an effective behavioural deterrent.

The Department of Treasury (2019) reported that ‘the Regulators have continued to investigate many complaints relating to the possible inclusion of unfair contract terms in small business contracts. The ACCC received 1,238 unfair contract term related contacts between January 2017 and June 2019, of which a large proportion was believed to be related to small business complaints.’ Since the extension was implemented the ACCC has successfully litigated several businesses and resolved a number of these complaints via public administrative resolutions, including court enforceable undertakings. However, this is a small representative sample due to limitations in law and enforcement. This was a key driver behind the recommendation for a mandatory Dairy Code.

ADF supports option 3 proposed by the Department of Treasury in its *Enhancements to Unfair Contract Term Protections - Consultation Regulation Impact Statement* (2019). This makes unfair contract terms illegal and imposes penalties in the CCA. ADF concurs with the Treasury statement that ‘this option is likely to be the most significant deterrence against using unfair contract terms in a small business standard form contract. It places the onus on the contract-issuing party to ensure the contract does not contain UCTs, or risk facing a financial penalty.’

Insert an appropriate definition and penalty for unconscionable conduct in the CCA

Unconscionable conduct is currently vaguely defined. Section 20 of the CCA says ‘a person must not, in trade or commerce, engage in conduct that is unconscionable, within the meaning of the unwritten law from time to time.’ A court is required to give consideration to a raft of factors (S22 of the CCA) to determine what may constitute unconscionable conduct but this is not definitive. In the absence of a definition unconscionable conduct is difficult to prove. This appears to be a contributing factor as to why there has been few prosecutions in the past.

The unconscionable conduct provisions in the CCA (Sections 20-22) says that a ‘pecuniary penalty may be imposed for a contravention of this subsection.’ An act of unconscionable conduct results in a weaker party being significantly disadvantaged by a dominant party. The suffering can include but not limited to financial loss even bankruptcy and emotional hardship at the company or industry level. Not having a penalty imposed provides no deterrent to such a severe negative outcome.

Collective bargaining

ADF has authorisation until 30 August 2021 to register and administer CBGs. This authorisation was provided by the ACCC on 4 August 2011 (authorisation number A91263).

The ADF register currently lists 18 CBGs in operation across the country. 355 dairy farmers are members of 18 CBGs. This represents only 6.8% of dairy farms (based on the current total of 5,213).

The ACCC and Senate dairy inquiries said CBGs enhance bargaining power for farmers and should be utilised at a greater scale. The consistent low uptake is largely due to the following:

1. ADF’s limited resources has meant that it can only provide a basic registration and administration service function to CBGs. If more resources were provided e.g. establishment of an ADF CBG Coordinator position functions such as marketing/promotion, education and facilitation services could be provided to boost uptake.
2. Leading and engaging in CBGs often require new skills for farmers. This can be a deterrent to participation, especially when additional costs and time are required to acquire those new skills.
3. There have been examples of processors attempting to undermine and circumvent CBGs by refusing to negotiate with CBGs and/or negotiating directly with individual farmers by offering them more favourable terms.

Expand the scope and reboot the Starting Farms Cooperative Program

On 8 May 2019 the Australian Government announced it will provide \$3 million for a Starting Farms Cooperative Program as an election commitment. This program was designed to provide grants to assist farmer groups establish farm cooperatives and other collaborative business models. It builds on the success of the Farm Co-operatives and Collaboration Pilot Program, which operated from 2016-2018 and supported 132 cooperatives, most of whom were grassroots start-ups. It also addresses some ACCC dairy inquiry recommendations pertaining to unlocking regulatory barriers and resource deficits for farmers wanting to vertically integrate by starting or building their own dairy processing facilities to increase revenue.

The Starting Farms Cooperative Program has not been effectively implemented. This appears to be the result of a focus on other priorities, such as Australia's unforeseen COVID-19 response. In the context of enhancing the dairy supply chain, the original program intent still has merit and should be progressed. However, an expansion of program scope to include grants for establishing and improving capacity and capability of CBGs would overcome barriers and increase CBG adoption.

Consider prohibition of companies undermining CBGs under S93 of the CCA

Section 93 of the CCA outlines the processes and requirements surrounding collective bargaining. There may be opportunity to include a section where companies have to deal with a CBG as part of their procurement practices in a manner consistent with other potential suppliers. This section could also include prohibiting companies from undermining a CBG by individual negotiation or other activity. Such changes would address some of the challenges surrounding CBG participation.

Dairy code of conduct

In April 2018 the ACCC's *Dairy Inquiry report* was released with a recommendation for the Australian Government to apply a mandatory code of practice to the dairy industry. The ACCC said that despite industry making significant inroads at self-regulation via its voluntary code, a mandatory code is required to ensure all farmers are protected from unfair contract terms. This was based on a finding that farmers have inadequate information in relation to pricing and payments, limited bargaining power in contract development and find it difficult to switch processors to improve their terms and conditions. It is argued that a mandatory code would help address these issues and fill a gap in Australian competition law.

ADF made a decision to support the mandatory code based on a Discussion Paper it produced on codes of practice in August 2018 and the ACCC's key arguments. Ultimately, ADF could not guarantee the participation of all processors in a strengthened voluntary code. Without full processor coverage there is a greater risk of farmers being disadvantaged from unfair processor terms.

Following a review of the dairy industry's voluntary code (12 months after commencement) a new Dairy Code was developed by ADIC. This was adopted as an initial draft mandatory Dairy Code by the Department of Agriculture and used for national consultation. The new draft code:

1. retained clauses in the voluntary code where there is no stakeholder objection or issue
2. added clauses where there is universal agreement between states and processors. This included good faith provisions, standard contract timelines, protection for collective bargaining groups, independent complaints management and dispute resolution processes, penalties regime and improved administrative arrangements.
3. aligned with the ACCC's guideline for industry codes.

The release of the *Competition and Consumer (Industry Codes—Dairy) Regulations 2019* on 13 December 2019 by the Minister for Agriculture in Canberra adopted most of the ADIC's revised code. It also:

- implemented most of the ACCC's *Dairy Inquiry report* recommendations:
 - that 'processors and farmers should acknowledge in writing the terms and conditions for milk supply'
 - 'processors should provide all contractual documents simultaneously before the commencement of the dairy season or contract term'
 - 'milk supply contracts should not include terms which unreasonably restrict farmers from switching between processors'
 - 'establish a process whereby an independent body can mediate and arbitrate in relation to contractual disputes between farmers and processors'
 - 'processors should publish information identifying how their pricing offers apply to individual farm production characteristics to enable better farm income forecasts'
 - 'a mandatory code of conduct within the act should be established for the dairy industry'.

- implemented many of the Senate’s Economics Reference Committee’s recommendations:
 - ‘that contracts with farmers should offer a clear, consistent formula for milk pricing with unambiguous conditions’¹
 - ‘processors to make their pricing structures for sourcing drinking milk reflect the volume they estimate they require to meet their total commitments and offer more stability in prices rather than changing frequently’²
 - ‘dairy processors set opening prices conservatively so that any downward pressure from market forces will not result in retrospective price step-downs that have devastating impacts on dairy farmers’³
 - ‘any review of the code of conduct for contractual relationships should be undertaken by an independent party that can objectively assess whether the code is working as intended and consider if a mandatory code would be more appropriate.’⁴

Evidence to date is the Dairy Code has been an effective government intervention. The significant effort made by industry and government to develop a code that resolves key bargaining power imbalances between dairy farmers and processors has been rewarded.

Most dairy processors have made a concerted effort to adhere to the code. Many conducted education webinars with farmers prior to 1 June – the date processors are required to release their opening contracts and prices simultaneously. Processor contracts have been significantly reformed to be code compliant. This includes a number of small processors adopting the ADF milk supply agreement template (released in May) despite not being obliged to do so under the code (due to an exemption clause). They agree with the view of ADF and ACCC that having written agreements with suppliers is better business management than having no written agreement.

The 1 June clause has provided a significant boost for industry competition and professionalisation of contract management. Most farmers now have signed written contracts. Generally, these were negotiated and finalised from 1 to 30 June.

¹ Milking it for all it's worth—competition and pricing in the Australian dairy industry

² The impacts of supermarket price decisions on the dairy industry

³ Australia's dairy industry: rebuilding trust and a fair market for farmers

⁴ Australia's dairy industry: rebuilding trust and a fair market for farmers

ADF received a few telephone calls from dairy farmers believing they were ‘being forced’ to sign contracts. The 14-day cooling off period ensured these people had appropriate bargaining power for this situation.

Determine options for incentivising longer-term contracts in the Dairy Code

The length of contracts being offered to farmers appear to have shortened as a result of the Dairy Code. In Western Australia for example farmers are only being offered 12-month contracts whereas in the past they were 2-5-year contracts, including fixed price contracts for up to three years. Such a reduction reduces security of supply and discourages farm investment and innovation.

Review exclusive supply arrangements in the context of the intent of the Dairy Code

According to the Code, the ‘milk supply agreement must not provide for both exclusive supply and a maximum volume’. Also, the ‘milk supply agreement must not provide for both exclusive supply and tier pricing’. If a farmer does not give exclusive supply to a processor then they effectively receive a lower price. They are penalising non-exclusive contracts by offering two cents less for non-exclusive contracts than for exclusive contracts. The wording of these contracts may technically comply with the Code, but they are against the intent of the Code.

Consider inserting a written confirmation clause in S18 of the Dairy Code

The code allows unwritten contracts. This has been included to provide industry with flexibility around procurement of excess or unforeseen raw milk supply. In these circumstances there is a requirement for processors to confirm such arrangements by providing farmers with a written notification within 30 days from the agreement being made (Section 18 for commencement and Section 19 for variation). There is no requirement for the farmer to acknowledge receipt of this record or provide confirmation of the terms specified. This creates a degree of risk for farmers, particularly in the event of a dispute. Inserting a requirement for the farmer to acknowledge confirmation provides evidence of an agreement to terms.

Extend the Dairy Code to include retailers

Since the commencement of \$1 litre milk it has been ADF policy that a mandatory Dairy Code should apply across the entire supply chain to include retailers. Having consistent behavioural expectations is fair to all parties. It is also easier to comply with for dairy processors who no longer have to behave a certain way to farmers (under the Dairy Code) and a different way to retailers (under the Food and Grocery Code).

Comparison of clauses in the Dairy Code with the Food and Grocery Code demonstrate the following:

1. There are far more similarities than differences. This makes an extension of the Dairy Code an easier task than if there were substantive differences.
2. The Dairy Code provides far superior transparency and assurances around price and penalties for non-compliance. Strengthening these provisions would address the issues dairy farmers have in this part of the supply chain.

Table 2: Comparison of Dairy Code and Food and Grocery Code clauses

Requirement	Dairy	Food and Grocery
Mandatory	Green	Orange
Small business exemption	Green	Red
Good faith	Green	Green
Written agreements	Green	Green
Publish agreements	Green	Green
Price formula / justification	Green	Red
Minimum price	Green	Red
Cooling off period	Green	Red
Supply period	Green	Green
Unilateral variation prohibited	Green	Green
Termination on reasonable grounds only	Green	Green
Quality and quantity specification	Green	Green
Retrospective step downs prohibited	Green	Green
Fees and charges / payment terms	Green	Green
Funding promotions	Red	Green
Exclusive supply prohibited	Orange	Red
Loyalty payments	Green	Red
Confidentiality	Green	Green
Intellectual property	Red	Green
Internal complaints process	Green	Green
Compliance officer appointment	Green	Green
Independent mediation or arbitration	Green	Green
Reporting on disputes	Green	Green
Record keeping	Green	Green
Training	Red	Green
Financial penalties for breaches	Green	Red
Review by Minister	Green	Green

Price integrity

The Australian dairy market has the least amount of government intervention than the major dairy-producing Western jurisdictions (UK, NZ, US, Canada and the EU). Canada is a regulated market whereas the others have a deregulated market with some level of intervention. With the exception of NZ these countries have swapped regulation for new and larger subsidies. Now, bureaucracies manage a myriad of subsidy programs under which consumers pay for their products once at the retail level and again through their tax dollars. This is economic inefficiency with a significant loss to taxpayers not consuming dairy products.

Evaluation of a market outcome is measured by its economic efficiency. This is the extent to which consumer and producer net benefit is maximised. Any form of price control reduces net benefit on either or both sides (often referred to in economics as deadweight loss). The exception is where there is market failure.

Establish pricing principles in the Dairy Code

Intervention in the retail sector has to be targeted to correct the problem - the low sale price of fresh milk. As previously demonstrated, this is the area of deficiency in the Food and Grocery Code. If an extension of the Dairy Code were to occur it would have to include a set of price clauses deterring unsustainable discounting behaviour. As a foundation ADF suggests working from the following:

1. Retailers will pay suppliers a price for their product which is:
 - a. higher than the cost the supply chain has borne to produce it
 - b. provides the supply chain with an appropriate profit margin.

Currently there is a delay of more than a year once a price rise or fall is instigated, which is not an effective way of reflecting the true cost of milk. A cost index utilising real data from industry sources needs to be applied on a regular (quarterly) basis.

2. Prices paid to suppliers will not be fixed for an extended period of time. They will change in accordance with supply and demand.
3. Change in a supplier's price for one product will not be offset or influenced by changes in one or more of their other products.
4. Independent verification of pricing and value distribution along the supply chain will be undertaken on a regular basis by the ACCC.

Recommend a minimum farmgate price not be implemented nationally

Imposing floor prices by region, as proposed by the current Senate inquiry, has a number of problems. The failure that occurred in this part of the supply chain (information asymmetry) is currently being addressed via the Dairy Code and other initiatives. There are also a number of economic and trade consequences that are detrimental to industry and the country more broadly.

If the minimum farmgate price was set above the market clearing rate:

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).

These dynamics diminish incentive to innovate and improve productivity across the supply chain. More importantly they undermine profitability and international competitiveness as consumers and processors source alternate suppliers e.g. NZ dairy and substitute products e.g. plant-based alternatives.

A floor price by region also negatively impacts Australia's international trade obligations and is inconsistent with some sections of the Australian Constitution:

1. Section 38 – Trade between states must be free
2. Section 51 – Federal taxation must not discriminate between states, parts of states; and Commonwealth bounties on production, export must be uniform across states
3. Section 99 - Laws cannot give preference to one state, or part thereof, over another state.

Release a plan for enhanced ACCC dairy supply chain oversight and enforcement

The ACCC Agriculture Unit was established by the government in 2015 under the *Agriculture White Paper*. This had funding until 30 June 2019. Continuation of the unit was guaranteed by the Australian Government when it announced an additional \$8.1 million injection into the unit and appointment of a ‘Dairy Specialist’ as part of the government’s dairy support package. These commitments were in addition to more general agriculture funding of \$2.7 million provided in the 2019 Budget.

Work on price integrity and more broadly fair-trading and competition across the dairy supply chain can include provision of education, advice and coordination services, investigations and enforcement functions. At this stage it is not clear how the additional funding provided to the ACCC covers this spectrum.

As a minimum the ACCC should be monitoring prices, costs and profits of the dairy supply chain, including the three major retailers engaging in discounted dairy products, and enforcing breaches of the CCA. An assurance that active policing (prevention and response) work is being undertaken for the dairy supply chain is required. These activities should be articulated in some form of work plan with performance metrics. The ACCC’s Dairy Consultative Committee is well placed to sponsor this output.

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Australian Dairy Farmers' (ADF) role in Emergency Animal Disease (EAD) preparedness and animal health, welfare and biosecurity

Australian Dairy Farmers (ADF) plays a fundamental role in managing the dairy industry's mandated input to the Emergency Animal Diseases Response Agreement (EADRA). As a signatory to the EADRA, ADF on industry's behalf:

- organises and coordinates dairy industry trainees for Emergency Animal Disease (EAD) preparedness programs delivered by Animal Health Australia (AHA). Depending on the stream of training, trainees are equipped to represent the industry on the National Management Group, the Consultative Committee on EADs and State and Local Control Centres as *Liaison Personnel—Livestock Industry*. ADF maintains a database of trainees and periodically contacts trainees to ensure their currency;
- provides practical input to the drafting, review and finalisation of Australian Veterinary Emergency Plan (AUSVETPLAN) documents relevant to the dairy sector. AUSVETPLAN documents, including enterprise manuals such as the *Enterprise Manual—Dairy*, are pre-emptively prepared as essential guidance material for use in an EAD response;
- participates in regional and national EAD incursion exercises to test the industry's level of preparedness and to assess the capacity for government agencies and industry to work together in potential crisis situations involving an EAD;
- is responsible for evaluating the industry's level of preparedness for an EAD. This is managed through the AHA-developed *Industry Benchmarking Tool*, which equates to the governments' *Provision of Veterinary Services* tool developed by the World Organisation for Animal Health (OIE). The *Industry Benchmarking Tool* enables peak bodies to identify strengths, weaknesses and gaps in their respective industry's preparedness and so assists in efficient resource allocation to attend to any shortcomings; and
- is a member of numerous AHA-managed EAD-related surveillance programs such as the Transmissible Spongiform Encephalopathy Freedom Assurance Program, the National Screw Worm Fly Surveillance and Preparedness Program, and programs targeting national surveillance more generally.

Additional to its EADRA-related tasks, ADF provides invaluable and ongoing input to:

- AHA-managed programs targeting endemic diseases. Examples include the National Arbovirus Monitoring Program and the National Johne's Disease Program; and
- AHA's Industry Forum, for which ADF provides the Chair. (AHA's Industry Forum is a platform for representatives of AHA's 14 animal and livestock sector peak body members and 10 industry associate member bodies¹. The Industry Forum has a role to discuss livestock health, welfare and biosecurity matters of common interest, and to collaborate on initiatives that are of mutual benefit to their respective constituents. The livestock sectors represented by these bodies collectively are worth in excess of \$50 billion² in value to the Australian economy.)

¹ <https://www.animalhealthaustralia.com.au/industry-forum/>

² Self-assessed using best-available data