

Chapter 6

Government needs to play the right role

6.1 The preceding chapters of this report have identified that, for the dairy industry to grow and prosper into the future, it is the industry's responsibility to rebuild trust, increase transparency and improve consumer awareness. That said, there is a role for government to provide a legislative and regulatory structure which can reduce the power imbalances between stakeholders, reduce market distortions and promote innovation. Further, governments can also assist by supporting research and development activities, and improving knowledge transfer about market conditions.

Direct government intervention—milk levies and floor prices

6.2 Direct intervention is one approach that governments can take to intervene when markets do not appear to function correctly. Mr Rhys Palmer provided his view on how regulation and subsequent deregulation had contributed to the current state of the dairy industry:

Deregulation never hurt anybody; what hurt was regulation in the first place. They had farmers milking cows in areas that were not conducive to doing so and getting paid to do it. Look at the stuff-up it generated in the finish. It generated deregulation in which everybody got hurt.¹

6.3 Indeed, many of the issues faced by dairy farmers in Western Australia and Queensland can be attributed to government intervention.² The QDO recognised this but advocated for a market based solution, not more intervention:

... deregulation laid the groundwork for the state we are in now. But the dairy industry has not looked for re-regulation. We are prepared to live, I think, in a fair market, a free and fair market, but the 'fair' part is the bit that we really want to focus on. In a lot of other parts of the world the dairy industry is not regulated, but they operate in a market where there is more market power in the farm sector. I think that is what is missing in Australia.³

6.4 It is unsurprising then that many stakeholders were against direct government intervention in the industry in the form of milk levies and floor prices. For example, Fonterra was not in favour of measures that could be considered reregulation:

We note in particular the proposed introduction of measures such as a floor price for milk or a 50 cent levy on the sale of fresh milk, with proceeds directed to an emergency fund to assist dairy farmers.

1 Mr Rhys Palmer, *Committee Hansard*, 3 February 2017, p. 2.

2 See, for example, Mr Andrew Weinert, *Submission 28*.

3 Mr Brian Tessman, QDO, *Committee Hansard*, 31 January 2017, p. 2.

We do not support these proposals. We are concerned they would be steps towards re-regulation of the dairy market that would jeopardise our international trade agreements and undermine Australia's competitiveness.⁴

Floor price

6.5 When questioned, there was limited support from farmers for the introduction of a floor price:

No, I do not believe there is a case for a floor price. We have seen what happened to the wool industry with a floor price...It is about companies getting the right product mix.⁵

If a floor price or regulated market were to create an increase in the price of entry into our dairy industry, we may not have enough new farmers coming in to sustain our milk production.⁶

6.6 That said, Mr Lionel Harniess took a different view to contend that a floor price must reflect a fair milk price to the farmer, the processors and the consumers:

We have been in deregulation for some 16 or 17 years now. It has been a race to the bottom, and here we are. Quite bluntly, it has not worked. We need to go back into regulation and quota.⁷

Milk levy

6.7 Throughout the inquiry, Farmer Power advocated for the introduction of a levy on fresh drinking milk sales to 'stem the exodus of farmers from the industry'⁸:

Farmer Power has suggested that the previous levy on the price of milk could be introduced as a temporary intervention measure, until such time as a more permanent industry solution can be found. A 50c per litre levy could be redistributed to all dairy farmers providing a top up payment of around 12c per litre, which would bring farmgate milk prices to a more sustainable level.⁹

6.8 Farmer Power explained that any money from a levy on fresh drinking milk could be effectively used as an insurance policy to support farmers:

You can bank the money away in good years, and in the bad years we can withdraw from it...¹⁰

6.9 The Department of Agriculture and Water Resources cautioned against such an approach:

4 Fonterra Co-operative Group, *Submission 38*, p. 5.

5 Mr Paul Weller, *Committee Hansard*, 2 February 2017, p. 12.

6 Mrs Sarah Parker, *Committee Hansard*, 2 February 2017, p. 22

7 Mr Lionel Harniess, *Committee Hansard*, 2 February 2017, p. 22.

8 Farmer Power, *Supplementary Submission 17.1*, p. 4.

9 Farmer Power, *Submission 17*, p. 9.

10 Mr Darryl Cardona, *Committee Hansard*, 3 February 2017, p. 21.

The Australian government would need to be satisfied that the benefit to industry from such a levy would outweigh any other industry of public detriment.

For example, the imposition of a levy on domestic drinking milk risks distorting market signals along the dairy supply chain, being a disincentive to improved productivity, and impeding international competitiveness. Further, it may have unintended consequences of reducing consumption of fresh milk, damaging the profitability of dairy farmers and squeezing supply chain margins further. Such a levy would also make it difficult for Australia to advocate against domestic dairy support measures in other countries when negotiating trade agreements.¹¹

6.10 Dairy Connect explained that previous milk levies had not worked for farmers and, as such, were reluctant to support any reintroduction of milk levies.¹²

6.11 Mr Chris O'Keefe also opposed the imposition of a compulsory consumer levy for a number of reasons including the precedent it could set for other industries that suffer 'bad' times.¹³

Committee view

6.12 An outcome of the intense competition for milk between processors in the Southern Milk Region appears to be that milk prices have been more variable as processors ride the highs and lows of the market. However, the overwhelming view of farmers was that rather than regulation and government intervention, they would prefer to have a more stable and higher farm gate milk price. In this regard, industry leadership, as outlined in previous chapters, is necessary to bring greater stability to farm gate milk prices and restore farmer confidence through processors offering longer term contracts at sustainable prices. As such, the committee does not consider that direct government intervention, either through a floor price or milk levy, is appropriate.

Encouraging a level playing field

6.13 While direct intervention may not be appropriate, the government has taken steps to reduce power imbalances and discourage anti-competitive behaviour by legislating unfair contract terms and introducing legislation to implement an effects test. While these initiatives are not directly aimed at the dairy industry, they have the potential to affect stakeholder behaviour.

Unfair contract term laws

6.14 Unfair contract terms are instrumental in creating and sustaining power imbalances between contracting parties. In the context of the dairy industry, farmers and representative bodies raised concerns about unfair contract terms. For example, Dairy Connect noted:

11 Department of Agriculture and Water Resources, *Submission 23*, pp. 3–4.

12 Mr Graham Forbes, Dairy Connect, *Committee Hansard*, 31 January 2017, p. 14.

13 Mr Chris O'Keefe, *Submission 34*, [p. 1].

When you ask the processor, 'Is this contract or agreement legal?' they basically come back and say, 'Well, nobody has contested it.' That is basically because we are all individual farmers and we do not have the capacity or the strength to go out there and challenge multinational companies and other large companies that want to stand by these agreements...¹⁴

6.15 That said, some stakeholders were optimistic that the recent unfair contract term amendment to the Australian Consumer Law (ACL) could be applied to milk supply contracts. The amendment, effective from 12 November 2016, aims to protect farmers and small businesses from unfair contract terms in standard form contracts.¹⁵ The law aims to address some of the power imbalances that exist in business-to-business transactions.¹⁶

6.16 Section 24 of the ACL provides that contract terms will be unfair if:

- it would cause a significant imbalance in the parties' rights and obligations arising under the contract;
- it is not reasonably necessary in order to protect legitimate interests of the party who would be advantaged by the term; and
- it would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied upon.¹⁷

6.17 The law applies to standard form contracts where at least one of the businesses involved employs less than 20 people, and the price payable under the contract is more than \$300 000, or \$1 million if the contract is for more than 12 months.¹⁸

6.18 Given that a standard form contract is prepared by one party and the other party has little or no opportunity to negotiate the terms, the ACCC is of the opinion that milk supply agreements are likely to be considered standard form contracts for the purpose of the law.¹⁹

6.19 In relation to the applicability of financial thresholds to standard form contracts, the ACCC noted that:

For the purposes of determining whether a contract fall under the relevant threshold to meet the definition of a 'small business contract', any amounts that cannot be calculated with certainty at the time the contract is entered are unlikely to be included in the calculation of the upfront price payable.

14 Mr Graham Forbes, Dairy Connect, *Committee Hansard*, 31 January 2017, p. 11.

15 A standard form contract is prepared by one party to the contract and where the other party has little or no opportunity to negotiate the terms—that is, it is offered on a 'take it or leave it' basis.

16 ACCC, *Submission 5*, p. 2.

17 ACCC, *Submission 5*, p. 2.

18 ACCC, *Submission 5*, p. 2.

19 ACCC, *Submission 5*, p. 2.

Given the value of milk supply agreements typically cannot be calculated at the time of entering into the agreement, it is arguable that such agreements will fall within the scope should other thresholds be met.²⁰

6.20 The ASBFEO commented that the application of the unfair contract terms legislation to the dairy industry was not clear:

It is also important to monitor how the unfair contract terms legislation applies to industry contracts. Given that milk prices are generally set on a daily basis, there is an argument that the contracts are effective separate daily (standard form) contracts that would each fall within the \$300 000 threshold. If this is the case, a number of existing contractual terms may be made void, such as clauses that provide for:

- limited (or no) notice of price and service changes;
- contract lock-in; and
- unilateral contract variation.²¹

6.21 Similarly, Primary Industries and Regions South Australia (PIRSA) submitted that:

It would be beneficial to understand whether this legislation will assist in preventing future hardship for dairy farmers due to their milk supply contracts. If this is not the case, amendments or new legislation should be considered.²²

6.22 The ACCC outlined the complex process for determining whether terms are unfair:

In deciding whether a term is unfair, consideration must be given to the transparency of the term, and the overall rights and obligations of each party. Further, the fairness of a particular term must be addressed in light of the contract as a whole.

In order for the ACCC to form a view on whether specific contract terms are unfair, the ACCC must undertake a detailed assessment of the specific contracts and all the surrounding circumstances.²³

Committee view

6.23 The committee welcomes the introduction of unfair contract term laws and looks forward to its application to milk supply agreements and contracts within the dairy industry.

6.24 While noting the complexities associated with the application of the unfair contract term law to the different milk supply arrangements in the dairy industry, the committee considers that the ACCC is best placed to undertake such analysis,

20 ACCC, *Submission 5*, p. 2.

21 ASBFEO, *Submission 2*, [p. 3].

22 PIRSA, *Submission 22*, p. 4.

23 ACCC, *Submission 5*, p. 2.

particularly as part of its inquiry into the dairy industry, and expects that the ACCC report will provide clarity for farmers and processors regarding the application of the law to milk supply agreements and contracts.

6.25 The committee considers that there would also be value in the ACCC providing guidance as to how model milk supply agreements and contracts could be developed under the code of conduct for contractual relationships to comply with unfair contract term laws.

Recommendation 7

6.26 The committee recommends that the ACCC specifically address the issue of unfair contract terms within the dairy industry and provide guidance as to whether milk supply contracts, in-principle, fall under the scope of the unfair contract term laws. Further, the ACCC should provide guidance as to how milk supply agreements and contracts could be developed under a code of conduct for contractual relationships to be compliant with unfair contract term laws.

Effects test legislation

6.27 The effects tests seeks to amend section 46 of the *Competition and Consumer Act 2010* to strengthen the prohibition of the misuse of market power by corporations and better target anti-competitive conduct by corporations with a substantial degree of market power.²⁴

6.28 A number of stakeholders noted that the introduction of an 'effects test' into competition law may address issues related to the sale of private label and branded dairy products. The QDO considered that:

In an Australia without an 'Effects Test', large and powerful companies can unfairly damage supplier and small competitors and our ACCC cannot prove anti-competitive intent or 'purpose' even though the 'effect' is clear.²⁵

6.29 The QDO advocated for the setting of retail milk prices that reflected the cost of production in each region:

Retail prices of fresh white milk should reflect the cost of selling the milk in each region that it is sold to allow dairy farmers, all retailers and all milk brands to compete on a level playing field.²⁶

6.30 Concerns were also raised about the standardised retail pricing of products across Australia. WA Farmers questioned how a nation-wide retail price of \$1 per litre could reflect the cost of production, particularly in regional locations:

With expanding the dollar-a-litre stuff across to Coles Express and to Woolworths Caltex, or whatever, those places were maintaining a high value because it was convenience price. So, at a Coles Express in

24 *Explanatory Memorandum, Competition and Consumer Amendment (Misuse of Market Power) Bill 2016*, p. 1.

25 Queensland Dairyfarmers' Organisation, *Submission 9*, p. 4.

26 Queensland Dairyfarmers' Organisation, *Submission 9*, pp. 3–4.

Kununurra at midnight, you could get milk for \$1 a litre. So I would suggest that in this state, if the true cost of retail and transport was applied to milk, it would be sold at a loss in every regional town in the state. When they do their justification for it, it may work in Victoria. And I think it does work in Victoria. But it does not work here [in Western Australia]; it does not work in Queensland.²⁷

6.31 Indeed, Coles expressed concerns about the potential ramifications following the introduction of the effects test:

We have been particularly concerned about the impact it may have on state-based pricing. State-based pricing is basically our policy whereby we charge the same for all our stores, with the exception of some fruit and vegetables, regardless of where you live...²⁸

6.32 Coles went on to explain their approach moving forward:

One of our main concerns we have raised is the unintended consequences of placing this legislation through parliament...We really pride ourselves on our customer offer and the fact that we do not discriminate against customers on the basis of where they live. But this will ultimately be a matter for the courts when we see the first test cases coming through over the next few years.²⁹

6.33 In considering the potential impact of the introduction of an effects test on the agricultural section, the Productivity Commission concluded that:

...perceptions in the agricultural sector that the introduction of an effects test will shield farm businesses from intense competition are not well supported by the evidence.³⁰

6.34 The Competition and Consumer Amendment (Small Business Access to Justice) Bill 2017, a private members bill passed by the Senate on 10 August 2017, provides an alternative to the effects test. The bills seeks to address the unfair playing field between large and small businesses by allowing judges in the Federal Court to waive liability for adverse costs to small business private litigants in cases related to the misuse of market power. It would also allow the Australian Small Business and Family Enterprise Ombudsman to provide assistance to small businesses in preparing these cases.

Committee view

6.35 The committee considers that the introduction of an effects test has the potential to create risks for businesses that seek to lower prices for customers and could set a dangerous precedent which ultimately hurts consumers; however, it notes

27 Mr Michael Partridge, WA Farmers, *Committee Hansard*, 1 February 2017, p. 22.

28 Mr Alister Jordan, Coles, *Committee Hansard*, 15 November 2016, p. 51.

29 Mr Alister Jordan, Coles, *Committee Hansard*, 15 November 2016, p. 51.

30 Productivity Commission, *Regulation of Australian Agriculture*, Inquiry Report No. 79, 15 November 2016, p. 519.

that an effects test was legislated in August 2017. The committee remains concerned that issues associated with the implementation of an effects test, such as state-based pricing and the potential costs on businesses litigating breaches, need to be resolved in a timely manner to reduce uncertainty and the potential impact on retailers, processors and farmers.

6.36 The committee also considers that the measures contained in the Competition and Consumer Amendment (Small Business Access to Justice) Bill 2017 have the potential to appropriately address power imbalances between large and small businesses and recommends that the House of Representatives pass this bill.

Recommendation 8

6.37 The committee recommends that the House of Representatives pass the Competition and Consumer Amendment (Small Business Access to Justice) Bill 2017.

Encouraging expansion in dairy cooperatives

6.38 As a result of rationalisation and privatisation, only two dairy cooperative processors of scale remain in the Australian dairy landscape—Murray Goulburn and Norco. Cooperatives exist to benefit members and structure their operations accordingly. For example, Norco outlined that:

Norco's primary concern is to maximise the farm gate returns of our members because unlike non-co-operative structured dairy processors, we do not have to satisfy the needs of external shareholders who do not have a vested interest in the dairy industry.³¹

6.39 Some submissions supported the cooperative model and advocated for its expansion. For example, Lindsay Jarvis and Ann Jarvis noted that the cooperative model provided entry and exit points for people moving through their careers:

We believe in the culture of co-operatives as being the way of the future...³²

6.40 Lindsay Jarvis and Ann Jarvis also highlighted the importance of having cooperatives in the dairy industry in terms of farm gate pricing:

When strong co-operatives exist in the marketplace, it ensures all players must maintain competitive prices. Without this ethic, suppliers would be exploited for the benefits of non-industry shareholders.³³

6.41 Norco also sees a role for cooperatives as part of the future of the dairy industry:

It is Norco's view that the Australian dairy industry needs a strong and vibrant co-operative sector. The events of the last six months are regrettable and are likely to have long lasting consequences. It is imperative we learn

31 Norco, *Submission 18*, p. 3.

32 Lindsay Jarvis and Ann Jarvis, *Submission 3*, [p. 2].

33 Lindsay Jarvis and Ann Jarvis, *Submission 3*, [p. 1].

from these unfortunate events and it is even more important to move on and focus on the issues that will put confidence back into the dairy industry in Australia.³⁴

6.42 Indeed, Norco explained how it had expanded recently:

...even though it is widely reported that the Queensland dairy industry is in decline, Norco's farm gate pricing and co-operative model are seen as attractive propositions. Norco is proud of the fact that we support new start-up farms and some 14 new start-ups have commenced milk supply with Norco in the last few years. This demonstrates that the co-operative model is becoming better known and recognised as a sustainable business model.³⁵

6.43 Norco outlined the challenges they considered to the establishment of new cooperatives:

To start any business requires a level of investment, and the challenge that has always existed in a farming community in agricultural cooperatives is: do you invest in your farm or do you invest in the co-operative, especially if they are growing or actually requiring a capital investment? Then, on the other side of it, if you take that capital investment and put it into the cooperative, for which you need physical assets—in some instances, to manufacture product—then where does the capital actually come from in that scenario? That is the difficulty cooperatives have traditionally had in Australia, especially for younger farmers growing in the system, and how they actually fund that.³⁶

6.44 In order to help strengthen the cooperative model, Norco advocated for tax incentives for members to invest in their cooperatives:

Norco is of the view that the Senate Committee should consider the point that if co-operatives are to resist external equity and the inherent conflict this brings, it should consider recommending that the members of co-operatives are given tax incentives to invest in their co-operative. At present any investment by members is seen as a capital item and therefore attracts normal tax rates.³⁷

Committee view

6.45 The committee considers that the cooperative model has an important role to play in agricultural industries, provided these organisations are managed appropriately. As such, the committee commends the findings of previous inquiries undertaken by the Senate Economics References Committee and supports the expanded use of the cooperative business model.

34 Norco, *Submission 18*, p. 5.

35 Norco, *Submission 18*, p. 3.

36 Mr Greg McNamara, Norco Cooperative Limited, *Committee Hansard*, 31 January 2017.

37 Norco, *Submission 18*, p. 4.

6.46 Specifically in relation to cooperative models in the dairy industry, the committee concluded in 2010 that:

The interests of farmers would be better served if there were more processors and preferably more of them in the form of cooperatives.³⁸

6.47 This committee has also previously inquired into the Australian cooperative sector in 2015. That inquiry concluded that there were significant barriers to growth and innovation by cooperatives, including in the establishment of new cooperatives. That inquiry recommended, among other things, that governments develop a program of supports to encourage the establishment of new cooperatives and reduce barriers to growth, particularly in accessing capital.³⁹

6.48 The committee notes that the government is undertaking consultation on potential reforms to identify and improve access to capital by cooperative and mutual organisations. The committee understands that this report has been submitted to the Treasurer and looks forward to its public release.

Recommendation 9

6.49 The committee recommends that the government prioritise action to reduce the regulatory burden across the cooperative sector and support programs to facilitate the establishment of new cooperatives.

Monitoring and enforcement by regulatory agencies

6.50 The roles, responsibilities and effectiveness of regulatory bodies overseeing conduct within the dairy industry were raised as areas of concern, particularly in relation to investigating the conduct of Murray Goulburn and Fonterra. For example, Dairy Connect was critical of the powers available to the ACCC:

Anticompetitive behaviour is still there in form, but what we do need to see is that the ACCC is able to be given some teeth that can ensure that such things as collective bargaining, such as the effects clause that has been introduced, can provide a way forward that can have an outcome that is positive.⁴⁰

6.51 Public perceptions of the ACCC did not give farmers a sense of confidence that justice would prevail:

My other formal point is the ACCC. When are they ever going to put some teeth into those fellas instead of paying them money? Take them to the dentist, for goodness sake, get them some teeth because they have got absolutely no teeth whatsoever.⁴¹

38 Senate Economics References Committee, *Milking it for all its worth—competition and pricing and in the Australian dairy industry*, May 2010, p. 67.

39 Senate Economics References Committee, *Cooperative, mutual and member-owned firms*, March 2016.

40 Mr Shaughn Morgan, *Committee Hansard*, 31 January 2017, p. 13.

41 Mr Geoff Atkinson, *Committee Hansard*, 3 February 2017, p. 19.

6.52 Concerns about the timeliness of ACCC and ASIC investigations were also raised:

We had the right honourable Sarah Henderson at a meeting in Alvie. She affirmed to us that the ACCC would have a verdict on Fonterra and Murray Goulburn within weeks, and that was back in May [2016]. I have since hounded her and hounded her, but we still have not seen anything.⁴²

6.53 Indeed, despite repeatedly indicating that the results of any investigation would be available before the end of 2016, the ACCC did not make any public statement about the investigation until 28 April 2017, where it announced publicly that it would take action in the Federal Court against Murray Goulburn, former Managing Director Mr Gary Helou and former Chief Financial Officer Mr Bradley Hingle.⁴³ To date, ASIC has not yet released the findings of its investigation.

6.54 The timeliness and transparency of investigations by the ACCC and ASIC is a longstanding concern and is certainly not limited to the dairy industry. However, the dim view that many stakeholders have of these regulatory agencies and the prolonged nature of any investigation of substance raises questions about whether regulatory agencies could be more transparent during the course of any investigation.

6.55 That said, it is important to consider whether greater transparency has the potential to undermine the integrity of investigations or unfairly besmirch the reputations of individuals and businesses associated with being under investigation.⁴⁴

6.56 Regulator transparency and timeliness issues are not new. Indeed, the committee's 2011 report into the impact of supermarket pricing decisions on the dairy industry concluded that:

...there is some scope, albeit limited, for additional transparency of the ACCC's enforcement activities. Improvements to the way the ACCC releases this information could help ensure that the public is confident that matters are being taken seriously, and increase the accountability of the ACCC.⁴⁵

6.57 That inquiry went on to recommend that:

...the ACCC review its approach to releasing information about its investigations with a view to providing greater information about its current enforcement activities and relevant issues of particular concern.⁴⁶

⁴² Mr Alex Robertson, *Committee Hansard*, 3 February 2017, p. 22.

⁴³ ACCC, *ACCC takes action against Murray Goulburn*, <https://www.accc.gov.au/media-release/accc-takes-action-against-murray-goulburn> (accessed 18 May 2017).

⁴⁴ Senate Economics References Committee, *The impacts of supermarket price decisions on the dairy industry*, November 2011, p. 88.

⁴⁵ Senate Economics References Committee, *The impacts of supermarket price decisions on the dairy industry*, November 2011, p. 88.

⁴⁶ Senate Economics References Committee, *The impacts of supermarket price decisions on the dairy industry*, November 2011, p. 88.

6.58 While the government of the day supported transparency where possible and appropriate, it acknowledged that actions to improve transparency were ultimately a matter for the ACCC as an independent statutory agency. Based on what has been observed over the last 12 months in relation to the dairy industry, it would appear that the ACCC has not taken steps to improve its practices in this regard.

Committee view

6.59 The committee is concerned that, where livelihoods of farmers are at stake and where public confidence in the regulatory system appears to be undermined, regulatory agencies are letting Australian farmers down.

6.60 The committee is of the view that the ACCC should take a more proactive approach to informing affected parties of how an investigation is progressing. It is unacceptable that it should take almost 12 months to initiate action in what, to many stakeholders, appeared to be a straightforward case of engaging in unconscionable conduct and making false or misleading representations.

6.61 Similarly, the committee is concerned and frustrated that despite significant additional funding, ASIC also appears to not be able to meet reasonable timelines nor provide public updates on the progress of investigations.

6.62 As with the committee's last report into the Australian dairy industry in 2011, it now again recommends that public confidence in regulatory investigations by the ACCC and ASIC needs to be improved through making better and more timely public statements on key matters to help inform the broader public debate on such issues.

Recommendation 10

6.63 The committee recommends that regulatory agencies, particularly the ACCC and ASIC, review their approach to publicly releasing information about investigations, with a view to providing greater general information about current enforcement activities and relevant issues of public concern.

Dairy Commodity Price Index

6.64 As discussed previously, there is an onus on processors to keep supplier farmers informed about the state of the market and provide timely updates on potential changes to the farm gate milk price. However, the government also considers that it has a role in increasing transparency about dairy prices and has committed \$1 million to establish a commodity milk price index as part of the Dairy Support Package:

...the index would introduce greater transparency and market signals in domestic and global milk prices.⁴⁷

6.65 Further, the proposed milk price index would:

47 Malcolm Turnbull (Prime Minister), *Coalition announces \$579m support package for dairy farmers*, Media Release, 25 May 2016, <https://www.malcolmturnbull.com.au/media/the-coalition-will-guarantee-support-for-australian-dairy-farmers> (accessed 28 March 2017).

...provide dairy farmers with valuable information for use in supply negotiations with processors and...assist in following international price trends.⁴⁸

6.66 Despite this commitment, some stakeholders were not convinced that a milk price index would be beneficial. Mr Peter Lavery noted that there were a variety of issues which complicate the development of such an index including:

- the range of products that milk can be manufactured into;
- the prices of dairy commodities do not move in parallel; and
- farm gate milk prices are influenced by manufacturing costs (including overheads) and milk collection costs.⁴⁹

6.67 Mr Lavery concluded that:

...it is difficult, if not impossible, to develop a farm-gate milk price index which provides reasonable guidance to dairy farmers. In any event, once the cows are joined and a season has started, a dairy farmer's ability to vary milk production and inputs is limited.⁵⁰

6.68 However, Mr Lavery suggested that improved communication would assist farmers to monitor the fairness of prices and/or minimise their risk to help them make better investment decisions.⁵¹

6.69 This sentiment was echoed by Mr Paul Weller:

Our business suffered last year because we were buying water and buying hay and buying grain on the assumption that we were going to get a \$5.60 a kilo milk solids price. Then, two months from the end of the year, we were told it was \$4.80. I had already gone and bought my water, bought my hay and bought my grain. So a price index would be good for farmers to use as information, but it needs to be accurate.⁵²

6.70 Mr Ben Govett also highlighted some of the shortcomings with a dairy index:

Having an index that tells me the milk price is going to go down in six months does not help my business if I have no money to plan for it anyway. I do not think the majority of farmers, before this milk price drop, would have had reserves of capital to either do quick improvements or improve efficiencies et cetera to plan for this. I think the industry has gone through a pretty lean time, so I do not think that would have helped.⁵³

48 Malcolm Turnbull (Prime Minister), *Coalition announces \$579m support package for dairy farmers*, Media Release, 25 May 2016, <https://www.malcolmturnbull.com.au/media/the-coalition-will-guarantee-support-for-australian-dairy-farmers> (accessed 28 March 2017).

49 Mr Peter Lavery, *Submission 27*, p. 2.

50 Mr Peter Lavery, *Submission 27*, p. 2.

51 Mr Peter Lavery, *Submission 27*, p. 3.

52 Mr Paul Weller, *Committee Hansard*, 2 February 2017, p. 12.

53 Mr Ben Govett, *Committee Hansard*, 2 February 2017, p. 19.

6.71 Dairy Australia was cautious of supporting a dairy price index as processors have different product mixes which influence the value of raw milk:

In Australia, 65 per cent of what is produced is sold domestically. It is in very different product mixes. We have many more manufacturers, so it is much more complex. I am not saying an index cannot be determined and cannot be worked up. Whether it is a true picture of the industry in Australia is just another question.⁵⁴

6.72 Fonterra told the committee that:

Within our own business, our suppliers told us they wanted clearer price signals so that they could plan ahead with greater certainty, so we introduced a monthly Australian Global Dairy Update, which includes information on market conditions, commodity prices, currency and input costs—the factors that influence the cost of production and farmgate milk price towards providing greater transparency on price so that suppliers better understand how their milk price is determined.⁵⁵

Committee view

6.73 While the committee can see merit in increasing the information available to farmers, it questions whether a Dairy Commodity Price Index is the best approach to assist farmers given the unique product mixes of different processors and associated manufacturing costs. Indeed, the proposal for a Dairy Price Commodity Index seems to be a knee-jerk reaction to an isolated incident caused by poor management and distorted incentives.

6.74 Rather than developing a Dairy Commodity Price Index, the committee considers that improving relationships between farmers and processors in regions where the farm gate milk price fluctuates would be a more effective and efficient way of increasing transparency about market conditions in the dairy industry and its potential impact on farmers.

Recommendation 11

6.75 The committee considers that the proposed Dairy Commodity Price Index is of limited value and its development should not be continued.

Role of Dairy Australia

6.76 Dairy Australia is the dairy industry's service organisation, providing pre-competitive services to help farmers adapt to a changing operating environment, improve farmer profitability and protect the future sustainability of the industry. These services include:

- Supporting productivity initiatives and facilitating innovation on farm to improve productivity.
- Gaining market intelligence to help farmers prepare and plan for the future.

54 Mr Ian Halliday, Dairy Australia, *Committee Hansard*, 15 November 2016, p. 30.

55 Fonterra Co-operative, *Submission 38*, pp. 5–6.

- Creating and maintaining access to preferred high value export markets.
- Encouraging consumption of dairy products through protecting and promoting the industry and implementing health and nutrition programs.
- Protecting the reputation of the industry and encouraging demand for its products.⁵⁶

6.77 Dairy Australia has no involvement in market pricing and commercial arrangements but actively collaborates with industry representative bodies to help improve the position for farmers.⁵⁷

6.78 Dairy Australia is funded by the Dairy Services Levy (\$34 million), government support for research and development (\$19 million), and funding at a project level from state governments, universities, research organisations and other dairy support organisations (\$20–30 million).⁵⁸

6.79 A number of stakeholders were critical of Dairy Australia and the levies paid by farmers to support it. For example, Mr Alex McKenzie submitted that:

Farmers have levies deducted from their milk cheque to fund bodies like Dairy Australia. Dairy Australia has invested near 750 million dollars since its inception, with little or no benefit to the average farmer. Many would say if Dairy Australia were not there it would not be missed.⁵⁹

6.80 Parmalat Australia was critical of Dairy Australia and other leadership bodies:

While organisational leadership in the processing sector is one aspect, the industry structures that should help drive and create sensible whole of industry policy are in our view poor when compared to the EU, NZ or the US. Dairy Australia needs an overhaul. It no longer represents the interest of the 6 states and its relevance in delivering unified industry policy is questionable. For instance the work of DA in export support and development is virtually irrelevant to Qld dairy farmers who have a wholly domestic focus...

In trying to be all things to all farmers Dairy Australia is significantly conflicted by highly differing agendas.⁶⁰

6.81 There were also some concerns that Dairy Australia were not making the best use of their funding to benefit farmers:

...they pay \$300,000 a year in car parking. What has research and development got to do with car parking?⁶¹

56 Dairy Australia, *Submission 33*, p. 7.

57 Dairy Australia, *Submission 33*, p. 2.

58 Dairy Australia, *Submission 33*, pp. 5–6.

59 Alex McKenzie, *Submission 24*, [p. 2].

60 Parmalat Australia, *Submission 16*, p. 4.

61 Mr Darryl Cardona, *Committee Hansard*, 3 February 2017, p. 20.

Committee view

6.82 The committee recognises the role that Dairy Australia plays in providing pre-competitive services to the dairy industry and the support it enjoys from some industry stakeholders. However, the committee is concerned that Dairy Australia may not be making the best use of the levies paid by farmers, many of whom are facing financial difficulties and challenging conditions.

Recommendation 12

6.83 The committee recommends that an independent review of the Dairy Services Levy and Dairy Australia be undertaken by government to provide assurance to dairy farmers that they are receiving value for money from the Dairy Services Levy and the benefits of the levy are being fairly distributed across farmers in all dairy producing regions.

Senator Chris Ketter
Chair