



Australian Government



Australian
**Small Business and
Family Enterprise**
Ombudsman

9 February 2018

Mr Mark Laybutt
Assistant Director
Agriculture Unit
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

By email: dairyinquiry@acc.gov.au

Mark

Dear ~~Mr Laybutt~~

ACCC INQUIRY INTO THE AUSTRALIAN DAIRY INDUSTRY

Thank you for the opportunity to comment on the Interim Report.

We are disappointed to read the ACCC's evidence that industry-wide practice is still failing to meet the various minimum requirements set out in the voluntary code. It is particularly disappointing that all processors have still not signed up to the code. The fact that the industry has not taken the opportunity to reform itself clearly points to the need for the code to be strengthened by making it both mandatory and requiring a far higher degree of specificity.

It is essential that issues surrounding contracting practices, transparency and price signalling along the supply chain are addressed as a matter of urgency. This is paramount for the industry's long term success and viability. Equally, it is important to take measures to address the underlying structural and behavioural features that lead to power imbalances and allow risk to be pushed onto parties who are least able to manage it, namely farmers. Obviously, this is a particular issue in respect of retrospective step-downs where the risk of international price fluctuation is transferred to farmers (rather than remaining with processors who are able to manage it).

As part of greater specificity in the mandatory code, the code should include a detailed and independent dispute resolution process to ensure that breaches are properly and efficiently dealt with. We also agree that further treatment of price transparency is needed, including in respect of processor formulations and forecasts. By way of example, it would appear beneficial for any information provided by processors to retailers and others in the industry to also be supplied to their producers. The report's suggestion of an online interactive model that allows farmers to enter their own production characteristics to obtain a reliable estimate of incomes is another positive step in improving transparency. Further, close attention should be paid to the way that loyalty payments are still being used to restrict the ability of farmers to freely move between processors and how this may be directly dealt with in the new mandatory code.

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Given that the mandatory code will also mean higher compliance costs, it is essential that we work closely with you and the industry to ensure that any costs to small businesses (whether farmer or processor) are fully understood and minimised.

We also support the finding in the Report that while the existing voluntary code continues to operate in the very short term, there should be immediate improvements made to it, such as to ensure appropriate and timely dispute resolution and greater price transparency. Accordingly, the operation of the code should be reviewed as a matter of urgency (this was proposed to be following a year of operation, but the pressing need means that this should now be brought forward). The review should be conducted by an independent person or body and include coverage of the key industry issues dealt with in this inquiry. The review should also investigate the critical issues that need to form the basis of the mandatory code once implemented. Again, I am keen that my Office is included as a central part of the review and, where appropriate, take a leading role.

I hope that these comments assist you and would be happy to discuss them with you. Please feel free to contact my Deputy, Dr Craig Latham, by telephone on 02 6263 1500 or email craig.latham@asbfeo.gov.au.

Yours sincerely

A handwritten signature in black ink, reading "Kate Carnell". The signature is written in a cursive, flowing style.

Kate Carnell AO

Australian Small Business and Family Enterprise Ombudsman