Australian Government

Department of Agriculture, Water and the Environment

Farmer guide to the Dairy Industry Code

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Introduction

The Australian Government is supporting the dairy industry by implementing clearer and enforceable rules about the conduct of business relationships between farmers and the first purchasers of milk (generally processors). These rules are contained in the Dairy Industry Code. The code is a mandatory prescribed industry code made under the *Competition and Consumer Act 2010* that will:

- require farmers and processors act in good faith in their business relationships
- establish a mediation and arbitration process to address disputes
- empower the Australian Competition and Consumer Commission (ACCC) to monitor the conduct of farmers and processors to support compliance.

The code takes effect from 1 January 2020.

The code will improve transparency in transactions between farmers and processors by setting out the key rights and obligations of each party. The requirements will apply to all agreements between processors—as first purchasers of milk—and dairy farmers. The code will also allow other matters to be negotiated and agreed between farmers and processors, as long as they comply with the code.

From 1 January 2020 all new agreements must comply with the code and agreements already in place have 12 months to transition to become code-compliant. The good faith provisions within the code will apply to all farmers and processors, regardless of size. The other parts of the code apply to larger processors and the farmers that supply them.

The code will be reviewed following its first year of operation and in its fourth year of operation. The reviews will take into consideration the role, impact and operation of the code and make recommendations to ensure it delivers positive outcomes for the dairy industry.

The code will lead to changes to industry practice, including:

- requiring processors to publicly release standard form agreements by 2pm (Australian Eastern Standard Time) on 1 June each year
- prohibiting retrospective step-downs in all circumstances
- prohibiting unilateral prospective step-downs except in exceptional circumstances
- establishing a dispute resolution process
- restricting unilateral changes to the terms and conditions in agreements.

This guide helps farmers better understand the code and how it will affect their business.

Summary of the code

Who the code applies to

The good faith provisions of the code will apply to all farmers and processors, regardless of size. This means that parties will have to deal with each other in good faith during negotiations, performance of the agreement and dispute resolution processes.

The other parts of the code apply to larger processors and the farmers that supply them.

When milk supply agreements have to be code-compliant

The code will be in force from 1 January 2020. The code will apply to all agreements entered into, renewed or amended after this date.

Agreements that are already in place will have 12 months to become compliant with the code. Processors and farmers will need to work together to vary any long-term agreements that are already in place.

Comparing new contracts

Where farmers are looking to enter into a new agreement with an existing processor or switch processors, the code will introduce requirements that make it easy to find and compare agreements.

Under the code, processors need to publish standard forms of agreement annually by 1 June on their websites. A standard form of agreement is a publicly available agreement that farmers can enter into or use as a starting point for further negotiations with processors. This will enable farmers to compare contract terms and prices across different processors, and choose a business arrangement that best suits their individual farming operations.

Processors must release at least one standard form of agreement. They may release other agreements depending on factors affecting the purchase of milk. Factors include the region where they intend to purchase milk and the length of the agreement. All processors need to offer non-exclusive supply agreements. However, they can offer an exclusive agreement with terms similar to the non-exclusive agreement. The prices between the 2 do not have to be the same.

All standard forms of agreement must contain minimum prices, justification of prices and a cooling-off period of 14 days.

The code also requires genuine standard forms of agreements. This means that processors cannot release standard forms of agreement that they do not intend to honour.

Farmers and processors will not have to agree only to supply under a standard form agreement. The code will allow farmers and processors the flexibility to negotiate and agree to a range of matters such as agreement length or ownership arrangements. However, all agreements must be consistent with the code and other relevant legislation.

What milk supply agreements must contain

All written milk supply agreements must be in plain English—or contain a plain English overview—and consist of a single document. This may comprise other documents such as supply handbooks and will provide farmers with more certainty about their supply terms.

If an agreement is entered into verbally, the processor has 30 days to provide a written record of the agreement. This ensures that farmers have the terms of their agreement in writing.

The code requires milk supply agreements to include:

- a clear minimum price, a schedule of monthly prices, or a schedule of yearly prices for longer-term agreements (noting the price among years can be different)
- a cooling-off period of 14 days
- a clear start and end date for the milk supply period, unless the processor is a cooperative
- the quantity (if applicable) and quality requirements of milk, including sampling procedures and assurances about volume accuracy
- any circumstances under which the processor may reject milk supplied by the farmer
- how the processor will deal with milk that does not meet the quality and quantity requirements
- any requirements the processor has for delivery of milk from the farmer
- when the milk changes ownership from farmer to processor
- the circumstances for varying an agreement, noting that processors can only unilaterally vary the terms of an agreement to comply with a changed law
- the process a processor may use to unilaterally prospectively step-down the minimum price—if applicable and only in exceptional circumstances
- information on loyalty payments, where applicable
- a complaint-handling procedure, the mediation process detailed in the code and may provide for arbitration
- if an agreement is longer than 3 years, the agreement must allow for farmers to postpone the end of an agreement by 12 months. This clause allows farmers who wish to exit the industry to resolve their business, sell assets and address any animal welfare and environmental concerns.

Processors and farmers can negotiate other terms and conditions to suit their individual interests as long as they are consistent with the code and relevant legislation—including the *Competition and Consumer Act 2010*.

Changing an agreement

Processors can only unilaterally vary milk supply agreements in 2 circumstances:

1. A change in law that the processor or farmer must comply with—such as changes to work, health and safety laws. The change should be limited to the clauses in the agreement relevant to the change in law. The unilateral variation cannot result in a decrease of minimum price in an agreement.
2. An exceptional circumstance where a processor may be permitted to step-down the price. If this occurs, a processor must follow the process in the code. This includes advising the ACCC of their intention, providing farmers 30 days' notice of this intention and giving farmers permission to terminate the agreement. Examples of exceptional circumstances include the sudden closure of an export market or a biosecurity emergency.

The code does not prevent farmers and processors agreeing to vary the contract, as long as the variations comply with the code and other relevant legislation. For example, farmers and processors can mutually agree to increase the minimum price or increase the volume of milk supply.

If parties agree to vary an agreement, the processor must provide a written record of the variation within 30 days.

Terminating an agreement

Agreements will finish on their agreed end date. If an agreement ends and the farmer and processor want to continue their business relationship, parties need to enter into a new agreement.

Under the code, parties can mutually agree to terminate the agreement early. If parties verbally agree to terminate an agreement, the processor must provide a written record of the termination within 30 days.

What to do if you have a problem with your agreement

There are 2 different ways to address an issue with your agreement, depending on whether the issue relates to a suspected breach of the code or a dispute about the operation of the agreement.

If either party believes their agreement does not comply with the code, they may notify the ACCC. It is the role of the ACCC to monitor and enforce compliance with the code. This role is consistent with the ACCC's role with other codes such as the Horticulture Code of Conduct. Following investigation of complaints, the ACCC can issue infringement notices or take other action if they find the code has been breached.

If a farmer or processor believes the other party has breached the agreement, they may use the dispute resolution process. Under the code, processors must provide for an internal complaint handling procedure in their milk supply agreements. Milk supply agreements must also provide for mediation and may provide for arbitration as a means for resolving disputes.

The code does not affect the right of either party to an agreement to bring about legal proceedings.

What is prohibited under the code

The code prevents egregious business practices by:

- prohibiting retrospective step-downs in all circumstances
- prohibiting unilateral prospective step-downs except in exceptional circumstances
- restricting unilateral changes to the terms and conditions in agreements
- prohibiting exclusive supply combined with maximum volume
- prohibiting exclusive supply combined with tier pricing.

New milk trading and marketing arrangements

A number of emerging approaches to alternative milk pricing and trading concepts aim to support farmers to have a greater role in managing the sale of their milk. The code does not prohibit these new or emerging milk trading and marketing arrangements as long as they are consistent with the code.

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