# Discussion paper on the operation of the Dairy Industry Code

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Department of Agriculture, Fisheries and Forestry

GPO Box 858 Canberra ACT 2601

Telephone 1800 900 090

Web [agriculture.gov.au](https://www.agriculture.gov.au/publications)

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**Acknowledgement of Country**

We acknowledge the Traditional Custodians of Australia and their continuing connection to land and sea, waters, environment and community. We pay our respects to the Traditional Custodians of the lands we live and work on, their culture, and their Elders past and present.

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## Purpose

The Dairy Industry Code (the Code) is a mandatory industry code that came into effect on 1 January 2020. The code imposes minimum standards of conduct on processors and farmers.

In 2021, the Australian Government conducted the [first review of the Code](https://www.agriculture.gov.au/sites/default/files/documents/review-report-dairy-industry-code.pdf) (DAFF 2022). The review identified several concerns that warranted further exploration prior to the second review of the Code being performed. The Australian dairy industry has since also highlighted additional concerns that the first review did not include. All these concerns have been outlined in this paper for stakeholder input.

This discussion paper seeks to gather information from Australian dairy stakeholders about the issues in the Code as identified by the first review and by industry. These issues impact the business relationships between dairy farmers and processors to varying degrees. The Department of Agriculture, Fisheries and Forestry (DAFF) is asking you as a dairy stakeholder to review the issues outlined in this discussion paper and offer your views and possible options to resolve these issues.

DAFF will consider your feedback and review all evidence provided. This will be used to assess the impact each of the eight concerns has on the industry. The second review of the Code will consider the outcomes of this consultation process, on these individual topics, and will involve further consultation on the Code overall.

As a stakeholder in the Australian dairy industry, we invite you to read through this discussion paper and provide a Have Your Say submission.

## Context

### Dairy Industry Code

In 2015-16, retrospective step-downs in milk prices by Australia’s then-two largest milk processors had wide-ranging impacts on the industry. In response, the dairy industry came together to develop a voluntary code of conduct to address transparency of milk pricing, bargaining power, sharing of price risk across the supply chain and other matters.

On 27 October 2016, the then-Treasurer issued a notice requiring the Australian Competition and Consumer Commission (ACCC) to hold an inquiry into the competitiveness of prices, trading practices and the supply chain in the Australian dairy industry. The ACCC found significant imbalances in bargaining power at each level of the dairy supply chain. It identified that the industry voluntary code was insufficient to address market failures and required strengthening in a number of areas. The [ACCC’s 2018 Dairy Inquiry Final Report](https://www.accc.gov.au/about-us/publications/dairy-inquiry-final-report) (ACCC 2018) included a recommendation for a mandatory code for dairy.

The then Department of Agriculture, Water and the Environment (now DAFF) held extensive consultation with dairy farmers, processors and peak industry bodies on the issues identified in the ACCC’s report. This included consultation on policy options that would address the market failures, and options to improve transparency and trust between farmers and processors. Following consultations, including an exposure draft consultation period in late 2019, the government introduced the [*Competition and Consumer (Industry Codes – Dairy) Regulations 2019*](https://www.legislation.gov.au/Details/F2019L01610#_blank)(known as the Dairy Industry Code), which came into effect on 1 January 2020. The Code is a mandatory industry code, prescribed under Section 51AE of the *Competition and Consumer Act 2010*. It is intended to provide a strong platform for the restoration of ‘trust, openness and transparency’ between farmers and processors in negotiating their Milk Supply Agreement (MSA).

### First Review of the Dairy Code

The Code legislated two review periods. The purpose of the reviews is to check that requirements and responsibilities of the Code are operating as intended.

In 2021, the Australian Government conducted the first review of the Code. The review found that the Code was working as intended and made three recommendations for improvement.

**Recommendation 1**: The Code should be amended to:

* 1. Clarify the definition of ‘minimum price’ under the Code, to explain that deductions related to milk quality will not contravene the ‘minimum price’ requirements.
  2. Allow, where agreed by both parties to a Milk Supply Agreement (MSA), an exemption from the minimum price requirements for a specified quantity of milk to enable participation in alternative milk pricing markets.
  3. Confer the roles of mediation and arbitration advisor under the Code to the Australian Small Business and Family Enterprise Ombudsman.

DAFF progressed [*Competition and Consumer (Industry Codes – Dairy) Amendment (2023 Measures No. 1) Regulation 2023*](https://www.legislation.gov.au/Details/F2023L01697) legislative amendments to the Code to implement Recommendation 1 in December 2023. These amendments also postponed the end date for the second review to 2026, to allow for the amendments from Recommendation 1 to take effect. This provides flexibility to ensure the second review can adequately consider the effect of the amendments.

The recommendation to include an exemption to the minimum price requirements to allow participation in alternative milk pricing markets was not included in the legislative amendments, as further consultation with industry is required to ensure a fit for purpose solution. The department will work on this element of Recommendation 1 with the dairy industry separately to this discussion paper.

**Recommendation 2**: To support the operation of the Code, the Australian Government should:

* 1. Develop additional guidance material to assist compliance with the Code.
  2. Work with industry stakeholders to continue to make improvements to price transparency.

The ACCC developed additional guidance material to assist with industry compliance with the Code and address Recommendation 2 (a). This was published on 27 April 2023. Implementation of Recommendation 2 (b) is being led by industry following a funding grant from DAFF to develop price transparency tools.

**Recommendation 3**: The Australian Government and industry stakeholders should investigate and gather further evidence to determine suitable solutions to address the following areas for potential improvements to the Code:

1. extensions of 3-year contracts
2. small business definitions and exemptions
3. MSA variation requirements
4. non-exclusive contract arrangements
5. minimum price in multi-year contracts
6. Multi-party dispute resolution and arbitration.

This discussion paper addresses the topics in Recommendation 3.

Since the first review, dairy industry representative bodies have nominated two additional topics for further investigation:

1. cooling off period
2. unsigned contracts.

These topics are also covered by this discussion paper.

## Identified areas for improvements to the Code

### 1. Extension of 3-year contracts

Longer-term MSAs are important for the security of supply in the domestic fresh milk markets. To avoid a situation where a farmer is without a buyer for their milk, Section 36 of the Code allows a farmer with a MSA longer than 3 years to postpone the end of the supply period by 12 months. The farmer is required to provide notice to the processor no earlier than 30 days before and no later than 7 days before the expiration of the MSA.

The extension option and notice period may pose risks and uncertainty for processors and may adversely affect its MSAs with other milk suppliers. If the price of milk is heavily influenced by the export market, and processors have extended a contract, they could face a shortage of funds, leading to business failure. Some processors may consider this an unacceptable risk and may be deterred from offering 3-year MSAs to begin with, which would be to the detriment of income security for both the farmer (MSA security) and processor (supply security).

Farmers can be reliant on the income security afforded by 3-year contracts, and possible extensions. Being able to keep the extension option ensures that farmers can continue to be financially viable in times of uncertainty at the end of their contract and allows them to have a consistent purchaser of their milk, which in turn ensures supply to the market.

**1: Extension of 3-year contracts**

Question 1.1: What are the anticipated tensions that could arise when the end of a MSA supply period is postponed?

Question 1.2: How can the risk of 3-year MSA extensions be better balanced between all parties?

### 2. Small business definition and exemptions

Under Section 8 of the Code, small business entities under the Code are milk processors with an annual turnover of less than $10 million. Section 8 of the Code outlines exemptions for milk processors defined as a small business entity. Small business entities are still required to deal with farmers in good faith.

The first review of the Code noted that there are several processors that deal with as few as one farmer but do not qualify for the small business exemption. The requirement that these smaller processors publish their standard form MSAs may pose an unnecessary administrative burden. Under the Code, the exemption has no criteria for the number of MSAs entered, only the size of the processor. Therefore, a processor contracting one farmer that exceeds the small business entity threshold is still required to publish MSAs by 1 June each year.

While there are benefits to reducing regulatory oversight and burden on low-risk entities, further evidence is required to assess the potential impact of allowing exemptions to processors that do not meet the small business definition.

**2: Small business definitions and exemptions**

Question 2.1: Should the small business exemption be expanded to include processors purchasing milk from a limited number of farmers? What threshold would be appropriate (e.g., processors purchasing from fewer than five farmers)? What risks would arise from expanding this exemption?

### 3. MSA variation requirements

Section 12(6) of the Code prohibits a processor from varying or removing a published MSA after the publication deadline and before the end of the financial year to which it applies. In some cases, this can result in several versions of a single MSA being published and maintained by the processor.

Removing unnecessary administrative burden is beneficial to both the processor and farmer, however publishing MSAs is important to ensure price transparency and for all parties to have access to an accurate written record of their current MSA. Any solution should consider how all parties will have access to and be aware of an MSA variation.

**3: MSA variation requirements**

Question 3.1: Rather than publishing all MSAs (including the superseded MSAs), what are the risks or benefits from a processor maintaining a complete list of variations alongside the current MSA? Can the risks be mitigated?

### 4. Non-exclusive contract arrangements

Processors can offer both exclusive and non-exclusive MSAs to farmers, however the management of provisions for non-exclusive MSAs may not be meeting industry needs.

Farmers raised concerns that the significant price reductions that were being applied to non-exclusive supply contracts rendered them potentially economically unviable. From a farmer’s perspective, these could be considered as non-genuine offers.

Processors have similar concerns that non-exclusive supply contracts can be offered on a percentage rather than a volume basis, meaning they can be difficult to interpret and can change during the operation of the contract if the farmer’s milk supply varies. Additionally, the requirement to offer non-exclusive contracts may pose commercial inefficiencies and administrative costs for processors and limit their ability to manage business activities.

It is evident that some of the arrangements for non-exclusive supply could be improved to ensure these contracts remain a viable and appropriately regulated contractual option for both parties.

Conversely, there are positives from using non-exclusive MSAs. For example, a processor may not require the full milk supply from an individual farmer and could use a non-exclusive MSA to secure the portion it requires while allowing the farmer to seek other MSAs for the remainder of their milk supply.

**4: Non-exclusive contract arrangements**

Question 4.1: How can processors reduce the inefficiencies and administrative costs of non-exclusive MSAs?

Question 4.2: How can the risks of non-exclusive MSAs be better balanced between both parties?

### 5. Minimum pricing requirements in multi-year contracts

As described in Section 26 of the Code, processors are required to set a minimum price for the duration of an MSA, including multi-year MSAs. This may be one minimum price set for the duration of the agreement, a monthly price, or a yearly price. The minimum price in multi-year MSAs is intended to provide certainty of price and supply for both farmer and processor.

However, the minimum pricing requirement in multi-year MSAs may not be clearly articulated in the agreements, and farmers may consider the prices offered conservative in comparison to single year MSAs. Processors also need to ensure the minimum price offered in a multi-year MSA is sustainable in the forward years, noting changes to the domestic and global markets may impact the milk price (negatively or positively).

The Code stipulates the minimum pricing mechanism. There is no ability to unilaterally vary the price unless under ‘exceptional circumstances.’ ‘Exceptional circumstances’ is defined in the Code, but the interpretation of the article could be subjective.

A flexible pricing mechanism in Australia that is more responsive to market conditions under exceptional circumstances may be beneficial for those that set the prices, including processors, in responding to the impacts on milk price and overall sustained production of dairy products. Inversely, it may be a concern for farmers, who may face an increased risk of temperamental prices when the market faces exceptional circumstances.

Processors are concerned about the potential impact of locking in minimum prices 13 months out from the season end for annual contracts, or for the duration of a multi-year contract. Australia is also highly susceptible to volatilities of the global market as we supply both the drinking milk and manufacturing/export markets. Locking in minimum prices for multi-year contracts means that if there is an unforeseen drop in global milk prices, then Australian processors are susceptible to significant financial losses.

**5: Minimum pricing requirements in multi-year contracts**

Questions 5.1: What mechanisms can be implemented to ensure price protections on multi-year MSAs for both the farmer and processor?

Question 5.2: Do multi-year MSAs provide enough pricing flexibility to respond to changing markets? If not, how can this be achieved?

Question 5.3: Should there be a defined process to determine what meets the requirements of an exceptional circumstance?

### 6. Multi-party dispute resolution and arbitration

The requirements for handling dispute resolution between farmers and processors is outlined at Subdivision F of the Code. However, there is no provision in the Code for multiple parties with the same issue to jointly enter into dispute resolution with a processor.

Dispute resolution can be costly for all parties. Addressing the same dispute with multiple parties together can increase the efficiency of the handling process. It may also provide the ability for processors and farmers to identify and resolve underlying issues causing the disputes. Without there being an obligation to negotiate with a dairy collective bargaining group, there is a perception the power imbalance remains in favour of the processor until such an obligation is imposed.

There is legislative precedent for multi-party dispute resolution (such as the [*Competition and Consumer (Industry Codes – Franchising) Regulations 2014*](https://www.legislation.gov.au/Series/F2014L01472)*, Clause 40B*), which allows for parties with a similar dispute to resolve it in the same way. It also allows for parties to discuss their dispute with each other despite any confidentiality requirements outlined in their agreements. This can better balance the bargaining power between parties.

**6: Multi-party dispute resolution and arbitration**

Question 6.1: Should negotiation and arbitration costs be based pro rata on turnover to give each party a fairer deal in expensive legal processes? If not, can you suggest a fairer solution?

Question 6.2: What are the risks and benefits to both the farmer and processor of allowing multi-party dispute resolution? How can any risks be mitigated?

### 7: Contract cooling off period

Under section 23 of the Code, processors must provide a 14-day cooling-off period, during which the farmer may terminate an MSA without incurring any liability. If the MSA is terminated during the cooling-off period, it continues to apply to all milk supplied up until the date on which the termination takes effect.

It is important to provide a cooling off period for all MSAs. Cooling off periods allow farmers adequate time to ensure the MSA is financially and legally appropriate to their circumstances. They do not allow a processor to terminate an MSA should its circumstances change during the cooling-off period. When a farmer terminates an MSA there may be negative impacts on the processor. For example, a processor may need to reassess its production output based on the lower milk supply.

A concern has arisen that with the 14-day cooling-off period, one farmer can have valid contracts with multiple processors during this time period. At the end of the 14 days, the farmer can terminate contracts with the processors that they do not want to do business within the current season, leaving processors without a guaranteed milk supply from that farmer, for the lifetime of that contract. This can have significant impacts on their viability.

**7: Contract cooling off period**

Question 7.1: Could MSAs be negotiated earlier to allow time for farmers to assess the financial and legal circumstances before the beginning of the season?

Question 7.2: How can the cooling off period be implemented in a way that more equitably balances risk and not significantly disadvantage either party?

### 8. Unwritten or unsigned contracts

Section 16 of the Code outlines that a processor must not purchase milk from a farmer unless it is purchased under an MSA. However, there is no requirement for the MSA to be written or signed by both parties prior to milk collection, meaning a processor and farmer can enter into an unwritten MSA. In this instance, the processor must provide a written record of the MSA to the farmer within 30 days and if the MSA is longer than 90 days, take reasonable steps to have the farmer acknowledge it in writing (Section 18). All MSAs must be published on a processor’s website.

There could be risks to both the farmer and processor when relying on an unwritten or unsigned MSA, particularly for dispute resolution. Unsigned and unwritten MSAs cause ambiguity for processors with little to no evidence there is an agreement in place with a farmer, which is essential to securing a milk supply.

**8: Unwritten or unsigned contracts**

Question 8.1: Should verbal MSAs be allowable at any point during the lifetime of the MSA?

Question 8.2: What are the risks and benefits of enforcing written MSAs, signed by both parties?

Question 8.3: Should a signed MSA be in place before the commencement of the milk supply?

## Guiding questions

To assist you with your response the guiding questions have been collated into a list that can be downloaded at [www.agriculture.gov.au/haveyoursay/industry-comments-on-the-operation-of-the-dairy-industry-code/guiding-questions](https://aus01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.agriculture.gov.au%2Fhaveyoursay%2Findustry-comments-on-the-operation-of-the-dairy-industry-code%2Fguiding-questions&data=05%7C02%7CEmily.McKechnie%40aff.gov.au%7Ce19846516a064a4ff74108dc11a5683d%7C2be67eb7400c4b3fa5a11258c0da0696%7C0%7C0%7C638404649306119250%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=vhhgsPn2nZ%2FcU676%2BMJ3ed6X4MrwD5kRgK1E0KDKI4E%3D&reserved=0).

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**3: MSA variation requirements**

Question 3.1: Rather than publishing all MSA's (including the superseded MSAs), what are the risks or benefits with a processor maintaining a complete list of variations alongside the current MSA? Can the risks be mitigated?

**4: Non-exclusive contract arrangements**

Question 4.1: How can processors reduce the inefficiencies and administrative costs of non-exclusive MSAs?

Question 4.2: How can the risks of non-exclusive MSAs be better balanced between both parties?

**5: Minimum pricing requirements in multi-year contracts**

Questions 5.1: What mechanisms can be implemented to ensure price protections on multi-year MSAs for both the farmer and processor?

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Question 6.1: Should negotiation and arbitration costs be based pro rata on turnover to give each party a fairer deal in expensive legal processes? If not, can you suggest a fairer solution?

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Question 8.3: Should a signed MSA be in place before the commencement of the milk supply?

## Make a submission

We invite industry, business and the community to contribute suggestions for addressing the eight topics that have been identified for improvement in the Code.

### Have your say

To make a submission:

* Read this discussion paper and
* Complete the form on the Have Your Say webpage.

Submissions must be:

* in writing;
* made based on one or more of the eight topics; and
* supported by relevant information and evidence.

One online form can be completed for your submission and you may provide responses to questions of your choice. You are not required to provide responses to any or all questions. You may also upload your submission as a separate document, should you find this option easier.

**Note: It is not compulsory to answer all guiding questions.**

Only submissions which are formally submitted through Have Your Say will be considered.

Deadline for submissions is 5.00pm (AEDT) 15 March 2024. Late submissions will not be accepted.

Go to [Industry comments on the operation of the Dairy Industry Code | Have Your Say - Agriculture, Fisheries and Forestry](https://haveyoursay.agriculture.gov.au/industry-comments-on-the-operation-of-the-dairy-industry-code) to find out more about this process and to lodge your submission.

### Next steps

DAFF will consider all submissions provided in this Have Your Say process. DAFF will then consult with industry on the final overall conclusions from the submissions. After consulting with industry, DAFF will collate the feedback provided by stakeholders, and present recommendations to the government for consideration. The outcomes of this Have Your Say process will inform the second review into the Code. The second review will review the Code in its entirety, and not just focus on these eight topics.

### Confidentiality

‘Personal information’ means information or an opinion about an identified individual, or an individual who is reasonably identifiable. We collect your personal information (as defined in the *Privacy Act 1988*) for the purposes of seeking stakeholder views on how industry and government can best address the eight topics in this discussion paper. If you do not provide some or all of the personal information requested, we will be unable to contact you to discuss or respond to your submission. Personal information may be published on our website, disclosed to parliament, other Australian agencies, persons or organisations where necessary for these purposes, provided the disclosure is consistent with relevant laws, in particular the Privacy Act 1988. Your personal information will be used and stored in accordance with the [Privacy Principles](https://www.oaic.gov.au/privacy/australian-privacy-principles).

See [our Privacy Policy](https://www.agriculture.gov.au/about/commitment/privacy) to learn more about accessing or correcting personal information or making a complaint. Alternatively, phone us on +61 2 6272 3933.

De-identified submissions may be published online on the Have Your Say webpage, after the consultation period has closed. When finalising your submission on the Have Your Say webpage, you will be asked to stipulate whether you agree to your de-identified submission being published as an example.

### Contacts

For further information about how you can have your say on areas for improvement to the Dairy Industry Code, email animal.products@aff.gov.au.

## Glossary

| Term | Definition |
| --- | --- |
| Contract cooling-off period | A cooling-off period is a period:   1. That starts on the day the milk supply agreement is entered into; and 2. During which the farmer may terminate the agreement with immediate effect without incurring any liability to the processor. |
| Dairy Industry Code | It is a Dairy Industry Code of Conduct. This Code is a mandatory industry code under section 51AE of the *Competition and Consumer Act 2010*. |
| Milk Supply Agreement (MSA | A contract between a processor and a farmer for the supply of milk. |
| Non-exclusive contract | A milk supply agreement that is not an exclusive supply agreement. |

## References

ACCC 2018, [Dairy inquiry final report](https://www.accc.gov.au/about-us/publications/dairy-inquiry-final-report), Australian Competition & Consumer Commission, 2018.

DAFF 2022, [Report of the first review of the Dairy Industry Code](https://www.agriculture.gov.au/agriculture-land/farm-food-drought/meat-wool-dairy/dairy-dairycode), Department of Agriculture, Fisheries and Forestry, March 2022.

## Appendix A

This appendix contains a list of sections of the *Competition and Consumer (Industry Codes-Dairy) Regulations* 2019 and the *Competition and Consumer (Industry Codes – Franchising) Regulations 2014* which are relevant to the concerns outlined in this discussion paper.

[***Competition and Consumer (Industry Codes – Dairy) Regulations 2019***](https://www.legislation.gov.au/Details/F2019L01610#_blank)

* + - 1. **Extension of 3-year contracts**

***Section 36 Extensions***

*(1)  This section applies if the supply period of the milk supply agreement is longer than 3 years.*

*(2)  The milk supply agreement must allow the farmer to give to the processor a written notice postponing the end of the supply period by 12 months.*

*(3)  The notice must be given:*

*(a)  no earlier than 30 days before the end of the supply period; and*

*(b)  no later than 7 days before the end of the supply period.*

*(4)  This section does not require the milk supply agreement to allow the farmer to postpone the end of the supply period more than once.*

*(5)  A reference in this instrument to varying a milk supply agreement is taken not to include a reference to giving a notice in accordance with subsection (2).*

* + - 1. **Small business definition and exemptions**

***Section 8 Exception for processors that are small business entities***

*(1)  If a processor is a small business entity for a financial year:*

*(a)  section 12 (requirement to publish standard forms of agreements) does not apply to the processor in relation to the publication deadline in the financial year; and*

*(b)  Subdivision B of Division 2 (standard forms of agreements) (other than section 12) does not apply in relation to the processor in the financial year; and*

*(c)  section 16 (requirement to have milk supply agreements) does not apply in relation to the processor in the financial year; and*

*(d)  Subdivisions C to G of Division 2 (other provisions relating to milk supply agreements) (other than section 16) do not apply in relation to a milk supply agreement that the processor enters into in the financial year.*

*Extensions of milk supply agreements*

*(2)  If:*

*(a)  a milk supply agreement is varied at a particular time; and*

*(b)  the variation postpones the end of the supply period of the agreement;*

*this section applies in relation to the agreement from that particular time as if it were a new agreement entered into at that particular time.*

* + - 1. **MSA variation requirements**

***Section 12  Requirement to publish standard forms of agreements each 1 June***

*(6)**The processor must not, after the publication deadline and before the end of the financial year mentioned in paragraph (1)(b), vary or remove from its website a standard form or statement published under subsection (2).*

*Section does not prevent publication of other standard forms of agreements*

* + - 1. **Minimum pricing requirements in multi-year contracts**

***Section 26  Minimum price***

*The milk supply agreement must clearly specify the minimum price or prices under the agreement, by specifying:*

*(a)  a single minimum price that applies throughout the supply period of the agreement; or*

*(b)  a schedule of yearly minimum prices; or*

*(c)  a schedule of monthly minimum prices.*

* + - 1. **Multi-party dispute resolution and arbitration**

***Subdivision F—Complaints and disputes***

***43  Milk supply agreement must provide for complaint handling procedure and mediation and may provide for arbitration***

*Internal complaint handling procedure*

*(1)  A milk supply agreement must provide for a complaint handling procedure for dealing with and resolving complaints by a party to the agreement about matters arising under or in connection with the agreement.*

*Note:          An example of a matter arising in connection with a milk supply agreement is the termination of the agreement.*

*Internal complaint handling officer*

*(2)  A processor who is a party to a milk supply agreement must have a complaint handling officer to manage complaints in accordance with the complaint handling procedure provided in the agreement.*

*Mediation*

*(3)  A milk supply agreement must provide for mediation as a means for resolving disputes between parties to the agreement.*

*Arbitration*

*(4)  A milk supply agreement may provide for arbitration as a means for resolving disputes between parties to the agreement.*

***44  Mediation adviser and mediators***

*(1)  The Agriculture Minister must appoint a mediation adviser for the purposes of this Subdivision.*

*(2)  The mediation adviser must compile a list of persons who are to be mediators for the purposes of this Subdivision.*

***45  Arbitration adviser and arbitrators***

*(1)  The Agriculture Minister must appoint an arbitration adviser for the purposes of this Subdivision.*

*(2)  The arbitration adviser must compile a list of persons who are to be arbitrators for the purposes of this Subdivision.*

***46  Resolving complaints and disputes—general***

*(1)  If a party to a milk supply agreement has a complaint or there is a dispute in relation to a matter arising under or in connection with the agreement, the matter may be dealt with or resolved:*

*(a)  in accordance with the complaint handling procedure provided in the agreement; or*

*(b)  by mediation; or*

*(c)  subject to subsection (2), by arbitration.*

*(2)  The matter must not be resolved by arbitration unless:*

*(a)  the milk supply agreement provides for arbitration as a means for resolving disputes between parties to the agreement; or*

*(b)  all parties to the agreement have agreed in another written document to use arbitration to resolve the matter.*

*(3)  If the matter is the termination of a milk supply agreement, this Subdivision applies as if a reference to a party to a milk supply agreement included a reference to a person who was a party to the agreement before it was terminated.*

***47  Dealing with complaints in accordance with internal complaint handling procedure***

*(1)  The procedure set out in this section applies if a party to a milk supply agreement (the****complainant****) wishes to have a complaint in relation to a matter arising under or in connection with the agreement dealt with in accordance with the complaint handling procedure provided in the agreement.*

*(2)  The complainant must notify the other party to the agreement (the****respondent****), in writing, of the following:*

*(a)  the nature of the complaint;*

*(b)  that the complainant wishes the complaint to be dealt with in accordance with the complaint handling procedure provided in the milk supply agreement;*

*(c)  the outcome the complainant wants.*

*(3)  Within 5 working days after receiving notice of the complaint under subsection (2), the respondent must give a written acknowledgement to the complainant stating:*

*(a)  that notice of the complaint has been received; and*

*(b)  the steps to be taken to deal with the complaint.*

*(4)  The complainant and the respondent must attempt to resolve the complaint in accordance with the complaint handling procedure provided in the milk supply agreement before taking action to resolve the complaint by mediation or arbitration.*

*(5)  If the complaint is not resolved in accordance with the complaint handling procedure provided in the milk supply agreement within 60 days after the acknowledgement was given to the complainant under subsection (3):*

*(a)  either party may take action to have the complaint resolved by mediation; or*

*(b)  the parties to the agreement may agree that the complaint is to be resolved by arbitration.*

*(6)  The complainant may, at any time, withdraw the complaint by notice in writing to the respondent.*

***48  Mediation***

*(1)  The procedure set out in this section applies if a party to a milk supply agreement wishes to have a dispute resolved by mediation in accordance with this Subdivision.*

*Appointment of mediator*

*(2)  The party must request the mediation adviser to appoint a mediator for the dispute.*

*(3)  The mediation adviser:*

*(a)  must appoint a mediator within 14 days after receiving the request under subsection (2) unless the mediation adviser is satisfied that the complaint giving rise to the dispute:*

*(i)  is frivolous or vexatious; or*

*(ii)  has previously been the subject of another mediation; and*

*(b)  must give the parties to the dispute, in writing, details of the mediator appointed.*

*Conduct of mediation*

*(4)  Subject to subsection (5), the mediator must decide:*

*(a)  how the mediation is to be conducted (for example, by telephone or in meetings); and*

*(b)  the time and place for the mediation; and*

*(c)  the day the mediation commences for the purposes of this Subdivision.*

*(5)  The mediation must be conducted in Australia.*

*Mediator must notify mediation adviser that mediation has commenced*

*(6)  Within 14 days after the mediation has commenced, the mediator must notify the mediation adviser, in writing, that the mediation has commenced and of the nature of the dispute.*

*Note:          The mediator decides under paragraph (4)(c) when a mediation commences.*

*Attendance at mediation*

*(7)  Each party to the dispute must attend the mediation and attempt to resolve the dispute.*

*(8)  For the purposes of subsection (7), a party is taken to attend a mediation to attempt to resolve a dispute if the party is represented at the mediation by a person who has authority to enter into an agreement to settle the dispute on behalf of the party.*

*Mediator must give notice of successful mediation*

*(9)  If an agreement is reached in relation to the dispute, the mediator must, within 14 days after the agreement is reached:*

*(a)  set out, in writing, the terms of the agreement; and*

*(b)  give a copy of the terms to each party to the dispute; and*

*(c)  notify the mediation adviser that an agreement has been reached.*

*(10)  The party who requested the mediation may, at any time, withdraw the complaint that is the subject of the dispute by notice in writing to the other party to the dispute and the mediator.*

***49  Termination of mediation***

*(1)  The mediator conducting a mediation of a dispute in accordance with this Subdivision:*

*(a)  may terminate the mediation at any time if the mediator is satisfied that a resolution of the dispute is not likely to occur; and*

*(b)  must terminate the mediation if the party who requested the mediation requests the mediator to do so.*

*(2)  If a dispute that is the subject of mediation in accordance with this Subdivision is not resolved within 30 days after the mediation commenced:*

*(a)  the respondent to the mediation may ask the mediator to terminate the mediation; and*

*(b)  the mediator must do so.*

*Note:          The mediator decides under paragraph 48(4)(c) when a mediation commences.*

*(3)  If the mediator terminates a mediation under subsection (1) or (2), the mediator must issue a certificate stating:*

*(a)  the names of the parties to the mediation; and*

*(b)  the nature of the dispute that was the subject of the mediation; and*

*(c)  that the mediation has been terminated; and*

*(d)  that the dispute has not been resolved.*

*(4)  The mediator must give a copy of the certificate to:*

*(a)  the mediation adviser; and*

*(b)  each party to the dispute.*

***50  Costs of mediation***

*(1)  Each party to a dispute that was the subject of a mediation in accordance with this Subdivision must pay half the costs (if any) of the mediation (being all reasonable costs associated with the conduct of the mediation), unless the parties to the mediation agree otherwise.*

*(2)  Each party to a dispute that was the subject of a mediation in accordance with this Subdivision must pay that party’s costs of attending the mediation, unless the parties agree otherwise.*

***51  Arbitration***

*(1)  The procedure set out in this section applies if the parties to a milk supply agreement agree, in writing, to have a dispute resolved by arbitration conducted in accordance with this Subdivision.*

*Note:          The milk supply agreement may provide for arbitration to be used as a means of resolving disputes or, if the agreement does not provide for arbitration, the parties may agree in another written document to use arbitration to resolve disputes.*

*Appointment of arbitrator*

*(2)  The parties must request the arbitration adviser to appoint an arbitrator for the dispute.*

*(3)  The arbitration adviser:*

*(a)  must appoint an arbitrator within 14 days after receiving the request under subsection (2) unless the arbitration adviser is satisfied that the complaint giving rise to the dispute:*

*(i)  is frivolous or vexatious; or*

*(ii)  has previously been the subject of another arbitration; and*

*(b)  must give the parties to the dispute, in writing, details of the arbitrator appointed.*

*Conduct of arbitration*

*(4)  Subject to subsection (5), the arbitrator must decide:*

*(a)  how the arbitration is to be conducted (for example, by telephone or in meetings); and*

*(b)  the time and place for the arbitration; and*

*(c)  the day the arbitration commences for the purposes of this Subdivision.*

*(5)  The arbitration must be conducted in Australia.*

*Arbitrator must notify arbitration adviser that arbitration has commenced*

*(6)  Within 14 days after the arbitration has commenced, the arbitrator must notify the arbitration adviser, in writing, that the arbitration has commenced and of the nature of the dispute.*

*Note:          The arbitrator decides under paragraph (4)(c) when an arbitration commences.*

*Attendance at arbitration*

*(7)  Each party to the dispute must attend the arbitration.*

*(8)  For the purposes of subsection (7), a party is taken to attend an arbitration if the party is represented at the arbitration by a person who has the authority to enter into an agreement to settle the dispute on behalf of the party.*

*Arbitrator must give notice of successful arbitration*

*(9)  If the dispute is resolved, the arbitrator must, within 14 days after the dispute is resolved:*

*(a)  set out, in writing, the terms of the resolution; and*

*(b)  give a copy of the terms to each party to the dispute; and*

*(c)  notify the arbitration adviser that the dispute has been resolved.*

***52  Termination of arbitration***

*(1)  The arbitrator conducting an arbitration of a dispute in accordance with this Subdivision must terminate the arbitration if the complainant mentioned in section 47 requests the arbitrator to do so.*

*(2)  If the arbitrator terminates an arbitration under subsection (1), the arbitrator must issue a certificate stating:*

*(a)  the names of the parties to the arbitration; and*

*(b)  the nature of the dispute that was the subject of the arbitration; and*

*(c)  that the arbitration has been terminated; and*

*(d)  that the dispute has not been resolved.*

*(3)  The arbitrator must give a copy of the certificate to:*

*(a)  the arbitration adviser; and*

*(b)  each party to the dispute.*

***53  Costs of arbitration***

*(1)  Each party to a dispute that was the subject of an arbitration in accordance with this Subdivision must pay half the costs (if any) of the arbitration (being all reasonable costs associated with the conduct of the arbitration), unless the parties to the arbitration agree otherwise.*

*(2)  Each party to a dispute that was the subject of an arbitration in accordance with this Subdivision must pay that party’s costs of attending the arbitration, unless the parties agree otherwise.*

***54  Confidentiality requirements***

*The parties to a complaint or a dispute about a matter arising under or in connection with a milk supply agreement must observe any confidentiality requirements relating to information disclosed or obtained in dealing with or resolving the complaint or dispute.*

* + - 1. **Contract cooling off period**

***Section 23  Cooling‑off period***

*Milk supply agreements must provide for cooling‑off periods*

*(1)  Subject to subsection (3), the milk supply agreement must provide for a cooling‑off period that ends 14 days after:*

*(a)  if the agreement is in writing—the day the milk supply agreement is entered into; or*

*(b)  otherwise—the day the processor gives to the farmer a written record of the contents of the agreement under section 18.*

*(2)  A****cooling‑off period****is a period:*

*(a)  that starts on the day the milk supply agreement is entered into; and*

*(b)  during which the farmer may terminate the agreement with immediate effect without incurring any liability to the processor.*

*Cooling‑off periods not required for variations of milk supply agreements*

*(3)  To avoid doubt, this section does not require the milk supply agreement to allow the farmer to terminate the agreement in response to a variation of the agreement.*

* + - 1. **Unwritten or unsigned contracts**

***Section 16  Requirement to have milk supply agreements***

*A processor must not purchase milk from a farmer other than under a milk supply agreement.*

*Civil penalty:          300 penalty units.*

**18.  Written records of unwritten milk supply agreements**

*Scope of this section*

             (1)  This section applies if:

                     (a)  a processor enters into a milk supply agreement with a farmer; and

                     (b)  the agreement is not in writing.

*Requirement for processor to give farmer written record of contents of agreement*

             (2)  The processor must, no later than 30 days after entering into the milk supply agreement:

                     (a)  make a written record of the contents of the agreement in accordance with subsections (3) and (4); and

                     (b)  give a copy of the record to the farmer; and

                     (c)  if the supply period of the agreement is 90 days or longer—make all reasonable efforts to obtain from the farmer a written acknowledgement that the record is a complete and accurate record of the contents of the agreement.

Civil penalty:          300 penalty units.

             (3)  Without limiting paragraph (2)(a), the record must:

                     (a)  cover all of the matters dealt with by Subdivision D and subsections 43(1) and (3); and

                     (b)  in particular, record all of the matters that Subdivision D and subsections 43(1) and (3) require to be specified in, or provided for by, a written milk supply agreement.

Civil penalty:          300 penalty units.

             (4)  The record must:

                     (a)  either:

                              (i)  be in plain English; or

                             (ii)  contain a plain English overview of the agreement; and

                     (b)  consist of a single document.

[***Competition and Consumer (Industry Codes – Franchising) Regulations 2014***](https://www.legislation.gov.au/Series/F2014L01472)

***Clause 40B***

**40B  Similar disputes between 2 or more franchisees and one franchisor**

             (1)  This clause applies if 2 or more franchisees have similar disputes under their franchise agreements with the same franchisor.

             (2)  To avoid doubt, the franchisees and the franchisor may agree to resolve their disputes in the same way.

             (3)  For the purpose of deciding whether to agree to resolve their disputes in the same way, the franchisees may discuss their disputes with each other, despite any confidentiality requirements provided in their franchise agreements.

             (4)  To avoid doubt, if any of the franchisees and the franchisor cannot agree how to resolve their disputes, all of the franchisees (who cannot agree) or the franchisor may refer the matter to a single ADR practitioner in accordance with subclause 40A(3) for a single ADR process for all of their disputes.

Note:          Each of the disputes remains separate, even if there is a single ADR process dealing with all of them.

             (5)  To avoid doubt, if any of the franchisees and the franchisor cannot agree on who should be the ADR practitioner, all of the franchisees (who cannot agree) or the franchisor may request the Ombudsman in accordance with subclause 40A(4) to appoint a single ADR practitioner for a single ADR process for all of their disputes.

             (6)  If:

                     (a)  under subclause (4), all of the franchisees refer the matter to a single ADR practitioner for a single ADR process for all of their disputes; or

                     (b)  under subclause (5), all of the franchisees request the appointment of a single ADR practitioner for a single ADR process for all their disputes and the appointment is made;

but the franchisor does not agree that there should be a single ADR process for all the disputes or does not agree to the appointment of the ADR practitioner, the ADR practitioner may conduct the ADR process despite the franchisor’s disagreement.

Note:          If the ADR practitioner conducts the ADR process despite the franchisor’s disagreement, the franchisor is required to attend the ADR process and try to resolve the dispute (see subclauses 41A(3) and (5)). Clause 36 (when a party is taken to be trying to resolve a dispute) applies in relation to all the parties to the disputes.