

TasFarmers

Dairy Industry Code Submission

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TasFarmers
A UNITED VOICE FOR TASMANIAN FARMERS

Contents

About TasFarmers	3
Overview	3
Extension of 3-year contracts	3
Small business definitions and exemptions	4
MSA variation requirements	5
Non-exclusive contract arrangements	6
Minimum pricing requirements in multi-year contracts.....	6
Multi-party dispute resolution and arbitration.....	7
Contract cooling-off period.....	9
Unwritten or unsigned contracts	10
Conclusion.....	11

About TasFarmers

TasFarmers, founded in 1948, is Tasmania's foremost agricultural advocacy organisation, representing the diverse interests of farmers and primary producers across the state. Committed to promoting the sustainability, profitability, and resilience of Tasmania's agricultural sector, TasFarmers plays a pivotal role in shaping policies, influencing decision-makers, and providing support to farmers. With a membership base covering various agricultural industries, TasFarmers advocates for key issues such as market access, environmental sustainability, and rural development, while also serving as a hub for knowledge exchange and professional development within the agricultural community.

Through collaboration with government agencies, industry stakeholders, and research institutions, TasFarmers drives positive change and fosters innovation to ensure a prosperous future for Tasmanian agriculture. As the state's peak agricultural advocacy organisation, TasFarmers remains dedicated to championing the interests of farmers, safeguarding the state's agricultural heritage, and promoting a thriving and sustainable agricultural sector for generations to come.

Overview

The Dairy Industry Code plays a pivotal role in ensuring equity and transparency within Australia's dairy sector, serving as a cornerstone for safeguarding the livelihoods of our nation's dairy farmers. While the code has made strides in its mission, recent concerns have surfaced regarding the management of downside market risks by processors. This raises alarm bells about the potential vulnerability of farmers to overly cautious pricing mechanisms, which may stem from an imbalance in risk distribution.

Moreover, there's a pressing need to address the broader context in which the dairy industry operates. Farmers face not only market fluctuations but also regulatory and policy landscapes that can impact their bottom line. Government policy settings must be carefully calibrated to avoid exacerbating cost pressures on dairy businesses, ensuring a conducive environment for sustainable operations.

Considering these challenges, this submission aims to delve into specific recommendations for fortifying the Dairy Industry Code. By advocating for enhancements that prioritise the welfare and rights of farmers while acknowledging the broader industry dynamics, we seek to build a more resilient and sustainable dairy sector that benefits all stakeholders involved.

Extension of 3-year contracts

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

In addressing the risks associated with 3-year MSA extensions, it's essential to acknowledge that every business has a different risk appetite. While the Dairy Code aims to strike a balance between protecting farmers and ensuring processor viability, considerations should be made for varying risk tolerances among stakeholders. Clear provisions for price adjustments based on objective market indicators can mitigate undue burden on processors, but flexibility should also be allowed to accommodate differing risk appetites.

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?

Expanding the small business exemption to include processors purchasing milk from a limited number of farmers could potentially provide additional protections for small-scale processors and ensure fair treatment in their dealings with farmers. However, careful consideration is needed to prevent unintended consequences that may undermine the objectives of the Dairy Industry Code.

Benefits of Expansion:

1. **Additional Protections for Farmers:** Including processors purchasing milk from a limited number of farmers under the small business exemption could offer additional protections for farmers, particularly those dealing with smaller processors. This could help ensure fair and equitable treatment in contractual negotiations.
2. **Fair Treatment:** Small-scale processors may have fewer resources than larger operations, making them more vulnerable to regulatory burdens. Expanding the exemption could help level the playing field and prevent undue regulatory pressure on smaller processors.
3. **Capture of Small-Scale Processors:** Setting a threshold of fewer than five farmers for the exemption could capture small-scale processors while excluding larger operations with more resources. This ensures that the exemption targets processors that may genuinely require additional protections.

Risks of expansion:

1. **Reduction in Code Coverage:** Expanding the exemption may result in fewer processors being subject to the Dairy Industry Code, reducing overall regulatory oversight within the industry. This could potentially leave some farmers without the protections afforded by the Code.
2. **Manipulation of Supplier Numbers:** Processors may attempt to limit the number of farmer suppliers to qualify for the exemption, potentially leading to unfair practices or manipulation of contractual arrangements to avoid regulatory obligations.
3. **Impact on Competitiveness:** Expanding the exemption could distort competition within the dairy industry by providing certain processors with regulatory advantages over others. This could potentially disadvantage larger processors or those operating within the Code's requirements.
4. **Consumer Confidence:** Consumers may perceive an expanded exemption as a loophole that allows processors to evade regulatory scrutiny, potentially eroding trust in the industry and its products.
5. **Compliance Issues:** Small-scale processors may still need to meet certain legal requirements and quality standards to ensure food safety and product integrity. Expanding the exemption without adequate safeguards could result in compliance issues or compromise product quality.

Overall, while expanding the small business exemption could provide benefits for smaller processors and farmers, careful consideration of the associated risks is necessary to ensure fair and transparent operations within the dairy industry. Any expansion should be accompanied by measures to prevent abuse of the exemption and maintain regulatory integrity.

MSA variation requirements

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

Maintaining a comprehensive record of variations alongside the current MSA presents several benefits for both farmers and processors. Transparency in contractual arrangements is crucial for fostering trust and ensuring fairness in the dairy industry. Farmers benefit from having access to a complete list of variations, enabling them to better understand the evolution of their agreements over time. By reviewing past modifications, farmers can assess how changes may impact their operations and make informed decisions accordingly.

For processors, maintaining such a record demonstrates accountability and a commitment to fair dealings with farmers. It provides assurance that any changes to the MSA are documented and communicated transparently. This transparency helps mitigate the risk of misunderstandings or disputes over contractual terms, fostering a more collaborative relationship between farmers and processors.

However, alongside these benefits, there are potential risks associated with maintaining a comprehensive list of variations. The presence of numerous variations alongside the current MSA may lead to confusion for farmers, particularly if they lack the resources or expertise to navigate complex contractual language. This could result in misunderstandings or disputes over contractual terms, potentially damaging the relationship between farmers and processors.

Moreover, there is a risk that processors may exploit the complexity of variations to introduce unfavourable terms or unilaterally modify agreements without sufficient oversight. This could disadvantage farmers and undermine their bargaining power, eroding trust and fairness in contractual arrangements.

To mitigate these risks, clear communication is essential. Processors should promptly communicate any variations to farmers and provide comprehensive explanations of changes. Establishing mechanisms for independent review or mediation in cases of dispute over variations can ensure fairness and accountability in contractual negotiations. Simplifying the documentation of variations and using standardised formats can also reduce complexity for farmers and facilitate a better understanding of contractual terms.

By implementing these mitigation strategies and prioritising clear communication and farmer empowerment, processors can minimise risks and ensure fair and transparent contractual arrangements for all parties involved.

Non-exclusive contract arrangements

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

Processors can address the inefficiencies and administrative costs associated with non-exclusive MSAs by adopting several strategies tailored to the needs of dairy farmers and processors alike. Investing in technology and digital platforms designed specifically for dairy farming operations is a key approach. These platforms can automate various contract management processes, such as invoice submission, delivery tracking, and communication with farmers. By leveraging digital tools, processors can significantly reduce manual administrative tasks, thereby enhancing efficiency and reducing operational costs.

Moreover, simplifying the documentation process for non-exclusive MSAs is crucial. Standardising and streamlining contracts and related paperwork can minimise complexity and make it easier for farmers to comprehend their rights and obligations. Clear and concise documentation not only reduces administrative overhead but also fosters transparency and trust between processors and farmers.

Additionally, processors should consider providing support services to assist farmers with compliance and administrative tasks. Offering training sessions, informational resources, and dedicated support staff can empower farmers to navigate the complexities of non-exclusive MSAs more effectively, thus alleviating the burden on both parties.

Ensuring fairness and transparency in pricing and payment terms is paramount. Farmers should receive competitive prices for their milk and timely payments to sustain their livelihoods and ongoing operations. Transparent pricing mechanisms and clear communication about payment schedules can minimise disputes and cultivate trust between processors and farmers.

By implementing these measures, processors can effectively reduce the inefficiencies and administrative costs associated with non-exclusive MSAs. This not only benefits farmers by streamlining processes and improving transparency but also enhances the overall experience in the dairy industry, fostering a more collaborative and mutually beneficial relationship between all stakeholders involved.

Minimum pricing requirements in multi-year contracts

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

Ensuring price protections in multi-year MSAs requires a nuanced approach that acknowledges the varying risk appetites of farmers and processors. While fixed pricing mechanisms, such as lock-in contracts, may provide stability, they can also incentivise processors to set prices too low, particularly if they anticipate downward trends in the market. This can adversely affect farmers' income and sustainability.

Instead, we recommend incorporating negotiable pricing mechanisms within the contract. This approach allows processors to set initial prices at a reasonable level, benefiting farmers, while also providing the flexibility to renegotiate prices if market conditions change significantly during the contract term. By including provisions for price adjustments based on objective market indicators or mutually agreed-upon criteria, both parties can ensure fairness and adaptability in pricing arrangements.

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

Multi-year MSAs may not inherently provide enough pricing flexibility to adequately respond to changing market conditions. To address this, provisions for periodic price reviews or clauses allowing adjustments based on significant market shifts can enhance the flexibility of such agreements. By incorporating mechanisms that allow for pricing adjustments in response to fluctuations in market conditions, both farmers and processors can better navigate volatile market dynamics.

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

Yes, establishing a defined process is crucial to determining exceptional circumstances, and ensuring fairness and consistency in addressing market disruptions or unforeseen events. Clear guidelines should be agreed upon by both parties and overseen by an independent arbitrator or regulatory body. This ensures that the interests of farmers and processors are protected and that decisions are made transparently and impartially.

Multi-party dispute resolution and arbitration

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?

Cost-sharing mechanisms should be carefully designed to ensure fairness and accessibility for all parties involved in dispute resolution processes. While basing costs solely on turnover might disproportionately burden smaller farmers, a fairer solution could involve a sliding scale based on the financial capacities of each party, considering factors such as turnover, resources, and ability to bear costs. This approach aims to promote a balanced distribution of financial responsibility, ensuring that the burden is proportionate to each party's financial capacity.

Another option to consider is implementing a hybrid model where a portion of the arbitration costs is based on turnover, while the remainder is shared equally among the parties. This approach acknowledges the need to mitigate the financial burden on smaller farmers while also ensuring that larger processors contribute their fair share to the cost of arbitration.

Furthermore, exploring government subsidies or financial assistance programs specifically aimed at covering arbitration costs for smaller farmers could alleviate the financial strain and ensure their meaningful participation in dispute resolution processes. By providing targeted support, the government can help level the playing field and promote fair and equitable outcomes in arbitration proceedings.

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?

Multi-party dispute resolution offers both risks and benefits to farmers and processors, influencing their relationships and outcomes in dispute resolution processes.

Risks to Farmers:

1. **Financial Burden:** Participating in multi-party dispute resolution processes may impose significant costs on farmers, potentially outweighing the benefits of resolving disputes. Smaller farmers may struggle to bear these costs, affecting their financial stability and viability.
2. **Power Imbalance:** Farmers, especially smaller ones, may have less bargaining power compared to larger processors in multi-party disputes, leading to unequal outcomes and potentially disadvantaging farmers.

Benefits to Farmers:

1. **Fair Resolution:** Multi-party dispute resolution can provide a fair and impartial forum for resolving disputes, ensuring that farmers' interests are adequately represented and protected.
2. **Collective Bargaining Power:** By joining forces with other farmers in multi-party disputes, individual farmers can strengthen their bargaining power and negotiate more favourable outcomes, potentially levelling the playing field against larger processors.
3. **Transparency:** Multi-party dispute resolution processes can enhance transparency and accountability within the industry, fostering trust between farmers and processors and promoting fair and equitable outcomes.

Risks to Processors:

1. **Financial Liability:** Processors may incur significant costs associated with participating in multi-party dispute resolution processes, particularly if they are required to cover a larger proportion of the costs. This could impact their financial stability and profitability.
2. **Reputation Damage:** Public exposure of disputes through multi-party arbitration could harm processors' reputations and undermine consumer confidence in their brands, potentially leading to long-term consequences for their business operations.

Benefits to Processors:

1. **Resolution of Complex Disputes:** Multi-party dispute resolution can facilitate the resolution of complex disputes involving multiple parties, ensuring that all stakeholders' concerns are addressed and potentially leading to more comprehensive and satisfactory outcomes.
2. **Risk Mitigation:** By resolving disputes through arbitration rather than litigation, processors can mitigate the risk of lengthy and costly court proceedings, potentially saving time and resources in the long run.
3. **Enhanced Relationships:** Successfully resolving disputes through multi-party arbitration can strengthen relationships between processors and farmers, promoting long-term collaboration and cooperation within the dairy industry.

Mitigation Strategies:

1. **Financial Assistance or Subsidies:** Providing financial assistance or subsidies to farmers to cover arbitration costs can alleviate the financial burden on smaller farmers and ensure their participation in dispute resolution processes.
2. **Clear Guidelines and Procedures:** Establishing clear guidelines and procedures for multi-party dispute resolution can ensure fairness and impartiality in the process, enhancing trust and confidence among all stakeholders.
3. **Mediation and Negotiation:** Facilitating mediation and negotiation processes can encourage amicable resolutions before resorting to arbitration, potentially reducing the time and costs associated with formal dispute resolution.
4. **Representation and Advocacy Support:** Ensuring representation and advocacy support for farmers during dispute resolution proceedings can help level the playing field and protect their interests, promoting fair and equitable outcomes for all parties involved.

By addressing these risks and promoting equitable dispute resolution processes, the dairy industry can foster a culture of collaboration and trust between farmers and processors, ultimately benefiting the entire supply chain.

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?

Yes, initiating negotiations for MSAs earlier in the process would provide farmers with a crucial window of time to thoroughly evaluate the financial and legal implications of the agreements before the start of the season. This proactive approach acknowledges the varying risk appetites among stakeholders, allowing farmers to assess their circumstances and make informed decisions.

By negotiating MSAs well in advance, farmers can engage in comprehensive discussions with processors, seek legal advice, and carefully consider the terms and conditions of the proposed contracts. This not only ensures clarity and transparency in contractual arrangements but also enables farmers to align their business objectives with their risk tolerance.

Moreover, early negotiations facilitate meaningful dialogue between farmers and processors, fostering mutual understanding and trust. It provides an opportunity for both parties to express their concerns, clarify expectations, and negotiate terms that are fair and equitable. Addressing potential conflicts and misunderstandings proactively leads to more robust and mutually beneficial agreements.

Ultimately, initiating negotiations earlier in the process enhances transparency, accountability, and collaboration within the dairy industry, benefiting all stakeholders involved.

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

Implementing a cooling-off period in MSA contracts can serve as a vital safeguard to ensure that both farmers and processors have sufficient time to review the terms of the agreement and assess its implications before finalising the contract. The cooling-off period should be structured to accommodate the diverse risk appetites and capacities of both parties, mitigating the risk of undue pressure, or rushed decision-making.

One approach to achieving this balance is to establish a standard duration for the cooling-off period, such as 30 days, during which either party can withdraw from the MSA without penalty. This allows farmers the opportunity to carefully reconsider their decision if they feel rushed or pressured into signing the agreement. Similarly, processors can review the terms of the contract and address any concerns raised by farmers before the agreement becomes binding.

Furthermore, clear guidelines should be established regarding the consequences of withdrawing during the cooling-off period to ensure fairness and transparency. This includes specifying any costs or obligations associated with terminating the contract during this period and ensuring that both parties are fully informed of their rights and responsibilities.

It is essential to consider regional variations and industry dynamics when implementing the cooling-off period. Flexibility may be necessary to accommodate specific circumstances, such as seasonal variations in milk supply or market conditions. Additionally, providing support and resources to both parties during the cooling-off period can facilitate informed decision-making and enhance the effectiveness of the safeguard.

Overall, implementing a cooling-off period in MSA contracts provides a valuable mechanism to promote fairness, transparency, and informed decision-making. By allowing sufficient time for review and reflection, farmers and processors can enter into agreements with confidence, knowing that their interests are protected, and their obligations are understood.

Unwritten or unsigned contracts

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

Verbal MSAs pose significant risks and lack transparency. Prioritising written agreements is essential to protect farmers' interests and ensure clarity in contractual arrangements. Allowing verbal MSAs at any point during the MSA's lifetime could disadvantage farmers and undermine their rights. It is essential to prioritise written agreements to protect farmers' interests and ensure clarity, enforceability, and transparency in contractual arrangements. This approach safeguards against potential disputes and provides a clear framework for both parties to adhere to throughout the MSA.

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

Enforcing written MSAs, signed by both parties, offers several benefits for farmers. Firstly, written agreements provide clarity and certainty regarding the terms and conditions of the contract, reducing the likelihood of disputes and misunderstandings. Secondly, signed MSAs create legally binding obligations, ensuring that both parties fulfil their commitments. This protects farmers from unilateral changes or breaches of contract by processors. Additionally, written contracts serve as essential documentation for resolving disputes, providing a clear record of the agreed-upon terms and obligations. However, there may be administrative burdens associated with maintaining written contracts, such as document storage and retrieval. Nonetheless, the benefits of enforceable agreements outweigh these potential drawbacks, as they safeguard farmers' interests, promote accountability, and provide a foundation for fair and transparent dealings within the dairy industry.

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

Yes, ensuring a signed MSA before the commencement of milk supply is crucial to protect farmers from potential exploitation and to establish clarity in contractual arrangements. Without a signed agreement, farmers face the risk of supplying milk without clear terms and conditions, making them vulnerable to price manipulation, unilateral changes, or non-payment by processors. Having a signed MSA in place before the start of supply allows farmers to define their rights and obligations upfront, reducing the risk of disputes and ensuring fair treatment throughout the supply period. This practice fosters transparency, accountability, and trust between farmers and processors, ultimately benefiting the entire dairy industry.

Conclusion

In conclusion, the Dairy Industry Code serves as a cornerstone for safeguarding the livelihoods of Australia's dairy farmers, yet recent concerns highlight the need for ongoing enhancements to address evolving challenges. The management of downside market risks by processors requires attention to ensure fairness and equity for all parties involved. Moreover, broader regulatory and policy landscapes must be carefully calibrated to support sustainable operations within the dairy industry.

The recommendations outlined in this submission aim to fortify the Dairy Industry Code by prioritising the welfare and rights of farmers while acknowledging the broader industry dynamics. Extension of 3-year contracts necessitates a nuanced approach that considers varying risk tolerances among stakeholders. Expanding small business exemptions could provide additional protections for smaller processors while mitigating unintended consequences. Maintaining comprehensive records of MSA variations enhances transparency and accountability in contractual arrangements.

Efforts to streamline non-exclusive contract arrangements and ensure minimum pricing requirements in multi-year contracts are essential to promoting fairness and transparency. Multi-party dispute resolution mechanisms should be equitable and accessible to all parties involved, with clear guidelines and support mechanisms in place. Implementing a cooling-off period in MSA contracts and prioritising written agreements signed by both parties are crucial steps to protect farmers' interests and ensure clarity in contractual arrangements.

Overall, by implementing these recommendations and fostering a culture of collaboration and trust, the dairy industry can build a more resilient and sustainable future for all stakeholders involved. Through ongoing dialogue and proactive measures, we can navigate the challenges ahead and ensure the continued prosperity of Australia's dairy sector.

Yours sincerely,

