



Vice Chair – Dairy Committee

Ref: 24012POC

10 April 2024

Livestock Section
Department of Agriculture, Fisheries and Forestry

Dear Department of Agriculture, Fisheries and Forestry

RE: Industry comments on the operation of the Dairy Industry Code

NSW Farmers Dairy Committee welcomes the opportunity to provide this submission to the Department of Agriculture, Fisheries and Forestry (DAFF) consultation, *Industry comments on the operation of the Dairy Industry Code*. In combination with this submission, NSW Farmers highlights support for the submission and feedback provided to this consultation by Australian Dairy Farmers (ADF) as the peak industry body.

As per the discussion paper,¹ NSW Farmers understands that this consultation is specifically seeking feedback on the topics raised in Recommendation 3 of the first review of the Code undertaken in 2021-2022 and that the outcomes of this consultation will be considered in the second review.

NSW Farmers strongly supports the mandatory Dairy Industry Code of Conduct (the Code) for the dairy industry and fought hard for its implementation and design to meet the purpose of regulating bargaining power imbalances between dairy farmers and processors by providing all farmers with a set of legally enforceable minimum standards, increasing available information and equitable allocation of risk.

NSW Farmers considers that the Code is largely operating as intended and has enabled a fairer operating environment for dairy farmers, creating more certainty and transparency for suppliers as well as fairer allocation of risk in the supply chain. Broadly, farmers in New South Wales consider that Milk Supply Agreements (MSA) have been positive for the dairy industry. It is critical that no changes are made to the Code that would detrimentally impact improvements made by the minimum standards that exist under the current arrangements. A number of the items identified in this consultation have critical roles in providing farmers with a level of certainty and assurances in their MSAs.

The practical impact of this pricing certainty is the farmer's ability to plan and budget operations in advance, providing stability and certainty to their farm business for the season ahead. In addition to limited bargaining powers, dairy farms in New South Wales continue to face several challenges in the broader operating environment impacting costs of production. Some the key risks managed pre-farm gate include climate and weather events, heightened input costs, access to skilled labour, livestock health and businesses scale ability to absorb decreased margins based on increasing costs of production.

Dairy farmers are at a distinct disadvantage with the large retailers and processors holding significant bargaining power in contract negotiations. Processors and retailers are also in the strongest position to manage risk in their pricing, which can include passing this down the supply chain to farmers supplying the

¹ DAFF 2024, Discussion paper on the operation of the Dairy Industry Code, Department of Agriculture, Fisheries and Forestry, Canberra.

milk. Minimum pricing, long term contracts and cooling off periods provide important safeguards to help ensure that risks are not disproportionately borne by the farm business vis-a-vis the processors or retailers. For these reasons, improvements to supply certainty are important to ensuring sustainable prices and long-term viability for farmers including confidence to re-invest in their businesses to enhance productivity.

Before supporting any potential changes to the Code, NSW Farmers would require more detailed information on these with adequate time to review and understand any unintended consequences for dairy farmers. Any changes intended to provide more flexibility or reduce the regulatory burden for processors must not be at the expense of maintaining appropriate protections to ensure a fairer operating environment for dairy farmers. This includes changes that would shift risk disproportionately to the farm gate for example, removing the ability to extend 3-year contracts; transparency of MSAs and any variations; reduced cooling off periods to ensure the MSA is appropriate; or greater price reductions for non-exclusive supply contracts. perceived regulatory burden of the MSA variation requirements. Additionally, minimum pricing requirements in multi-year contracts not only need to be sustainable for the processor as indicated in the discussion paper, but also for supplying farms who can experience volatility in seasons and input costs. Viable minimum prices and long-term contracts provide important safety nets for dairy farming businesses to plan and manage risks in production. As such, NSW Farmers would not support changes to the existing Code that would compromise this.

As raised in the previous review² one of the key weaknesses in the Code is the exclusion of the retail sector from its remit. While there have been welcome developments in the dairy farmer – processor relationship under the Code, one of the greatest impacts on profitability of dairy farmers remains the risk of detrimental pricing behaviours of the retail sector. NSW Farmers considers that processors should have greater protections in respect to bargaining power imbalances and the large retailers they supply to. As highlighted in our submission to the first review of the Dairy Code³ and subsequent responses regarding the Food and Grocery Code (F&G),⁴ it is critical to ensure appropriate protections are consistent throughout the supply chain, including for processor - retailer relationships due the cascading impacts to farmer – processor relationships.

NSW Farmers has recommended that the minimum standards in the F&G Code must be at least equivalent with other industry codes that govern trade between suppliers and buyers in the supply chain, for example the Dairy Code. Specifically, that the F&G Code must be made mandatory for all retailers and has the ability to apply significant civil pecuniary penalties when it is breached including necessary enforcement tools for the ACCC to protect suppliers against signatories that fail to comply with its requirements. NSW Farmers has considerable concerns for the implications of high concentration of market power in the food and grocery sector and the impacts for farmers and as such, has continued to call for several broader competition reforms to address harmful consequences for farm businesses.

NSW Farmers looks forward to engaging in the second review of the Dairy Code, scheduled to commence from September 2024.

Yours sincerely,

Vice Chair
NSW Farmers Dairy Committee

² NSW Farmers submission to the Review of the Dairy Industry Code of Conduct - August 2021.

³ NSW Farmers submission to the Review of the Dairy Industry Code of Conduct - August 2021.

⁴ NSW Farmers submission to the NSW Farmers' submission to the Review of the Food and Grocery Code of Conduct - February 2024.