



**Our ref:** [REDACTED]

Contact officer: [REDACTED]

Contact phone: [REDACTED]

28 May 2025

Craig Rosner-Moore  
Assistant Secretary  
Department of Agriculture, Fisheries and Forestry  
Agriculture House, 70 Northbourne Avenue  
CANBERRA ACT 2601

Land of the Ngunnawal people  
23 Marcus Clarke Street  
Canberra ACT 2601

GPO Box 3131  
Canberra ACT 2601

Tel 02 6243 1111

[www.accc.gov.au](http://www.accc.gov.au)

By email: [dairycode.review@aff.gov.au](mailto:dairycode.review@aff.gov.au)

Dear Mr Rosner-Moore

### **ACCC submission to second review of the Dairy Code**

The ACCC is an independent Commonwealth statutory agency that promotes competition, fair trading and product safety for the benefit of consumers, businesses and the Australian community. The primary responsibilities of the ACCC are to enforce compliance with the competition, consumer, fair trading and product safety provisions of the *Competition and Consumer Act 2010* (Cth) (the **CCA**), regulate national infrastructure and undertake market studies.

As the regulator responsible for enforcing compliance with the *Competition and Consumer (Industry Codes – Dairy) Regulations 2019* (the **Dairy Code**), the ACCC welcomes the opportunity to provide a submission to the Department's review.

The purpose of this submission is to supplement the ACCC's previous feedback to the Department's *2024 Discussion paper on the operation of the Dairy Industry Code*. The issues and recommendations detailed in that submission continue to reflect the ACCC's current position on those aspects of the Dairy Code.

The Code was introduced in response to market failures identified in the dairy industry, including:

- significant and systemic information asymmetries and bargaining power imbalances between dairy farmers and processors, and
- some standard industry practices that were unfair, deterred farmers from responding to market signals, or unreasonably transferred additional risk onto farmers.

The ACCC maintains the Dairy Code has been effective in addressing these market failures by setting enforceable minimum standards for contracts between farmers and processors. These contracting requirements provide farmers with a degree of price certainty, limit the circumstances in which processors can unilaterally reduce prices or amend contracts, and provide access to dispute resolution processes. Furthermore, the requirements for processors to publish their standard form milk supply agreements by 1 June each year, and to ensure milk supply agreements are recorded in writing, have considerably improved transparency and certainty in the industry.

The ACCC continues to observe high levels of compliance with the Dairy Code.

## **ACCC guidance and enforcement activity under the Dairy Code**

Since the Code came into effect on 1 January 2020, the ACCC has dedicated significant resources towards educating farmers and processors about their rights and obligations, and enforcing compliance with the Code. The ACCC maintains public guidance on the operation of the Code which was most recently revised in April 2024.

We are aware some stakeholders have raised concerns about the unclear operation of certain requirements under the Dairy Code through the current review process. The ACCC is open to further engagement with the industry to consider the need for additional or revised guidance. However, it is important to note the interpretation of industry codes is ultimately a matter for the Courts and the ACCC cannot provide binding guidance on the operation of the Dairy Code. Furthermore, the ACCC cannot provide legal or commercial advice to individual farmers or processors about the application of the Code to their business, and it is critical that processors and farmers consider seeking independent legal advice if they have concerns about whether they are complying with their obligations under the Code.

Ensuring competition and consumer laws, and industry codes, are operating to protect small businesses and the agriculture sector is now an enduring compliance and enforcement priority for the ACCC. The ACCC actively monitors compliance with the Dairy Code and relies on a range of compliance and enforcement tools to ensure adherence to the Code, including stakeholder engagement, infringement notices and litigation. As noted above, the ACCC continues to observe high levels of compliance with the Code, and our previous submission to the discussion paper provides a summary of the ACCC's compliance and enforcement outcomes.

### **Requiring processors to report opening prices to an independent third party for publication**

Some stakeholders have recommended amending the Dairy Code to require all processors to report their opening minimum prices to an independent third party. This third party would be responsible for simultaneously publishing all opening prices at the publication deadline. We understand this recommendation is intended to promote greater price competition between processors, and stakeholders have suggested the ACCC should be responsible for collating and publishing opening prices.

If there is evidence that the current price announcement framework under the Code is not facilitating price competition in the dairy industry, the ACCC considers requiring processors to report their opening prices to an independent third party for simultaneous publication could be an option to promote more effective and vigorous competition. The costs and benefits of any amendments to the publication requirements under the Dairy Code would require careful consideration, and it should be noted that a more restrictive price announcement framework has the potential to reduce price transparency in the dairy industry in a way that disadvantages farmers.

However, the ACCC considers an independent government or dairy industry body, not aligned with dairy processors or farmers, would be best placed to perform this function. The ACCC does not seek this role because it believes other agencies are better placed to deliver it. Given the inherent sensitivities associated with collecting and announcing farmgate prices, the ACCC also notes the importance of ensuring any price reporting mechanisms are sufficiently secure and robust, and adequate funding is required to develop and enforce compliance with this framework.

## **Permitting 'minor' unilateral variations to milk supply agreements**

The Code sets out a range of requirements relating to the publication and variation of milk supply agreements:

- Section 12(2) requires processors to publish all of their standard form milk supply agreements on their website by 2pm (AEST) on 1 June each year. Once a document is published it cannot be varied or removed from the processor's website until 30 June in the following year.
- Section 12(7) allows processors to publish new or additional standard form agreements after 1 June.
- Section 19 requires processors to create a written record of all unwritten variations to a milk supply agreement within 30 days.
- Section 22 provides that a written milk supply agreement must consist of a single document.
- Section 33 prohibits processors from including terms which allow the processor to unilaterally vary a milk supply agreement with a couple of exceptions, namely that the agreement must allow processors to:
  - implement unilateral prospective step downs in accordance with section 28. Retrospective step downs are not permitted in any circumstances, and
  - unilaterally vary the agreement (so long as it does not reduce the minimum price) to the extent necessary to comply with a change in Commonwealth, State or Territory law.
- Section 55 requires processors to keep records of any variations to a milk supply agreement.

Some stakeholders have previously suggested amending the publishing requirements to allow processors to publish a list of changes to a standard form agreement rather than requiring them to publish an updated version of the relevant standard form. As set out in the ACCC's previous submission to the discussion paper, the requirements for publishing standard form agreements have greatly improved transparency in the dairy industry and these proposals could reduce transparency or otherwise create confusion about the terms of an agreement.

Separately, as part of the second review, some stakeholders have also recommended the Code should allow processors to unilaterally vary an agreement where the change is 'minor' in nature. Stakeholders suggested minor variations could be defined in the Code to include changes such as price step ups or changes to product quality requirements. Stakeholders assert that certain 'minor' variations would be unlikely to cause detriment to farmers and therefore farmers would, as a matter of course, consent to those variations.

The ACCC acknowledges the administrative burden associated with varying a large number of written agreements could be significant and may disincentivise processors from varying agreements in a manner that benefits farmers. However, this must be balanced against the need to ensure clarity of, and certainty about, the terms of an agreement.

The ACCC submits it is inherently difficult to distinguish between 'minor' and 'major' variations to milk supply agreements, and such an assessment is likely to be highly fact dependent. For example, changes to product quality requirements could potentially impact farmers' margins. On balance, the ACCC considers that providing additional scope for

unilateral changes to a contract will reduce contractual certainty and may allow processors to transfer additional risks onto farmers in circumstances where those risks are most efficiently managed by processors.

Lastly, it should be noted that the issue of whether the Code requires a processor to formally vary or publish a milk supply agreement in specific circumstances will depend on the way the agreement is drafted.

### **Increase maximum penalties under the Dairy Code**

As a prescribed mandatory code under the CCA, the Dairy Code includes several civil penalty provisions. Appropriate civil penalties are integral to the ACCC's ability to effectively enforce industry codes and provide strong incentives for processors to invest in compliance.

In 2021, the maximum civil penalty permitted for breaching most industry codes was increased to 600 penalty units (currently \$198,000).<sup>1</sup> However, these amendments to the CCA do not automatically update the civil penalties specified in existing industry codes. As at 30 May 2025, failure to comply with a civil penalty provision of the Dairy Code may be subjected to an infringement notice of 60 penalty units (\$19,800) or a civil pecuniary penalty of up to 300 penalty units (\$99,000).

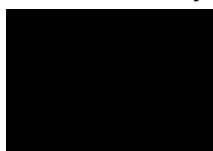
The ACCC recommends the maximum penalties under the Dairy Code should be increased from 300 to 600 penalty units, to reflect the maximum penalties currently permitted under Part IVB of the CCA.<sup>2</sup>

Furthermore, the way certain civil penalty provisions are framed under the Code means some significant breaches will be characterised as a single contravention, irrespective of the nature or seriousness of the breach. For example, the Federal Court has held that the maximum penalty for the failure to publish standard form agreements on or before the publication deadline as required by s 12(2) of the Code is 300 penalty units.<sup>3</sup> This maximum appears to apply regardless of the length of the delay in publication, the number of standard form agreements a processor failed to publish, or the potential advantage obtained from the conduct.

Several Australian dairy processors are large corporations. To ensure the Code remains effective, the maximum available penalties for breaches must be sufficiently high to ensure the Court can order a penalty which achieves the goals of specific and general deterrence for companies with significant resources at their disposal.

The ACCC is thankful for the opportunity to provide a submission to the review and welcomes further engagement with the Department on any proposed changes to the Dairy Code.

Yours sincerely



---

<sup>1</sup> [Treasury Laws Amendment \(2021 Measures No. 6\) Act 2021 \(Cth\)](#), Schedule 2.

<sup>2</sup> *Competition and Consumer Act 2010* (Cth), s 51AE(2).

<sup>3</sup> *Australian Competition and Consumer Commission v Lactalis Australia Pty Ltd (No 2)* [2023] FCA 839, [33].