

## **Dairy Industry Contracts and Transparency Workshop**

### **Summary of Workshop and Outcomes**

#### **Background**

On Tuesday 27 September ADF convened a workshop with State Farmer Organisation Presidents and processors who attended the Dairy Industry Symposium to begin the process of improving the contractual arrangements with farmers and balance risk along the supply chain.

#### **David Basham – Acting ADF President**

Welcomed all attendees and thanked them for their participation.

Explained the workshop is a first step for dairy farmers and processors working together on contract and transparency issues.

The importance of working cooperatively to find solutions to issues faced by dairy farmers and the industry was emphasised.

Apologies:

- Michael Partridge, WA Dairy Council President
- Tony Girgis. Brownes Dairy Managing Director and CEO

#### **Mick Keogh – ACCC Agricultural Commissioner**

Mr Keogh:

- Outlined the role of the ACCC and the Agricultural Enforcement and Engagement Unit;
- Gave an explanation and examples of Mandatory, Prescribed Voluntary and Voluntary Codes of conduct;
- Provided an overview of Unfair Contracts, along with Collective Bargaining arrangements; and
- Gave a brief overview of the potential process for the ACCC dairy industry market study.

Mr Keogh's presentation is attached for information.

#### **Craig Latham, Deputy, Australian Small Business and Family Enterprise Ombudsman.**

Mr Latham:

- Provided background to the Unfair Contracts legislation;
- Outlined key features of the legislation, which is due to come into effect on 12 November 2016, and explained the law will apply to a standard form contract where:
  - at least one of the parties is a small business (employs less than 20 people, including casual employees employed on a regular and systematic basis); and
  - the upfront price payable under the contract is no more than \$300 000 or \$1 million if the contract is for more than 12 months.

To be 'unfair', a term must:

- cause a significant imbalance in the parties' rights and obligations
- not be reasonably necessary to protect the legitimate interests of the party advantaged by the term, and

- cause financial or other detriment (such as delay) to a small business if it were relied on.
- Described good contracting practice.

There was discussion around the potential exclusion of a significant number of dairy farmers, particularly those in Qld, Nth NSW and WA with daily pasteurised liquid milk contracts, from the protections afforded by the Unfair Contracts legislation.

It was noted that if a price cannot be determined up front then it is likely farmers will be covered, irrespective of the thresholds. If some farmers are under the thresholds, then it is likely all farmers on the same standard form contract will be covered.

In addition, contracts which might imply greater than the threshold amount but the actual amount cannot be calculated at the start of a contract then farmers under those contracts are also likely to be covered.

### **ADF Proposal for an Industry Code of Best Practice on Contractual Arrangements**

Acting ADF CEO, John McQueen then introduced the ADF draft discussion paper (agenda and draft discussion paper are attached) outlining a set of principles which industry could consider in working together to develop a Code of Best Practice on Contractual Relationships.

Processors and farmers engaged in a constructive discussion of the points raised in the draft discussion paper.

Key outcomes are captured in the attached table.

### **Other Issues**

The issue of \$1 per litre milk was also raised along with an issue relating to farmers who have not signed a contract within a defined period being deemed to have signed by their processor.

### **Next Steps**

The formation of a small working party of processor and farmer nominees was discussed to further progress the issues raised with a view to developing a draft code of conduct for further consideration by the wider group.

It was proposed that the working party include the ADIC Board and representatives from Fonterra, Bega and Parmalat.

The discussion of the following issues took place in the context of four overarching principles acknowledging:

1. The changing nature of the dairy industry, e.g. volatility;
2. The different Australian operating environments, e.g. domestic v export;
3. The need for fair and reasonable negotiation to take place between farmers and processors on contracts and supply agreements and the need to assist farmers to negotiate; and
4. The importance of transparency in both market signals, pricing and forecasts and supplier agreements and contracts.

Issue	Outcome	Comment
Transparency	Agreed, acknowledged importance of transparency as per the principle above, agreed that any commodity milk price index must show trends in international prices, not weighted average price.	Working Party will develop a proposal for an industry product value index and the communication of such to dairy farmers to better inform them of the implications of world market trends and facilitate their business decision making.
Pricing	Agreed the need for clarity and a clear pricing mechanism and agreed to work together on principles.	Supply agreements or contracts set out a clear price, pricing mechanism (such as a formula) or a price notification process.
Pricing Mechanisms	Agreed importance of transparency and prescribing the mechanisms for pricing in the proposed draft Code and importance of allowing flexibility.	Working Party to develop clear guidelines on how the pricing mechanisms should be prescribed.
Pricing Adjustments	Agreed no retrospectivity and flexibility on notice period, 30 days' written notice ideal and a principle to aim for.	Working Party to consider 30 days' written notice principle. Also outline guidelines for how pricing adjustments should be signalled to farmers.
Step-Ups/Step-Downs	Agreed no retrospectivity, principle of as much notice as possible, and continue work.	Working Party to consider timing of step-downs principle. Initial suggestion was if step-downs are necessary they only occur prior to November.
Loyalty Payments	Agreed, farmers should receive all payments that accrue over the period of the contract or supply agreement.	Payments should not be contingent on the farmer being a supplier when, for example the June payment is made in mid-July, as currently applies in a number of company arrangements.
Volume/Exclusivity	Agreed to remove these clauses but agreed need for negotiated	Working Party to examine practicalities around this

	flexibility.	issue.
Contract Alignment	Agreed contract alignment is a principle to work towards. Agreed to work with the entire value chain on this issue.	Working Party to discuss with affected farmers, processors and retailers.
Supply Agreement/Contract Duration	Agreed supply agreements and contracts may be for fixed periods or may be rolling.	Reflects current industry practice.
Termination/Notice to Terminate	Agreed the importance of a negotiated termination period. Agreed 3 months' termination notice principle where applicable. Agreed should not be excessive, for example 6-12 months.	Working Party to consider 3 months' termination notice principle.
Termination on Fundamental Breach	Agreed termination on fundamental breach principle.	It was noted that a dispute resolution process should be included in draft Code, Working Party will undertake initial work on this.
Variation of Contract Terms	Agreed principle that contracts and supply agreements should set out the process by which variations are made, the principle of 30 days' written notice of proposed changes and acknowledged the importance of a negotiated agreement to accommodate farmer and processor circumstances. Agreed that materiality and exceptional circumstances must be considered.	Working Party to examine.
Alternative Options for Payment Systems	It was agreed that further work is needed in this area recognising the four overarching principles articulated above.	Working Party to consider.
Other Terms to be Specified in the Contract	This item was not discussed – it was agreed that the Working Group should discuss this detail.	Working Party to examine.
Review	This item was not discussed - it is proposed that if a draft best Practice Code on Contractual Arrangements is agreed by industry that a yearly review process be undertaken.	Working Party to discuss and consider.