



Processor checklist for the Dairy Code

The Dairy Code is a mandatory industry code that regulates the conduct of dairy farmers and businesses who buy milk from them.

Milk buyers are referred to in the Code as “processors”, which includes traditional dairy processors but may also include supermarkets, milk brokers, and cooperatives, where those bodies directly acquire milk from farmers.

From 1 January 2021, all milk supply agreements must comply with the Code, and milk must not be acquired from farmers except under a milk supply agreement. Non-compliance with the Code may result in infringement notices or court proceedings, and may leave you liable to civil pecuniary penalties.

This checklist has been produced by the ACCC, and is intended to provide processors with an overview of their key obligations under the Dairy Code. This checklist is not a full statement of a processor’s obligations under the Code, and we recommend that processors seek specialist advice on how the Code applies to their circumstances.

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Further information

For further detail on the Dairy Code, including more detailed discussion of these key processor obligations, visit our [website](#).

Dealing in good faith

- Are you dealing with farmers in [good faith](#), including in relation to:
 - Negotiating or entering into a milk supply agreement?
 - Exercising rights, or performing duties, under a milk supply agreement?
 - Dealing with or resolving complaints or disputes arising under or in connection with a milk supply agreement?
 - Varying or terminating a milk supply agreement?

Handy hint

Are you a '[small business entity](#)' for the next financial year, according to the Code?
If so, the remaining parts of this checklist **do not apply to you** or to the farmers from whom you are buying milk.

Publication requirements

- Are you intending to purchase milk from farmers in the next financial year?
- Have you assessed [all of the different sets of circumstances](#) (for example, geographic region, length of supply period, milk type, etc.) in which you are intending to purchase milk?
- By 2pm on 1 June (Australian Capital Territory time)¹ in the financial year preceding the one to which the standard form agreements relate, you must have [published on your website](#):
 - For each set of circumstances, a statement of those circumstances.
- For each set of circumstances, a standard form [non-exclusive milk supply agreement](#).
- If you are also intending to offer an [exclusive supply option](#) – for each set of circumstances in this category, a standard form exclusive milk supply agreement.
- Are your standard form milk supply agreements [accessible on your website](#)?
- Would your standard form milk supply agreements [comply with the Code](#) if you were to enter into an agreement in that form?
- Are your standard form milk supply agreements [genuine](#)?
- By 2pm (Australian Capital Territory time) on 1 June each year, have you published on your website a [report on disputes](#) that have arisen in the 12month period starting on 1 May the previous year?

Handy hint

Once a standard form agreement or a report on disputes is published on your website, it **cannot be removed or varied** in any way until 1 July in the following year.

¹ If 1 June falls on a Saturday, Sunday or public holiday, we consider the processor will have until 2pm (AEST) on the next day that is not a Saturday, Sunday or public holiday to publish the standard form agreements, statement of circumstances and report on disputes.

Key requirements for executed milk supply agreements

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- Are your executed milk supply agreements in writing?
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- If not (for example, they are [verbal agreements](#)), have you:
 - made a written record of the agreement
 - provided a copy of that record to the farmer, and
 - made all reasonable efforts to obtain a written acknowledgement from the farmer?
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- Are your executed milk supply agreements in [plain English](#) or do they contain a plain English overview?
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- Do your executed milk supply agreements consist of a [single document](#)?
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- Do your executed milk supply agreements:
 - Contain a 14-day [cooling-off period](#) that allows the farmer to terminate the agreement for any reason with immediate effect and without incurring any liability to you?
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- Specify the first and last days of the [supply period](#), with the last day identified as a particular calendar date?
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- If the supply period is longer than 3 years – allow the farmer to postpone the end of the supply period by 12 months?
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- Specify the quantity and quality requirements for milk, and detail how milk will be tested and dealt with if standards are not met?
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- Clearly specify the [minimum price\(s\) payable](#) for milk under the agreement?
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- Include a [statement of justification](#) for how you arrived at the minimum price?
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- Specify the services that you will perform, and any fees payable for those services?
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- Specify when ownership of the milk passes to you?
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- Provide for a [loyalty payment](#) to the farmer, and if so, comply with the Code's requirements around conditions on loyalty payments and prorata payment of loyalty payments?
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- Your executed milk supply agreements must not:
 - under any circumstances, allow you to pay less than the minimum price, or to reduce the minimum price payable, [for milk that has already been supplied](#) under the agreement
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- allow you to reduce the minimum price payable [for milk to be supplied in the future](#) under the agreement, unless exceptional circumstances exist and you have followed the Code's requirements, including providing farmers an opportunity to terminate the agreement as a result
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- if it is an exclusive supply agreement – impose any [maximum volume limits](#)
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- if it is an exclusive supply agreement – impose any [tier pricing](#).
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Variations

- Do your executed milk supply agreements [specify the circumstances](#), if any, in which the farmer may unilaterally vary the agreement?

- If your executed milk supply agreements allow you to unilaterally vary the agreement, they must only allow you to do so:
 - for [prospective step-downs](#) – in exceptional circumstances and in accordance with the process set out in the Code, and
 - for all other unilateral variations – only to comply with a change in Commonwealth, State, or Territory law, and only to the extent necessary to comply with that law (provided that the variation does not reduce the minimum price payable for milk under the agreement).

- Do your executed milk supply agreements:
 - Specify how the agreement may be unilaterally varied?

- Require that a unilateral variation must be in writing?

Terminations

- Do your executed milk supply agreements [specify the circumstances](#), if any, in which the farmer may unilaterally terminate the agreement?

- If your executed milk supply agreements allow you to unilaterally terminate the agreement, they must only allow you to do so where the circumstances involve a [material breach](#) by the farmer.

- Do your executed milk supply agreements:
 - Specify how the agreement may be unilaterally terminated?

- Require that a unilateral termination must be in writing?

Complaints, disputes, and record-keeping

- Do your executed milk supply agreements:
 - Identify your internal complaint handling officer and set out an internal complaint handling procedure that complies with section 47 of the Code?

 - Provide for mediation as a means for resolving disputes, either in accordance with the process set out in Subdivision F of the Code, or through another process?

 - You may also decide to allow for arbitration as a means for resolving disputes, either in accordance with the process set out in Subdivision F of the Code, or through another process.

 - Have you retained copies of all the documents that you are required to retain under section 55 of the Code?
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