

# SADA UPDATE

## Senate Economics References Committee Report

There has been a degree of interest in the report of the Senate Economics References Committee into the Australian dairy industry. As has been reported in other areas, we have been underwhelmed by the report, and these are our reasons why.

On 14 September 2016, the Senate referred an inquiry into the Australian dairy industry to the Senate Economics References Committee for inquiry and report by 24 February 2017, in order to establish a fair, long term solution to Australia's dairy crisis, with particular reference to fresh milk security and:

- a. the legality of retrospective elements of milk contracts
- b. the behaviour of Murray Goulburn; and
- c. any other related matters.

The reporting date was extended a number of times prior to the final release in August. There are some interesting insights into the operations of the industry within the body of the report, and then there are the recommendations.

### Recommendations

1. The committee recommends that the ACCC, as part of its inquiry into the Australian dairy industry, evaluate the extent to which the code of conduct will reduce power imbalances between farmers and processors, and recommend improvements to the code may better achieve this outcome. Any outcomes from the ACCC inquiry should be incorporated in the proposed review of the code after its first year of operation.

This might have been a useful recommendation, had it been made in February, or even May. SADA has been working with the ACCC and ADF to support the ACCC inquiry. The reality is the bulk of the investigating, evaluating and examining has been done ahead of the report to be released in November which means that this recommendation becomes little more than grandstanding. It should be noted that the ACCC plays a vital role in reducing the power imbalances between retailers, processors and farmers and helping to reduce the transfer of risk onto farmers.

2. The committee recommends that the ACCC consider how collective bargaining in the dairy industry could be strengthened to enable these provisions to be more widely used and assist in addressing the power imbalance.

This too may have been useful in February. SADA has worked with the ADF and others for a number of years on the subject of collective bargaining but the Senate recommendation does little to enhance what is already underway.

3. The committee recommends that any review of the code of conduct for contractual relationships should be undertaken by an independent party that can objectively assess whether the code is working as intended and consider if a mandatory code would be more appropriate.

The strength of the code of conduct for contractual relationships is that it has been done by the industry for the industry. We need to continue to work towards managing the industry's own destiny and not moving to an imposed solution. A mandatory code can only "legislate" for minimum standards, not for best practice.

4. The committee recommends that representative organisations of the dairy industry, together with retailers, develop an education campaign to promote awareness about the dairy industry so consumers can make informed choices when purchasing dairy products.

In South Australia (and in Queensland) this is already occurring. The Do Dairy campaign has had the support of the State Government and the vast majority of milk processors within the State.

5. The committee recommends that dairy processors set opening prices conservatively so that any downward pressure from market forces will not result in retrospective price step-downs that have devastating impacts on dairy farmers

Traditionally, across Southern Australia, processors set the opening price at about 90% of the final end of season price. This system has generally worked well but obviously did not in April 2016. Processors need to set realistic opening prices and keep farmers informed of any market issues. There were other issues that lead to the “market failure” in April 2016.

6. The committee considers that an independent review of the government's dairy support package be undertaken to determine whether it has been effective in improving outcomes for affected dairy farmers and whether it has delivered value for money.

SADA is aware that a number of aspects of the government's dairy support package are currently being reviewed. Any review of government support should be undertaken by government.

7. The committee recommends that the ACCC specifically address the issue of unfair contract terms within the dairy industry and provide guidance as to whether milk supply contracts, in-principle, fall under the scope of the unfair contract term laws. Further, the ACCC should provide guidance as to how milk supply agreements and contracts could be developed under a code of conduct for contractual relationships to be compliant with unfair contract term laws.

This is a good recommendation however the references to ACCC collect the same comment as those above. In the SADA submission to the ACCC, one of our recommendations was that the ACCC be active in using the powers that it currently has. We believe that unfair contract terms fall with these powers.

8. The committee recommends that the House of Representatives pass the Competition and Consumer Amendment (Small Business Access to Justice) Bill 2017\*.

This is supported and it is pleasing to see the progress that has been made. It is important to recognise the work of the ADF in progressing this.

9. The committee recommends that the government prioritise action to reduce the regulatory burden across the cooperative sector and support programs to facilitate the establishment of new cooperatives.

SADA supports measure to ease the regulatory burden on cooperative entities. Support in the establishment of new cooperatives would be welcome. We are aware that the Australian Government does have a program which supports this.

10. The committee recommends that regulatory agencies, particularly the ACCC and ASIC, review their approach to publicly releasing information about investigations, with a view to providing greater general information about current enforcement activities and relevant issues of public concern.

SADA would welcome this but recognise the delicacies related with the provision of greater information.

11. The committee considers that the proposed **Dairy Commodity Price Index is of limited value** and its development should not be continued.

It would seem that the committee could not agree on this recommendation as a minority report supported the Index. Such an instrument will not be a perfect solution. The underlying need is for greater clarity and transparency in the dairy market.

12. The committee recommends that an independent review of the Dairy Services Levy and Dairy Australia be undertaken by government to provide assurance to dairy farmers that they are receiving value for money from the Dairy Services Levy and the benefits of the levy are being fairly distributed across farmers in all dairy producing regions.

There are already mechanisms in place to ensure that dairy farmers get value for money from their levy and Dairy Australia. At a time like this we should be ensuring that R,D & E keeps going to get every possible advantage for dairy farmers in the future.