



Australian Government

Department of the Prime Minister and Cabinet  
Office of Best Practice Regulation

Reference: 24428  
Telephone: 6271 6270  
e-mail: helpdesk-OBPR@pmc.gov.au

Ms Cindy Briscoe  
Deputy Secretary  
Department of Agriculture and Water Resources

Dear Ms Briscoe

**Regulation Impact Statement– Dairy industry  
(farmer-processor transactions) Code of Conduct – Second Pass Final  
Assessment**

Thank you for forwarding a Regulation Impact Statement (RIS) for Second Pass Final Assessment on 18 February 2019, examining options to address perceptions of anti-competitive and unfair terms in the standard contracts between dairy processors and dairy farmers.

Firstly, it is important I acknowledge the complexity of this issue. The structure of the dairy market, including its exposure to global commodity markets, has made it difficult to clearly identify both the nature and extent of the policy problem. This challenge has been exacerbated by the onset of drought which, while not directly connected to the relationship between farmers and processors, has raised public expectations of a government policy response. In this context, I appreciate the scale and scope of developing analysis that captures all of these dynamics. I want to draw specific attention to the significant time and effort the Department has put into consulting with stakeholders across government and the private sector to help inform this analysis and advice to government.

Our assessment is that the RIS, while thorough, does not provide sufficient evidence of market failure in farmer-processor relationships to be considered best practice. Noting the above, in order to make a strong case for a mandatory code of conduct in line with the Australian Government *Industry Codes of Conduct Policy Framework*, the RIS should clearly demonstrate a persistent market failure. In this case, the RIS does not sufficiently show that the Farm Gate Price is not reflective of prevailing market conditions, including overall levels of supply. Given a mandatory code will likely shift risk from farmers to processors, the analysis presented on market conditions and price falls short of best practice to fully justify intervening in any aspect of the pricing relationship between farmers and processors.

In the context of price, given the Recommendation by the Department on page 34 for additional analysis of the potential pricing impacts of a mandatory code, it would be best practice to undertake this analysis prior to any substantive decision being made. Furthermore, noting the analysis fails to provide detail of the clauses and their impacts, the RIS does not sufficiently indicate the likely outcomes from a mandatory code.

However, we do note the sufficient body of evidence and analysis undertaken to demonstrate the presence of information asymmetry. As such, there is merit in measures that seek to address dispute resolution and simplification of contracts between processors and farmers. Given this, the analysis lends itself to a decision being made on these aspects of a dairy industry-specific code.

We would appreciate you advising us when a final decision on this proposal, or any measures it informs, has been announced and forwarding us a copy of the RIS in a form meeting the Government's accessibility requirements. The OBPR's reference number for this matter is 24428. If you have any further queries please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J Lange', written in a cursive style.

Jason Lange  
Executive Director  
22 February 2019