



# **Sustainable Queensland Dairy Production (Fair Milk Price Logos) Bill 2016**

**Report No. 33, 55<sup>th</sup> Parliament  
Agriculture and Environment Committee  
April 2017**

## **Agriculture and Environment Committee:**

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### **Acknowledgements**

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## Abbreviations

2013 inquiry	Inquiry into the Milk Pricing (Fair Milk Mark) Bill 2013
ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
Constitution	<i>Constitution of the Commonwealth of Australia</i>
Lion	Lion Dairy and Drinks (a division of Lion Pty Ltd)
Logos	Fair milk price logos
MG	Murray Goulburn Co-operative Co. Ltd
Parmalat	Parmalat Australia Pty Ltd
PCD	Port Curtis Dairies
QDAS	Queensland Dairy Accounting Scheme
QDO	Queensland Dairyfarmers' Organisation
The Department	Department of Agriculture and Fisheries

## Chair's foreword

It is difficult to escape the fact that dairy farmers in Australia, and particularly in Queensland, are labouring under tremendous economic pressures. Certainly, anyone sitting through the hearings conducted by the committee would be plainly aware that there are significant power imbalances affecting the functioning of the dairy market.

The Sustainable Queensland Dairy Production (Fair Milk Price Logos) Bill 2016 was introduced by the Member for Dalrymple in an attempt to achieve better farm gate prices for the state's dairy farmers, something I am sure all honourable members would support. It seeks to strengthen consumer information which is one of the pillars of a well-functioning market. Unfortunately, the Bill creates more problems than it seeks to resolve. The majority of the committee are of the view that significant difficulties would arise were the state government to return to the role of making 'fair' price determinations for milk farm gate prices, as the Bill proposes. That role of government ceased with deregulation of the dairy industry back in 2000.

Adopting the labelling scheme proposed in the Bill, though well-intentioned, could also leave the legislation vulnerable to a future legal challenge on constitutional grounds. This is because the scheme seeks to grant a competitive advantage to Queensland producers not available to inter-state producers whose milk is supplied here. The fact that the proposed labelling scheme is voluntary for Queensland processors does not avoid this.

While legislated labelling as proposed in the Bill is problematic, a number of small milk processors in Queensland are already using labelling and other marketing tools to better position themselves in the competitive drinking milk market. They are creating a marketing advantage on the basis that they offer a quality local product, and treat farmers and livestock well. This includes paying a fair price for their milk they receive from farmers. That a significant and growing proportion of consumers are buying their milk, is testament to their willingness to pay the premiums these companies charge.

It is undeniable that the dairy industry is an important component of many of the state's regional economies. For this reason, the committee is of the view that government should assist the Queensland Dairyfarmers' Organisation (or a similar body) to run a marketing scheme to assist consumers make better-informed decisions about the milk they purchase. This is reflected in the recommendations of this report. This is the best option to support the Queensland dairy industry.

I commend this report to the House.



Joe Kelly MP

**Chair**

## Recommendations

### Recommendation 1

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The committee recommends the Sustainable Queensland Dairy Production (Fair Milk Price Logos) Bill 2016 not be passed.

### Recommendation 2

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That the Minister for Agriculture and Fisheries direct his department to investigate options for supporting the Queensland Dairyfarmers' Organisation to devise and operate an industry-operated marketing scheme, potentially including fair milk price logos.

### Recommendation 3

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That the Minister for Agriculture and Fisheries consult with his counterparts in other states and territories, and with the Commonwealth Minister for Agriculture and Water Resources, regarding the institution of similar schemes in order to increase the sustainability of the Australian dairy industry as a whole.

## 1. Introduction

### Role of the committee

The Agriculture and Environment Committee is a portfolio committee appointed by a resolution of the Legislative Assembly on 27 March 2015. The committee's primary areas of responsibility are: agriculture, fisheries, rural economic development, environment and heritage protection, national parks and the Great Barrier Reef.<sup>1</sup>

In relation to its areas of responsibility, the committee:

- examines Bills and subordinate legislation to consider the policy to be enacted, their lawfulness and the application of fundamental legislative principles set out in section 4 of the *Legislative Standards Act 1992*
- examines the budget estimates for departments
- assesses departments' public accounts of each in regard to the integrity, economy, efficiency and effectiveness of financial management, including examining government financial documents and considering the annual and other reports of the Auditor-General, and
- considers departments' public works in light of matters such as the suitability of the works for the purpose, necessity for the works, value for money of the works, revenue produced by, and recurrent costs of, the works, or estimates of revenue and costs, present and prospective public value of the works, procurement methods used for the works, and actual suitability of the works in meeting the needs in and achieving the stated purpose of the works.

### Referral and committee process

The Sustainable Queensland Dairy Production (Fair Milk Price Logos) Bill 2016 (the Bill) was introduced into Parliament by Mr Shane Knuth MP, Member for Dalrymple, on 13 October 2016. The Bill was drafted following close consultation with the Queensland Dairyfarmers' Organisation (QDO). It reflects QDO research showing that consumers are concerned that dairy producers are not receiving fair prices for their milk, and are willing to pay higher retail prices to ensure that the Queensland dairy industry is sustainable.

For its review of the Bill, the committee:

- wrote to stakeholders inviting written submissions (a list of submitters is at Appendix A)
- received private briefings from Mr Knuth and the Department of Agriculture and Fisheries (the Department) on 15 February 2017
- held public hearings and a public briefing on 1 March 2017, and
- sought further written advice from Mr Knuth and the Department regarding the operation of the Bill and the conditions of the Queensland dairy industry.

### Policy objectives of the Bill

The Bill establishes a scheme for voluntary use of a series of fair milk price logos (the logos) in labelling of fresh drinking milk. This is assumed to be cows' milk, though this is not specified in the Bill. The need to address unclear drafting is discussed further in section 3 of this report. The logos are intended to influence consumer behaviour by reliably informing purchasers that the farmers who supplied the raw milk were paid a fair and sustainable price for their product.

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<sup>1</sup> [Standing Rules and Orders of the Legislative Assembly of Queensland](#), sch 6.

In support of this, the Bill also provides for Ministerial determination of appropriate farm-gate prices for the production of fresh milk. The Bill does not specify the Minister who will have responsibility for its implementation. This issue is likewise discussed further in section 3.

The Minister's decision is to be made on the basis of data reported by the Queensland Dairy Accounting Scheme (QDAS). These prices would be determined individually for each of three dairy producing regions in Queensland (which are specified in the Bill), and are to be published in official gazette notices at least twice per year.

### **Should the Bill be passed?**

Standing Order 132(1)(a) requires the committee to determine whether to recommend the Bill be passed. The committee recommends the Sustainable Queensland Dairy Production (Fair Milk Price Logos) Bill 2016 not be passed.

The committee is sympathetic to the difficulties faced by Queensland's dairy industry. It considers that dairy farming provides greater benefits in terms of local employment and trade than alternative uses of comparable land. For that reason alone, it is desirable to retain as much of Queensland's dairy production as possible.

However, the committee concludes that the voluntary, government-run labelling scheme proposed by the Bill is problematic. It would rely on the Minister for Agriculture determining fair milk prices for farmers based on indicative farm and production data. This data is self-reported by a small sample of farmers through QDAS, a scheme operated by the Department as an industry-development resource for the dairy industry. Significant changes to the scheme would be required to make the scheme's data sufficiently robust to determine sustainable costs of production for dairy farmers across whole dairy regions.

The Bill would also need substantial changes. This includes redrafting of unclear provisions, and the addition of new provisions to provide a statutory review process for the Minister's price determinations.

A further issue is the need for the legislation. Companies such as Maleny Dairies and 4Real Milk are already marketing themselves as fair and sustainable alternatives to major brands. Arguably, an industry-based marketing scheme could achieve similar benefits to consumers and dairy farmers without the costs to government associated with administering the scheme proposed in the Bill.

Additionally, most of the state's dairy farmers who supply major milk processors would likely miss out on any benefits from the scheme. The committee's inspection of Parmalat's South Brisbane processing facility confirmed Parmalat's earlier advice that it sources and blends milk from multiple farms and regions. The processes of Lion Dairy & Drinks (Lion) are assumed to be similar. This would preclude them from marketing and labelling milk based on it being from a particular dairy region.

Finally, the Bill may offend the requirement of the *Australian Constitution* (the Constitution) that trade and commerce between states be absolutely free. If this is the case, then the Bill will be vulnerable to a challenge in the High Court on the grounds that it offends the provisions of the Constitution.

#### **Recommendation 1**

The committee recommends the Sustainable Queensland Dairy Production (Fair Milk Price Logos) Bill 2016 not be passed.

## 2. Issues considered by the committee

### Milk pricing

As with many other agricultural industries, dairy farmers typically sell their product to processors. Processors then process the milk into the final product and supply it to retailers and other end-users. Processors in Queensland overwhelmingly produce white drinking milk, but other products such as custard, yoghurt and ice cream are also manufactured in the State.

Milk pricing is dynamic, with the farm gate price being determined by the proportion of fat and other solids in the milk.<sup>2</sup> There can be significant seasonal variation over the course of a year.<sup>3</sup>

Australia's status as a milk exporter means that prices are also sensitive to global market movements. Between 40 per cent and 45 per cent of Australian dairy production is exported in the form of value-added goods. A further 30 per cent is used in the manufacture of products, the price of which is directly determined by world markets. Most of the milk used by these manufacturing processors is sourced from southern states, which exposes farmers in these regions to global price movements to a higher degree than those operating in Queensland.<sup>4</sup>

Since 2014, there has been very significant downward pressure on global milk prices, caused by:

- the imposition of trade sanctions by Russia, formerly the world's second-largest dairy importer<sup>5</sup>
- the removal of dairy quotas in Europe on 1 May 2015, causing a glut in production,<sup>6</sup> and
- weaker than anticipated demand from China over 2014 and 2015.<sup>7</sup>

The combination of these factors has led to stockpiling of milk powder in Europe,<sup>8</sup> which has prolonged the price slump.<sup>9</sup> However, a slowing of production growth in the European Union, coupled with increasing demand from China and South East Asia, is predicted to return global dairy prices to around the historical average.<sup>10</sup> Dairy production in Australia, however, continues to decline, and this may leave processors unable to boost exports in response to improved global conditions.<sup>11</sup>

### Committee comment

The committee notes the continuing decline in Australian dairy production. It considers that there may be value in the Department working with representatives of the industry to create a plan to increase export volumes if and when global market conditions improve.

<sup>2</sup> Dairy Australia, 'Fat and Protein', dairyaustralia.com.au, <<http://www.dairyaustralia.com.au/Markets-and-statistics/Production-and-sales/Milk/Fat-and-Protein.aspx>>.

<sup>3</sup> Mr Brian Tessmann, President, QDO, *Public hearing transcript – 1 March 2017*, p 7.

<sup>4</sup> Rural Industries Research and Development Corporation, 2016, *From farm to retail – how food prices are determined in Australia*, pp 63, 68.

<sup>5</sup> Dairy Australia, 2014, *Dairy Industry Situation and Outlook – October 2014*, p 12.

<sup>6</sup> Australian Food and Grocery Council, Submission No. 6 to the Senate Standing Committee on Economics, *Inquiry into the Australian Dairy Industry*, October 2016, p 3.

<sup>7</sup> Dairy Australia, 2015, *Dairy Industry Situation and Outlook – June 2015*, p 21.

<sup>8</sup> Jamie Smyth, 'Commodities: The milk industry cowed', *Financial Times (online)*, 12 August 2016, <https://www.ft.com/content/1b93f92c-5ef8-11e6-bb77-a121aa8abd95>.

<sup>9</sup> Rabobank Australia & New Zealand, 'Surge in EU milk production not "opening of floodgates" – European dairy expert', rabobank.com.au, <<https://www.rabobank.com.au/media-releases/2016/160421-surge-in-eu-milk-production-not-opening-of-floodgates/>>.

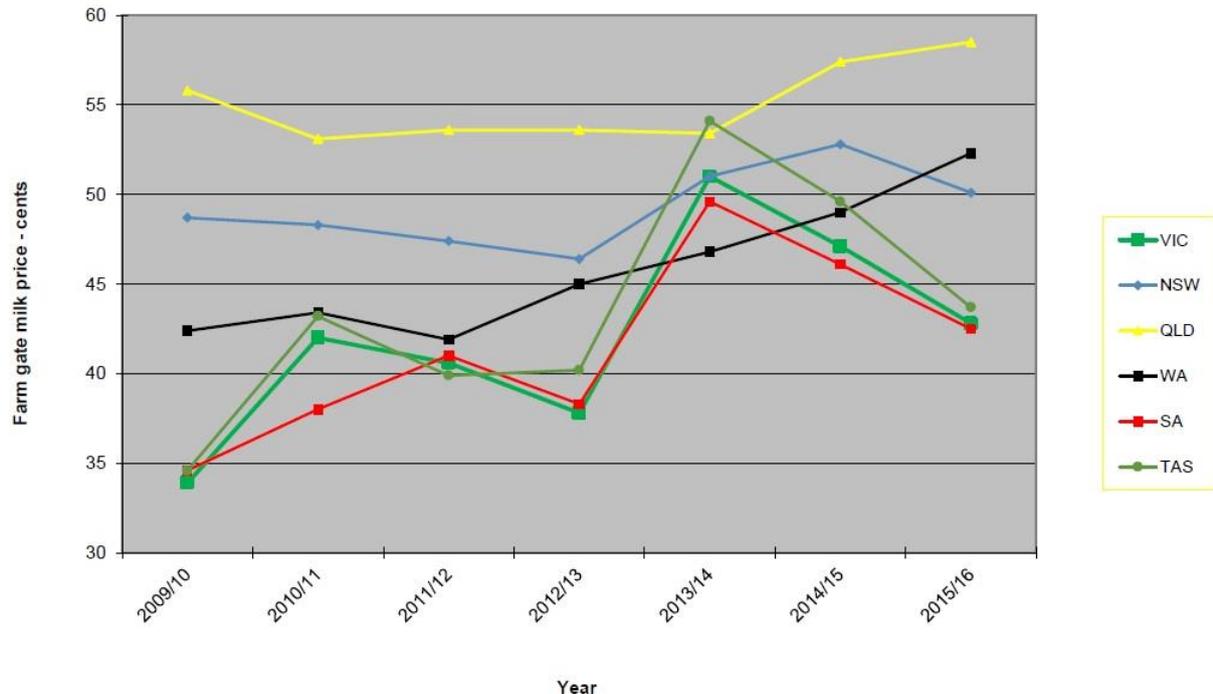
<sup>10</sup> Dairy Australia, 2017, *Dairy Industry Situation and Outlook – February 2017*, p 18.

<sup>11</sup> Food and Agriculture Organisation of the United Nations, 2016, *Food Outlook: Biannual Report on Global Food Markets – June 2016*, pp 50-51.

## 1. Comparative pricing in Australia

Since deregulation of the dairy industry on 1 July 2000, the farm gate price for milk has altered significantly. At a private briefing, the Department tabled documents showing that prices have fallen significantly in New South Wales, Victoria and Tasmania (Figure 1). The information provided was based on data sourced from Dairy Australia, the industry's peak national body.

**Figure 1: Changes in domestic milk pricing**



Source: Department of Agriculture and Fisheries, 2017

It is important to note that pricing trends have not been the same from state to state. Given the sharp increase in prices experienced in 2013-14, it may be that this is a correction of the market back towards historical averages. It is worth noting that farm gate prices in every jurisdiction remain above those set prior to 2013-14.<sup>12</sup>

Queensland has consistently shown the highest farm gate prices in Australia.<sup>13</sup> In its submission, Parmalat states that it paid its suppliers an average of 59.13 cents per litre for raw milk, and that the same suppliers received an average of 58.13 cents per litre over the course of 2015.<sup>14</sup> In correspondence, however, Port Curtis Dairies (a co-operative of 31 central Queensland farmers) (PCD) challenged the figures provided by Parmalat.<sup>15</sup>

Figures for 2015-16 from QDAS show an average of 12.6 cents per litre profit among reporting farmers, an increase of 2.6 per cent over the previous year, due mainly to declining overhead costs.<sup>16</sup> It should be noted, however, that QDAS figures may not be indicative of the state of Queensland's dairy industry as a whole. This is discussed in greater detail below.

In comparison to Queensland prices, the long-term average farm gate price in the Riverina region in New South Wales and northern Victoria is between 44 and 47 cents per litre. The industry standard

<sup>12</sup> Dairy Australia, 'Farmgate milk price', dairyaustralia.com.au, <<http://www.dairyaustralia.com.au/Markets-and-statistics/Prices/Farmgate-Prices.aspx>>.

<sup>13</sup> Department of Agriculture and Fisheries, *Public briefing 15 February 2017 - documents tabled*, p 3.

<sup>14</sup> Parmalat, *Submission 6*, p 2.

<sup>15</sup> PCD, *Correspondence 12 March 2017*, p 1.

<sup>16</sup> QDAS, 2016, *Balancing dairy production and profits in northern Australia*, p 2.

rate to freight milk from the Riverina to Queensland for processing is 15 cents per litre. This establishes an effective ceiling farm gate price for Queensland milk of between 59 and 62 cents per litre (including shipping costs).<sup>17</sup>

### Committee comment

The committee notes that Queensland farm gate prices are, and have historically been, the highest in Australia. The committee also notes that, since deregulation in July 2000, lower farm gate prices available in southern dairy producing areas have effectively capped the market price for raw milk. Finally, the committee notes that farm gate prices in these regions are determined to a very great degree by movements in world markets, which are only now reaching pre-2014 price levels.

## 2. Role of retailers

The committee heard differing opinions of the role of retailers in setting farm gate prices for dairy products. There is no question that the move by major supermarkets (Aldi, Coles and Woolworths) in January 2011 to sell home-branded milk for \$1 per litre, has had an effect on retail pricing. Two of the largest processors in Australia, Lion and Parmalat, saw their combined retail market share for branded milk drop from 45.9 per cent in 2008 to 35.1 per cent by December 2014,<sup>18</sup> though this trend shows signs of an equally strong reversal, with sales of branded milk increasing by 21 per cent in the year to February 2017.<sup>19</sup>

The degree to which the supermarket 'price wars' have influenced farm gate dairy prices, however, is much harder to ascertain. This is chiefly because farmers sell their product to processors, who then collect, process and package it for supply to retailers. The position of processors appears to be that their activities effectively separate the farm gate price (which has increased, in trend terms, since deregulation) and the retail price (which has remained relatively static).<sup>20</sup>

Neither retailers nor processors gave evidence to the committee on this point. However, industry participants have been more forthcoming to the Senate Standing Committee on Economics' inquiry into the Australian dairy industry. Murray Goulburn Co-operative Co. Ltd (MG) wrote:

*The milk price paid to MG by Coles locks in a margin that delivers additional profits to MG farmer-suppliers over the life of the contract. ... There is no link between Coles' shelf price and the price paid to MG farmers under our contract.*<sup>21</sup>

Similarly, the Agriculture, Resources and Environment Committee of the 54<sup>th</sup> Parliament heard during its inquiry into the Milk Pricing (Fair Milk Mark) Bill 2013 (the 2013 inquiry) that major retailers were using a loss-leading strategy rather than realising the full market value of the product.<sup>22</sup>

However, evidence was provided in hearings before the current committee that, with \$1 per litre milk having become a fixture in supermarkets, processors' margins for drinking milk were being reduced, and they were attempting to pass the price reductions on to farmers:

*... how that affects our price at the dairy farm gate is the bigger the share of the \$1 a litre milk, the less we are going to be able to bargain with the processors of the world to be able to get*

<sup>17</sup> Parmalat, *Submission 6*, p 3.

<sup>18</sup> Mark Hawthorne, 'Milk wars likely to claim more victims yet', *Sydney Morning Herald (online)*, 24 January 2015, <<http://www.smh.com.au/business/milk-wars-likely-to-claim-more-victims-yet-20150122-12wirn.html>>.

<sup>19</sup> Dairy Australia, 2017, *Dairy Industry Situation and Outlook – February 2017*, p 11.

<sup>20</sup> Parmalat, *Submission 6*, p 4.

<sup>21</sup> Murray Goulburn Co-operative Co. Ltd, *Submission No. 8 to the Senate Standing Committee on Economics, Inquiry into the Australian Dairy Industry*, October 2016, p 18.

<sup>22</sup> Agriculture, Resources and Environment Committee (of the 54<sup>th</sup> Parliament), 2013, *Report No. 30 - Milk Pricing (Fair Milk Mark) Bill 2013*, pp 17-18.

*that sustainable price. ... At the end of the day if we supply directly to Parmalat and they sold every litre in a Parmalat bottle at ... \$1.50 a litre, then our bargaining tool when we go back is, 'You can move 100 per cent of your milk at \$1.50 a litre. Why are you paying us 55 cents a litre?' If 70 per cent of it goes to Coles or Woolworths and they sell it at \$1 a litre, their argument directly back to us will be, 'Coles and Woolies are paying us a lower price', which is exactly what happens. ... So the more milk that is moved at that cheaper price, the larger the market share for that, so the less bargaining power that we have in the long run.*<sup>23</sup>

Reports that Parmalat has attempted to lower its farm gate price by 1.5 cents per litre in the most recent round of collective bargaining with farmers appear to support this view.<sup>24</sup> However, Cr Radel stated that Parmalat has previously paid higher farm gate prices than other processors.<sup>25</sup> Therefore, lower offers may be a simple market correction.

A history of farm gate prices, as reported to QDAS, does show a decrease between 2010-11 and 2012-13.<sup>26</sup> This may represent local processors 'pricing in' a reduction in long-term retail prices. However, it is again worth noting that QDAS figures may not be reflective of the industry as a whole. Figures published by Dairy Australia (sourced directly from processors) show a reduction in Queensland's farm gate prices beginning in 2009 and largely complete by 2011, with very little variation between that year and 2014.<sup>27</sup>

#### **Committee comment**

The committee notes that the relationship between farm gate and retail prices is not a direct one. Little evidence was provided to the committee on the interaction between processors and retailers, and as a result this issue was not investigated by the committee in any significant depth. Information obtained by the committee's own efforts was equivocal.

The committee notes that the Senate Standing Committee on Economics is due to table the report of its inquiry into the Australian dairy industry on 11 May 2017. The committee hopes that this report will shed greater light on both the relationship between retail and farm gate pricing and the impact of contract negotiations between farmers and processors.

### **3. Role of processors**

As mentioned above, two of Australia's largest dairy processors, Lion and Parmalat, continue to operate in Queensland. Norco Milk Supply has also operated a bottling plant at Coombabah, on the Gold Coast, since the early 1980s. A number of smaller processors also exist, such as Maleny Dairies and 4Real Milk (based in the Scenic Rim), and new companies continue to enter the processing industry.<sup>28</sup> These tend to have vertically integrated supply arrangements, which provide high farm gate prices to their suppliers. By promoting themselves as fair and sustainable alternatives they have

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<sup>23</sup> Cr Robbie Radel, North Burnett Regional Council, *Public hearing transcript – 1 March 2017*, p 4.

<sup>24</sup> Marty McCarthy, 'Dairy farmers fear pay dispute could cost them \$3 million as milk processor tries to drop prices' *ABC News Online*, 19 January 2017, <<http://www.abc.net.au/news/2017-01-19/dairy-farmers-fear-pay-dispute-could-cost-them-3-million-dollars/8193382>>.

<sup>25</sup> Cr Robbie Radel, *Transcript - 1 March 2017*, p 4.

<sup>26</sup> Parmalat, *Submission 6*, p 4.

<sup>27</sup> Rural Industries Research and Development Corporation, 2016, *From farm to retail – how food prices are determined in Australia*, p 68.

<sup>28</sup> See, for example, Meecham Philpott and Lara Webster, 'North Queensland dairy farmer raises enough money for a milk processor', *ABC News Rural*, 20 October 2016, <<http://www.abc.net.au/news/2016-10-20/north-queensland-dairy-farmer-crowdfunding-success/7946688>>.

been increasing in both retail market share and income.<sup>29</sup> Sixty dairy processing facilities are currently involved in the Safe Food Queensland Dairy Scheme.<sup>30</sup>

The number of processing facilities across Queensland reflects the physical nature of the industry. Unless refrigerated (itself an expensive proposition), there is a finite distance that raw milk may travel if the final product is to meet appropriate food standards.<sup>31</sup> Therefore, processing facilities must be sited close to the areas of production. Conversely, dairy farmers frequently have little choice but to sell their product to the operator of the nearest processing facility.<sup>32</sup> This creates situations of regional monopsony in which processors' market power significantly outstrips the farmers who supply them.

Mr Knuth stressed this point, stating that dairy farmers 'have no capacity to increase or decrease the price they receive [for] the milk they produce.'<sup>33</sup> Dairy farms have traditionally been considered independent businesses able, in theory, to negotiate supply contracts on their own behalf. However, the characteristics of the dairy industry identified above, coupled with processors' greater access to market information and ability to source alternative supplies of raw milk, tilt the scales significantly in favour of processors. Put simply, it appears that processors have the ability to offer contracts to dairy farmers without negotiation on any of the terms.

One example of how this operates in practice was provided by Cr Robbie Radel, who described negotiations between PCD and Parmalat:

*All Parmalat suppliers in Queensland are off contract as of 1 January this year, which means that as of 1 January this year we took a three-cent-a-litre price drop because we have no contractual agreement. ... [N]ot only have they said, 'We're not going to pay you that three cents a litre for the contractual arrangement' but also if we want to break ranks and go and supply a label, or if we could find another processor ... we have to give three months written notice to get out of a contract that we do not have.*

...

*Realistically, we could be looking at six to eight months where we have no contract, which means that we have no guarantee that they are going to pick us up, which means that we cannot do anything. If the bank were to knock on my door tomorrow and say, 'Show me how you are going to fulfil your mortgage and your contract,' they have every right to foreclose on my business because I do not have a contract of supply.'<sup>34</sup>*

The Australian Competition and Consumer Commission (ACCC) advised the committee that the unfair business-to-business contract provisions of the Australian Consumer Law (ACL) may apply to negotiations between farmers (or co-operatives) and processors. Section 24 of the ACL provides that:

- (1) *A term of a consumer contract or small business contract is unfair if:*
- (a) *it would cause a significant imbalance in the parties' rights and obligations arising under the contract; and*
  - (b) *it is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term; and*

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<sup>29</sup> Cr Robbie Radel, *Transcript – 1 March 2017*, p 5.

<sup>30</sup> Safe Food Production Queensland, *Food safety scheme*, Safe Food Queensland – dairy and dairy products, <[http://www.safefood.qld.gov.au/index.php?option=com\\_content&view=article&catid=15&id=46&Itemid=31](http://www.safefood.qld.gov.au/index.php?option=com_content&view=article&catid=15&id=46&Itemid=31)>.

<sup>31</sup> Food Standards Australia, 2009, *Primary Production and Processing Standard for Dairy Products*, p 31.

<sup>32</sup> Cr Robbie Radel, *Transcript - 1 March 2017*, p 3.

<sup>33</sup> Mr Shane Knuth MP, *Summary of Submissions*, p 5.

<sup>34</sup> Cr Robbie Radel, *Transcript - 1 March 2017*, p 3.

*(c) it would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied upon.*<sup>35</sup>

Section 24 applies to standard form contracts where at least one of the businesses involved employs fewer than 20 people, and the price payable under the contract is no more than \$300 000, or \$1 million if the contract is for more than 12 months.<sup>36</sup>

The ACCC noted that standard form contracts arise in situations where one party has little ability to vary the terms offered to them, and that this may be widespread in dairy supply contracts:

*A standard form contract is one that has been prepared by one party to the contract and where the other party has little or no opportunity to negotiate the terms – that is, it is offered on a ‘take it or leave it’ basis. It appears likely that milk supply agreements will be standard form contracts for the purpose of the law.*<sup>37</sup>

However, without an ability to scrutinise particular contracts, the ACCC were unable to comment on whether processors in Queensland were engaging in unfair contracting.<sup>38</sup>

#### **Committee comment**

The committee notes that significant power imbalances exist within the dairy industry, and that imbalances between processors and farmers are the most severe.

#### **4. Industry sustainability**

As the QDO notes in its submission, participation in the Queensland dairy industry is declining, with 192 farmers having exited the industry since 2010.<sup>39</sup> QDO contends that this is due to the effect of \$1 per litre milk.<sup>40</sup> However, the decline since 2010 is part of a much longer trend. QDO itself notes that:

*Since 2000, we have lost half our milk production in Queensland... We have gone from 1,500 down to about 425 dairy farmers in that time.*<sup>41</sup>

Dairy Australia figures show that the decline began even before deregulation, as illustrated in Figure 2. The continuing decline can be attributed to a number of factors, including:

- farm gate price fluctuations, in particular an immediate drop in farm gate price of 24 per cent following deregulation<sup>42</sup>
- the impact of widespread flooding in 2011 and 2013, and subsequent drought, and<sup>43</sup>
- continually rising prices for fodder<sup>44</sup> and energy.<sup>45</sup>

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<sup>35</sup> ACL, s 24.

<sup>36</sup> ACCC, *Submission 1*, p 3.

<sup>37</sup> ACCC, *Submission 1*, p 3.

<sup>38</sup> Ms Gabrielle Ford, General Manager, Agriculture Unit, ACCC, *Public hearing transcript – 1 March 2017*, p 12.

<sup>39</sup> QDO, *Submission 7*, p 1.

<sup>40</sup> Mr Brian Tessmann, *Transcript– 1 March 2017*, p 7.

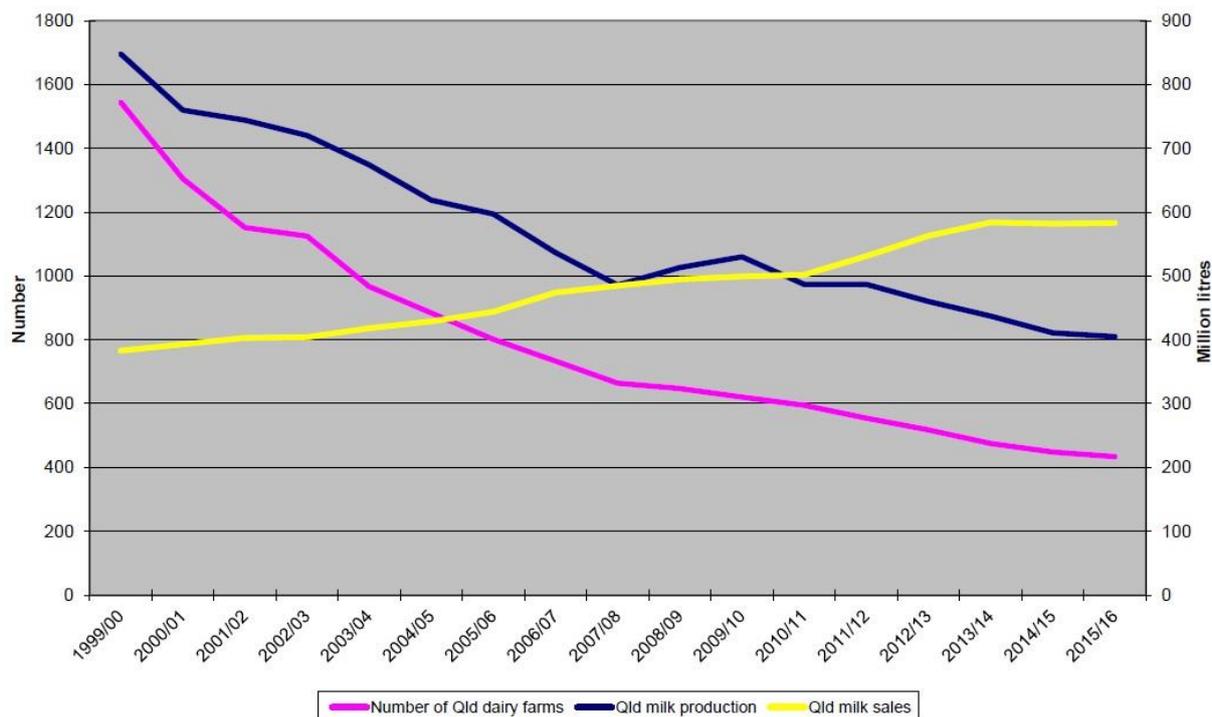
<sup>41</sup> Mr Brian Tessmann, *Transcript– 1 March 2017*, p 7.

<sup>42</sup> Australian Competition and Consumer Commission, 2001, *Impact of farmgate deregulation on the Australian milk industry: study of prices, costs and profits*, p 31.

<sup>43</sup> Mr Brian Tessmann, President, QDO, *Public hearing transcript – 11 September 2013*, p 7.

<sup>44</sup> Dairy Australia, *International and national grain report*, week ending 10 March 2017, <<http://www.dairyaustralia.com.au/Pastures-and-Feeding/Supplements/Hay-and-grain-report/International-and-national-grain-report.aspx>>; Dairy Australia, *National hay report*, week ending 10 March 2017, <<http://www.dairyaustralia.com.au/Pastures-and-Feeding/Supplements/Hay-and-grain-report/National-hay-report.aspx>>.

<sup>45</sup> Jacobs Australia, 2016, *Retail electricity price history and projections – Public*, p 37.

**Figure 2: Decline in Queensland dairy production**

Source: Department of Agriculture and Fisheries, 2017

Queensland's milk production is used almost entirely to satisfy local demand for drinking milk.<sup>46</sup> However, the ongoing decline in production has shifted the state of the industry from fully meeting local demand, with a surplus exported to other states, to importing between 20 and 25 per cent of its required raw milk.<sup>47</sup>

The ability of at least the larger processors to source raw milk does not appear to be in question, given the availability of milk from southern regions. However, widespread adoption of this strategy on the part of processors may result in further contraction of local supply to the point where it is uneconomical to continue processing milk in Queensland. This would contribute further to the loss of local supply, and could potentially result in a situation in which milk production in Queensland either ceases<sup>48</sup> or is restricted to vertically integrated supply for regional processors.<sup>49</sup>

Regardless of the precise outcome, this may result in significant loss of employment in regional Queensland. The committee heard that dairy production is more employment-intensive than other uses to which former dairy properties are now being turned:

*Even on an average sized dairy farm of about 150 cows, we employ probably two or three staff, so you have increased wages and increased employment figures. However, if that farm is then turned over to beef production, a 400-acre dairy farm that employs three people or four people all of a sudden goes back to being just a beef block that one person musters once a month on a horse. ... You also have the processing side of things, which employs quite a large number of people and the transport side of things.<sup>50</sup>*

<sup>46</sup> QDO, *Submission 7*, p 1.

<sup>47</sup> Mr Brian Tessmann, *Transcript – 1 March 2017*, pp 7-9.

<sup>48</sup> Explanatory Notes, pp 4-5.

<sup>49</sup> Mr Brian Tessmann, *Transcript – 1 March 2017*, p 9.

<sup>50</sup> Cr Robbie Radel, *Transcript - 1 March 2017*, p 5.

According to the Explanatory Notes for the Bill, the total loss to Queensland from the closure of milk processing facilities has been estimated at over 3,000 jobs, \$250 million in farm revenue, \$400 million in factory production and \$700 million in retail sales.<sup>51</sup>

It may be, though, that the size of Queensland's dairy industry, from prior to deregulation to the present day, has never been sustainable. In its submission, Parmalat stated that:

*The simple truth which the wider industry understands is that the sub-tropical climate of Queensland provides less than ideal conditions for dairy cows. ... Lots of food categories are important and desirable but Queensland is not well placed to produce them. On the other hand Queensland produces many foods that other Australian states cannot economically produce.*<sup>52</sup>

In any case, the likelihood of a large-scale shutdown of the Queensland dairy industry appears to be low. The Department takes the view that the decline in Queensland's production is:

*... an outcome of that deregulation that there has been a continued structural adjustment in the industry in Queensland. If you look at the QDAS numbers, they show ... that the top 25 per cent of producers are quite viable and make quite a good return, but within all industries there will always be the less good performing producers that will struggle to be profitable under a whole range of pricing scenarios.*

...

*[The Department] does not necessarily see that as a big concern. [The Department] would see that as the national milk market working.*

...

*That does not necessarily mean they are the only producers that are viable. When you look at the average figures in QDAS ... it would be a much higher per cent of the QDAS contributors that we would deem to be viable rather than just the top 25 per cent.*<sup>53</sup>

#### **Committee comment**

The ongoing decline in the size of the Queensland dairy farming industry appears to be the continuation of a long-term trend that began on or before the date of industry deregulation in 2000. This trend does not appear to have been affected by the introduction of \$1 per litre milk. The committee also notes that current QDAS data show that a quarter of existing dairy farms are performing well, and that an additional (though unspecified) portion of contributors continue to be viable in the current environment.

Nonetheless, the committee considers that it is feasible for government action to improve the viability of Queensland's dairy production and processing industry, and that both economic and social benefits could be realised by doing so.

#### **Fair milk price**

The Bill provides for Ministerial determination of a fair milk price for each of three dairy producing regions specified in the Bill.<sup>54</sup> Under Clauses 5 and 6, the fair milk price is to be the cost of production in each region (determined by the Minister with reference to QDAS data) plus a sustainable profit

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<sup>51</sup> Explanatory Notes, p 5.

<sup>52</sup> Parmalat, *Submission 6*, p 3.

<sup>53</sup> Mr Elton Miller, Executive Director, Rural Economic Development, Department of Agriculture and Fisheries, *Public hearing transcript – 1 March 2017*, pp 19-20.

<sup>54</sup> Sch 1.

margin.<sup>55</sup> The sustainable profit margin is also to be determined by the Minister in consultation with dairy farmers and their representative organisations.<sup>56</sup>

It appears likely that, whatever the final fair milk price is for a given region, it will be above the existing farm gate prices. In hearings, Cr Radel stated that:

*I would think that Queensland-wide whatever the figure comes out at it would need to start with a six – whether it be 62 or 65 [cents] – to be sustainable.<sup>57</sup>*

#### **Committee comment**

The committee notes that participation in the proposed logos scheme is to be voluntary, and that re-regulation of the industry is explicitly not contemplated. However, the committee remains concerned that, by determining and publishing a fair milk price, the government will be indirectly interfering in the dairy market to a comparable ultimate effect. Similarly, the committee does not consider that it is appropriate for government to dictate an appropriate return on investment for agricultural businesses by the determination of a sustainable profit margin.

The committee considers that alternative methods of achieving the same policy outcomes have been insufficiently explored. This is discussed in greater detail below.

### **1. Adequacy of QDAS data**

The Queensland Dairy Accounting Scheme is an annual survey of dairy farm performance with regard to costs, efficiency and profitability. Farmers participate via a voluntary questionnaire, which is collected and processed by officers of the Department between August and November. The scheme is both ‘the industry accepted model for determining the cost of milk production’<sup>58</sup> and the verified farm data for Queensland when comparing Queensland’s dairy industry with that of other states.<sup>59</sup>

However, questions have been raised regarding the validity of QDAS data from the beginning of the committee’s inquiry. Most notably, QDAS has always been focused on benchmarking high-performing farms, and is not a statistically representative sample of the industry.<sup>60</sup> Participants in QDAS reporting tend to skew toward those performing at above average levels.<sup>61</sup> Participants tend to own larger herds and produce more milk than other farmers.<sup>62</sup> Also, some areas are under-represented. Central Queensland is notably so, with only one participant in QDAS reporting.<sup>63</sup>

The Department advised the committee that, in order to correct these issues, further resources would be required to enhance the representative nature of QDAS:

*... if QDAS was required to perform the task you would require of it then we would need additional resources. We would have to do some further work with it to ensure that it is statistically representative of the industry and of the various regions in the industry. As [was] mentioned just before, we only have one farm in Central Queensland currently represented. As you would all understand, that is not statistically viable.*

...

<sup>55</sup> Clause 6.

<sup>56</sup> Clause 5.

<sup>57</sup> Cr Robbie Radel, *Transcript - 1 March 2017*, p 5.

<sup>58</sup> Mr Shane Knuth MP, *Correspondence 24 March 2017*, p 1.

<sup>59</sup> QDAS, 2016, *Balancing dairy production and profits in northern Australia*, p vi.

<sup>60</sup> Parmalat, *Submission 6*, p 5.

<sup>61</sup> Mr Elton Miller, *Transcript – 1 March 2017*, p 20.

<sup>62</sup> QDAS, 2016, *Balancing dairy production and profits in northern Australia*, p vi.

<sup>63</sup> Mr Elton Miller, *Transcript – 1 March 2017*, p 17.

*If you wanted to compel producers to participate, you would need a legislative trigger to do that. However, we would certainly work with QDO and I am sure it would be possible to get sufficient numbers ... to participate in the survey in order for it to be statistically significant, but it would be a matter of working with industry to help make that happen.*<sup>64</sup>

#### **Committee comment**

The committee notes that farmers participate in QDAS and contribute data on the costs of production and earnings voluntarily. The data reported by QDAS is not independently verified as to its accuracy or validity, and there is no minimum, statistically significant number of farmers contributing data in each region. The data appears adequate for fulfilling the scheme's stated objectives as a business development tool. However, the committee is concerned that the same data is not sufficiently statistically valid to serve as the basis for determinations by the Minister of sustainable prices for each dairy region, as proposed in the Bill.

## **2. Appeal rights**

Section 4 of the *Legislative Standards Act 1992* reads, in part:

*(2) Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation -*

*(d) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review...*<sup>65</sup>

The committee has not identified this as an issue of fundamental legislative principle, as the majority of the actors impacted by a Ministerial determination of a fair milk price under Clauses 5-6 are expected to be corporations or other companies, rather than individuals. However, the provision codifies the long-standing expectation in the community that decisions of the executive branch of government, including Ministerial decisions, are to be subject to review. No such provision is present in the Bill.

The effect of the Minister's decision on farm gate milk pricing is, by design, an indirect one, and the extent to which it will shift farm gate prices has proven difficult for industry experts to quantify.<sup>66</sup> Nonetheless, if implemented, the Bill will likely have some effect on farm gate prices. This may affect the viability of businesses, whether these be processors making use of the logos or the farmers who supply them.

#### **Committee comment**

The committee considers that the likelihood of a party (whether a dairy farmer or a processor) wishing to challenge a gazetted fair milk price at some point is high. Given this likelihood, it is concerned that the Bill, as drafted, does not provide formal means by which a review of the Ministerial decision can be sought.

## **Feasibility of participation**

Figure 3 is a schematic diagram of Parmalat's South Brisbane processing plant. As can be seen in the diagram, raw milk is kept in storage tanks prior to processing. These may contain a mixture of milk from multiple suppliers, regions or even states. The fact that this mixing takes place renders it almost impossible to certify that milk bottled at these plants was from a particular region, let alone whether the farmer supplying the raw product received a certain farm gate price.

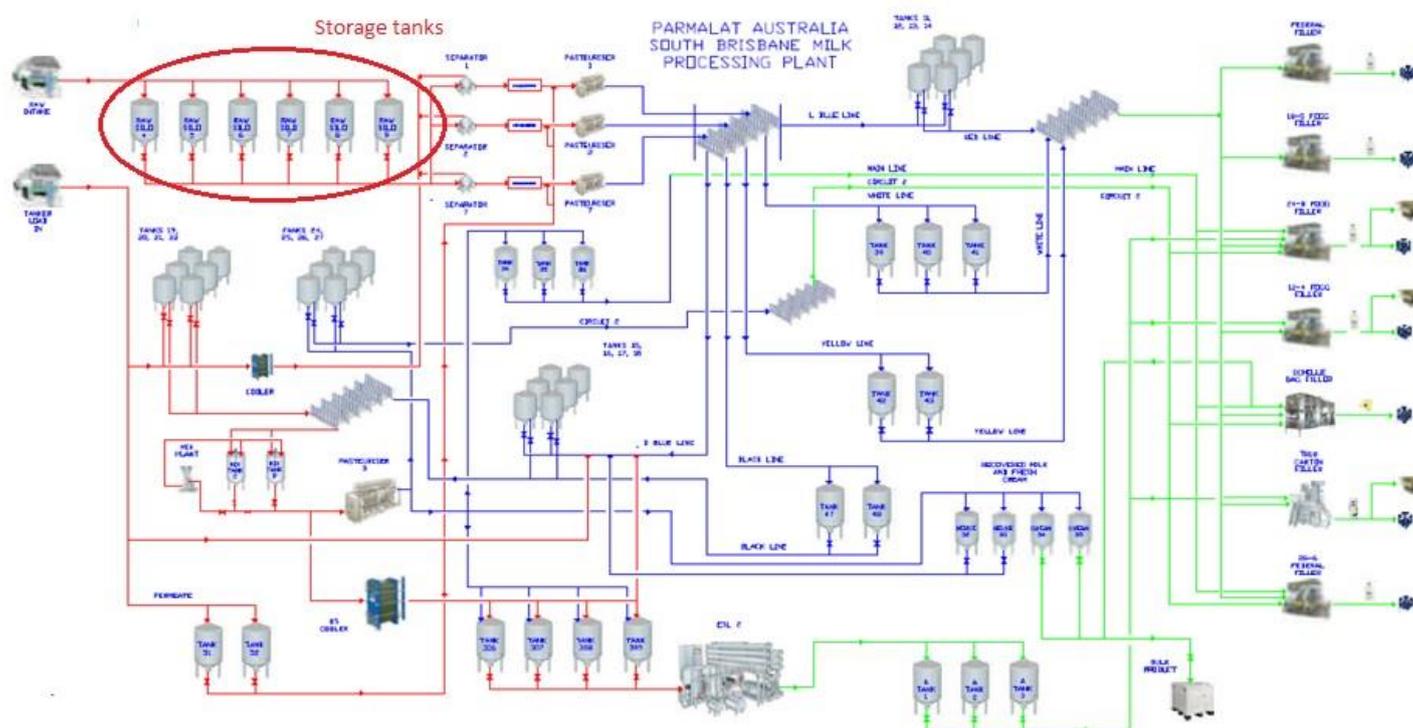
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<sup>64</sup> Mr Elton Miller, *Transcript – 1 March 2017*, pp 17-18.

<sup>65</sup> *Legislative Standards Act 1992*, s 4(3).

<sup>66</sup> See, for example, Mr Brian Tessmann, *Transcript – 1 March 2017*, p 8.

Figure 3:



Source: Parmalat Australia 2017

The QDO pointed out in hearings that milk from regional processing facilities is easier to trace to a particular region:

*The Central Queensland milk mostly comes out of Rockhampton. Obviously, there is movement of milk around there, but that is an issue for the processor in whether they can work to isolate that. The central is a fairly distinct milk pool in itself. North Queensland absolutely is a very distinct milk pool. It is only of recent times that there has been any real traffic of milk up to North Queensland. At the moment, a little goes up at times and a little comes back out at times. It is a long way up there and there is not that much interference into that North Queensland milk pool.<sup>67</sup>*

At the same hearings, Cr Radel's told the committee that Parmalat's Rockhampton plant processes 90 million litres of milk per year, from as far as Victoria, while central Queensland only produces 20 million litres of milk.<sup>68</sup> If correct, this would mean that, even in central Queensland, more than 75 per cent of the milk processed comes from outside the region.

Over the course of 2015, Queensland produced approximately 408 million litres of raw milk,<sup>69</sup> of which 198.5 million litres was processed by Parmalat.<sup>70</sup> This represents almost half (over 48 per cent) of Queensland's dairy production. Parmalat's production, combined with production from Lion's plant at Crestmead, account for the majority of milk processed in Queensland.

The committee heard that, in order to participate in a logo scheme, Parmalat would have to extensively refit its South Brisbane facility to isolate milk from particular regions. Parmalat has not provided the committee with an estimate of the cost of a hypothetical refit. However, it has estimated the cost of

<sup>67</sup> Mr Brian Tessmann, Transcript— 1 March 2017, p 8.

<sup>68</sup> Cr Robbie Radel, Transcript - 1 March 2017, pp 3-4.

<sup>69</sup> Dairy Australia, Milk, Dairy Australia – Production and sales, <<http://www.dairyaustralia.com.au/Markets-and-statistics/Production-and-sales/Milk.aspx>>.

<sup>70</sup> Parmalat, Submission 6, p 2.

moving its facility to a location on Brisbane's outskirts (an operation of comparable complexity) to be in the 'hundreds of millions of dollars', including both the cost of construction and the loss of production capacity in the interim.<sup>71</sup> Parmalat has stated that it has no interest in changing the physical setup of its South Brisbane plant.

#### **Committee comment**

The committee notes that Queensland farmers overwhelmingly supply large processing facilities. These were never designed to isolate milk from particular areas in order to enable later identification, and the cost of refitting them to do so does not appear to be commercially feasible.

Therefore, even accounting for the portion of Queensland milk received by north Queensland facilities, or by smaller processors with a greater local focus, it appears that milk from the majority of Queensland dairy farmers who supply major processors will be excluded from the logos scheme proposed in the Bill.

#### **Need for legislation**

Establishing a voluntary system of logos in order to allow consumers to make informed choices regarding the origin and farm gate price of drinking milk was supported by several stakeholder submissions<sup>72</sup> and members of the broader community.<sup>73</sup> If implemented, it is considered likely that a logos scheme would help to improve the viability of those dairy farms that supplied processors willing to invest in compliance in return for possible increased market share. The QDO stated:

*I think what it will do is give a higher value to that Queensland produced milk. ... I think many consumers are looking for it and are willing to pay some more for it.*

*... At the end of the day, it has the potential to make the farmers better off and actually to increase milk production in Queensland, which could allow us to take advantage of some of the overseas markets that are crying out for milk.<sup>74</sup>*

Parties have compared the scheme to industry-operated schemes such as the Heart Foundation tick<sup>75</sup> or Fair Trade mark.<sup>76</sup> The effect of labelling on consumer behaviour is well established.<sup>77</sup> Therefore, the key question to be answered in this inquiry is not whether the policy objectives of the Bill ought to be supported, but whether legislation is the most appropriate way of achieving them.

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<sup>71</sup> Tony Moore, 'South Brisbane firm warns shifting costs 'hundreds of millions of dollars'' *Brisbane Times (online)*, 21 August 2014, <<http://www.brisbanetimes.com.au/queensland/south-brisbane-firm-warns-shifting-costs-hundreds-of-millions-of-dollars-20140821-106wya.html>>.

<sup>72</sup> AgForce Queensland, *Submission 2*, p 2; QDO, *Submission 7*, p 1, Ms Gabrielle Ford, *Transcript – 1 March 2017*, p 12.

<sup>73</sup> Amanda Feher, *Submission 4*, p 1; Cr Robbie Radel, *Transcript – 1 March 2017*, p 1; Explanatory Notes, p 4.

<sup>74</sup> Mr Brian Tessmann, *Transcript – 1 March 2017*, p 8.

<sup>75</sup> Explanatory Notes, p 6.

<sup>76</sup> Parmalat, *Submission 6*, p 2.

<sup>77</sup> See, for example, Bryunina Daria and Khodadad Safaei Sara, 2011, 'The Influence of Eco-labeled Products on Consumer Buying Behavior By focusing on eco-labeled bread' (Department of Sustainable Development of Society and Technology (Sweden)), p 12; B.E.S. Bandara, D. A. M. De Silva, B.C.H. Maduwanthi and W.A.A. I. Warunasinghe, 'Impact of food labeling information on consumer purchasing decision: with special reference to faculty of Agricultural Sciences' (2016) 6 *Procedia Food Science*, 312.

## 1. Constitutionality

Beyond the practical challenges of implementing the Bill, its validity under the Constitution may be called into question. Specifically, the Bill may offend s 92 of the Constitution, which aims to create a free-trading area within the borders of the Commonwealth of Australia. The section states, in part:

*On the imposition of uniform duties of customs, trade, commerce and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free.*<sup>78</sup>

The practical effect of this section is that the High Court will hold any law, whether originating from the Commonwealth or a state government, invalid to the extent that it seeks to impose border duties or discriminatory fees or charges.

Burdens on inter-state trade need not be financial. The Court will also disallow non-fiscal controls on inter-state trade which seek to protect a state's domestic industry from competition elsewhere in the Commonwealth.<sup>79</sup> In the past, it has found against administrative measures such as:

- discouraging retailers from stocking non-reusable beverage containers, where intra-state manufacturers predominantly used refillable containers and inter-state manufacturers did not, and<sup>80</sup>
- prohibiting the making of bets and wagers through telephone and internet services in the absence of a permit, where most services offering 'telephonic' betting on events in a state operated out of other states.<sup>81</sup>

Under the test outlined by the Court, a law will offend s 92 if it:

- is discriminatory (i.e. involves unequal treatment of intra- and inter-state trade), and
- is protectionist (i.e. confers a competitive advantage on intra-state trade which is not available to inter-state trade).<sup>82</sup>

In the case of the Bill, the fact that the logos are available to milk produced within Queensland, but not to milk produced in southern states, is sufficient to establish that the Bill is discriminatory.

Whether use of the logos produces an actual competitive advantage is beyond the ability of the committee to determine, and may not be knowable until such a scheme is already in operation. It should be noted, though, that there appears to be an expectation on the part of the Bill's supporters that it will do so. In hearings, Mr Tessmann stated that Queensland consumers 'want local milk', and stated his belief that the proposed logos scheme would 'give a higher value to that Queensland produced milk.'<sup>83</sup> If Mr Tessmann is proven correct, this would establish a protectionist policy affecting Queensland dairy farmers.

The Court has recognised some latitude for governments to implement measures designed to pursue their legitimate interests (e.g. environmental regulations), which may as a consequence place a burden on inter-state trade.<sup>84</sup> However, there does not appear to be recourse to such a defence in the case of the Bill. The Explanatory Notes show a clear intention on the part of Mr Knuth to protect the Queensland dairy industry from further decline.<sup>85</sup> As has been discussed earlier in this report, this decline is due largely to the impact of inter-state competition.

<sup>78</sup> *Australian Constitution*, s 92.

<sup>79</sup> *Cole v Whitfield* (1988) 165 CLR 360, 393.

<sup>80</sup> *Castlemaine Tooheys Ltd v South Australia* (1990) 90 ALR 371.

<sup>81</sup> *Betfair Pty Ltd v Western Australia* (2008) 234 CLR 418.

<sup>82</sup> *Castlemaine v South Australia*, 379-380.

<sup>83</sup> Mr Brian Tessmann, *Transcript – 1 March 2017*, p 7.

<sup>84</sup> *Cole v Whitfield*, 409.

<sup>85</sup> Explanatory Notes, pp 3-4.

### Committee comment

While protecting the dairy industry has apparent benefits for the broader economic viability of rural and regional communities, these are not the primary object of the Bill. As such, the Bill appears vulnerable to a constitutional challenge.

## 2. Role of government

The provisions of s 92 of the Constitution, including their applicability to non-fiscal controls, establish an environment where the government must proceed with utmost caution. However, the government has a broader range of options than legislation, or any direct interference, for achieving the same policy outcomes. Indeed, the 2013 inquiry recommended that the Milk Pricing (Fair Milk Mark) Bill 2013 not be passed, as ‘there is no legislative requirement to establish a fair milk mark.’<sup>86</sup>

The Explanatory Notes address this issue directly. They argue that:

*... a non-government administered logo related to the cost of dairy production and industry sustainability would be plagued by legal challenges, as reflected in legal undertakings related to [a]2 milk labelling.<sup>87</sup>*

The proposed logos scheme can be differentiated from the facts in the various a2 cases, however. Excluding the litigation based purely on claims of a2 milk’s health benefits, the only case of any significance is *The a2 Milk Company (Australia) v Lion - Dairy and Drinks*, currently progressing through the Federal Court of Australia.<sup>88</sup> This case centres on enforcement of intellectual property rights created for the benefit of one particular actor in the industry<sup>89</sup> and the accuracy of claims of health benefits from drinking a2 milk.<sup>90</sup> The latter claim has no relevance for the fair price logos, and the former does not apply in a context where any actor can make use of the logos once the controlling entity is satisfied that the eligibility criteria are met.

The Explanatory Notes also argue that:

*... government control over a fair milk price logo also ensures the integrity of the logo is protected and consumers can be confident that milk bearing a fair milk price logo directly supports a sustainable Queensland dairy industry.<sup>91</sup>*

What government chiefly offers is transparent decision-making and a perception that those compiling the information used to inform decisions do not stand to gain from manipulating the data. Other organisations are equally capable of transparency, and the use of QDAS (or a similar program such as Dairy Australia’s National Dairy Farmer Survey) can establish a basis for objective decision-making.

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<sup>86</sup> Agriculture, Resources and Environment Committee, 2013, *Report No. 30 - Milk Pricing (Fair Milk Mark) Bill 2013*, p 19.

<sup>87</sup> Explanatory Notes, p 6.

<sup>88</sup> Commonwealth Courts Registry, *Applications for File* (17 June 2016) Commonwealth Courts Portal <<https://www.comcourts.gov.au/file/Federal/P/NSD962/2016/actions>>.

<sup>89</sup> Damon Kitney, ‘a2 Milk sues Lion over branding claims’, *The Australian (online)* 18 June 2016, <<http://www.theaustralian.com.au/business/companies/a2-milk-sues-lion-over-branding-claims/news-story/ca1c644773624ad3c25bb8232ad66e0e>>.

<sup>90</sup> Lucy Cormack, ‘Legal battle between a2 Milk and Dairy Farmers’ Lion turns to science’ *The Age (online)* 16 September 2016, <<http://www.smh.com.au/business/consumer-affairs/legal-battle-between-a2-milk-and-dairy-farmers-lion-turns-to-science-20160916-gri2js.html>>.

<sup>91</sup> Explanatory Notes, p 6.

### 3. Feasibility of industry leadership

The QDO is the peak body representing dairy farmers in Queensland. In hearings, its President, Mr Brian Tessmann, was pessimistic about the capacity of the QDO to launch and operate a scheme of logos:

*You need somebody else to do it or you need the government to do it. Nobody else is going to do it. QDO cannot do it. We do not have the wherewithal. We run on the smell of an oily rag. To go from an advocacy organisation to somehow jumping into the middle of the processing sector is a very big jump. There is no real ability for any other sector of the industry to do it.*<sup>92</sup>

Nor have the larger processors, or Australia-wide peak bodies, demonstrated any willingness to back a logo scheme.

*The idea originally came out of the [Australian Dairy Farmers] in Melbourne. It was an idea that was chucked around in the national organisation in with a couple of larger processors but, obviously, from the pressure that was put on those larger processors they pulled out and they have had no interest in it ever since.*<sup>93</sup>

#### Committee comment

The committee notes that the Bill, and potentially other administrative measures, may offend provisions of the Australian Constitution. As such, the committee considers that if any support is to be provided, it is to the industry as a whole. This has the added advantage that it allows the industry to innovate with the requirements and use of the logos, and to be more responsive to market change.

The committee notes that the only industry organisation that has shown any desire to operate a scheme of fair milk price logos appears to lack the capacity to do so.

However, this does not rule out any possibility of governmental assistance to the Queensland Dairyfarmers' Organisation to establish and operate an industry-operated logos scheme. Given the possible options, the committee believes that the Minister, with Advice from his department, is best placed to determine the nature of any assistance to be provided by the government to assist the dairy industry devise an industry-based logos scheme.

#### Recommendation 2

That the Minister for Agriculture and Fisheries direct his department to investigate options for supporting the Queensland Dairyfarmers' Organisation to devise and operate an industry-operated marketing scheme, potentially including fair milk price logos.

#### Recommendation 3

That the Minister for Agriculture and Fisheries consult with his counterparts in other states and territories, and with the Commonwealth Minister for Agriculture and Water Resources, regarding the institution of similar schemes in order to increase the sustainability of the Australian dairy industry as a whole.

<sup>92</sup> Mr Brian Tessmann, Transcript– 1 March 2017, p 8.

<sup>93</sup> Mr Brian Tessmann, Transcript– 1 March 2017, p 8.

### 3. Fundamental Legislative Principles

#### Rights and liberties of individuals

The Legislative Standards Act provides that:

*(1) Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation –*

*...*

*(k) is unambiguous and drafted in a sufficiently clear and precise way.<sup>94</sup>*

Legislation must be drafted in a way that clearly expresses its purpose and intended operation.<sup>95</sup> Therefore, the terms used in the legislation must be clearly defined, entities granted powers must be clearly identified and guidance should be provided as to how the powers should be exercised.<sup>96</sup>

Clauses 6 and 9 do not appear to be drafted with sufficient clarity to satisfy these requirements.

Clause 6 reads, in part:

*(2) The fair milk price—*

*(a) is equal to the sum of—*

*(i) the amount the Minister is satisfied is the cost for a typical dairy farmer in the Queensland dairy region of producing a litre of fresh milk in the region...*

Clause 9 provides that the Minister must consult with the Ministers with responsibility for the dairy industry in the Commonwealth and other States and Territories regarding the establishment of a comparable fair price logo scheme in their jurisdictions.

The Minister must table a report regarding this consultation in the Legislative Assembly within 14 sitting days after 1 January and 1 July each year.

The term ‘typical dairy farmer,’ in Clause 7, is not defined in the Bill. The same wording is used earlier, in Clause 5, which obliges the Minister to:

*... consider the costs and margins of producing fresh milk, as indicated in the most recent QDAS report, for a typical dairy farmer in the region...*

This would seem to indicate that the term is to be read as meaning ‘a statistically average dairy farmer, as determined by the QDAS information.’ However, a formal definition of the term would enhance the clarity of the Bill.

‘Typical’ is, however, a subjective term, and its use in the Bill may make its meaning unclear and weaken the legislation. As described above, dairy farmers within each region may operate quite differently from one another depending on the dairy production model they use, and other key variables such as:

- herd and farm size
- climatic conditions and topography of their farms
- the structure of their business
- the extent to which they have adopted best practice farming methods, and

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<sup>94</sup> *Legislative Standards Act 1992*, s 4(3)(k).

<sup>95</sup> Office of the Queensland Parliamentary Counsel, 2014, *Clear Meaning: OQPC Guide to FLPs*, p 8.

<sup>96</sup> Office of the Queensland Parliamentary Counsel, 2014, p 12.

- their exposure to financial risks.

Mr Knuth argues that the term is not defined in the Bill but is defined within the QDAS reports.<sup>97</sup> The QDAS reports do describe a segment of the dairy production sector (subject to the caveats discussed earlier in this report). However, the term ‘typical dairy farmer’ has not appeared in a QDAS report since at least before 2005.

#### Committee comment

The committee notes that QDAS reports do not supply a definition of the term ‘typical dairy farmer’. Nor, for reasons discussed earlier in this report, is the existing QDAS data collection process capable of generating data that is a statistically valid representation of the dairy production sector.

Similarly, the Bill makes references to ‘the Minister’ (in Clause 6 and elsewhere) without stating which Minister will have responsibility for carrying out the Bill’s provisions.

#### Committee comment

This can be safely assumed to be the Minister for Agriculture, but the Bill would be improved by making this explicit in Schedule 1.

The Bill also refers to ‘milk’ without further definition. In addition to cow’s milk, Queensland farmers produce milk from goats,<sup>98</sup> sheep,<sup>99</sup> and camels.<sup>100</sup> As drafted, it is not clear whether the Bill is intended to apply to these milks in addition to cows’ milk. If milks other than cow’s milk is intended to be covered by the logos scheme, this would require the expansion of QDAS to determine the cost of production, and potentially the declaration of new ‘dairy’ producing regions. This could be avoided by defining ‘milk’ in Schedule 1 to include only cows’ milk.

With regard to Clause 9, it is not clear whether the Minister’s obligation to report twice annually will apply in the absence of any ongoing consultation (e.g. following the adoption of corresponding milk logos in other Australian jurisdictions). If it does apply, it will be an arguably unnecessary obligation on both the Minister (and, by extension, the Department) and Parliament.

Mr Knuth stated to the committee that:

*Consultation ... amongst Ministers and Departments occur[s] on a regular basis where best practice and new reforms are discussed. This Bill simply compels the Minister to advocate for fair prices for milk that a farmer has produced... The Minister and the committee could perhaps take the view that this bill (sic) will support Queensland consumers, and that other States and Territories would be eager to adopt the same model.<sup>101</sup>*

#### Committee comment

Mr Knuth’s comments fail to resolve the lack of clear drafting in the Bill regarding the requirement for the Minister to consult other ministers. While he is correct in noting that inter-jurisdictional consultation and cooperation on matters of policy occurs on a routine basis, Mr Knuth has not addressed the issue that the Bill binds the government to ongoing consultation in the absence of any need to do so, and may result in unnecessary reporting. This would waste the time of Parliament.

<sup>97</sup> Mr Shane Knuth MP, *Correspondence 24 March 2017*, p 1.

<sup>98</sup> Matt Sherrington, ‘Ventens northern dairy goat success’ *North Queensland Register (online)* 15 September 2016, <<http://www.northqueenslandregister.com.au/story/4166444/ebuta-goat-dairy-hits-the-sweet-spot-for-summer/>>.

<sup>99</sup> Marty McCarthy, ‘Aussie farmer helps to rebuild Qatar’s ailing Awassi sheep industry’ *ABC News Rural*, 28 November 2014, <<http://www.abc.net.au/news/2014-11-27/queensland-farmer-sends-sheep-to-qatar/5919426>>.

<sup>100</sup> See, for example, Lauren Brisbane, *The QCamel Story*, QCamel, <<http://qcamel.com.au/index.php/about-us>>.

<sup>101</sup> Mr Shane Knuth MP, *Correspondence 24 March 2017*, p 1.

This obligation could be avoided by amending Clause 9 to state that consultation may cease when other Australian jurisdictions either adopt comparable logos schemes, or formally state that such schemes will not be adopted in the foreseeable future. The desirability of inter-jurisdictional consultation with a view to improving the overall sustainability of the Australian dairy industry has, in any case, been addressed in Recommendation 3.

## Appendix A: List of submitters

Sub No.	Submitter
1	Australian Competition and Consumer Commission
2	AgForce Queensland
3	Cheelonga Farming
4	Amanda Feher
5	North Burnett Regional Council
6	Parmalat Australia Pty Ltd
7	Queensland Dairyfarmers' Organisation
8	Confidential

## Appendix B: Witnesses at public briefing

1 March 2017
<b>Department of Agriculture and Fisheries</b> <ul style="list-style-type: none"><li>• John Darlington, Director, Animal Industries</li><li>• Elton Miller, Executive Director, Rural Economic Development</li><li>• Ray Murphy, Senior Scientist (Dairy Farm Business Management), Animal Science</li></ul>

## Appendix C: Witnesses at public hearing

1 March 2017
<b>North Burnett Regional Council</b> <ul style="list-style-type: none"><li>• Cr Robbie Radel</li></ul>
<b>Queensland Dairyfarmers' Organisation</b> <ul style="list-style-type: none"><li>• Mr Brian Tessmann, President</li></ul>
<b>Australian Competition and Consumer Commission</b> <ul style="list-style-type: none"><li>• Ms Sheridan de Kruiff, Acting Director, Agriculture Unit</li><li>• Ms Gabrielle Ford, General Manager, Agriculture Unit</li><li>• Ms Melinda McDonald, General Manager, Enforcement Queensland</li></ul>

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## **Robbie Katter MP** Member for Mount Isa



Wednesday, April 12, 2017

### **RE: Dissenting Report on Report No 33, Sustainable Queensland Dairy Production (Fair Milk Price Logos) Bill 2016**

I write to lodge this Dissenting Report to the Agriculture and Environment Committee on Report No. 33, Sustainable Queensland Dairy Production (Fair Milk Price Logos) Bill 2016.

My concerns relate to the recommendations agreed to by my fellow committee members, being

- Recommendation 1: the committee recommends the Bill not be passed.
- Recommendation 2: the Minister for Agriculture and Fisheries investigate options to devise and operate an industry-operated marketing scheme, potentially including fair milk price logos.
- Recommendation 3: the Minister for Agriculture and Fisheries consult with his counterparts in other states and territories regarding the institution of similar schemes.

These recommendations are not materially different from the report tabled in November 2013 by a Parliamentary committee assessing a similar piece of legislation. The reason this Bill has been introduced into the house is because successive Governments have done nothing to assist the Queensland dairy industry despite its continued decline since deregulation around the turn of the century. It is extremely disappointing that the Government and the Bureaucracy, namely the Department of Agriculture and Fisheries (DAF), will not act to reverse the decline particularly when the report clearly recognises the issues. The question remains, what has the Government and (DAF) done in almost four years to support a struggling industry.

The committee noted a significant power imbalance exists within the dairy industry and the committee members and major processors believe that legislation is not the key to changing the imbalance. However, no alternatives have been put forward by either party. I remind all stakeholders that this is the second Bill put forward by the member for Dalrymple that tries to address the issues and the second round of recommendations against such a solution. The committee is calling for action yet when a solution is proposed successive Governments have preferred not to act and would apparently rather see the industry decline.

It was disappointing to hear DAF denigrate and demoralise the skills of its own Queensland Dairy Accounting Scheme stating that it is a 'bench-marking tool' and the data it provides is not reliable. This is concerning as the Queensland dairy industry rely on this data to innovate and improve their own farming practices. DAF appears to have given up on the industry stating that they "[DAF] certainly recognises that the Queensland industry is under substantial pressure" but appear to be more concerned with national market and 'viable farmers' then helping those struggling to become more viable.

It's disappointing that in four years the only thing that has changed in the dairy industry is the amount of dairy farmers which has continued to decline. It is easy to be sceptical of the concern DAF and the Government have for the industry and whether they are genuine in wanting to reverse the decline.

The Committee still agrees that the Minister needs to talk and make a plan but in the last four years the talking and planning has resulted in no action to assist the industry.

Due to the reasons stated above, I cannot support the committee's recommendations and strongly urge the House to support the Bill.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rob Katter', with a long horizontal line extending to the right.

**Rob Katter**

Member for Mount Isa