Parliamentary Committees

Milk Pricing (Fair Milk Mark) Bill 2013

Report No. 30

Agriculture, Resources and Environment Committee

November 2013

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Acknowledgements

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Abbreviations and definitions

ADF	Australian Dairy Farmers Limited
ACCC	Australian Competition and Consumer Commission
CCIQ	Chamber of Commerce and Industry Queensland
COAG	Council of Australian Governments
DAFF	Department of Agriculture, Fisheries and Forestry (Qld)
DIAP	Dairy Industry Adjustment Program
EMB	European Milk Board
QDAS	Queensland Dairy Accounting Scheme
QDIA	Queensland Dairy Industry Authority
QDO	Queensland Dairyfarmers' Organisation
QFF	Queensland Farmers' Federation
RSPCA	Royal Society for the Protection of Cruelty to Animals
UK	United Kingdom

Chair’s foreword

The inquiry of the Agriculture, Resources and Environment Committee into the Milk Pricing Bill has been an interesting and informative examination of the milk industry in Queensland.

It is disappointing that the committee process has been used by Katter Party politicians as a political process to try to advantage their brand, not the milk industry brand.

The Bill is ambiguous and not drafted in a sufficiently clear manner. The Bill is not well suited to be legislation as it is subjective. As noted in the hearing the Fair Milk Mark can be implemented by the industry whenever it wants as a method of differentiating milk products.

The new Federal Government has announced that it will look into the Australia Competitive Consumer Commission (ACCC) which could decide whether processors and retailers are paying farmers a fair price for milk.

I feel that the dairy industry, particularly in Queensland, has been through a difficult phase of change that is now being resolved at all levels of the industry. Coles has stated branded milk has recaptured the market share it had pre-2011 before $1 a litre was introduced. Coles have also advised that they have entered into longer term contracts with suppliers. Processors have also advised that they have entered into longer contracts with rise and fall clauses reflecting the needs of the industry. This is showing that the industry is maturing and the customer base wants good milk products, fresh and local.

The Bill should not be passed as there is no legislative requirement to do so to establish the Fair Milk Mark.

Ian Rickuss MP
Chair
November 2013

Recommendations

1. Introduction

Role of the committee

The Agriculture, Resources and Environment Committee (the committee) is a portfolio committee established by a resolution of the Legislative Assembly on 18 May 2012. The committee's primary areas of responsibility are agriculture, fisheries and forestry, environment and heritage protection, and natural resources and mines.[1]

In its work on Bills referred to it by the Legislative Assembly, the committee is responsible for considering the policy to be given effect and the application of fundamental legislative principles.[2]

In relation to the policy aspects of Bills, the committee considers the policy intent, approaches taken by departments to consulting with stakeholders and the effectiveness of the consultation. The committee may also examine how departments propose to implement provisions in Bills that are enacted.

Fundamental legislative principles are defined in Section 4 of the *Legislative Standards Act 1992* as the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.

The referral

On 2 May 2013, Mr Shane Knuth MP, Member for Dalrymple, introduced the Milk Pricing (Fair Milk Mark) Bill 2013. The Legislative Assembly referred the Bill to the Agriculture, Resources and Environment Committee for examination. The committee was given until 4 November 2013 to table its report to the House, in accordance with SO 136(1).

The committee's processes

In its examination of the Bill, the committee:

- sought advice from Queensland Treasury and Trade;
- identified and consulted with likely stakeholders on the Bill;
- invited public submissions on the Bill;
- convened a private meeting with departmental officers on 22 May 2013;
- convened a public briefing and hearing in the Parliamentary Annexe on Wednesday 11 September 2013 to clarify points raised by submitters;
- convened private meetings with major supermarket chains, Coles on 16 October 2013 and Aldi on 23 October 2013. Woolworths were invited but declined the committee's invitation;
- convened separate private meetings with major milk processors Lion Nathan, Parmalat Australia and Norco, and with small processors Maleny Dairies and Mungalli Creek Dairy on 16 October 2013; and
- sought expert advice on possible fundamental legislative principle issues with the Bill.

[1] Schedule 6 of the Standing Rules and Orders of the Legislative Assembly of Queensland as at 1 January 2013.
[2] Section 93 of the *Parliament of Queensland Act 2001*.

The Australian Dairy Industry

The Australian dairy industry is Australia's third largest rural industry after the beef and wheat industries. In 2011-12 the farmgate[3] value of its production approached $4 billion and the industry employed an estimated 50,000 workers.[4] The dairy industry's exports total $2.76 billion.[5] Australia's biggest overseas markets are Japan, China, Singapore, Indonesia and Malaysia. In recent times Australia's fastest growing export market has been Greater China made up of mainland China, Hong Kong and Macau.[6]

The manufacturing sector of the Australian dairy industry is diverse and includes farmer-owned co-operatives and public, private and multinational companies. The number of owner-operated farms has fallen significantly from 20,300 in 1982 to 6,770 by mid-2012[7] and can be attributed to the deregulation of the industry in 2000 and farmgate milk prices, with recent lower prices leading to greater numbers of farmers leaving the industry.

Prior to 2000, the supply and price of milk was regulated by a complex combination of federal-state policies and legislation and in most states, dairy authorities controlled the distribution, sourcing, and pricing of milk.[8] For example, the Queensland dairy industry was administered through the *Dairy Industry Act 1989* which provided for the management of market milk supply and the establishment of the Queensland Dairy Industry Authority (QDIA).

In the regulated market it was possible for the price of market milk[9] and manufacturing milk[10] to be quite disconnected, with the former reacting to domestic conditions and government preferences, and the latter to global commodity prices.[11]

However, on 1 July 2000, all Australian states repealed legislation governing the dairy industry. The impact of deregulation at the farm level varied across the states. A number of farmers took advantage of the exit payments offered under the Diary Industry Adjustment Program (DIAP) scheme to leave the industry. The DIAP is the largest package provided to an Australian agricultural industry to assist with structural adjustment pressures.[12]

Until deregulation, dairy farmers who sold milk as market milk received a substantially higher farmgate price than the average price paid for manufactured milk, even though there was little distinction between the two products. With no legislative control over milk prices processor companies now pay farmers for their milk. The price farmers receive varies across states and reflects how dairy products are produced in those markets. For example, in southern states farmers receive a price which incorporates both drinking and manufactured milk while the northern states such as Queensland, who mainly produce drinking milk, rely on commercial contracts with processors.

In terms of milk production the Australian dairy industry experienced its strongest growth in a decade in 2011-12 with milk production increasing by 4 per cent,[13] however production decreased by

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[3] A basic price with the "farm gate" as the pricing point, that is, the price of the product available at the farm, excluding any separately billed transport or delivery charge, OECD Glossary of Statistical Terms, http://stats.oecd.org/glossary/detail.asp?ID=940

[4] Dairy Australia, 2012, *Australian Dairy Industry in Focus 2012*, p. 18.

[5] Dairy Australia, *Australian Dairy Industry in Focus 2012*, p. 2.

[6] Dairy Australia, *Australian Dairy Industry in Focus 2012*, p. 23.

[7] Dairy Australia, *Australian Dairy Industry in Focus 2012* p. 11.

[8] Department of Agriculture, Deregulation of the Australian dairy industry, http://www.daff.gov.au/agriculture-food/meat-wool-dairy/dairy/deregulation-of-the-Australian-dairy-industry accessed 27 September 2013

[9] Selling milk to drinking milk processors.

[10] Selling milk for use in the production of milk products.

[11] The Senate, Economics References Committee (SERC), *Milking it for all it's worth—competition and pricing in the Australian dairy industry*, May 2010, p. 32.

[12] Department of Agriculture, Deregulation of the Australian dairy industry, http://www.daff.gov.au/agriculture-food/meat-wool-dairy/dairy/deregulation-of-the-Australian-dairy-industry accessed 27 September 2013

[13] Dairy Australia, 2013, *Your Levy at Work, Strategic Plan: 2013/14 to 2015/16*, p. 12.

3 per cent in the 2012/13 season due to lower milk prices, higher feed costs and poor weather conditions in states such as Queensland. [14]

The Australian dairy market is divided into two distinct categories. Queensland, northern NSW and Western Australia produce domestic drinking milk and the southern states including Victoria, Tasmania and South Australia produce milk largely for manufactured product and export markets.

The Queensland Dairy Industry

The Queensland dairy industry operates throughout southeast Queensland, the Darling Downs, Wide Bay, Monto, Rockhampton and in Far North Queensland near the Atherton Tableland. It directly employs approximately 2,500 people.[15] (Figure 1 at Appendix C shows the location of dairy farms in Queensland). According to the Queensland Dairyfarmers' Organisation (QDO) the Queensland dairy industry had 510 dairy farmers as at July 2013[16] with 80 dairy farmers exiting the industry since the beginning of 2012.[17] The number peaked before deregulation at 1,545 in 1999-2000.[18]

In their submission to the committee on the Bill the QDO explained that the Queensland industry's reliance on drinking milk production left it particularly susceptible to price variations.

The QDO submitted:

> *As virtually all of Queensland milk produced is used as drinking milk, it makes Queensland farmers highly susceptible to variations in the price of drinking milk and as such the ongoing supermarket 'milk price war'.*
>
> *With only two main processors in Queensland, combined with the requirement to supply milk in a flat supply system with high quality standards for only the domestic fresh milk market makes for a difficult operational environment for dairy farmers with limited or no alternative supply and production system options.*[19]

Because of its reliance on drinking milk, the Queensland industry has also been greatly affected by the by the $1 a litre price war. This is compounded by the fact that Queensland has only two major milk processors in Parmalat and Lion Nathan. Both companies have indicated that the drop in milk prices has adversely affected their profits with the reduction flowing through to impact dairy farmers.[20] Queensland also has several smaller processors and there has been a gradual expansion of this industry with processors growing their market sales in regional and niche markets.[21]

In recent years the Queensland dairy industry has faced other challenges in the form of natural disasters. The industry was adversely affected by severe flooding at the beginning of 2011 which is estimated to have cost the Queensland industry $80 million in lost production and damage.[22] This was exacerbated in 2013 by serve flooding as a result of ex-cyclone Oswald. This is estimated to have cost the industry approximately $40 million in damage and lost production in 2013.[23]

[14] Dairy Australia, 2013, *Dairy 2013 Situation and Outlook*, September Update, p. 14.
[15] Australian Dairy Farmers, 2013, *Submission No.1*, p. 2.
[16] Queensland Dairyfarmers' Organisation (QDO), July 2013, *Northern Dairy Industry, Regional Industry Situation & Outlook*, p. 3.
[17] QDO, *Northern Dairy Industry, Regional Industry Situation & Outlook*, p. 5.
[18] QDO, *Northern Dairy Industry, Regional Industry Situation & Outlook*, p. 6.
[19] Queensland Dairyfarmers' Organisation, 2013, *Submission No.2*, p. 3.
[20] Australian Dairy Farmers, 2013, *Submission No.1*, p. 2.
[21] QDO, *Northern Dairy Industry, Regional Industry Situation & Outlook*, p. 22.
[22] QDO, *Northern Dairy Industry, Regional Industry Situation & Outlook*, p. 3.
[23] QDO, *Northern Dairy Industry, Regional Industry Situation & Outlook*, p. 3.

At the committee's public hearing the QDO gave an insight into the effect that these natural disasters have had on the Queensland dairy industry:

> *It is, I think, a resilient industry, but it certainly has been hit hard. The two floods in 2010-11 and also earlier this year came on top of the worst drought in history. So the industry has been dealt some really severe blows from all of those. There are certainly farmers out there at the moment who, because of no response from the market to the lower volumes of milk coming out, have not really been able to get the farms back into full operation. Certainly, I think there are farmers, if it had not been for organisations such as BlazeAid would not even have all of their fences back up yet at the moment. So there are certainly lingering issues from the flood. I think there the virtually lingering issues from the drought as well, because the industry has not been given the chance to recover from any market response from the lower volumes coming out off the farms.*[24]

The impact of these natural disasters has seen Queensland milk production drop by 16ML in the first half of 2013 compared to the same period in 2012.[25] There has been a general declining trend in Queensland milk production from 848ML in 1999-2000 to 458ML in 2012-13.[26] (Figure 2 at Appendix C shows the impact of Queensland's natural disasters on milk production in 2011 and 2013).

At the committee's public hearing the Department of Agriculture, Fisheries and Forestry (DAFF) commented that in future, the supply of milk produced in Queensland will be less than demand forcing milk to be imported from interstate.

The department advised:

> *In the longer term there is a likelihood that the regional fresh milk supply will consistently fall below demand with interregional milk transfers becoming the norm to balance regional supply and demand year round. In a whole-of-Queensland context, milk sales continue to grow, essentially in line with Queensland's population growth.*[27]

Queensland dairy farmers have also been affected by further cost pressures such as increased electricity prices and rising grain costs.[28]

Queensland Government initiatives to assist the dairy industry

At the committee's public hearing the department advised the committee of the support it provides to the local industry by way of research and development through organisations such as the Gatton Dairy Research Centre.

The department advised:

> *The department does a range of work with the industry. It works fairly closely with the industry. We have a research facility at the University of Queensland at Gatton which was established recently, and it is a pre-eminent research institution in relation to the dairy industry in Australia. We continue to provide those sorts of services. We work very closely with Dairy Australia in relation to the funding into those sorts of activities, including extension activities.*[29]

The committee notes that the Minister for Agriculture, Forestry and Fisheries, Hon Dr John McVeigh MP, has liaised extensively with dairy industry stakeholders at events such as the 'Electricity Price Reform – A Common Approach' forum organised by the Queensland Farmers' Federation (QFF) at

[24] Tessmann, B, 2013. *Draft public hearing transcript*, 11 September, p. 7.
[25] Dairy Australia, September 2013, *Dairy 2013 Situation and Outlook*, p. 14.
[26] QDO, *Northern Dairy Industry, Regional Industry Situation & Outlook*, p. 6.
[27] Darlington, J. 2013. *Public hearing transcript*, 11 September, p. 23.
[28] QDO, *Northern Dairy Industry, Regional Industry Situation & Outlook*, p. 38.
[29] Letts, M. 2013. *Draft public hearing transcript*, 11 September, p. 24.

Parliament House on 19 August 2013. At this forum the Minister discussed the effects of rising electricity prices on dairy production with representatives from the dairy industry.

The committee also notes that on 22 August 2013 the Minister chaired a forum in Brisbane attended by Members of Parliament, dairy farmers and processors to discuss the problems currently experienced by the Queensland dairy industry with a view to assisting the industry moving forward. All major supermarket chains were invited to the forum but only Costco chose to attend.

The forum heard that given that the Queensland dairy industry predominantly produces only fresh drinking milk, there was a need to find alternative markets to change the dynamics of Queensland's dairy industry. In recent years the demand for dairy products in China has increased with local suppliers unable to meet demand. The reliance on dairy imports has grown between 20-30 per cent per annum in the last two years.[30] In response to China's demand for drinking milk a co-operative of farmers from northern New South Wales (NSW) and southern Queensland recently shipped a trial of Norco fresh milk to China. The co-operative already exports ice cream to Japan and North America.

The forum also heard that the Premier had appealed to consumers to buy branded milk. The committee notes that in March this year the Premier, Hon Campbell Newman MP, and Minister for Minister for Tourism, Major Events, Small Business and Commonwealth Games, Hon Jan Stuckey MP, launched a 'Think Queensland, buy locally' campaign supported by the Chamber of Commerce and Industry Queensland (CCIQ) to promote and help Queensland small business.

The committee notes that in September 2013 the Minister undertook a trade mission to China where he promoted the Queensland dairy industry with government and business groups.

Committee Comment

The committee acknowledges the efforts of the Minister for Agriculture, Fisheries and Forestry in engaging with stakeholders from across the Queensland dairy industry in order to better understand the problems currently faced by Queensland farmers and processors.

The committee believes that it is important for the Queensland dairy industry to explore burgeoning export markets such as China in order to broaden its market share. The committee also believes that the Queensland dairy industry needs to diversify the products it produces to capitalise on these potential new markets.

Point for clarification

The committee invites the Minister for Agriculture, Fisheries and Forestry, during the second reading debate of the Bill, to outline the government's plan to assist the Queensland dairy industry.

Recommendation 1

The committee recommends that the Department of Agriculture, Fisheries and Forestry continue to liaise with the Queensland Dairyfarmers' Organisation (QDO) to formulate a strategy to assist farmers and co-operatives in targeting dairy markets in the Asian region, and to continue to seek alternative ways to support the dairy industry in Queensland.

[30] Rabobank, 14 October 2013, 'China dreaming of a white river of milk – industry report', http://www.rabobank.com.au/News-and-Events/Media-Releases/2013-NewsArchive/Pages/media-release-20131014.aspx accessed 21 October 2013

Recommendation 2

The committee recommends that the Queensland Dairyfarmers' Organisation (QDO) and the local dairy industry ensure that they leverage off local and state 'buy local' campaigns to buy locally branded milk.

The Milk Price War

Another significant impact on the Queensland industry has been the 'milk price war'. On Australia Day 2011, Coles reduced the purchase price for its generic branded drinking milk, available through its network of Coles supermarkets across Australia, to $1 per litre. Its competitors, Woolworths, Aldi and Franklins quickly responded by reducing the price of their generic milk products to $1 or less per litre. In 2011-12 this resulted in the supermarket share of drinking milk sales through its private label milk increasing to 52.7 per cent at the expense of branded milk.[31] (Figure 3 at Appendix C shows the drop in price in private or supermarket brand fresh milk in Queensland New South Wales and Victoria from June 2010-May 2013 and in particular from January 2011 when Coles introduced $1 litre milk. Figure 4 at Appendix C shows the average price of Queensland branded fresh milk is substantially lower in price than in New South Wales and Victoria).

The milk price war has had a negative impact on the Queensland dairy industry where the decline in processor profits has forced down prices for farmers and in turn, their profit margins. Farmgate[32] prices vary between manufacturers, with individual company returns affected by factors such as product and market mix, marketing strategies and process efficiencies.[33]

At the committee's public hearing Ross McInnes, a dairy farmer and Vice President of the Queensland Dairyfarmers' Organisation (QDO), gave an insight as to the effects of the introduction of $1 litre milk.

Mr McInnes advised the committee:

> *When a dollar a litre for milk came in, there was always talk that it was all covered by the retailers, especially Coles. They stated categorically that it was their margin that they were cutting into. Personally it did not have an effect on our milk price until June, until our contract finished, and then we went down 3.5c. Every liquid milk processor in Australia recorded a significant drop in profits. We are talking about a drop in profits in the 25 per cent to 50 per cent range for every processor across Australia.*[34]

The Australian Competition and Consumer Commission (ACCC) investigated the issue and found that discounted milk pricing was good for consumers and that Coles had not indulged in predatory pricing. The ACCC found that Coles was reducing the price of milk as a popular food item as a tactic to increase its market share against competitors such as Woolworths.

The then ACCC chairman stated:

> *The major impact of the reduction in milk prices since January seems to have been a reduction in the supermarkets' profit margins on house brand milk. These price reductions have benefited consumers who purchase house brand milk.*
>
> *It is important to note that anti-competitive purpose is the key factor here. Price cutting, or underselling competitors, does not necessarily constitute predatory pricing. Businesses*

[31] Dairy Australia, 14 October 2013, *Domestic sales summary* http://www.dairyaustralia.com.au/Statistics-and-markets/Production-and-sales/Domestic-Sales-Summary.aspx accessed at 21 October 2013
[32] The price processors pay farmers for their milk.
[33] Dairy Australia, 2012, *Australian Dairy Industry in Focus 2012*, p. 13.
[34] McInnes, R. 2013. *Draft public hearing transcript*, 11 September, p. 14.

> *often legitimately reduce their prices, and this is good for consumers and for competition in markets.*
>
> *ACCC enquiries have revealed evidence that Coles' purpose in reducing the price of its house brand milk was to increase its market share by taking sales from its supermarket competitors including Woolworths. This is consistent with what the ACCC would expect to find in a competitive market.*[35]

However, the peak body for the dairy industry, Australian Dairy Farmers Limited (ADF), argued that the ACCC was ineffective in dealing with discounted milk.[36]

The ADF argued:

> *The ACCC has obviously conducted a very narrow inquiry that did not look at issues around false advertising, any long-term impacts of this cynical marketing tactic on farmers, corner stores, independent service stations and milk vendors or what the cost is to Coles at the checkout.*[37]

In their recent public statements Coles have attributed the reduction in the retail milk price to other factors including the export market and the strong Australian dollar.

Coles' Chief Executive, Ian McLeod advised:

> *I mean, that's a really good point because I think that there is a - there is a complete disconnect really or should be a disconnect between the retail price of the milk and what's actually going on in the marketplace, and, you know, the - what influences the farm gate price is the export market. About half the milk that's produced in Australia goes overseas. And what we've had is we've had a very strong Australian dollar. So there are dynamics at play that are quite different and disconnected from the retail price. So over the last couple of years what we have recognised is that there's this lack of transparency between the farm gate price and the price the processors get and the cost of production.*[38]

Previous Inquiries by Federal Parliamentary Committees

Milking it for all it's worth – competition and pricing in the Australian dairy industry

The Senate, Economics References Committee (the senate committee) looked at the issues confronting Australia's dairy industry in its report, *Milking it for all it's worth – competition and pricing in the Australian dairy industry*, tabled on 13 May 2010. The inquiry investigated the circumstances leading to varying prices paid to dairy farmers across Australian states.

The senate committee recommended that the (federal) government request the ACCC to monitor the pricing practices within the dairy industry to establish whether predatory pricing or a misuse of market power was occurring.[39]

In its response to this recommendation the Federal Government noted that the ACCC had found Coles, in discounting milk to $1 a litre, was not in breach of any legislation.

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[35] Samuel, G, 22 July 2011, 'ACCC: Coles discounting of house brand milk is not predatory pricing', Australian Competition and Consumer Commission', http://www.accc.gov.au/media-release/accc-coles-discounting-of-house-brand-milk-is-not-predatory-pricing accessed at 18 October 2013

[36] Daily Liberal, 7 February 2012, 'Dairy industry unhappy with inquiry's responses', http://www.dailyliberal.com.au/story/878609/dairy-industry-unhappy-with-inquirys-responses/ accessed 27 September 2013.

[37] Australian Dairy Farmers, 22 July 2012, 'Dairy farmers let down by the ACCC', Media Release.

[38] McLeod, I, 29 September 2013. *The Observer Effect*, Special Broadcasting Service (SBS).

[39] The Senate, Economics References Committee (SERC), 2010, *Milking it for all it's worth—competition and pricing in the Australian dairy industry*, p. 3.

The government advised:

> *The Government notes the ACCC's media release of 22 July 2011, in which it states that it considers there is no evidence that Coles has acted in breach of the Act (formerly the Trade Practices Act 1974) in relation to milk discounting and that it will continue to monitor conduct within the dairy industry and grocery sector for signs of anti-competitive behaviour.*
>
> *The Government is confident that the ACCC will take appropriate action in relation to these issues should evidence emerge in future.*

The senate committee also looked at the labelling of milk products and determined that 'there is also a case for labeling on generic milk to disclose the processor involved so that consumers can make a more informed choice between generic and branded milk'.[40]

In its response, the Federal Government noted that the *Australia New Zealand Food Standards Code* governed most packaged dairy products for retail sale and that misleading and/or deceptive conduct was prohibited pursuant to Australian consumer law across all Australian jurisdictions.[41]

The senate committee also considered section 46 of the *Trade Practices Act 1974* which deals with the misuse of market power. In the committee's view section 46 was operating inadequately and was not providing protection against price discrimination from the major supermarkets that appeared to be using their dominant market position to drive down the farmgate price through the sale of generic products, thereby putting pressure on processors who are forced to compete with their own products.[42]

In response, the Federal Government referred to the comments by the Commissioner of the ACCC that judicial interpretation of section 46 was required before it could be established whether the provision was working effectively.[43]

The impacts of supermarket price decisions on the dairy industry

The senate committee carried out a second inquiry into the effects of supermarket decisions on the dairy industry, including the $1 price per litre milk in supermarkets. The committee's report, *The impacts of supermarket price decisions on the dairy industry*, was tabled on 3 November 2011.

The committee concluded that on a national level most dairy farmers would not be significantly worse off as a result of the $1 per litre milk sales.[44] The majority of milk production occurred in southern states like Victoria, where drinking milk represented only a relatively small share of production, compared to the production of manufactured dairy goods. The committee also found that due to significant export opportunities international prices were a key determinant of the income farmers in those areas received.[45]

The committee also concluded that the impact of changes to milk pricing was potentially greater in Queensland where there were fewer processors and they primarily produced drinking milk.[46] The emphasis on drinking milk means that any pressure on retail prices could potentially be pushed back down the chain, although at the time of the senate committee's report, there was no evidence of the

[40] SERC, *Milking it for all it's worth—competition and pricing in the Australian dairy industry*, p. 82.
[41] Government Response to the Senate Economics References Committee's 2010 Report, February 2012, *Milking it for all it's worth – competition and pricing in the Australian Dairy Industry*, p. 9.
[42] SERC, *Milking it for all it's worth—competition and pricing in the Australian dairy industry*, p. 59.
[43] Government Response, *Milking it for all it's worth—competition and pricing in the Australian dairy industry,* p. 4.
[44] The Senate Economics References Committee (SERC), November 2011, *The impacts of supermarket price decisions on the dairy industry*, p. xiv.
[45] SERC, *The impacts of supermarket price decisions on the dairy industry,* p. xiv.
[46] SERC, *The impacts of supermarket price decisions on the dairy industry*, p. xiv.

major supermarkets having done so. The committee also stated in relation to Queensland that it was difficult to distinguish between the impact on the industry due to the 2011 floods and milk price discounting. [47]

The committee was concerned about a group of farmers in Queensland contracted to Parmalat that appeared to be rapidly affected by the price discounts led by Coles. On that occasion, it appeared that the risk of any retail price movements or other impacts affecting the sale of branded milk products were in large part passed immediately onto the farmers. In light of this the committee recommended that the Federal Government commission a study of the dairy industries in Queensland, New South Wales and Western Australia and that the study concentrate on the capacity of each state to meet local demand.[48] The government agreed in principle to this recommendation.[49]

The committee further noted that the ACCC had considered Coles' conduct in discounting its milk prices and found no evidence that they were contravening the provisions of the *Competition and Consumer Act 2010* which superseded the *Trade Practices Act 1974*.[50]However the committee did recommend that the Federal Government initiate an independent review of the competition provisions of the *Competition and Consumer Act 2010*.

The committee also considered whether a consumer who chooses to buy a bottle of processor-branded milk or the supermarkets' private label milk should not (as a matter of principle) be a concern for farmers. They found that although processors are undoubtedly in a challenging position, the management of their branded products and the terms on which they supply private label milk to the supermarkets is a matter for them.[51]

In its response, the Government advised that it was committed to competition laws which stopped anti-competitive conduct but otherwise believed that businesses should be allowed to act as they see fit.[52]

House of Representatives Bill

On 11 February 2013, Hon Bob Katter MP, Member for Kennedy in the Federal Parliament introduced the *Dairy Industry (Drinking Milk) Bill 2013* into the House of Representatives.[53]

The Bill raised similar issues to the Milk Pricing (Fair Milk Mark) Bill 2013 that is the subject of this report. Hon Katter's Bill provided for the registration of dairy regional representative bodies; Fair Work Australia to determine a modern award for dairy farmers (including the objective of providing a fair minimum return to dairy farmers for producing drinking milk); dairy farmers and processors to establish enterprise agreements; and collective negotiations.

The Bill lapsed with the dissolution of the House of Representatives on the calling of the federal election on 5 August 2013.

[47] SERC, *The impacts of supermarket price decisions on the dairy industry,* p. xiv.
[48] SERC, *The impacts of supermarket price decisions on the dairy industry*, p. xv.
[49] Government Response to the Senate Economics References Committee's 2011 Report, February 2012, *The impacts of supermarket price decisions on the dairy industry,* p. 2.
[50] SERC, *The impacts of supermarket price decisions on the dairy industry*, p. xv.
[51] SERC, *The impacts of supermarket price decisions on the dairy industry*, p. xiv.
[52] Government Response, *The Impacts of Supermarket Pricing Decisions on the Dairy Industry*, p. 3.
[53] The Bill lapsed upon the dissolution of the Parliament before the last federal election.

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2. Examination of the Milk Pricing (Fair Milk Mark) Bill 2013

Policy objectives

The objectives of the Bill are to:

- provide for the setting of a fair price to be paid to dairy farmers for the production of milk to ensure a sustainable dairy farmer who produced the milk; and
- to establish a fair milk mark to be placed on containers of milk to indicate to Queensland consumers that a fair price has been paid to the dairy farmer who produced the milk.

At the committee's public hearing the Member for Dalrymple expanded on the objectives behind the Bill. The member advised the committee:

> *It is a non-compulsory, voluntary market mechanism that is put in place so that the consumer has a chance and an opportunity to know what milk they are buying. When they go into Woolworth's and Coles, they see Coles and Woolworth's branded milk that is reduced to $1 a litre and they see other branded milks which are coming from local dairy farmers, but they are still unsure what milk is what and what is local dairy milk.*
>
> *This is a question that has to be asked: why are the majors, Woolworth's and Coles, marketing their own $1 milk and why aren't they marketing the local branded milk at $1 a litre? This gives processors the opportunity to have an advantage as well so that when consumers see milk in their supermarkets that has 'fair milk' on it, it clearly identifies to those consumers that it is local, fresh milk and they are supporting local dairy farmers.*
>
> *This is not about reregulation at all; this is about opportunity and choice. This is non-compulsory. It is a market mechanism that will be put in place. This is also about bringing in transparency, as Mr Chesterman said, but he also said that consumers are desperate to know where their milk is coming from. The fair milk mark is the only thing that we presently have which allows consumers an opportunity to address this issue.*[54]

Key clauses of the Bill

Fair Milk Price

The following clauses of the Bill deal with the proposed fair milk price.

Clause 5 of the Bill says that there must be a fair price for milk. The fair milk price is to be published by the Minister by gazette notice at least twice during the year. At clause 5(3) the milk price must be at least 8 cents more than the amount the Minister is satisfied is the cost for a typical dairy farmer in the State producing a litre of milk.

At the committee's public hearing the Member explained that the Minister and the Queensland Dairy Accounting Scheme (QDAS) in conjunction with the dairy industry would determined what constitutes a typical dairy farmer.

The Member advised:

> *Where I have said 'typical' dairy farmer, I will be changing that to 'average' dairy farmer. That average dairy farmer will be determined by the minister and also QDAS, which is a government department, in conjunction with the dairy industry to work out what an average dairy farmer is.*[55]

[54] Knuth, S. 2013. *Draft public hearing transcript*, 11 September 2013, p. 16.
[55] Knuth, S. 2013. *Draft public hearing transcript*, 11 September 2013, p. 17.

Clause 6 of the Bill sets out how the Minister must calculate the fair milk price. This includes consulting dairy farmers across the State and organisations representing farmers in order to decide the characteristics of a typical dairy farmer and the costs for a typical dairy farmer in producing milk. In determining a fair milk price the Minister must have regard to the need to ensure food security in the State, the need to preserve a dairy industry in the State and the need to encourage and reward best farming practices and innovation in the dairy industry in the State.

Clause 9 works in conjunction with clause 6 and says that the Minister must consult with the relevant Commonwealth Minister responsible as well as each relevant state Minister about trying to establish a fair milk price in all States. The Minister must table a report on the consultation undertaken within 14 sitting days after 1 January and 1 July each year. The Minister must also seek to develop an industry code of conduct to provide a framework for the continued profitability of the Australian dairy industry.

The Member for Dalrymple explained the rationale for setting a milk price at the committee's public hearing.

The Member advised the committee:

> *That price will be set because there will be market fluctuations, but the main thing is that if we go below 8c a litre above the cost of production, then we are going into the situation we are in now where we are losing our dairy farmers. This is why we are trying to do our best to set a price. However, this may increase above 8c a litre above the cost of production because it will be set by the minister working in conjunction with the dairy industry and the department of agriculture.*[56]

At the committee's public hearing, Queensland Treasury and Trade commented on the Bill's introduction of a fair milk price, what typifies a 'typical' farmer and the enforcement of the fair milk mark.

> *The challenge is once the government starts to hop in and attempts to estimate what the cost of production is or what an efficient cost is. I think that has been something that governments have typically struggled with.*
>
> *What is a representative farmer? That is always going to be a difficult call. As for the government, it is notion of what is the right premium to apply. There is certainly the 8c there. I think to take account of those regional seasonal fluctuations is always going to be a challenge.*[57]

Committee Comment

The committee believes that introducing a market mechanism through legislation to increase the price of milk fails to take into account the many variables that exist in a free market economy which are subject to both local and international market fluctuations.

The committee also considers that determining what constitutes a 'typical' or 'average' dairy farmer is extremely difficult given the changing nature and different cost structure of Queensland's dairy industry.

Fair Milk Mark

The following clauses of the Bill deal with the fair milk mark.

Clause 7 states that there is to be a fair milk mark for milk sold or supplied in containers. The fair milk mark is to be decided by the Minister and set out in a gazette notice.

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[56] Knuth, S. 2013. *Draft public hearing transcript*, 11 September 2013, p. 17.
[57] Homan, T. 2013. *Draft public hearing transcript*, 11 September, p. 23.

Clause 8 makes it an offence to use a fair milk mark unless the milk is fair milk price milk or unless the container contains or is to contain fair price milk. It will also be an offence to advertise, market or promote milk in a container that bears the fair milk mark unless the milk is fair price milk or use the fair price milk mark in a way that would cause a reasonable person to believe milk is fair price milk. The maximum penalty will be 75 units.

The Member for Dalrymple advised the committee that the idea for a 'fair milk mark' came from the European model supported by the European Milk Board (EMB). In Europe the payment dairy farmers receive for milk produced has fallen steadily since 2001.

To address this situation the EMB supports the 'fair milk' campaign which advocates fair prices for consumers and farmers. In several European countries a life size cow or 'Faironika' symbol, referring to the term 'fair', appears in the colours of individual countries. The Faironika symbol appeals for fair payment for dairy farmers and consumers. The second step in the process is actually obtaining a fair price for farmers. At present only Austria has achieved a fair milk price with the EMB suggesting that until fair milk is introduced in more countries, consumers buy milk and milk products from direct marketing close to where they live.

The Member for Dalrymple further explained the reasoning behind having a 'fair milk mark' on milk containers, at the committee's public hearing.

The Member advised the committee:

> *One of the reasons why I brought this in is to ensure that it identifies the milk: it does not matter how much milk comes in from the other states; the consumer will know that in Queensland that fair mark milk is our milk, it is fresh milk and the farmers are paid a fair price for it.*
>
> *We do not want to use the excuse that we are frightened of a flood of milk and that everyone will be buying New South Wales milk or Victorian milk. We brought this in because we want to ensure that local consumers are buying fresh local milk and we want to ensure that our dairy farmers will survive as a result of consumers buying that milk.*[58]

At the committee's public hearing the ADF commented on the proposed fair milk mark contained in the Bill:

> *We have looked at a fair milk pricing type mark before previously ourselves. We believe it is the way forward to ensure that consumers can actually look at a product on the supermarket shelves and understand so that there is the ability for consumers to make a decision as to what is in the best interests of not only themselves long term, but for the dairy farming industry in general.*[59]

In its submission to the committee the QDO advised that while they supported the concept of a fair milk mark they had discussed the idea with major processors who were not supportive of the concept.

The QDO submitted:

> *It needs to be noted that the QDO has investigated this option commercially however the major processors did not wish to pursue the initiative. While a precise reason for not supporting the initiative was not given by the major processors it may well be because the major processors milk, do not wish to upset that retail relationship and thus the main market avenue to Australian consumers for their own branded products.*[60]

[58] Knuth, S. 2013. *Draft public hearing transcript*, 11 September, p. 18.
[59] Campbell, N. 2013. *Draft public hearing transcript*, 11 September, p. 1.
[60] Queensland Dairyfarmers' Organisation, 2013, *Submission No.2*, p.13.

At the committee's public hearing the department commented on the difficulty in getting major supermarket chains to put products with a fair milk mark on their shelves.

The department advised:

> *Again this is one of those ones where the enforcement side is going to be quite difficult. There is nothing to compel supermarkets from putting the products on their shelves. The member for Dalrymple talked about the shelf space for branded products shrinking.*
>
> *Again, without the support of the retailers themselves, while we can provide a fair milk mark on the product, there is no obligation on them to stock it or in fact to make it prominent if that is not part of their overall strategy.* [61]

Committee Comment:

The committee believes that the support of all processors and major supermarket chains is vital for the concept of a fair milk mark to succeed. The department and QDO have both indicated to the committee that it is likely that the major supermarket chains will not support this concept, thereby making it largely ineffective.

Mandatory Code of Conduct

In their submission to the committee the QDO submitted that the following reforms were needed to strengthen Queensland's dairy industry.

> *Amending and strengthening the Competition and Consumer Act 2010 to prevent predatory pricing and deceptive and misleading conduct including that:*
>
> - *an 'effects' test be reintroduced;*
> - *a definition of unconscionable conduct be inserted into the Act; and*
> - *a statutory duty of good faith be enacted as part of the Act.*
> - *a Mandatory Code of Conduct covering the whole of supply chain, headed by an Ombudsman or Commissioner that can enforce compliance of the code, to provide a better balance of market power and ensure that contracts, prices and supply conditions are fair, conscionable and not unsustainable.*
> - *strengthening the ACCC Collective Bargaining authorisation for dairy farmers to provide a better balance in market power for dairy farmers.* [62]

The introduction of a code of conduct for the dairy industry is supported at clause 9(1)(b) of the Bill whereby the Minister must consult with each relevant state and federal Minister to develop a code of conduct.

At the committee's public hearing both the ADF and the QDO argued that a mandatory code of conduct overseen by an ombudsman was needed, as opposed to a voluntary code of conduct.

The ADF submitted:

> *Clearly we have pursued over time a mandatory code of conduct for supermarkets. We have not had, from either the previous government or what is the current government now, a tick for that. They are more towards the voluntary code.*
>
> *We had diverse views from both sides of politics during the election campaign with respect to their acceptance of something like a mandatory code. Some people were quite positive towards it; others said there was no way they would do that. It is just a matter of us*

[61] Homan, T. 2013. *Draft public hearing transcript*, 11 September, p. 24.
[62] Queensland Dairyfarmers' Organisation, 2013, *Submission No.2*, p.15.

> *continuing to work alongside the federal government to try and pursue this and show what it could do to the dairy industry and consumers in the long term. We believe that these low prices and the selection that consumers can make on the shelves will be limited in the long term because of this, and therefore it will not only be in dairy farmers' worst interests but also consumers' in the long term as well.* [63]

In advocating for a mandatory code, the QDO pointed in their submission to the United Kingdom (UK) dairy experience where like Australia discounting tactics by supermarket chains has led to supermarket 'private label' products dominating the market at the expense of processor owned brands.[64] The QDO argued that a voluntary code did not work in the UK.

The QDO submitted:

> *What we have also seen is that introduced a voluntary code of conduct and we have seen that that did not work. That was not the way to go. So I think we can learn from all of those experiences in Britain. They have gone to enforce that—to basically go down the road that we are advocating of a mandatory code. They have gone to have an enforceable code overseen by an ombudsman. That is the way that I think is obvious that we need to go. There is no point in that regard messing and with things that do not work, such as voluntary codes. They are really only a token issue. So there is certainly a lot to be learned in Britain.*[65]

Review of the *Competition and Consumer Act 2010*

The QDO also submitted that changes were required to the federal *Competition and Consumer Act 2010* to allow the Australian Competition and Consumer Commission (ACCC) to investigate the pricing tactics of the supermarket chains.

The QDO submitted:

> *So there actually is a long-term detriment to consumers, which we have actually been highlighting to the federal government. It is one of the reasons why we are seeking changes to the Competition and Consumer Act, particularly to bring back the effects test, which was taken out of the act in the last major review. That effects test actually would allow the ACCC to look forward about the implications of these tactics, which the current act does not allow them to do. As Noel highlighted, that is why we are continuing, as an industry, to push for changes to the Competition and Consumer Act, particularly to stop predatory and unconscionable conduct and also seeking that mandatory code of conduct to cover the whole supply chain, from farm right through to retail checkout, as well as looking at ways that we can possibly strengthen collective bargaining powers to groups of farmers, including the potential for boycott powers.*[66]

Committee Comment

The committee acknowledges that the QDO have stated that a voluntary code of conduct does not work e.g (Britain). QDO also acknowledge that changes need to be made to the federal *Competition and Consumer Act 2010* to allow that ACCC have the appropriate powers to investigate and seek change.

[63] Campbell, N. 2013. *Draft public hearing transcript*, 11 September, pp. 1-2.
[64] Queensland Dairyfarmers' Organisation, 2013, *Submission No.2*, p.11.
[65] Tessmann, B. 2013. *Draft public hearing transcript*, 11 September, p. 8.
[66] Peake, A. 2013. *Draft public hearing transcript*, 11 September, p. 6.

At its public hearing the committee asked the ADF whether all avenues had been exhausted with the ACCC as to whether there was a case against the supermarket chains in relation to predatory pricing.

The ADF advised the committee:

> *The indications that we were given by the coalition prior to the election were that they would fast-track some sort of inquiry into the ACCC. This came out of Joe Hockey's office. We would then obviously make submissions on it. Our concern is how long it will take, et cetera.*[67]

Committee Comment

The committee notes that any change to the *Competition and Consumer Act 2010* is a matter for the federal government however prior to the recent federal election campaign and as part of its 'Policy for Small Business' the now coalition government undertook to review the competition law framework in Australia.

The committee also notes that during the recent election campaign the now federal Agriculture Minister, the Hon Barnaby Joyce MP, supported a mandatory code of conduct for the dairy industry, and an ombudsman to oversee the code.

Recommendation 3

The committee recommends that the Minister for Agriculture, Fisheries and Forestry continues to liaise with the Federal Agriculture Minister, the Hon. Barnaby Joyce MP and the Federal Minister for Small Business, the Hon. Bruce Bilson MP, to explore avenues available to bring more equity and balance into the milk market, on both a state and federal level.

Consultation

Committee consultation with milk processors

In its consideration of the Bill the committee met with small processors, Maleny Dairies and Mungalli Creek Dairy, and large processors Parmalat Australia, Norco and Lion Nathan. There has been a major challenge for processor brands in the competition with supermarket private label brand milk. (Figure 5 at Appendix C shows that supermarket brands are now over a $1 a litre cheaper than processor brands).

The small processors, Maleny Dairies and Mungalli Creek Dairy, informed the committee that the introduction of $1 a litre milk had little impact on the sales of their milk.[68] They also advised that the major supermarket chains were happy to stock their milk as long as there was consumer demand for their products.

Both small processors said that in order to compete in the fresh milk market their products needed to be significantly different from the $1 litre milk sold by the major supermarket chains. Mungalli Creek Dairy advised the committee that in their experience, 80-90 per cent of consumers buy fresh milk based on the price with the other 10-20 per cent looking for a product which they perceive to be better quality and value, with smaller processors competing for this market.[69] To capitalise on the point of difference that these products provide a marketing campaign to highlight the differences

[67] Campbell, N. 2013. *Draft public hearing transcript*, 11 September, p. 3.
[68] Mungalli Creek Dairy and Maleny Dairies, 16 October 2013, *Draft Private Hearing Transcript*, p. 1.
[69] *Draft private hearing transcript*, p. 4.

with supermarket brand milk was important.[70] For example, Maleny Milk advised that they market their pasteurised Guernsey milk and also a flavoured milk range.

Both Mungalli Creek Milk and Maleny Milk advised that a whole of business strategy was necessary for small processors to succeed and this meant diversifying the products and services they provided. For example, Mungalli Creek Milk are now also selling free range eggs in order to broaden the scope of their business and Maleny Milk have embarked on a tourism program where approximately 20,000 paid visitors a year tour their facility.[71]This also allows them to market their products to potentially new consumers. Maleny Milk advised that other small processors from Queensland, Western Australia, South Australia, New South Wales and Victoria had toured their facility to gain knowledge as to how they could improve their own facilities and expand their business.[72] However, both advised that as small processors they had struggled for several years in order to make their businesses viable.

In relation to the fair milk mark as proposed in the Bill, both processors advised that consumers who bought their products already knew they were local processors sourcing milk from local farmers. Mungalli Creek Milk added that a perception existed that logo's which currently appear on products were merely bought by a multinational company and any benefit does not go back to the farmer.[73] There appeared a further difficulty in calculating a fair price as contemplated by the Bill because farmers had indicated to Mungalli Creek Milk that they would need 70 cents to break even. A realistic figure would need to be established before moving forward with a scheme such as this.[74]

Committee Comment

The committee believes that smaller processors are an important part of Queensland's dairy industry and provide products which give consumers variety, quality and choice as opposed to the $1 a litre milk currently sold by the major supermarket chains. The committee notes that these niche operations run by the smaller processors are slowly expanding in Queensland.

The committee is of the view that commercial opportunities exist for smaller processors within the Queensland dairy industry however acknowledges that this can be a difficult business.

Recommendation 4

The committee recommends that the Department of Agriculture, Fisheries and Forestry continues to provide assistance with business pathways and technical advice to dairy farmers wishing to establish small processing operations in Queensland.

Lion Nathan and Parmalat both advised the committee that large processors had very limited power in the marketplace to change the effects that $1 a litre milk is having on dairy farmers. Parmalat advised that farmers were constantly asking what Parmalat as a major processor could do in relation to $1 a litre milk. They advised that the only option was not to supply the milk which meant that it would stay on the farm and be rendered useless. [75] Lion Nathan agreed that $1 a litre milk was causing issues in the marketplace, however they argued that the market was consumer led, and consumers were preferring to buy the cheapest milk. The pricing of milk was being used as a

[70] *Draft private hearing transcript*, p. 4.
[71] *Draft private hearing transcript*, p. 4.
[72] *Draft private hearing transcript*, p. 4.
[73] *Draft private hearing transcript*, p. 8.
[74] *Draft private hearing transcript*, p. 8.
[75] *Draft private hearing transcript*, p. 13.

marketing tool to get people into the supermarket chains' stores, rather than getting full value for the product.[76]

Parmalat also advised the committee that Queensland was a difficult market for dairy farmers because the cost of farming was higher than in southern states. This included grain and electricity costs which had gone up significantly in Queensland in the last few years.[77] A further difficulty for Queensland was the export market which was dominated by Victoria. Ideally, the Queensland dairy industry would try to broaden its market share by looking to export into Asian markets however this was cost prohibitive.

All three large processors submitted that long term deals with the supermarket chains were crucial for the viability of the industry and long term planning. To this end, Norco advised that they have negotiated a five year fresh drinking milk supply agreement with Coles, which will start from 1 July 2014. Not only was the agreement long term it also contained rise and fall mechanisms on not only the milk price but also on other cost inputs.[78] Norco submitted that trying to get long term contracts in place throughout the industry would be a positive for farmers and supported a mandatory code of conduct for the industry.[79]

In relation to the fair milk mark, Parmalat was sceptical as to whether it would change consumer behaviour. Further, it was unsure that brands with a fair milk mark would get appropriate shelf space from the major supermarkets.[80]Norco agreed that it was unsure whether a fair milk mark would work because at present, consumers believe they are paying a fair price for milk.[81]Lion Nathan did not support the Bill's measure for determining a 'fair milk price' as it was unclear how the cost of production would be determined and factored into the price. [82]

Committee consultation with major supermarket chains

The committee also consulted with major supermarket chains Coles and Aldi. The committee invited Woolworths to attend a private meeting however they declined the committee's invitation.

Coles advised the committee that at present they purchase milk from large processors Parmalat and Lion Nathan. In these existing contracts there are rise and fall clauses to ensure that the farm gate price is passed on to the farmer.[83] Coles further advised that branded milk has recaptured the market share it had pre-2011 before $1 a litre milk was introduced.

The committee asked Coles their view of long term contracts which the larger processors viewed as problematic. Coles pointed to the fact that they had entered into a five year contract with Norco commencing on 1 July 2014 and had entered into a ten year contract with Murray Goulburn.[84]

Coles acknowledged that Queensland does not export as much dairy product as the southern states and is therefore affected more by domestic market pressures. They advised that they work with a number of local Queensland brands such as Maleny Milk, Cooloola Milk and Eumundi Noosa Milk and are investigating the possibility of working with other smaller Queensland producers.[85]

The committee asked Coles for their response to farmers who claimed that $1 a litre milk was sending them broke. Coles advised that in discounting milk they did not intend to send anyone broke. They were providing a value option for families and making food staples like milk more affordable.[86]

[76] *Draft private hearing transcript*, 16 October 2013 p. 11.
[77] *Draft private hearing transcript*, 16 October 2013 p. 10.
[78] *Draft private hearing transcript*, 16 October 2013 p. 14.
[79] *Draft private hearing transcript*, 16 October 2013 p. 14.
[80] *Draft private hearing transcript*, 16 October 2013 p. 15.
[81] *Draft private hearing transcript*, 16 October 2013 p. 16.
[82] *Draft private hearing transcript*, 16 October 2013 p. 16.
[83] *Draft private hearing transcript*, 16 October 2013 p. 18.
[84] *Draft private hearing transcript*, 16 October 2013 p. 19.
[85] *Draft private hearing transcript*, 16 October 2013 p. 20.
[86] *Draft private hearing transcript*, 16 October 2013 p. 21.

Coles submitted that they work with processors to ensure that they were paying the market based, farmgate price. They ensure that rise and fall clauses are contained in their contracts with processors to make sure the appropriate farmgate price is honoured, before the retail price is applied.[87]

Aldi advised the committee that they introduced $1 a litre milk to compete with the other supermarket chains. In their view milk was a food staple and consumers would generally purchase the cheapest option.[88]

Aldi advised that the Queensland dairy market was more susceptible to cost pressures than in states such Victoria, which dominated the Australian dairy market. They submitted that for Queensland farmers a large problem was the two tiered pricing contracts they entered into.[89] Milk over the contracted volume has limited value and is priced at a second tier price, which can be much lower than the tier one contracted price. In states such as Victoria and Tasmania, milk was sold for one price however the two-tiered pricing structure in southern states such as Queensland limited the revenue for farmers.

In relation to the fair milk mark as proposed in the Bill, Aldi provided the example of canned fish. In this case a mark was placed on canned fish products to indicate that the fish had been caught responsibly. By placing the mark on the canned fish the price went up by 20-30 cents and consumers in the first instance were not prepared to pay extra for the same product.[90] However, after a large marketing campaign from Greenpeace there has been a slow transition toward customers buying canned fish with the mark. In relation to milk, Aldi advised that a fair milk mark would need a considerable advertising campaign behind it for it to succeed.[91]

Committee Comment

The statement to the committee by retailers and processors highlight that changes happening in the dairy industry around Australia namely, longer term contract, brand differentiation, and consumer awareness, are altering the way the dairy industry operates. The committee believes that the Queensland dairy industry needs to look to broaden its range of sales opportunities.

Should the Bill be Passed?

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed. The committee considered the form and policy intent of the Bill. The committee notes that the Bill seeks to set a 'fair' farmgate price for milk to be paid to dairy farmers and to establish an optional 'fair milk mark' that may be placed on milk containers, indicating that the 'fair' price has been paid to the dairy farmer who produced the milk.

Recommendation 5

The committee recommends that the Milk Pricing (Fair Milk Mark) Bill 2013 Bill 2012 <u>not</u> be passed as there is no legislative requirement to establish a fair milk mark.

[87] *Draft private hearing transcript*, 16 October 2013 p. 21.
[88] *Draft private hearing transcript*, 16 October 2013 p. 6.
[89] *Draft private hearing transcript*, 16 October 2013 p. 3.
[90] *Draft private hearing transcript*, 16 October 2013 p. 3.
[91] *Draft private hearing transcript*, 16 October 2013 p. 3.

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Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

The committee sought advice from the Member for Dalrymple in relation to a number of possible fundamental legislative principles issues. The following sections discuss the issues raised by the committee.

Implementing fair milk mark – clauses 7 and 8

The fair milk mark could be implemented other than by legislation. For example, the Heart Foundation 'tick' and the RSPCA approved farming scheme are implemented without legislative backing.

The Heart Foundation tests foods and if the food meets the Heart Foundation's standards, the food company pays a licence fee and displays the tick on the product. It is an independent not-for profit program. Foods with the tick are randomly tested for compliance and 'expelled from the program' if they fail to meet the standards. Packaging used for tick foods must be approved and all advertising claims must be truthful.[92]

The RSPCA approved farming scheme is based on animal welfare standards developed by the RSPCA for farming of layer hens, pigs, meat chickens and turkeys. The scheme is described as follows:

> *'Egg producers, pig, meat chicken and turkey farmers whose farms meet the RSPCA's standards can apply to join the RSPCA Approved Farming Scheme. Once the farm has been approved, eggs, pork, chicken and turkey products from these farms are stamped and sold with the RSPCA Approved Farming logo. Companies marketing eggs, pork, chicken or turkey products supplied by approved producers participate in the Scheme as Licensees'.*[93]

As mentioned on the RSPCA website, this scheme enables consumers to 'vote with their wallet'.

Use of the fair milk mark could be enforced by sanctions other than legislation – for example, if a person advertised milk bearing the fair milk mark when it was not fair price milk, he or she could be banned from using the fair milk mark in future.

Further, if the fair milk mark was implemented by means similar to the Heart Foundation tick or RSPCA paw of approval, existing laws on trademarks and fair trading could be used to enforce fair use of the fair milk mark without the need to specifically enact clause 8. For example, the *Trademarks Act 1995*, (Cth) section 121, deals with trademark infringement and the Australian Consumer law, schedule 2, section 18 deals with misleading or deceptive conduct.[94]

[92] Heart Foundation website, http://www.heartfoundation.org.au, accessed 20 May 2013

[93] RSPCA website, http://www.rspca.org.au/ accessed Tuesday 21 May 2013

[94] The Australian Consumer Law is a schedule to the *Competition and Consumer Act 2010* (Cth) and *Fair Trading Act 1989* (Qld).

Clause 6

Clause 6 of the Bill requires the Minister to:

'(a) consult with dairy farmers across the State, and organisations representing the interests of dairy farmers in the State, to decide—
(i) the characteristics of a typical dairy farmer in the State; and
(ii) the costs for a typical dairy farmer in the State of producing milk; and
(b) have regard to the following—
(i) the need to ensure food security in the State;
(ii) the need to preserve a dairy industry in the State;
(ii) the need to encourage and reward best farming practices and innovation in the dairy industry in the State.'

Generally, the Bill lacks the element of compulsion usually seen in legislation. The Bill does not require that the fair milk price mentioned in clause 6 be paid to dairy farmers. It proposes a non-compulsory fair price for milk.

Clear and precise – Section 4(3)(k) *Legislative Standards Act 1992*
Is the bill unambiguous and drafted in a sufficiently clear and precise way?

'Characteristics of dairy farmers' in clause 6(a)(i) is potentially ambiguous and not drafted in a sufficiently clear manner.

Subjective factors

Each of the matters the Minister is required to have regard to in clause 6(b) are subjective and not well-suited to legislation.

Lack of compulsion – clause 9

Clause 9 creates an obligation for the Minister to consult about trying to establish a fair milk price in all states and trying to develop an industry code of conduct to provide a framework for the continued profitability of the Australian dairy industry. The phrase 'trying to' is atypical for legislation. Terms such as 'must take reasonable steps to consult', 'must use best endeavours to' or 'must negotiate in good faith' have a higher degree of compulsion and illustrate what would normally be expected in legislation. Consultation between ministers on a fair milk price does not require legislative compulsion and could occur at COAG talks or other state – federal forums. Development of an industry code of conduct could happen by means other than legislative requirement, for example, by proactive consultation between the Executive and industry.

Most obligations rest on Minister – Bill generally

On an analysis of the Bill, it appears that most of the obligations created by the Bill fall upon the Minister, that is to:

- Set a fair milk price (clause 5(2));
- Be satisfied of the cost for a typical dairy farmer in the state of producing 1L of milk (clause 5(3);
- Publish a gazette notice setting the fair price for milk at least twice a year (clause 5(4));
- Consult with dairy farmers and organisations representing the interests of dairy farmers to decide the characteristics of a typical dairy farmer in the State and the costs for a typical dairy farmer in the State of producing milk (clause 6(a)), having regard to the need to ensure food security in the state, preserve a dairy industry in the State and encourage and reward best farming practices and innovation in the dairy industry in the State (clause 6(b));
- Decide the fair milk mark and set it out in a gazette notice (clause 7(2); and
- Consult with each relevant minister and table a report on consultation (clause 9).

This indicates that most of the initiatives in the Bill (apart from clause 8) could be undertaken by the Executive acting unilaterally, without the need for legislation.

On a practical level, the Department would need to enforce clause 8, and the dairy industry would need to provide information on the characteristics of a typical dairy farmer in the State and the costs for a typical dairy farmer in the State of producing milk, mentioned in clause 6.

Committee Comment

There are numerous examples of organisations and companies using brands and trademarks to their advantage in the competitive retail world. The use of these brands and trademarks is available to the Queensland dairy industry.

Appendix A – List of submitters

1. Australian Dairyfarmers Organisation
2. Queensland Dairyfarmers' Organisation
3. Mr Peter and Mrs Elke Watson
4. Mr Matthew and Mrs Michelle Trace
5. Mr Ross McInnes
6. Mr Aaron Clews

Appendix B – Briefing officers and hearing witnesses

Public Briefing officers – 11 September 2013

Queensland Treasury and Trade

Ms Tania Homan, Director, Microeconomics and Structural Reform

Department of Agriculture, Fisheries and Forestry

Mr Malcolm Letts, Executive Director, Regions and Industry Development

Mr John Darlington, Principal Policy Officer, Animal Industries

Public Hearing witnesses – 11 September 2013

Mr Noel Campbell, President, Australian Dairy Farmers Ltd

Mr Brian Tessmann, President, Queensland Dairyfarmers' Organisation Ltd

Mr Adrian Peake, Chief Executive Officer, Queensland Dairyfarmers' Organisation Ltd

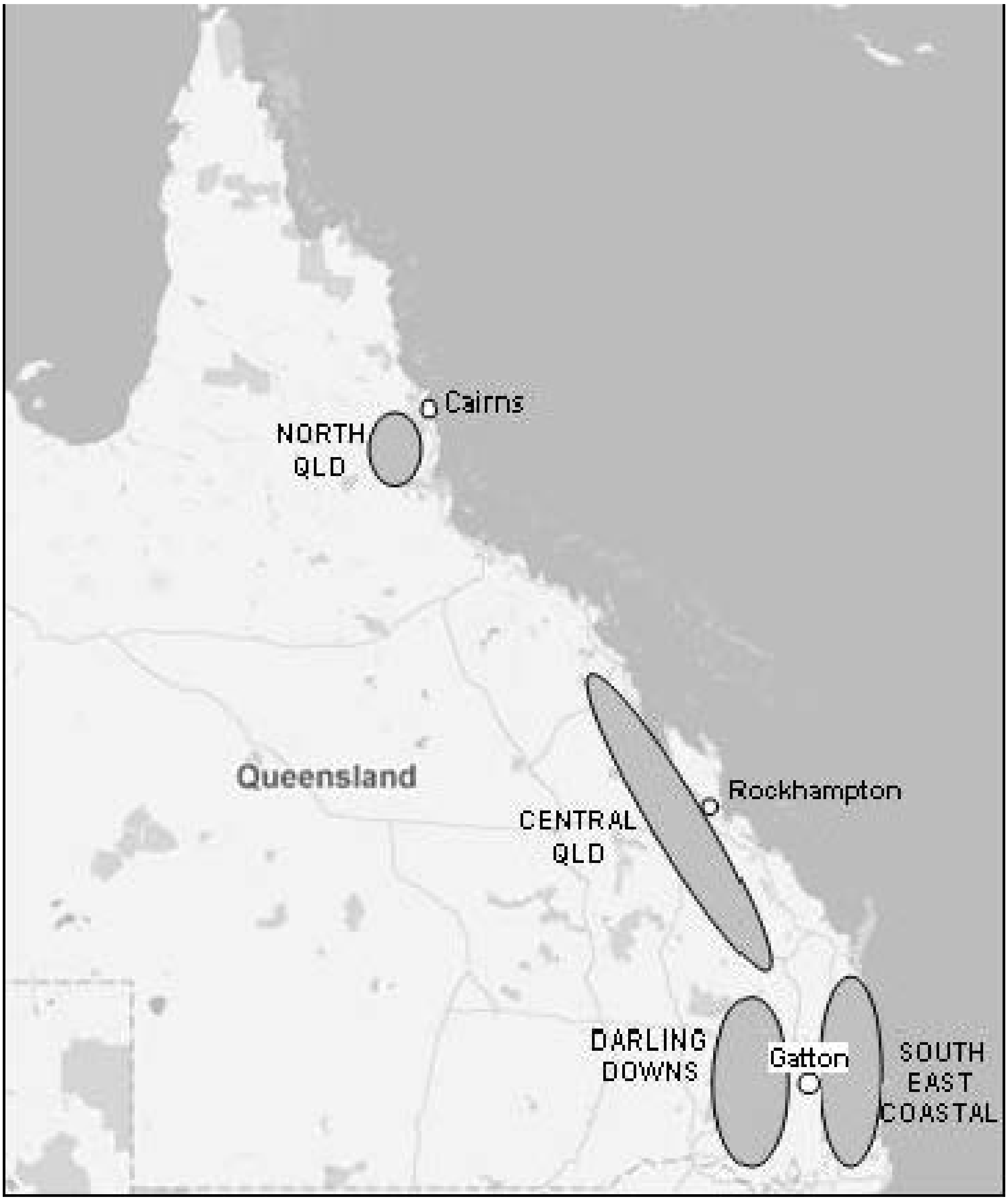
Mr Ross McInnes

Mr Matthew Trace

Mr Shane Knuth MP, Member for Dalrymple

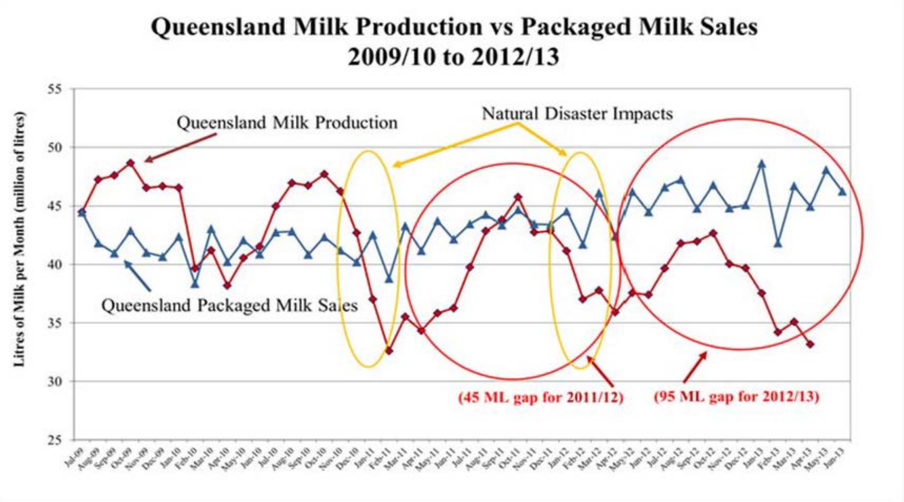
Appendix C – Figures and Graphs

Figure 1: Dairy farming areas in Queensland



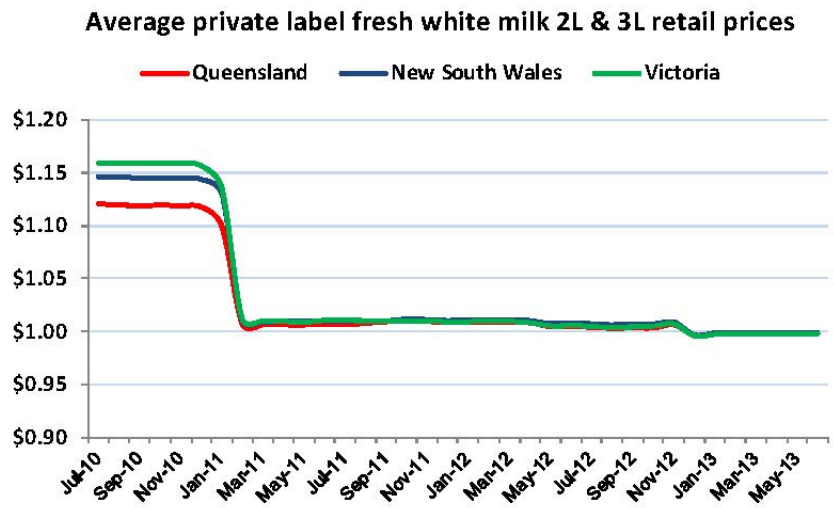
Source: Queensland Dairy Accounting Scheme - 2012, Dairy Australia

Figure 2: Queensland milk production vs. packaged milk sales 2009/10 to 2012/13



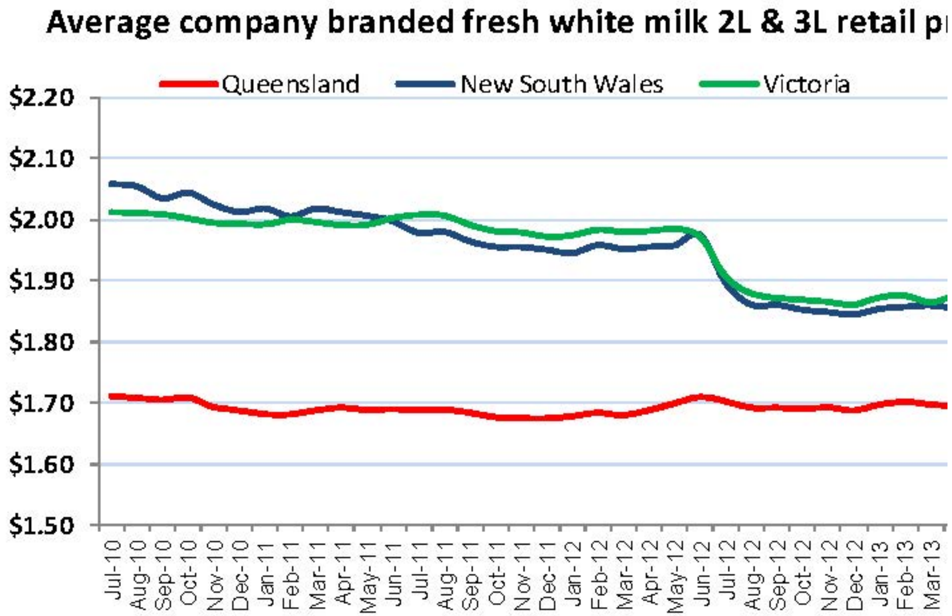
Source: Queensland Dairyfarmers' Organisation, Northern Dairy Industry Regional Situation & Outlook, July 2013

Figure 3: Average private label fresh white milk 2Litre & 3Lityre retail prices 2010-2013



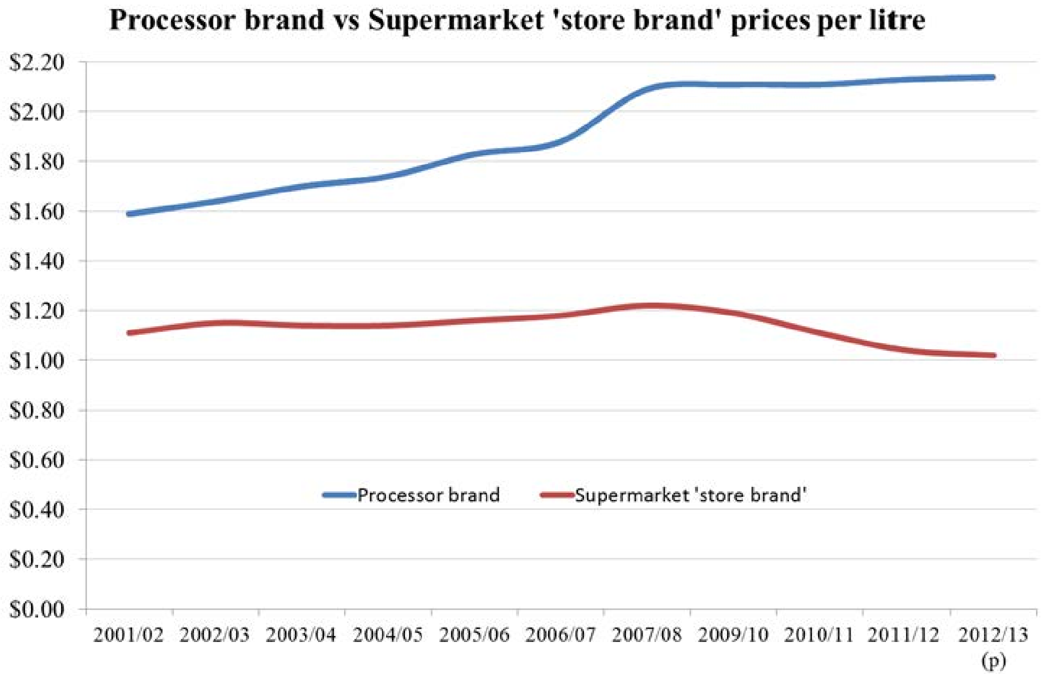
Source: Queensland Dairyfarmers' Organisation, Northern Dairy Industry Regional Situation & Outlook, July 2013

Figure 4: Average company branded fresh white milk 2Litre & 3Litre retail prices 2010-2013)



Source: Queensland Dairyfarmers' Organisation, Northern Dairy Industry Regional Situation & Outlook, July 2013

Figure 5: Processor brand vs Supermarket 'store brand' prices per litre



Source: Queensland Dairyfarmers' Organisation, Northern Dairy Industry Regional Situation & Outlook, July 2013

Dissenting Report

SHANE KNUTH MP

MEMBER FOR DALRYMPLE

4 November 2013

Dissenting Motion – Milk Pricing (Fair Milk Mark) Bill 2013

The Agriculture, Resources and Environment Committee final report on the Milk Pricing (Fair Milk Mark) Bill 2013 demonstrates a complete lack of understanding of the severity of the problem and an absence of concern for the Queensland dairy industry.

It is unbelievable that the committee acknowledges the dairy industry is in terrible condition yet recommends the Government continue the same course of ineffective and apathetic inaction of the previous Governments.

The committee has acknowledged that there is a shortage of milk in Queensland, with milk production falling from 848 ML in 1999/2000 to 458 ML in 2012/13. The committee report highlights dairy farmers are leaving the industry in droves with over 80 farmers terminating production since the beginning of 2012, yet the committee recommends these under resourced, financially stricken producers look at increasing investment to supply the Asian market or explore their own processing operation.

The recommendation to pursue an export market are only to set a perception that the Government is taking action but this fails to understand the complexities of milk production.

Submissions to the bill highlighted the fact that Queensland is facing a shortage of fresh milk product and that the long term forecast by the industry is that UHT milk may increasingly replace fresh milk in the medium to long term future. The committee has provided no solutions as to how producers will find the resources to upscale dairy production or reconfigure operational focus and infrastructure in order to consider supplying an export market.

The recommendations to increase research investment have been put forward without consideration of the real issues facing the industry and do not take into account the fact that this issue has been progressively getting worse for over a decade despite millions of dollars being poured into research and development.

The Government members of this committee never intended to support the bill and have displayed how deeply partisan politics has influenced the committee process by rejecting a bill that has the support of the majority of suppliers and processors with even the large retailers pointing out the bill has merit.

The promotion, adoption and use of a fair milk mark will be entirely in the hands of the milk industry and this legislation simply provides a conceptual framework for a market-based mechanism that gives consumers the opportunity to demonstrate their support for the Queensland dairy industry. The bill also protects the integrity of such a mark and prevents it from being used in a deceptive or misleading way.

Similar trademarks such as the Heart Foundation Tick and the RSPCA animal welfare standards are based on health or emotional appeals. The economic impact that misleading use of a fair milk mark will have on the dairy industry in Queensland requires specific legislative penalties.

The strategy is similar to the Government's current 'buy local' campaign. However, the Fair Milk Mark addresses the ineffectiveness of the Government's campaign by clearly identifying, at the point of sale, a locally produced product that supports a local industry.

If the government was serious about supporting local industry it would introduce labels similar to the Fair Milk Mark for all locally produced goods.

The final report of the Agriculture Resource and Environment Committee on the Milk Pricing (Fair Milk Mark) Bill 2013 demonstrates the current committee system is incapable of providing unbiased and impartial scrutiny of legislation that is reflective of community expectations, addresses a real issue with the Queensland dairy industry, is consistent with the principles of a free market economy and benefits Queensland.

On behalf of all those who demonstrated overwhelming support for the Milk Pricing (Fair Milk Mark) Bill 2013

I reject the AREC Final Report and recommendations on this bill.
Sincerely,

Shane Knuth
Member for Dalrymple

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