

Dairy Code of Conduct – updated Guidance notes and a new processor checklist now available

The ACCC [updated its guidance materials](#) on the Dairy Code of Conduct in May 2022.

The updated guidance provides greater detail on the interpretation of the Code's 'single document' requirement, arrangements for cooperatives and collective bargaining groups, what constitutes a 'material breach', loyalty payments and other bonuses, and the requirements to publish dispute reports.

Key updates and changes enclosed in the checklist include:

- **Transitional periods:** references have been removed to the Code's transitional period.
- **Single document requirement:** additional detail has been provided around non-written Milk Supply Agreements (MSAs), and how milk supply handbooks should be incorporated into MSAs as well as guidance around the use of pricing letters and directed processors to consider any implications arising out of the minimum price, step-down, and good faith requirements under the Code.
- **Collective bargaining groups:** collective bargaining groups do not receive any special concessions under the Code. General guidance has been provided on factors collective bargaining groups should consider under broader competition laws, and a link to the ACCC's small business collective bargaining class exemption.
- **Cooperatives:** cooperatives receive a limited exemption from the supply period requirements and are permitted to enter into open-ended agreements with their members. The ACCC's interpretation of what constitutes a cooperative has been further signposts.
- **Material breach:** additional guidance sets out further detail around 'material breach', including the view that a 'material breach' refers to an important or significant breach. However, only courts can determine whether a particular breach of an agreement is in fact a material breach. General examples of conduct that may constitute a material breach, such as regular or habitual breaches or many unremedied breaches by the farmer, have been outlined.
- **Loyalty payments:** guidance provides some additional detail on loyalty payments, including that they can only be subject to certain conditions, that farmers are entitled to pro rata payments if an agreement is terminated early, and reminds processors to be mindful of their other Code and Australian Consumer Law obligations in relation to other supplementary payments to farmers.
- **Publication of dispute reports:** guidance clarifies that all processors must publish a report on disputes, even if nil disputes have been reported in the relevant period.

To summarise the core obligations under the Code, the ACCC has also released a [new processor checklist](#) to support the development of a MSA. It covers dealing in good faith, publication requirements, key requirements for executed MSA, variations, terminations, as well as complaints, disputes, and record-keeping.

It is important to note that this checklist is not a complete summary of obligations, and processors should seek specialist advice on how the Code applies to their circumstances.

Access the ACCC's 'Processor checklist for the Dairy Code' [here](#).