



FARMGATE MILK PRICE UNDERPAYMENT CLAIM

For farmers who haven't "forgiven the debt" owed to them by Fonterra

Adley Burstyner and Harwood Andrews are working together on claims against milk processor Fonterra for the 2015/2016 Farmgate Milk Price clawbacks and step downs forced on Victorian dairy farmers.

Summary

The actions are about ensuring that dairy farmers receive the price promised for milk, and that processors don't act without regard to their legal obligations, let alone their moral ones.

In short, we simply believe that farmers deserve to get paid the price they were promised for the milk they delivered, and we believe that processors underpaid farmers in the 2015/2016 year by the retrospectively operating step downs. Processors claiming it wasn't a clawback is nothing more than a crafty word game which is unhelpful and adds insult to the financial injuries caused to farmers.

A class action is an opportunity for farmers to jointly tackle that exploitation, and ensure processors don't underestimate farmers' ability to fight back even against multinational corporations.

- The legal claims we propose bringing will:
 1. Allege misleading and deceptive conduct, unconscionable conduct, and breach of contract.
 2. Seek full reversal of unlawful step downs, clawbacks and underpayments, on the grounds of allegations that:
 - Fonterra did not have a reasonable basis for repeatedly assuring farmers about a strong farmgate price between the opening price statement of 24 June 2015 and the price corrections in April and May 2016. We believe the evidence will establish that Fonterra had ample information to know that they could not meet the prices they represented.
 - In any event it is illegal for Fonterra to adjust the price retrospectively and apply a clawback.
- Additionally, the claims will seek interest on the amounts unpaid from 2015/2016 season.

FONTERRA

Why did Fonterra set and pay the opening price and convince many farmers it would be honoured, only to reduce it at the very last minute after farmers had made on farm financial decisions and commitments relying on the price?

Fonterra says that it candidly told farmers that a \$5.60 price was not sustainable. It also says that it had to match MG's price.

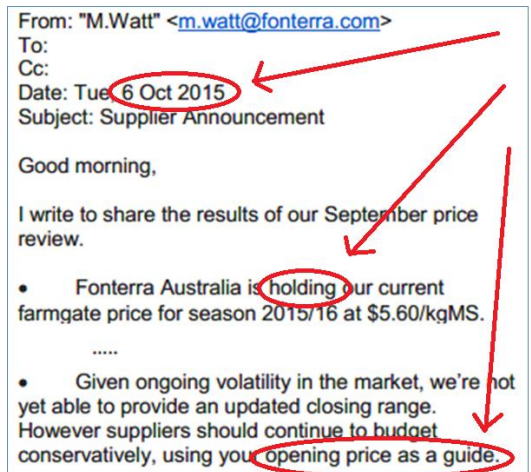
But Fonterra has admitted to the Senate inquiry that it could have had a lower opening price, and adjusted it at the end of the season if necessary. This is what was said in the senate inquiry:

Senator RICE: *But you could have opened lower than that. That was your choice. You did not have to match the Murray Goulburn price at the beginning of the season.*

Mr Watt: *That is correct*

Senator RICE: *So it was your choice. Even though you say you were forced into doing it and that you should have made a bigger song and dance, it was your choice to match Murray Goulburn at the beginning of the season.*

Mr Watt: *I think the clarification that is worth making is that at the start of the season—as in, late June, when the opening price was being set—the market did support \$5.60...What we saw in the ensuing 10 weeks was a*



Fonterra does not mention MG, or that Fonterra's FMG milk price will drop price if MG's drops. Fonterra makes it sounds like its price is based on the trading environment.

massive drop in terms of global commodity prices. ... It is a far more difficult conversation with farmers, albeit we had it around 'if we open here and move to there' versus 'opening here and then dropping', and that was the message that they provided back to us.

Senator RICE: Basically, it seems like you are saying that you foreshadowed it but you did not foreshadow it well enough to actually take action on it. You are trying to say that you did not take action on it, because you had to match the Murray Goulburn price, whereas, in actual fact, you did not have to.

Ms Swales: We did have to match the Murray Goulburn price.

Senator RICE: You did not have to.

Fonterra appears to be saying that instead of realistic FMG milk price guidance from processors, it's easier to give farmers false optimism for most of the season and a retrospective step down at the end.

In any event, even that explanation from Fonterra doesn't explain why Fonterra didn't tell farmers more openly that if MG stepped down then Fonterra would then do the same, with retrospective effect. In fact, Fonterra contracts say nothing about retrospectivity for a step down.

Even the Fonterra Supplier Announcement the weeks before the step down (pasted on this page) doesn't mention that Fonterra was simply doing whatever MG did, or any prospect of a step down.

At the end of the day, it appears Fonterra used the high price to seduce farmers to produce and supply extra milk to Fonterra, and still leave Fonterra able to pull the rug from under farmers' feet at the last minute once they had that milk, when the high price became nothing more than a deception.

We consider that a Court is likely to find Fonterra's conduct was illegal, and that Fonterra will be ordered to pay full compensation to farmers.

Fonterra's 10 May 2017 announcement:

- 40c/kgMS is offered to suppliers. It is to be provided either in 2017/2018 (so farmers have to keep supplying milk to Fonterra) or earlier if farmers commit to terms and conditions; and
- The payment is not being given to 2015/2016 Fonterra suppliers who are now supplying other processors.

Accordingly, all Fonterra suppliers:

- are not being compensated in full or at all for the drop to the publicly stated / average FMG price of \$1.91 for May and June 2016; and
- can join the class action to pursue proper compensation for the underpayment they suffered in respect of milk supplied in 2015/2016.

We are working on a case to recover the loss caused by Fonterra, which remains after the 10 May 2017 announcement. The viability of the case depends amongst other things on the interest shown by 2015/2016 Fonterra suppliers via the expression of interest form online or completing the form below.

We consider farmers are entitled to be paid the price they were assured they would get, and which they relied on for on farm decisions, and we believe that a Court is likely to agree.

A case may also send a message to the processor that a clawback will not be accepted without challenge. That may be important because Fonterra wants to keep the right to step downs. For example, in the Senate inquiry the following conversation occurred:

Senator HUME: On this issue of the restoration of trust, do you think that, to help provide farmers with the price certainty and given the need for confidence in the industry, Fonterra would consider providing a firm commitment not to impose step-downs late in the season in the future?

Ms Swales: I think that is an understandable question, given what has happened in the last six months. The danger with that kind of statement is that you will start the season very low. If you look here, we normally start the season around 90 per cent to where we think this season will end. In New Zealand, they are starting at 60 to 70 per cent. It is really about cash flow. Australian farmers, because of the flatter curve, need more regular cash flow. We need to be careful making statements that say, 'We guarantee we won't step down,' because the danger is that we will start the price so low that it will not actually encourage farmers to invest and grow their milk. It is something that would have to be considered very carefully to make sure that we do the right thing for everybody

Fonterra appears to be shamelessly saying that it needs to be able to give Australian farmers a price which is so high that Fonterra itself can't be confident about, and then be able to step down late in the season.

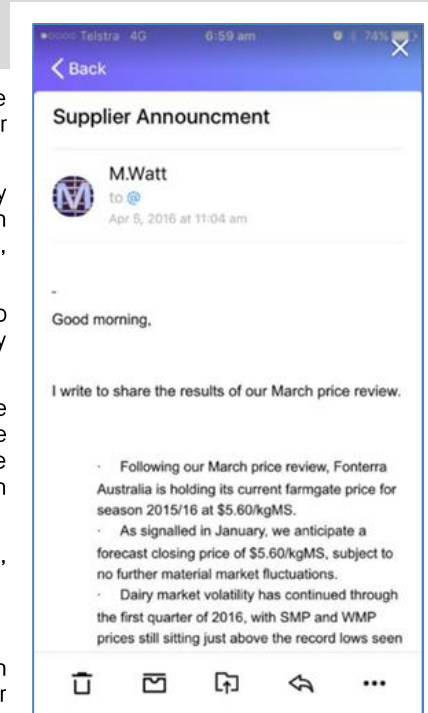
Court action can contribute to changing the unfairness shown towards farmers, including the lack of transparency, in the dairy industry's farmgate payment and pricing practices.

Farmers will not have to pay the costs to run the court case. These will only be paid upon success.

Adley Burstyner is working on this matter together with Harwood Andrews, Victoria's largest rural and regional law firm. Harwood Andrews is a 173 year old firm and has offices throughout Victoria. Adley Burstyner's expertise is group claims.

EXPRESSING YOUR INTEREST

Expressing your interest means that you will be kept in the loop about the case and be invited to participate. It will not commit you to anything.



To express your interest in this claim please complete the form below.

Name*

First Name

Last Name

Email Address*

Phone

Mobile*

ADDRESS

Street*

Suburb*

State*

Postcode*

Milk processor used in 2015/2016 season

- Murray Goulburn
- Fonterra
- NDP
- Lion
- Other

Did you sign a contract with your processor in 2015/2016

Yes No

If yes, when did you sign it

Have you switched milk processors since 2015/2016 season

Yes No

If yes, when did you switch

Number of cows run in 2015/2016

Number of farms in 2015/2016

Volume of milk you produced for FY 2015/2016 (rough, not compulsory)

kgMS
 litres

Volume of milk you expect to produce for FY 2017/2018 (rough, not compulsory)

kgMS
 litres

If you were you a Fonterra supplier in 2015/2016, does Fonterra claim a debt from you for advances to soften the blow of the May 2016 step down

Yes
 No

If yes, how much

Please feel free to email us any relevant documents, for example your contract with your processor or any written communications between you and your processor about the farmgate price. Our email address is info@adleyburstyner.com.au