



Collective Bargaining for Dairy Farmers

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Introduction

Glossary

ACCC: Australian Competition and Consumer Commission is the government body charged with administering the Competition and Consumer Act 2010

ADF: Australian Dairy Farmers, the peak dairy industry body for dairy farmers

CBG (collective bargaining group): a group of two or more dairy farmers who collectively negotiate terms and conditions of supply with milk buyers; the CBG must apply to the ACCC for legal protection from possible breaches of the Competition and Consumer Act

Milk buyers: a CBG's clients or prospective clients, including retailers, processors or commodity traders; also referred to in this guide by the ACCC term, 'negotiating targets'.

Dairy Australia has produced the *Collective Bargaining for Dairy Farmers* as a guide for farmers who are considering whether to start a collective bargaining group, for which they would need to seek approval from the ACCC (Australian Competition and Consumer Commission).

This guide helps dairy farmers to:

1. Decide whether collective bargaining could be beneficial
2. Get started on the process
3. Consider whether the Australian Dairy Farmers (ADF) authorisation applies or whether you need to separately seek ACCC approval
4. Be alert to issues and questions they may face along the way
5. Find resources, information and contacts.

The guide also includes case studies to help prospective collective bargaining groups (CBGs) learn from the experiences of their fellow dairy farmers. It has a glossary of terms used (preceding the Introduction); for example, 'milk buyer' refers to the party with which the CBG seeks to negotiate, however, the ACCC refers to milk buyers as negotiating 'targets'.

It must be noted that this guide is an overview of collective bargaining as it applies to the dairy industry only. Links to more detailed information are offered under the 'Resources and contacts' section at the end. Prospective collective bargaining groups should also talk to other experienced CBGs, and seek independent advice, including legal advice. This guide provides some pointers on how to source advice.

Getting started

Key Steps

- > Read this guide
- > Talk to likely CBG members and prospective milk buyers
- > Talk to other CBGs
- > Decide whether to start a CBG
- > Decide if the ADF authorisation is suitable
- > Contact ADF/ other industry bodies and ACCC
- > Get informed
- > Recruit members
- > Choose ACCC option: authorisation or notification?
- > Lodge required forms
- > Identify CBG skills/resources
- > Get expert help
- > Gain ACCC approvals (if required)
- > Start negotiating

CBGs interviewed for this guide have cited a few of their success and failure factors here.

Success factors

- > Strong leadership
- > A workable sized group with clearly stated, aligned goals
- > Similar risk profiles among members
- > Broad scope for negotiation
- > Good governance that:
 - Promotes transparency,
 - Provides realistic views on outcomes and goals, and
 - Fosters trust
- > The right skills and resources, sourced internally and/or externally
- > Regular communication with members and client/s
- > Capacity to convince milk buyers that using your CBG is the best option
- > Persistence!

Failure factors

- > Ineffective leadership
- > Poor communication
- > Lack of relevant skills and resources
- > Misaligned risk profiles among members
- > Lack of group cohesion
- > Unrealistic expectations/understanding among general members about the:
 - Level of effort committee members invest to achieve a deal
 - Likely outcomes of a negotiation
- > Conflicting agendas
- > Poor governance

Background

For dairy producers, collective bargaining is when two or more dairy farmers collectively negotiate terms and conditions of supply with milk buyers. The milk buyers could be milk processors, retailers, a company trading in milk as a commodity, or other types of businesses.

But collective bargaining risks breaching the Competition and Consumer Act 2010, which is administered by the ACCC, because the Act requires competitors to operate independently of each other.

However, the ACCC regards collective bargaining as potentially encouraging vigorous competition because it may 'level the playing field' between small operators (individual dairy farmers) and large milk buyers (like multinational processors and retailers). So ACCC approval provides protection from legal action under the Australian Competition and Consumer Act and enables the collective bargaining group to form.

While the ACCC has found that collective bargaining in the dairy industry is generally in the public interest, it does assess each application to decide if the benefit outweighs the detriment. The potential benefits of collective bargaining for both dairy farmers and the milk buyers they seek to negotiate with are detailed further here.

Collective bargaining's potential benefits

For dairy farmers

- > Savings for CBG members in transaction costs and time because they share negotiation costs e.g. legal costs
- > Supply chain efficiencies, such as reduced transportation costs if their milk goes to one processor
- > New marketing opportunities/more competition for buying raw milk because the CBG's combined volume of milk could supply large processors or retailers (for deals that may not have been viable for individual farmers)
- > Improved bargaining power may give dairy farmers greater input into contractual terms that may result in more efficient commercial outcomes, such as premiums for year-round supply of fresh milk, length of contracts and other non-price terms
- > More certainty on price
- > Premiums for higher fat or protein content
- > Presenting a cohesive case to milk buyers.

For milk buyers

- > Reduced transaction costs and ease of negotiating with a small CBG committee instead of many individual dairy farmers
- > Supply chain efficiencies, such as reduced transport costs if all farmers in one area are supplying a single company
- > Enhanced milk quality
- > Guaranteed year-round supply for fresh milk market
- > Improved two-way communication between milk buyer and CBG.



There are two ways that a CBG can seek legal protection under the Act. It can lodge:

1. An application for authorisation or
2. A collective bargaining notification.

In simplified terms, an authorisation is more flexible; its scope reflects the scope of the CBG's own application. For example, it can enable the CBG to negotiate with multiple milk buyers, including future unnamed buyers, and can cover new dairy farmers who may join the group in the future, but the application process is more involved.

Lodging a notification is quicker, but its terms are less flexible and the legal protection automatically expires after three years.

The ACCC can advise CBGs on which option may be best for them. *(For a fuller explanation of these options, see the 'Need to know' section, page 8.)*

Australian Dairy Farmers' authorisation

A CBG may not have to separately apply to the ACCC if it decides to collectively bargain under the authorisation granted to the national dairy farmers' body, Australian Dairy Farmers (ADF). The ADF was first authorised to collectively bargain with milk processors in 2002 and the ACCC in 2011 granted a 10-year renewal (until August 2021).

This means that, for a \$50 fee per CBG member, any qualifying CBG can register with the ADF to be covered by their umbrella authorisation. The CBG does not have to belong to the ADF, nor is it required to undergo an ACCC approval process in order to join the register.

However, the ACCC has set conditions that dairy farmers must meet for the ADF authorisation to apply. In broad terms, the key conditions include:

- > A CBG may be represented by one or more of its members, but not by a third party who has represented another CBG.
- > Collective bargaining is voluntary for both the CBG's members and the milk buyers with which it wants to negotiate.
- > CBGs cannot try to restrict other farmers from supplying particular processors, retailers or other milk buyers.

If a CBG doesn't meet these conditions, they are able to lodge their own proposal on different terms, and the ACCC will consider the merits of the application.

Importantly, the ADF authorisation only covers collective bargaining with milk processors. CBGs can apply independently to the ACCC for their own authorisations or lodge notifications if they find the terms of the ADF's authorisation unsuitable. For example, one group has since applied to the ACCC independently of the ADF authorisation, and negotiated directly with retailers under a notification

As of mid 2014, 16 CBGs had registered via the ADF's authorisation, although not all of them are active. The ADF offers guidelines for joining its authorisation *(see 'Resources and contacts', page 20).*

Case study: Strength in big numbers

Tasmanian Suppliers Group advocates strength in numbers as a key to effective collective bargaining. In the words of its chairman, Kem Perkins OAM,

“You’re a lot stronger if you have a group behind you”.

This philosophy seems the reverse of that held by the small Manning Valley Dairy Farmers Collective Bargaining Group (see case study ‘*Strength in small numbers*’). However, both CBGs agree that resilience in the face of setbacks and regular communication with both members and clients are essential success factors.

Tasmanian Suppliers Collective Bargaining Group started in June 2006 under the umbrella of the Australian Dairy Farmers’ ACCC authorisation. As of 2014, it has maintained 48 members located across the state. Its numbers have ranged between 29 and as high as 80, with its fall in membership due to farmers leaving the industry or moving to other processors. Kem estimates their CBG members supply 90% of Lion’s milk in Tasmania.

In December 2009 it negotiated a better deal with international beverage and food giant Lion Nathan National Foods after a highly publicised six-month battle that harnessed support from governments, the media and the public for the dairy farmers’ cause. The catalyst for the campaign was the drop in the milk price in the wake of the global financial crisis. “It needed immediate action,” Kem says.

At the height of the campaign, the group also struck an agreed levy on members, set according to each supplier’s production levels; only one fifth of the agreed levy amount was required. The group now collects an annual subscription fee of \$100 per member to fund its activities.

At various times, the group has invested tens of thousands of dollars for advice from business consultants and solicitors and also received significant support from pro bono advisors. It has been canny in identifying service providers who advance its agenda.

One of its consultants, for example, was a former politician and it also had an unofficial, pro bono independent advisor. Kem is a past president and life member of the executive of the Tasmanian Farmers and Graziers Association. He says the group has also appreciated the support of Australian Dairy Farmers (ADF).

Along with the obvious benefits of a better price for milk for its members, Kem says collective bargaining has improved its relationship and its communication with Lion Nathan, with which it meets quarterly. Its overall communications activities include: a pro bono liaison officer visiting members around the state; emailing a regular newsletter to members and ADF; an annual barbecue for members; and countless phone conversations.

“They know they can ring me or a committee member up and get an answer.”

Laying solid foundations

Time and effort invested in clarifying issues at the start can save much more time and money later – and avoid misunderstandings – once the collective bargaining process is under way.

Before considering in more detail whether the ACCC would approve your CBG, it's worth weighing up whether to start one.

Key Questions

Here are a few key questions that a prospective CBG would need to consider at the outset. The issues raised are covered further within this guide.

On target: Is the milk buyer – your negotiating target – receptive to collectively bargaining with your group? Have you had initial discussions? Even if a milk buyer is not receptive, the ACCC can consider an authorisation or notification. However, this situation may require a CBG to consider whether a negotiation is likely to succeed. (Note: a CBG must gain legal protection under the Act before starting the bargaining process but may obtain this coverage for early negotiations by seeking an interim authorisation – *outlined in 'Need to know', page 8.*)

CBG's goals: What are your CBG's goals – and do all prospective members share them? Conflicting agendas can undermine your CBG. Stating your goals in writing is an initial step towards drafting a clear foundation document for your CBG. (See *'Your CBG's foundation document', page 13.*)

Resources: Will your group have enough funds to cover all costs, and if not, how will your group raise funds? (See *'Funding your CBG', page 15.*) Have you identified and gained support from your foundation leaders who have the time, skills and commitment to take on collective bargaining? Do you have support networks that can help, for example, with pro bono services? Does your industry association or other organisations provide any support for collective bargaining (such as information, advice or grants)?

Structure: How would your group be structured? What legal/governance issues may arise that could require a formal legal entity?

Bargaining chips: Have you scoped out all the areas of negotiating advantage your prospective CBG could have? (see *'Negotiation points', page 17.*) What external factors may influence your CBG negotiations? What can you influence?



Need to know

ACCC resources and role

The ACCC encourages prospective CBGs to phone or email the ACCC Adjudication Branch and visit its website before preparing an application. (See 'Resources and contacts' page 20). Among other issues, the ACCC may discuss the requirements of the application form, the contents of supporting submissions, whether an authorisation or notification would be more suitable and the various steps in the ACCC's assessment of the application.

It is important to think about how broadly to frame the terms of your CBG's authorisation or notification in your draft application. If the terms are too specific and narrow, it may unintentionally restrict your CBG's capacity to negotiate. The ACCC Adjudication Branch can offer guidance.

The ACCC offers downloadable resources on its website (see 'Resources and contacts', page 20).

Should your CBG apply for an authorisation or lodge a notification?

In general terms, an authorisation is more flexible but the application process is more involved and lengthy, while lodging a notification is quicker but more limited in what it covers.

Authorisation

An authorisation can cover a CBG when circumstances change over time. There is no limit on which or how many milk buyers with which the CBG can negotiate.

In brief, an authorisation may be the best option if a CBG:

- > Wants legal protection for more than three years
- > Expects to negotiate contract/s worth more than \$5 million a year (i.e. that sum applies for each CBG member with each particular milk buyer)
- > May negotiate with several milk buyers over time
- > May have a changing CBG membership
- > May negotiate with as yet unidentified milk buyers in future.

The ACCC conducts public consultations with interested parties and issues a draft and final decision.

Time frames: An authorisation can take up to six months for a final decision or, under an expedited service, as little as three months. The legal protection usually lasts between five and 10 years. If CBGs need to start negotiating before the final authorisation decision is made, they can be covered by an interim authorisation, which provides immunity within about 28 days of applying.

Fees: The application fee is \$7,500, but the ACCC often favourably considers waiving this for primary producers, on a case-by-case basis. The waiver request must be lodged before the application.

Notification

A notification provides protection from legal action under the Act automatically after 14 days (this covers the CBG and the milk buyer it seeks to negotiate with), but its terms are much more limited. The CBG can negotiate with only one nominated target; to negotiate with others, it would need to lodge another notification. Even if a milk buyer is not receptive to collective bargaining, the ACCC can allow a notification. However, this situation may require a CBG to consider whether a negotiation is likely to succeed – a consideration that is also relevant to an authorisation. The CBG has to identify its membership at the time it lodges the notification, which can be onerous, particularly for a large group. If its membership changes, a fresh notification must also be lodged. The legal protection automatically lapses after three years and although it can't be extended, the CBG can lodge another notification or apply for an authorisation if it wishes to continue the arrangements.

Lodging a notification may be the best option if:

- > Your CBG has one milk buyer it seeks to negotiate with
- > Your CBG expects the collective arrangement to last less than three years
- > The contract/s in question with the milk buyer are not expected to exceed more than \$5 million per annum for each CBG member
- > Your CBG membership won't change
- > Your CBG needs to start the collective bargaining process quickly.

Time frames: Protection from legal action under the Act automatically commences 14 days after lodging a notification. Its duration is specified (three years) and can't be extended (as detailed earlier).

Fees: The application fee is \$1,000 and, unlike authorisation fees, the ACCC is not able to waive it.

Assessing strengths and harnessing resources

Your CBG's leaders and members

Uniting members under the leadership of skilled industry colleagues requires some astute choices by the group's foundation members – but these decisions are fundamental to the successful formation of any CBG.

Your CBG's leaders

Strong, visionary leadership is a critical success factor for a CBG. When recruiting leaders, a CBG needs to consider whether that person has the right experience, character and qualities to inspire others while carrying the extra responsibilities and workload that running a CBG entails.

CBG leaders ideally would be:

- > Respected within the local dairy industry
- > Successful dairy farmers
- > Confident communicators
- > Skilled negotiators
- > Broadly skilled, beyond the dairy industry
- > Strong willed but flexible; and, above all,
- > Resilient in the face of setbacks.

In a perfect world they would also have MBAs and law degrees, with expertise in the Australian Competition and Consumer Act – but those skills can be hired in.



Case study: Strength in small numbers

A Manning Valley collective bargaining group of seven dairy farmers has shown that a small group with a big vision can achieve a great deal through collective bargaining. Located on the NSW mid north coast, the group's persistence and cohesiveness were among its key success factors in signing a pilot deal with Woolworths in June 2013 that may set national precedents for the dairy industry.

The Manning Valley dairy farmers are an independent sub-group of the 70-strong Mid Coast Collective Bargaining Group in NSW, who supply four processors.

Headed by Tim Bale, the Manning Valley Dairy Farmers Collective Bargaining Group found the terms of the ADF's authorisation, which is limited to dairy processors, to be too restrictive. They lodged a notification with the ACCC in March 2013 to collectively bargain directly with retailer Woolworths, and to also negotiate separately with Milk2Market over the supply of raw milk and/or brokerage. Milk2Market provides logistical support to supermarkets or other buyers that deal directly with the dairy industry.

The group worked for two years to finalise the deal, in which 16 million litres annually of its premium quality milk will be sold to Woolworths and marketed as sourced from Manning Valley under the retailer's Farmer's Own brand.

The group's direct approach to Woolworths was prompted by the \$1 per-litre milk retail price wars. After Tim Bale's attendance at a Senate committee failed to raise political support for their plight, the group contacted the board directors of Woolworths to explore solutions over their price concerns and this led Tim to propose exploring a direct relationship with Woolworths.

Tim says the group won Woolworths over because its terms of supply committed all members to meeting the highest quality standards, and because the group was professional and well organised in its approach to collective bargaining.

The group initially had more than seven members, but negotiated volumes meant a small pilot group had to start in order to develop the model.

In addition to Grade 1 milk quality, the deal had covered animal husbandry and presentation of farm premises, among other issues.

The three-year contract offers security to offset the high risk the group took in dealing directly with Woolworths rather than a milk processor, Tim said.

Internal risks were also factored in, with the group informally 'risk profiling' its members, as to whether they were prepared for the rigours of the long-term negotiation process and the standards required to win over Woolworths.

The Manning Valley group's tips for other CBGs are included in this guide's 'Success factors'. Nominating a few key points, Tim Bale cites having a uniform group with shared goals, and tenacity.

“Never give up. You have got to believe this will happen and never give in.”

‘Shared community interest’

Under the ADF’s authorisation outlined earlier, the ACCC requires CBG members to have a ‘shared community interest’. The ACCC’s definition of shared community interest includes each member having a reasonable expectation of supplying the same plant of a dairy processor and being located within the economic delivery zone of that plant. (It is worth noting that this condition applies only to the ADF authorisation, which covers processors.)

‘Shared member interest’

But while the ACCC requires those ADF CBGs to have a ‘shared community interest’, any CBG’s success may depend on what could be termed ‘shared member interest’. It is up to each CBG to define what that means by considering its members’ motives for joining.

A CBG may be founded on the assumption that all members are signing on for the same reasons: they want a better deal or relationship with their ‘target’ and there is strength in numbers. Many may believe that there is no need to state anything in writing; a ‘gentleman’s handshake’ is all that is required to confirm that understanding.

However, each member might have different ideas of what a ‘better deal’ means: Is it all about prices or are other terms of supply important? And if so, what are they? What about long-term contract security or other issues?

Risk and reward

The foundation members starting the CBG may also reasonably expect members to understand that in order to reap bigger rewards, they have to take on some risk. But how much risk is too much?

The success of the negotiation and the group’s prospects may depend on the capacity of individual members to absorb risk. A typical scenario may be for the milk buyer to put the CBG under pressure by approaching individual members that it perceives are open to offers. If they accept, it can weaken or even derail a process that may have taken many months (even years) of work.

Under the ACCC’s conditions, CBG members may withdraw from the group at any time. So it may be worth clarifying the ‘better deal’ priorities of each member and assessing the risk profile of prospective members before signing them up. Assessing your prospective members may safeguard the potential success of your whole group – when recruiting members, let them know you’ll be talking through these issues with them. (See *information box ‘What is a risk profile?’*, page 11, and *CBG case study: ‘A cautionary tale’*, page 12).

What is a risk profile?

In this context, it means the ability of a dairy farmer to accept risk. It’s also worth considering the bigger picture: the CBG’s willingness to accept risk.

Why does it matter?

If prospective members do not share a similar ability to accept risk, it could jeopardise the success of the CBG’s capacity to negotiate a deal. CBG members who more readily succumb to pressure from the target (the other party in the negotiation) and accept a lower offer, could undermine the CBG’s terms and result in all members agreeing to a less satisfactory deal because they no longer have the ‘strength in numbers’.

Issues to consider

Before signing on prospective members, it may be worth considering their level of commitment and appetite for risk. Issues to assess may include: How much value do they put on price? How important is security/stability (i.e. a longer term contract) to prospective members? Can they supply other processors/clients readily or are they restricted because of location? How realistic are their expectations of what the negotiation may deliver?

Having members who share similar risk profiles and agendas at the outset is a sounder basis for starting a CBG than hoping that a disparate group will become united under pressure.

Recruiting members

In the start-up phase, a CBG’s foundation members will be focusing on recruiting new members. But in addition to signing up the right members, the CBG also needs to consider its ideal CBG size and potential member catchment area. This will be affected by whether the group operates under an authorisation or notification (see ‘ACCC resources and role’ page 8). It may also vary according to the nature of the negotiations and the group’s negotiating target or targets – for CBG size, biggest isn’t always best (see *NSW Mid North Coast case study: ‘Strength in small numbers’*, page 10).

Avenues for recruiting members include: phoning/emailing contacts within dairy industry networks; social media used by dairy farmers; promotional stories or advertisements in agricultural media outlets. Your dairy industry association may agree to help by promoting your recruitment drive via its newsletters or other communications.

Case study: A cautionary tale

“Collective bargaining is not for the faint hearted.”

This was the advice of the convenor of one group after a collective bargaining process that took a heavy toll, both financially and on relationships; the CBG is no longer active. The convenor hopes aspiring CBGs may learn from its experiences; names have been withheld to respect members' privacy.

The group had 27 members who sought a better price for their premium milk and a three-year contract, after the CBG's contract with a major processor had run out. It primarily negotiated with its original processor, which was hostile to collective bargaining, and the CBG also had discussions with other processors.

The CBG convenor was a dairy farmer whose professional legal background was advantageous in negotiating both the ACCC aspects and the deal with the company. His role included doing most of the CBG organising and the group had a strong leadership team. However, its lack of legal structure and lack of clearly stated goals, its informal approach and the misaligned risk profiles of its members contributed to a dysfunctional dynamic and eventual decline as a CBG, he said. (See 'Risk profiling' box).

The target company approached individual CBG members in a classic 'divide and conquer' tactic. Some members accepted prices that were lower than the CBG was negotiating for, while other members whom the company sought to keep as suppliers were given deals of one cent per litre more. The latter group remained members, however, and this proved divisive.

“In reality, people's risk profiles are different, so as soon as the company said, ‘That's the price, take it or leave it, we have other dairy farmers begging, begging, to supply us under this price, this is the last offer and don't bother talking to the CBG’, then we had about 10 who walked.”

“That's why it fell down, so many people got scared and you're only as good as your weakest link. We all ended up signing with the company in a deal that I'd rate as 65 out of 100 when we could have achieved an 80.”

What could have made their CBG stronger? Its convenor suggested that a strongly constructed, foundation document that stated the group's shared goals and other issues at the outset was “crucial”. A legal entity that enabled the CBG to collect membership fees to fund its activities or sell shares that would entitle members to voting rights, might have firmed members' resolve because each had invested in its success. And risk profiling of prospective members may have identified whether they had realistic expectations and were compatible with the interests of the CBG.

Your CBG's foundation document

Drafting a foundation document could safeguard the potential success of your CBG. The drafting process can clarify whether your members do share the CBG's stated goals and the document can be referred to in the future if there are doubts about that shared vision.

Those initial inquiries about what constitutes 'a better deal' and risk profile input could serve as background that ensures the foundation document does reflect its members' interests and aims.

It would be advisable to have a solicitor review your foundation document. This may help your CBG identify whether it should become a legal entity and what form that could take.

The foundation document could be an agreement that includes any or all of the following:

- > Shared goals (negotiation or other)
- > Agreed processes, e.g. reaching internal agreements; voting on recommendations
- > Internal dispute resolution/mediation
- > Structure and responsibilities of CBG committees
- > CBG committee member roles
- > Communication protocols, internally and externally
- > CBG funding of its activities
- > Conduct protocols, including how members should respond if the milk buyer approaches them individually.

What is the legal status of a CBG?

A prospective CBG needs to seek legal advice about the best way to set up the organisation so it is well equipped to deal with issues such as operational good governance (including financial records transparency) and potential legal liability. For example, if an aggrieved member sought compensation over the outcome of a negotiation, would the CBG's executive committee be legally vulnerable? Some CBGs have no formal structure; Queensland's Premium Milk Ltd has elected to be structured as a not-for-profit company (*see case study: 'Qld CBG maps path to follow', page 18*).

Essential skills within your CBG

In addition to leadership, highlighted earlier, CBGs need to draw on a range of other practical skills and expertise. If your own members don't have the relevant skills, your CBG can contract external professional service providers – perhaps on a pro bono basis.

Communications: persuasive, clear writing and presentation skills are an enormous advantage. Among other activities, your CBG could be: writing ACCC applications; reporting and presenting to its members and the management of major companies (CBG milk buyers); presenting in public forums, including government committees; briefing professionals who supply services; doing media interviews if your activities attract public interest – or if it is advantageous to generate public support. Strong communication skills are also essential for maintaining the commitment of members throughout what may be a protracted negotiation.

Negotiation: the milk buyers your CBG is dealing with would undoubtedly call on professional negotiators who are highly skilled in strategies and tactics. Does anyone in your group have the skills to match them? In addition, CBG leaders negotiate internally and informally with members to maintain group cohesion and motivation. The ability to keep members on board is critical because they are free to leave the group at any time.

Strategy: the capacity to map out a negotiating strategy that can foresee the possible implications of any move is invaluable. This requires the ability to: set goals; assess the best options for achieving them; envisage the short-term and longer-term potential impacts, and your CBG's likely response in various scenarios. Strategic skills are also valuable for aligning your group's interests with like-minded organisations, and for planning the CBG's development.

Administration: even if a CBG operates from a 'virtual office' rather than a physical one, running a CBG takes good systems and can be very time consuming. Fulfilling governance responsibilities, organising meetings and minutes of meetings, dealing with emails, phone calls and other communications are a few of its administrative activities.

Financials: maintaining CBG financial records is another skill set that could fall under 'administration' and good governance.

IT: this would vary according to the CBG's operating model but it could encompass everything from setting up shared software programs to being adept at social media platforms (see 'Communications' above).

Finding expert help

Your CBG may need to call in experts to provide specialist advice and services at different stages. These may include any or all of the following professionals suggested below.

To find suitable providers, research their backgrounds. The Internet may offer details about accreditation, professional associations, background, and client testimonials, all of which would need to be confirmed (see '*Resources and contacts*' page 20).

Ask prospective service providers about their previous experience that could benefit your CBG; some appropriate questions are suggested below. Recommendations from dairy industry colleagues are also valuable. If your CBG is offered pro bono support, it is in your CBG's best interests to ask the same questions of pro bono providers as you would put to a paid professional.

This brief summary points to some reasons why your CBG may need these advisors; when they may be needed; the questions to ask before engaging them; and the likely costs their services may incur, if that information was available. But costs will vary according to a CBG's particular needs; the service provider should be able to offer more detail.

Legal

Why: advising on best legal structure for setting up CBG; negotiating and preparing contracts; strategic advice; dealing with any ACCC/Trade Practices Act issues.

When: from the outset. Identify your provider before negotiating starts.

Questions: Their Competition and Consumer Act expertise? Experience in dealing with ACCC? Experience with farm clients? Compatibility with CBG's approach?

Cost: some CBGs have estimated legal costs to be between \$30,000 and \$100,000 per year over a protracted negotiation, but this would vary according to a CBG's circumstance. When assessing potential legal advisors, prepare a written brief and ask them to provide a quote in writing that includes their fee structure. Ask for indications on which areas costs could escalate – and how that could be avoided.

Negotiators

Why: See 'CBG skills' above.

When: Identify your provider before collective bargaining with target starts.

Questions: Experience with agriculture clients? Capacity to quickly grasp dairy supplier's issues? Compatibility with CBG's approach?

Cost: Ask for a quote in writing that reflects your CBG's needs and includes a fee structure.

Dispute management and mediation services

Why: Professional dispute resolution managers can be valuable when planning your strategy to avoid negotiations becoming protracted, oppositional and heated. A range of dispute resolution techniques is available, including mediation, expert determination and commercial arbitration under various State acts. Enlisting a mediator could help avoid litigation, if the parties are in dispute. Some legal practitioners are also accredited as mediators or arbitrators.

CBGs should also examine whether the Produce & Grocery Industry Code of Conduct could be useful to their particular dispute. This voluntary Code has been enacted by the Federal Government and provides the opportunity to use government funding to mediate a dispute (except for a small administration charge). It should be noted that the ADF has reservations about the Code that are detailed further in '*Resources and contacts*', page 20.

When: Identify your provider before negotiating starts.

Questions: Their experience? Capacity to quickly understand the relevant issues? Mediator's style (e.g. transformative, evaluative/facilitative?) Compatibility with CBG's approach?

Cost: Ask for a quote in writing that reflects your CBG's needs and includes a fee structure. Mediators and dispute managers can provide a fixed price quotation.

Financial

Why: CBGs need to account for their financial transactions e.g. expenditure on travel to meetings with target companies or ACCC.

When: From the outset.

Questions: Experience with farm clients? Compatibility with CBG's approach?

Cost: Ask for a quote in writing that reflects your CBG's needs and includes a fee structure.

Administration

Why: See 'CBG skills' above.

When: Good systems are needed from the start (perhaps set up by CBG members) but as administration becomes onerous, part-time staff may be required.

Questions: Office organisational experience? Can they cover other roles, such as bookkeeping, communications etc?

Cost: Estimated by some larger CBGs at approximately \$40,000 per year, part-time (20 hours per week X hourly rate). CBG members, particularly in the executive group, can also expect to invest substantial time and resources in-kind.

IT

Why: See 'CBG skills' above.

When: From the outset.

Questions: What are their recommendations for your CBG's IT needs?

Cost: Ask for a quote in writing that includes a fee structure.

Communications

Why: See 'CBG skills' above.

When: As required e.g. to assist with CBG's regular newsletter to members; handle media liaison.

Questions: Their experience? Skills (e.g. media liaison, social media). Capacity to quickly understand the relevant issues?

Cost: Ask for written quote, with fee structure.

Trainers

Why: Negotiation, mediation and communication skills are valuable for CBG leaders and committee members – and may assist them to identify appropriate expert advisers.

When: Before (rather than after) the skills are needed.

Questions: Experience with agricultural clients? Capacity to structure content and approach to meet your CBG's needs?

Cost: Ask for written quote, with fee structure.

Funding your CBG

The costs associated with starting a CBG can vary enormously and, if a protracted negotiation is involved, requiring legal advisers and consultants, may run into six figures. That's not including unpaid time: CBG leaders have commented that they couldn't begin to estimate the value of the time they've invested on a voluntary basis.

After the negotiation is finalised, the ongoing running costs are likely to be minimal.

A CBG's model for collectively financing and accounting for its activities, be they negotiation campaign costs or general running costs, will depend on whether it is a legal entity or an informal group. Expert legal and accounting advice is required.

Variable costs and factors that affect costs:

- > **Travel** – costs vary according to proximity to milk buyer/s and ACCC (Canberra or state capitals). Does the milk buyer require face-to-face meetings, involving airfares, big kilometres by car and accommodation?
- > **Communication** – meetings with CBG committees and members (consider whether social media, e-newsletters and online conferencing minimise need for face-to-face meetings?)
- > **Nature of negotiations** – if protracted and adversarial, may require higher investment in legal, mediation and consultancy services.
- > Administrative services, financial services, IT services, training services.
- > Whether pro bono providers are used.

As when budgeting for any project that has many variables, when estimating a total figure for start-up costs, add a contingency amount to cover the unexpected.

Fixed costs: ACCC fees; ADF authorisation or registration (both noted earlier).

It is also worth noting that the costs for catering and venue hire for CBG-related meetings can soon add up – asking members to contribute a specified amount can ensure these expenses are fairly shared.



Up and running

Good governance

The ADF has produced guidelines for CBGs that register under its authorisation (See 'Resources and contacts', page 20). Its guidelines cover many of the governance issues that apply to all CBGs, regardless of whether they register with the ADF.

These include:

- > Formation of CBGs
- > Formation and management of negotiation committees
- > Registration of CBG members
- > Recording minutes of meetings
- > Committee's progress reports to members
- > Voting on recommendations.

ACCC governance requirements

For notifications, CBGs must supply members' details to the ACCC and provide evidence of their consent to lodging the notification on their behalf. For authorisations, the CBG does not have to provide specific details about individual members and can have members join at a later date without having to apply for another authorisation. The ACCC's application process is detailed in its guides (see 'Resources and contacts', page 20).

CBG internal structure

A CBG would typically establish committees to conduct its leadership and governance responsibilities. A chair would head its executive committee, with a secretary in charge of organising meetings and recording minutes. Other roles may be designated, with appropriate titles.

The group would also have a negotiating committee to meet with its prospective milk buyers and to brief members about its progress in reaching a deal. Sometimes relationships between committee members of a CBG and competing milk buyers are tested during the course of a negotiation; in this case, a CBG may decide to have separate negotiating committees to deal with different milk buyers.

Ideally, a CBG's leaders would delegate work where possible to ensure that no one member is overburdened. This approach would also aid succession planning, so the CBG's long-term maintenance is not over-reliant on one or two leaders.

Negotiation points

Producers may be limiting the potential benefits of a deal if they focus too narrowly on price. As well as price, CBGs need to consider the full range of their bargaining options, such as:

- > Consistent quality benchmarks (e.g. butterfat, protein, bacteria levels etc.)
- > Volume (e.g. the capacity to supply more volume for a better price)
- > Animal husbandry
- > Security (longer-term contracts)
- > Premises (e.g. truck access and high standard presentation)
- > Product differentiation (e.g. clean, green environment; organic).

Strong communication is key

Without regular, clear communication, a CBG can come to a dead halt as its support drops away. A CBG needs to be in regular contact with its members, clients, service providers, industry colleagues and industry associations.

Strong communication is critically important in fostering the trust that, for example, ensures CBG members would be immune from 'divide and conquer' offers from milk buyers, with members happy to leave the negotiations to its leadership team.

Keeping in touch Internally

Consider appointing a liaison officer (perhaps a pro bono role for a retired farmer?) to visit dairy farmers, deal with their inquiries, and report their concerns to the CBG executive. This could help keep members motivated and committed.

Ask members how often and in what form they prefer to get CBG updates: a group email, Facebook, newsletter or other options?

Meet regularly with members: during negotiation periods, this may be as frequent as weekly but otherwise, at least twice a year. Managing members' expectations, keeping them ahead of developments and gaining their feedback are among the issues that need regular coverage.

Externally

CBGs should factor in regular meetings with clients to get their feedback, foster the relationship and deal with issues; for some CBGs that means twice-yearly meetings and more frequent updates via email and phone.

Case study: Qld CBG maps path to follow

Queensland collective bargaining group, Premium Milk Ltd, chaired by John Cochrane, is a good example of one of Australia's larger dairy CBGs. This CBG's experience is a reminder, however, that collective bargaining entails considerable challenges in terms of likely costs and commitment.

Premium Milk Ltd formed on 1 July 2000 through the merging of seven companies that were suppliers to the major processor Pauls, after the deregulation of the Australian milk industry. Structured as a not-for-profit company, the Premium Milk CBG initially had 360 members all supplying Pauls. By February 2014, the group had reduced to 146 members (due in part to dairy farmers leaving the industry but also because membership is voluntary and some regional groups, like CQ, have chosen to stand alone), with the CBG supplying Parmalat, which now owns the Pauls brand.

The annual total milk production of Premium members in 2012/13 was 172 million litres. In 2013/2014 it was expected to be about 159 million litres.

John says Premium Milk's motivation for collective bargaining had been to negotiate supply, quality and price arrangements within the ambit of the Trade Practices legislation, while Pauls (later Parmalat) sought to deal with a small, representative group rather than the individual milk producers.

From late 1999, the CBG's foundation members started talks with Pauls to establish the possible benefits to and outcomes sought by both parties. The prospective CBG briefed a specialist Trade Practices Act lawyer to help it apply to the ACCC for an independent authorisation. The group also prepared a separate Milk Supply Agreement with Pauls, to operate in accordance with the ACCC authorisation.

The ACCC granted authorisations to Premium Milk in 2001, 2005 and in 2010; the 2010 authorisation (with Parmalat) enables Premium to actively negotiate with the processor until October 2020. In 2011, the major supermarkets cut milk prices, a move that impacted the price setting environment significantly. Negotiations with Parmalat continue.

As part of the Milk Supply Agreement between Premium Milk and Parmalat, the parties each have three members on a Milk Management Committee to undertake all negotiations. On behalf of Premium Milk, Parmalat also collects the CBG's monthly membership fees that fund its activities.

The CBG's total annual income from membership fees is about \$80,000. John says Premium's not-for-profit company structure has worked effectively.

In addition to the Milk Supply Agreement, the CBG's members have individual contracts with Parmalat that guarantee a minimum price for their milk – a key benefit of their collective bargaining agreement. For Parmalat, a key benefit is having contracts that set the daily milk quantities that farmers supply.

The estimated costs in money and time have been considerable: the legal costs associated with the first authorisation in 2000 were about \$30,000, with subsequent authorisations costing less. John cautions that these costs could become significant if tight oversight is not exercised. Premium's directors also did up to 400 hours of voluntary work to secure that initial authorisation, and about 120 hours for subsequent authorisations.

In addition to legal advice, other externally sourced services have included:

- > A part-time secretary and accountant
- > A management consultant with specialist dairy industry knowledge (since 2005)
- > Audit services each year, and
- > Legal advice as required.

Although the Milk Supply Agreement between Parmalat and Premium Milk includes provisions for mediation, this has not been resorted to, even when the vote at Milk Management Committee meetings has sometimes been tied.

Premium has never received any direct financial assistance from government but relies on the indirect assistance afforded by the Queensland Dairy Accounting Scheme figures that it uses in pricing negotiations.

The CBG 'success factors' John cites include: ensuring that your voluntary members are committed to collective bargaining; fostering trust between the negotiating parties; and operating within your given resources.

Maintaining momentum

After a CBG has successfully negotiated a deal with its milk buyer/s, it needs to focus on its future direction and on keeping its members on board. Investing effort in maintaining those relationships is preferable to starting afresh when a contract is due to run out. This may be when a CBG discovers it has no support base because its members lost interest – perhaps due to poor communication or the members' belief that the group no longer represented them.

A CBG should also be assessing how it can build on its collective bargaining and negotiation experience and improve its performance to foster future success – sometimes setbacks deliver the most valuable insights. If the negotiation outcome was unsatisfactory, leaders need to reassure members that a loss in this round could lead to a win in the next, by drawing on that hard-won knowledge.

Next steps

Having read this guide, prospective CBGs can proceed by:

- > Talking to likely CBG members and prospective milk buyers
- > Seeking advice from other CBGs
- > Contacting ADF/ other industry body and ACCC (see 'Resources and contacts', page 20)
- > Getting informed (see Resources and contacts, page 20)
- > Recruiting members (see page 11)
- > Choosing ACCC option: authorisation or notification? (see page 8)
- > Lodging required forms (see Resources and contacts, page 20)
- > Identifying CBG skills/resources (see page 13)
- > Finding expert help (see page 14)
- > Gaining ACCC approvals (*if required* – see 'Resources and contacts', page 20)
- > Starting to negotiate.



Resources and contacts

ACCC contacts

Adjudication Branch – direct inquiries to:

General Manager,
Adjudication Branch Australian Competition and
Consumer Commission

Email: adjudication@accc.gov.au

Telephone: Small Business Helpline 1300 302 021
or you can contact the Adjudication Branch directly on
(02) 6243 1368

**ACCC resources and publications available online
include:**

- > Authorisation Guidelines (2013)
- > What you need to know about: Authorisation (2013)
- > Guide to Collective Bargaining Notification (2011)
- > Streamlined Collective Bargaining Process for Small
Business
- > 'Determination' (4 August 2011) extending the ADF's
10-year authorisation
- > Guidelines for collective bargaining groups formed
under the ACCC authorisation to the Australian Dairy
Farmers Ltd.
- > Other dairy industry authorisations that can offer
guidance

ACCC application forms are at:

www.accc.gov.au/authorisationforms

**ACCC authorisations and notifications are on its
public register at:**

www.accc.gov.au/public-registers

Dispute Resolution Associates

www.disputeresolution.com.au

Produce and Grocery Industry Code of Conduct

www.produceandgrocerycode.com.au

(Note: The Australian Dairy Farmers (ADF) is seeking a legislated mandatory Supermarket Code of Conduct, in response to farmer concerns that the voluntary Produce & Grocery Code of Conduct is weighted too heavily against producer interests. The proposed code includes an ombudsman to ensure compliance. For more information on the proposed mandatory code, contact ADF on 03 8621 4200.)

Legal referral services

(In states where available)

Law Institute of Victoria

[www.liv.asn.au/Referral]

Law Society of NSW

[www.lawsociety.com.au/community/findingalawyer/]

Law Society of South Australia

[http://www.lawsocietysa.asn.au/referral/LSSA_SearchCriteria.asp]

Law Society of Tasmania

[www.taslawsociety.asn.au/web/en/lawsociety/news/pfirms.html]

Dairy industry organisations

Australian Dairy Farmers (ADF)

Senior Policy Manager

www.australiandairyfarmers.com.au

(03) 8621 4200

Dairy Australia

<http://www.dairyaustralia.com.au>

1800 004 377

(03) 9694 3777

UDV/VFF (Victorian Farmers Federation dairy group)

www.vff.org.au

1300 882 833

NSW Farmers Association

<http://www.nswfarmers.org.au>

Head Office: (02) 9478 1000

Member Service Centre: 1300 794 000

emailus@nswfarmers.org.au

NSW Dairy Connect

<http://www.dairyconnect.com.au/>

0418 657 111

South Australian Dairy Association

Unit 5 780- 802 South Rd, Glandore SA 5037

08 8293 2399

Queensland Dairyfarmers Organisation

<http://www.dairypage.com.au>

(07) 3236 2955

Tasmanian Farmers and Graziers Association

<http://www.tfga.com.au>

Phone: (03) 6332 1800

1800 154 111 (within Tasmania)

reception@tfga.com.au

Western Australian Farmers Federation

<http://www.wafarmers.org.au>

(08) 9486 2100

reception@wafarmers.org.au

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