



23 January 2015

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Dear Members of the Senate Education and Employment Committee

Thank you for the opportunity to provide this submission to the Senate Committee in relation to the Fair Work Amendment (Bargaining Processes) Bill 2014, on behalf of the members of the Australian Sugar Milling Council (ASMC).

The Australian Sugar Milling Council (ASMC) is the peak policy body for Australian sugar milling companies, representing over 95% of Australian raw sugar production. Twenty four mills continue to operate in Australia today, and are collectively the largest source of biomass based renewable electricity in Australia. This submission is supported by ASMC's six member companies:

- MSF Sugar
- Isis Central Sugar Mill Company
- Bundaberg Sugar
- Wilmar Sugar
- Mackay Sugar
- Tully Sugar

The Australian Sugar Milling Council (ASMC) is generally supportive of the proposed changes to the FW Act as proposed by this Bill.

Specific comment is made in relation to the proposed amendments as follows:

***1 After subsection 187(1)***

***Insert:***

***Requirement that productivity improvements be discussed during bargaining***

***(1A) If the agreement is not a greenfields agreement, the FWC must be satisfied that, during bargaining for the agreement, improvements to productivity at the workplace were discussed.***



The matter of productivity discussions being mandated in bargaining processes is welcomed by the industry. The ASMC understands, however that the pursuit and realisation of genuine productivity gains remains the responsibility of management.

The determination of ‘sufficient’ meaningful discussions about productivity improvement will be difficult to assess, however, the inclusion is of this requirement is supported by the ASMC.

**2 Subsection 443(1)**

***After “must”, insert “only”.***

This proposed amendment provides more flexibility for the FWC in relation to the Commission approving a protected action ballot and therefore is supported by the ASMC.

**3 After subsection 443(1)**

***Insert:***

***(1A) For the purposes of paragraph (1)(b), the FWC must have regard to all relevant circumstances, including the following matters:***

- (a) the steps taken by each applicant to try to reach an agreement;***
- (b) the extent to which each applicant has communicated its claims in relation to the agreement;***
- (c) whether each applicant has provided a considered response to proposals made by the employer;***
- (d) the extent to which bargaining for the agreement has progressed.***

This proposed amendment provides additional guidance and definition around the requirement to bargain in good faith. As such, the ASMC supports the inclusion of the proposed amendment.

**4 Subsection 443(2)**

***Repeal the subsection, substitute:***

***(2) Despite subsection (1), the FWC must not make a protected action ballot order in relation to a proposed enterprise agreement if it is satisfied that a claim of an applicant or, when taken as a whole, the claims of an applicant:***

- (a) are manifestly excessive, having regard to the conditions at the workplace and the industry in which the employer operates; or***
- (b) would have a significant adverse impact on productivity at the workplace.***



This proposed amendment provides additional guidance and definition in relation to any objection an employer might make about the decision to grant a protected action ballot. The terms 'manifestly excessive' and 'significant adverse effect' are subjective and will require significant detail to satisfy the commission that these conditions exist to the extent where an application for a protected action ballot should not be approved.

The ASMC supports the inclusion of this proposed amendment.

The Australian Sugar Milling Council thanks the Senate Committee once again, for the opportunity to make this submission.

Should you have any further questions or wish to discuss the content of this submission further, please contact Frank Marchetti, Executive Officer - Safety and Workplace Relations on .

Yours sincerely

Dominic V Nolan  
Chief Executive Officer