Submission

to

Senate Employment, Workplace Relations and Education
Legislation Committee

Inquiry into the Workplace Relations Amendment (Agreement Validation) Bill 2004

Submission no: 4

Received: 23/11/04

Submitter: Mr Peter Johnston
Group Executive, Human Resources

Organisation: Suncorp Metway Ltd

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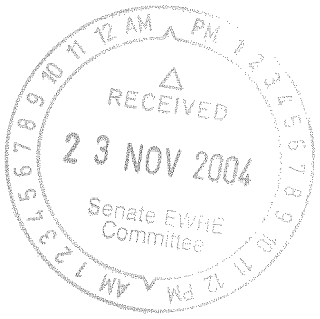

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22 November 2004

Mr John Carter
Committee Secretary
Senate Employment, Workplace Relations and Education Committee
Department of the Senate
Parliament House
Canberra ACT 2600

Fax: 02 6277 5706
Email: john.carter@aph.gov.au

Dear Mr Carter

Re: Extending the Workplace Relations (Agreement Validation) Bill 2004

Suncorp is seeking extension of the Workplace Relations (Agreement Validation) Bill 2004 to cover Agreements negotiated with employees prior to the Electrolux High Court decision and currently awaiting certification by the Australian Industrial Relations Commission.

Suncorp supports the underlying principles of the Bill as they will provide relief to a large number of employers, unions and employees by ensuring the integrity of their collectively negotiated agreements. However the Bill merely seeks to address the integrity of existing Certified Agreements, and fails to address the concerns of many employers and employees who had consulted extensively over Agreements prior to the Electrolux decision. At the time of the High Court decision, Suncorp was in the final 'cooling off' stage of a highly-consultative, six-month process involving 4000 staff across the nation. We had circulated the final iteration of the Agreement to more than 4000 employees by the time the Electrolux decision was handed down. Of those who voted, 87% of Suncorp staff voted in favour of the Agreement.

The Agreement approved by our staff was developed in good faith under the law and prevailing environment of the time ie the final iteration of the Agreement was circulated to all staff on 23 August, 10 days prior to the Electrolux decision.

.../2

If the Bill goes ahead as is, Suncorp and our employees face the prospect of being technically declined certification of our Agreement because of the Electrolux decision. We would therefore be required to conduct a new ballot and as outlined in appendix four, this is a lengthy and resource-intensive process. This will have significant implications in terms of cost, resourcing and importantly, our good working relationships with our people, the staff of a top 25 ASX company and the largest listed company in Queensland.

Certification of the Agreement is critical to the approval of remuneration increases and additional benefits for our staff. They will be significantly disadvantaged by a delay to the certification of their Agreement, as will the organisation. I do not believe the exclusion of the Suncorp Agreement would be consistent with the spirit and intent of the Bill.

I urge the Senate to amend this proposed Bill now so that it will provide certainty and protection for those who have progressed Agreements to the final stages and are awaiting certification. Later amending legislation will arrive too late for us and thousands of our employees.

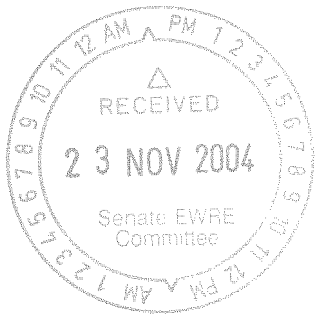
For your consideration, I have attached:

- a proposed amendment to the Bill (refer appendix one) developed by Harmers Workplace Lawyers), which I believe provides a simple solution to this predicament;
- an explanatory letter (refer appendix two) from Harmers Workplace Lawyers;
- legal interpretation of the consequences for Suncorp should our Agreement not be captured under the proposed new legislation (refer appendix three).

I urge your careful consideration of the matter and hope you will move to extend the Bill to afford protection to many thousands of employees who are awaiting certification of their Agreement.

Yours sincerely,

Peter Johnstone
Group Executive, Human Resources



Submission to the Senate Inquiry on the **Workplace Relations Amendment (Agreement Validation) Bill 2004**

Submission by:	Suncorp
Representative:	Group Executive, Human Resources, Peter Johnstone
Submitted:	23 November 2004
Summary:	This submission calls for an extension to the Bill to include Agreements awaiting certification by the Australian Industrial Relations Commission.
Inclusions:	**Summary** of Suncorp Position **Appendix One** – Harmers Workplace Lawyers' Draft Amendment to the Bill **Appendix Two** – explanatory letter from Harmers Workplace Lawyers **Appendix Three**- legal interpretation of the consequences for Suncorp should our Agreement not be captured under the proposed new legislation **Appendix Four** – Suncorp Certified Agreement Process

Summary of Suncorp Position
Amendment to the Workplace Relations Amendment
(Agreement Validation) Bill

1. Suncorp employees developed the Agreement over many months and in good faith under the prevailing law in the previous environment (ie prior to the Electrolux decision). The final iteration of the Agreement was circulated to all staff 10 days prior to the High Court decision.

2. Suncorp instructed workplace relations lawyers, Harmers, to prepare a document outlining the consequences of Suncorp's Agreement being excluded from the Bill introduced on 17 November. That legal advice, attached, clearly demonstrates that Suncorp will face a protracted and costly new Agreement process which has serious consequences for our staff and the organisation. Further to suggestions that Suncorp investigate moving the non-pertaining clauses in our Agreement to a Common Law Memorandum, the attached legal advice also concludes that this will not prevent us having to undertake a new Agreement consultation process.

An amended Bill, covering Agreements negotiated with staff by the time of the Electrolux High Court decision and awaiting certification is the clear solution because:

- Staff and the company developed the Agreement over many months and in good faith under the prevailing law in the previous environment (ie prior to the Electrolux decision);

- The Commission on 26 November may have grounds on the basis of the Electrolux decision not to certify our Agreement (which as you know was developed over six months through more than 1000 staff meetings across the country). This will almost certainly lead to a lengthy hearing and the likelihood of the Agreement being declined on the basis of the technical issues of Electrolux;

- Suncorp will have to re-start the consultation process which involves a minimum of six to eight weeks consultation and then a vote involving more than 4000 people - a massive and costly logistical exercise;

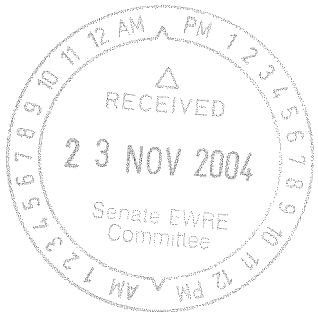
- Staff benefits under the Agreement will be held up through this period, including Christmas; and

- Staff engagement and support for a new Agreement process will be a significant issue.

3. Suncorp commends the introduction of this Bill but seeks the same protection for our process and people as that which has been afforded to others.

4. Pending confirmation of Senate support, Suncorp will make an appropriate Submission to the Commission on 26 November 2004, adjourning our certification hearing until such time as the amending legislation is debated and finalised.

Appendix One – Harmers Workplace Lawyers' Draft Amendment to the Bill



ATTACHMENT 1

WORKPLACE RELATIONS AMENDMENT (AGREEMENT VALIDATION) BILL 2004

A KEY SUGGESTED ADDITION

PROPOSED NEW SUB-SECTION ELEVEN (11) OF S.170LT OF THE WORKPLACE RELATIONS ACT 1996 (Cth)

S.170LT(11) Notwithstanding any other provisions of this Act, if the Commission has grounds to refuse to certify an agreement on the basis that the agreement covers matters which do not pertain to the relationship between employers and employees the Commission may certify the agreement solely in relation to those provisions which do pertain to the relationship between employers and employees if:-

(a) the Commission is satisfied by undertakings under section 170LV that the agreement should be certified; or,

(b) the Commission is satisfied that certifying the agreement is not contrary to the public interest.

[This proposed amendment to the Workplace Relations Act 1996 (Cth) has been drafted absent access to the Workplace Relations Amendment (Agreement Validation) Bill 2004 which has been embargoed prior to its presentation to Parliament.]

[This amendment can operate in relation to all agreements presented for certification, whether before or after the date of the Electrolux decision (2/9/2004) or, alternatively, can operate to save only those agreements which had entered the minimum 14 day pre-approval period under sections 170LJ(3)(a), s.170LK(2), or s.170LR(2)(a) of the Act prior to 2/9/2004.]

Appendix Two – explanatory letter from Harmers Workplace Lawyers

HARMERS
Workplace Lawyers

ATTACHMENT 2

- Industrial Relations
- Employment
- Occupational Health & Safety
- Human Rights & Equal Opportunity
- Change Management
- Legal Risk Management

Our ref: MDH:sk:SydDocs:250557_1.DOC

15 November 2004

PRIVATE AND CONFIDENTIAL

The Hon. Kevin Andrews, MP
Minister for Employment and Workplace Relations
Member for Menzies
Suite MG 48
Parliament House
CANBERRA ACT 2600

By facsimile: 02 6273 4115 and 03 9650 0323 and 03 9848 2741

COPY TO:
Mr Daniel King
Senior Adviser (Workplace Relations)
2nd Floor
4 Treasury Place
MELBOURNE VIC 3000

By facsimile: (03) 9650 0323

By email: kevin.andrews.mp@aph.gov.au

Dear Honourable Kevin Andrews MP,

WORKPLACE RELATIONS AMENDMENT (AGREEMENT VALIDATION) BILL 2004

URGENT NECESSITY FOR AMENDMENT TO THE PROPOSED BILL

Highly commendable reform

1 We write in relation to the extremely important legislation which is to be introduced into Federal Parliament this week with the aim of removing the considerable uncertainty in the Australian industrial relations system arising from the decision of the High Court of Australia in *Electrolux Home Products Pty Ltd v Australian Workers' Union and Others* (2004) 209 ALR 116 (**"Electrolux"**).

2 The introduction of such legislation on an urgent basis is to be commended as it will provide relief to a large number of employers, unions and employees by ensuring the integrity of their collectively negotiated agreements.

A key omission from the Amending Bill

3 The terms of the proposed amending Bill are currently the subject of an embargo. We understand, however, that the Bill will merely seek to address the integrity of Certified Agreements in place as at 2 September 2004 (the date of the High Court's decision) which may otherwise be invalid as a result of the Electrolux decision.

4 The amending Bill carries with it an extremely important omission which will preclude similar certainty and lack of extreme inconvenience being extended to a large number of employers, unions and employees who require relief.

5 Under the provisions of the *Workplace Relations Act* 1996 (Cth) employers, unions and employees engage in extensive consultation processes in the preparation of a Certified Agreement. The Act thereafter requires that a copy of the proposed Certified Agreement, whether being progressed under Division 2 or Division 3 of Part VIB of the Act, be made readily available to every employee who will be subject to its scope, at least 14 days prior to the making of the agreement via a vote or otherwise.

6 **The current amending Bill fails to address the many employers and employees who had consulted extensively over a proposed Certified Agreement prior to the Electrolux decision to the point where a copy of the proposed agreement had been circulated as part of the lead up to a vote.** Employers, unions and employees with such agreements in train face the prospect of being technically declined certification of the agreement under the Electrolux decision and the necessity to conduct a fresh ballot. **This will involve extensive inconvenience and uncertainty for many thousands of employees across the country.**

An omission relevant to many thousands of employees

7 Harmers Workplace Lawyers is the largest legal firm in Australia focusing solely upon legal issues involved in workplace relations.

8 The firm acts for a large number of employers, including 15 of the largest 100 employers in the country, and also, subject to conflict issues, for a large number of employees and their representative organisations (including some of Australia's largest unions in both inter and intra union disputes).

9 We as a firm have a large number of clients impacted by the uncertainty introduced by the Electrolux decision.

A prime example

10 We draw particular attention to but **one example** whereby a top 50 listed company in Australia has been progressing for many months of this year a proposed Certified Agreement extending to part of its business and covering in excess of **4,000 employees**.

11 At the time that the Electrolux decision was handed down, this particular employer had completed a quality consultation process with its workforce and had circulated access to the proposed certified agreement to the in excess of 4,000 employees.

12 Certification of the agreement under the Act is the prerequisite for the in excess of 4,000 employees to receive remuneration increases and additional benefits under the Act. Certification may however be refused on the basis of the Electrolux decision in that the proposed agreement contains a number of beneficial provisions in relation to staff access to products and to benefits relating to family members which may run contrary to the line adopted by the High Court of Australia in the Electrolux decision.

13 The employer and in excess of 4,000 employees subject to this one example are just as inconvenienced by the impact of the Electrolux decision as many employers and employees with existing agreements in place. Refusal of certification will require that a further consultation process be engaged in and an additional extensive and expensive vote undertaken by employees who have already approved the agreement in question.

14 **It will be a travesty if the many thousands of employees, their representative organisations, and their employers, who face similar circumstances, cannot attain relief through the amending Bill before Parliament this week. The amending Bill should provide certainty and protection not only to those with existing Certified Agreements in place, but also to those who have properly progressed agreements to the final stages of certification under the Act.**

A need for reform now

15 Those with agreements in train will face the detriment of the uncertainty introduced by the Electrolux decision in the coming months. **Any later amending legislation will arrive too late** to be of assistance to the many thousands of employees in this category.

16 The uncertainty introduced by the Electrolux decision does of course continue to impact even negotiations now taking place in light of that decision – with considerable disparity of views by members of the Australian Industrial Relations Commission in their attempts to implement the Electrolux decision.

A proposed additional amendment attached

17 In the circumstances, the attached amending provisions are commended for your consideration for inclusion in the Bill before Parliament this week.

18 It is requested that you give strong consideration to extending the protection of such an enlightened amending Bill to many thousands of employees who should not suffer any more detriment than those who currently have Certified Agreements in place.

19 The amending provisions can be readily extended to all Certified Agreements coming before the Commission for certification at any time subsequent to the date of the Electrolux decision – a more limited amendment, which would protect only those who had progressed agreements under the Act at the time of the Electrolux decision, would limit the altered provisions to those employers, unions and employees who had already reached the point of issuing an agreement in accordance with the 14 day requirements under the legislation as part of the lead up to a vote.

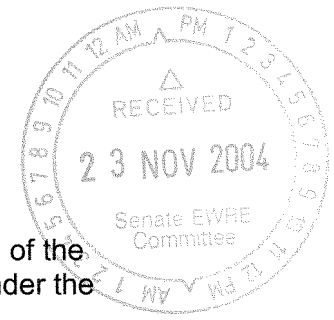
20 **Your favourable consideration of this additional proposed amendment will benefit many thousands of employees across the country, who will otherwise face inconvenience and delay in the receipt of remuneration and benefit increases under proposed certified agreements. It will also assist a large number of employers and unions.**

21 Thank you in anticipation of your co-operation and assistance in this matter.

Yours faithfully
HARMERS WORKPLACE LAWYERS

Michael Harmer
Managing Partner

Encl.



Appendix Three – Harmers Workplace Lawyers' legal interpretation of the consequences for Suncorp should our Agreement not be captured under the proposed new legislation

HARMERS
Workplace Lawyers

- Industrial Relations
- Employment
- Occupational Health & Safety
- Human Rights & Equal Opportunity
- Change Management
- Legal Risk Management

DISCUSSION DRAFT

Our Ref: MDH:cp:20041459:SydDocs:251143_3.DOC

18 November 2004

PRIVATE & CONFIDENTIAL

Mr John Mulcahy
Chief Executive Officer
Suncorp
Suncorp Centre
36 Wickham Terrace
BRISBANE QLD 4000

Dear John

Re: Workplace Relations Amendment (Agreement Validation) Bill 2004

We refer to recent correspondence in which we have asked for consideration for an extension of the above Bill to cover agreements that were in train at the date of the High Court decision in *Electrolux Home Products Pty Ltd v Australian Workers' Union* (2004) 209 ALR 116.

You have asked about the process which would need to be followed if a Member of the Australian Industrial Relations Commission ("AIRC") were to decide that Suncorp's enterprise agreement could not be certified because one or more clauses did not meet the tests set out by the High Court in the decision in the *Electrolux* case. We set out a brief description of this process.

The process was described in a decision of Vice President Ross in *KL Ballantyne and National Union of Workers (Laverton Site) Agreement 2004* on 22 October 2004 (PR952656). His Honour held that if an agreement requires amendment because it was affected by the *Electrolux* decision, it would be necessary to again comply with subsections 170LJ(2) and (3) of the *Workplace Relations Act 1996*. In coming to that decision, his Honour followed two Full Bench decisions of the AIRC, *Re Atlas Steels Metals Distribution Certified Agreement 2001-2003* ((2002) 114 IR 62) and *Re Independent Supermarkets Certified Agreement 2002* (25 September 2002, Guidice P, McCarthy DP and Gay C, PR922821).

The AIRC in *KL Ballantyne* expressly rejected suggestions that something less than proper approval would suffice. The Vice President stated (at paragraph [264]):

> What is required is that the relevant employees genuinely consent to the changes made. That is, the amendments are affirmatively approved by a valid majority not merely that a majority of employees have not expressed their objection to the proposed amendments.

The relevant clauses of the section of the Act to which the Vice President refers (sections 170LJ(2) and (3)) read as follows:

> (2) The agreement must be approved by a valid majority of the persons employed at the time whose employment will be subject to the agreement.
>
> (3) The employer must take reasonable steps to ensure that:
>
> (a) at least 14 days before any approval is given, all the persons either have, or have ready access to, the agreement, in writing; and
>
> (b) before any approval is given, the terms of the agreement are explained to all the persons.

Those provisions correspond to s170LK(1) and (2) of the Act which will apply to the s170LK agreement sought by Suncorp and its staff.

Accordingly, you can see that Suncorp, after extensive consultation and meetings with its in excess of four thousand staff (involving in excess of one thousand face to face meetings) would need to not just amend the Agreement, but would also need to:

1 give all its staff a copy of, or ready access to, a copy of the Agreement "in writing";

2 ensure that the terms of the Agreement are explained by Suncorp to all its employees;

3 wait at least fourteen days from the circulation of the Agreement;

4 after that period of time has elapsed, seek approval (usually by way of secret ballot) of a "valid majority" of the persons employed by Suncorp at the time who will be covered by the Agreement;

5 come back to a formal hearing of the AIRC for approval of the amended Agreement.

Given the number of employees and the large number of sites from which Suncorp conducts its business, this process will be a major logistical exercise both for Suncorp as an employer and for its staff, who have participated in an extensive process leading to the formation of the Agreement..

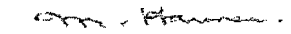
We understand that it has been suggested that Suncorp proceed by placing the *Electrolux*-impacted clauses into a common law agreement. Such a process would not avoid the necessity for the residual certified agreement to undergo the extensive steps outlined above. We further understand that an additional suggested alternative is that Suncorp merely proceed on the basis of a common law arrangement dealing with the entire Agreement. Obviously such an arrangement would not have the benefit of any of the provisions of the Act, relating to

enforcement or otherwise, leaving Suncorp exposed to union claims and protected industrial action which would be available under the Act in the absence of a formal certified agreement.

In the circumstances, it can be seen that absent the requested amendment to the Act, Suncorp and its employees, who were in the final stages of progressing their Agreement in accordance with the requirements of the Act at the time of the High Court's decision in *Electrolux*, will be adversely impacted. The amendment requested is not only desirable, but essential to ensure ongoing industrial stability.

Please do not hesitate to contact us in the event you wish to further discuss any aspect of this issue.

Yours faithfully
HARMERS WORKPLACE LAWYERS
Per:



Michael Harmer

Partner

Appendix Four - Certified Agreement Development Process

Suncorp first commenced the consultation and information procedure for the 2004 Certified Agreement on 5 May 2004. The Agreement was developed using a structure unique to Suncorp, ensuring comprehensive and objective consultation by employee representatives. These employee representatives formed an Agreement Development Team ('ADT') and a Communications Team ('CT') to collect feedback on existing Agreements, to consult on the development of the new Agreement and to communicate with the broader group of affected employees. A Steering Committee and an Agreement Advisory Team ('AAT) were also established to assist the employee representatives in their roles.

All employees were invited to nominate themselves or a colleague for a position on the ADT or CT using a nomination form. This email informed the employees that a new single certified agreement was being developed and that there would be an extensive consultation process. The ADT and CT members were then selected, following an application and interview process, on 13 May 2004.

Once the positions on the ADT and CT were filled the team members were provided with training to equip them with the skills required to perform their role. This was achieved by holding a 5 day conference with the ADT and CT as well as legal and other Facilitators.

In total, three rounds of information and consultation sessions were conducted with more than 4,000 employees across Australia.

The first round, which was purely an exercise of gathering employee feedback on the existing agreements, consisted of 388 sessions and 2180 employees being met with and consulted.

The second round, during which the CT and ADT conducted information sessions on the draft agreement, consisted of 436 sessions and 3,150 employees being consulted.

The third round, which involved explaining the final agreement upon which employees were asked to vote, consisted of 451 sessions and 3,157 employees again being consulted face-to-face.

In addition to the information and consultation sessions the CT sought and obtained feedback from employees using, feedback forms and a central email inbox. A specifically dedicated intranet home-page was also created and used by the CT to give and receive communications about the proposed Agreement.

The first round of information sessions took place between 7 June 2004 and 21 June 2004 and feedback was then collated through the CT.

Taking into account the feedback that had been received from the employees, the ADT then developed a first draft of the Agreement during the first' lock-up'

phase over the period from 28 June 2004 to 9 July 2004 inclusive. The development of the Agreement was facilitated by Helen Davis of McCullough Robertson Lawyers and members of the AAT.

After this first 'lock-up' period, a draft of the Agreement was produced.

Between 12 July 2004 and 16 July 2004 a pack containing the first draft of the Agreement was distributed to all employees and sent by mail to those not at work at that time. The pack, including the draft Agreement was also posted on the Intranet on 19 July 2004. The pack also contained a letter from Human Resources, a message from the ADT about the process, a key points document summarising the major changes from the existing agreement to the first draft, a question and answers document, a feedback questionnaire and a contact list for the members of the CT to contact with any queries.

The second round of employee consultation then took place between 19 July 2004 and 30 July 2004. All employees were invited to attend information and consultation sessions conducted by the CT and attended by at least 1 ADT member. The purpose of these sessions was to clarify the major provisions of the first draft of the Agreement, to explain how the first draft was developed and how employee feedback was used. The CT developed a number of powerpoint presentations which were presented at the information sessions and were also posted on the Intranet for anyone who was not able to attend an information session. Employees were invited to provide their feedback on the first draft at the sessions or to submit written feedback using the form provided in the first pack and on the Intranet or by email to the CT.

After the second phase of the consultation sessions, the ADT considered the further feedback received from employees, Leaders and third parties and made a number of changes to the first draft to develop a further draft of the proposed Agreement. A second 'lock-up' phase was then entered into between 5 August 2004 and 19 August 2004. During this second 'lock-up' period the ADT sought to refine, amend and update the proposed Agreement taking into account further employee feedback and other factors.

On 23 August 2004, a further pack was distributed to each employee via mail containing a copy of the proposed (amended) Agreement. The pack was also posted on the Intranet on 23 August 2004. The pack contained: a notice in accordance with section 170LK of the Company's intention to make a certified agreement; a message from John Mulcahy, the Chief Executive Officer, a message from the ADT; a table of proposed changes (between the first and second drafts); a key points on remuneration document; a questions and answers document; a copy of the final proposed Agreement; and a message from Secure Vote about the voting process. Employees absent from work at that time were sent a pack by mail. All Leaders also received a pack at the same time as the employees to be covered by the proposed Agreement.

The CT and ADT then conducted a third series of information sessions with employees across Australia between 6-30 September 2004 to explain the terms of the proposed Agreement and to answer further questions. At some of these information sessions a member of the Human Resources Group attended to

assist with any complex questions relating to remuneration and the performance pay scheme. Employees also asked questions of the CT by email.

Suncorp's Friday News Bulletins also included information about the consultation process, the proposed Agreement and communications from the CT encouraging employees to attend information sessions and to exercise their right to vote. Bulletins containing information about the Agreement were issued on 3 September 2004, 6-7 September 2004, 10 September 2004, 17 September 2004, 24 September 2004, 1 October 2004, 7-8 October 2004, 8 October 2004 and 11-13 October 2004.

A secret ballot was then conducted from 9:00am EST, 1 October 2004 to 5:00pm EST, 13 October 2004 by a combination of Internet, telephone and postal voting. This was managed by an external company called Secure Vote Pty Ltd who is an independent, impartial, specialist company providing ballot and election services.

Of the 4,162 employees eligible to vote, 2,751 (66%) employees voted. 2,410 (58% of total eligible voters, and 88% of those who actually did vote) voted in favour of accepting the new Agreement. 341 (8% of total eligible voters and 12% of all those who actually did vote), voted against the new Agreement.