

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.]

- 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

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Minister for Employment and Workplace Relations
Member for Menzies
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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**").

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- 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

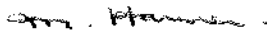
- 17 In the circumstances, the attached amending provisions are commended for your consideration for inclusion in the Bill before Parliament this week.
- 18 It is requested that you give strong consideration to extending the protection of such an enlightened amending Bill to many thousands of employees 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.