
12 November 2003

**Office of the Company Secretary**

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Dr Kathleen Dermody
Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Room SG.64 Parliament House
Canberra ACT 2600

**Email:** corporations.joint@aph.gov.au

Dear Dr Dermody

We refer to your letter to Dr Zygmunt Switkowski of 13 October 2003 inviting submissions on the draft CLERP 9 Bill. We attach for your information a copy of Telstra's submission to the Department of Treasury in relation to CLERP 9.

Thank you for your invitation, but Telstra does not intend to prepare a separate submission to the Joint Committee. We hope you find our general comments on the CLERP 9 Bill useful.

Yours sincerely

**Douglas Gration**
Company Secretary

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Telstra

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The General Manager
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Dear Sir/ Madam

**Submission on CLERP 9 (Audit Reform and Corporate Disclosure) Bill**

Telstra appreciates the opportunity to comment on the draft Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill (**"CLERP 9"**).

Telstra supports the enhanced corporate governance initiatives in CLERP 9 and the Government's stated underlying objective of the draft Bill - to improve the operation of the market by promoting transparency, accountability and shareholder rights.

In particular, Telstra makes the following comments:

**Continuous Disclosure – Infringement Notices**

Telstra strongly supports compliance by all listed companies with their continuous disclosure obligations. However, the concept of an on-the-spot fine/infringement notice issued by ASIC (which is not subject to review) for breaches of the continuous disclosure regime does not seem to be appropriate and raises some practical issues. In our view, infringement notices are more appropriate for relatively minor breaches of the Corporations Act that relate to factual issues which do not need to be adjudicated on the merits through the courts. In most cases decisions as to whether to make disclosures are not 'black and white' and involve assessing a number of complex factors and making difficult judgments, in many cases within a short timeframe and pressured commercial environment. For example, under Listing Rule 3.1A in determining whether the exception to disclosure applies, a decision needs to be made:

a) whether a "reasonable person would not expect the information to be disclosed";

b) the information "concerns an incomplete proposal or negotiation";

c) the information is "insufficiently definite to warrant disclosure".

Under the proposal, ASIC can issue an infringement notice if it has reasonable grounds to believe that a contravention of the relevant provisions have occurred – yet, reasonable people may differ in good faith as to whether or not a breach has occurred.

Whilst the proposal requires ASIC to provide the company with (i) its written reasons for proposing to impose a penalty before actually doing so, and (ii) an opportunity to appear at a private hearing before ASIC to give evidence and make submissions, the following should also be considered:

a) there is no express provision for a due diligence defence. In our view, given the process generally involved in making a decision to disclose, as described above, this defence should be open in relation to all continuous disclosure breaches.

b) it is not clear whether the persons investigating the alleged breaches will be the same persons participating at the private hearing before ASIC and making the final decision to issue the infringement notice. In Telstra's view, natural justice would dictate that the final decision makers be separate from the investigatory team.

In our view, Australia's existing continuous disclosure regime operates well. There is no evidence of non-compliance with the existing enforcement framework that requires an additional provision for the imposition of infringement notices.

**Remuneration of Directors and Executives Shareholder approval of the Remuneration Report**

Telstra supports the proposal to disclose to shareholders at the AGM the details of directors' and executives' salaries and bonuses in a separate and clearly identified remuneration report included in the directors' report. Telstra agrees that it is important to improve transparency and accountability of directors of public listed companies for decisions regarding director and executive remuneration. It is also important and appropriate that adequate opportunities be provided to shareholders to be actively involved in debate and discussion of the policies applied by a Board in determining remuneration levels.

However Telstra does not support the proposal that the remuneration report be put to shareholders for advisory approval in the form of a non-binding resolution at each AGM. The concept of a non-binding resolution seems to be a hybrid that is unlikely to achieve a practical benefit for either the company or shareholders. A majority vote against the report will not bind the directors and cannot override legally binding contracts entered into with directors and executives. The non-binding nature of the shareholder approval means that a majority vote against the report will not prevent the directors from implementing the proposed remuneration policy.

Given the range of material covered by the remuneration report it is not possible to determine which particular aspect of the report the shareholders are voting against. Where companies seek to vary their remuneration policies as a result of a shareholders' vote it will be difficult for them to determine the appropriate changes since the vote relates to the remuneration report as a whole.

In Telstra's view, there is already a reasonable opportunity for shareholders to ask questions about remuneration and all other aspects of management of the company at the AGM. The solution may be to provide for a compulsory agenda item at AGMs for shareholders to discuss and express opinions on the remuneration report in the same way that the overall financial reports are currently dealt with at AGMs.

We also suggest that the proposal make it clear that the vote binds neither the company nor its directors. The current drafting refers only to the directors.

**Disclosure of Remuneration in Relation to the Five Most Highly Remunerated Senior Managers and all Directors**

The CLERP 9 draft legislation retains the existing requirement for the disclosure of remuneration in relation to the five most highly remunerated senior managers and all directors of the listed company and extends the disclosures to include the top five senior managers in the consolidated entity. Remuneration to be disclosed will be prescribed in regulations.

As stated above, Telstra supports the principle of disclosure of remuneration of senior managers. However, we believe that guidance on matters of measurement and financial disclosure in relation to directors' and executives' remuneration should be dealt with in an appropriate accounting standard and administered by the accounting standard setting body.

It is confusing where there are differences between the scope and detail of disclosures and the basis of measurement required in the directors' report and those made in compliance with accounting standards.

We understand that at its October meeting the Australian Accounting Standards Board agreed to progress as a priority the issue of an Australian accounting standard covering executives' and directors' remuneration.

**Operating & Financial Review**

Telstra supports the proposal to require an operating and financial review (OFR) by listed entities. However, we believe that as an OFR is now required by the ASX Listing Rules inclusion of the requirement in the Corporations Act involves some duplication. It will be necessary to ensure that the requirements are consistent. Telstra believes that the legislation should require that the OFR be presented in the annual report but not necessarily specify that it is part of the directors' report which already contains a range of other disclosures.

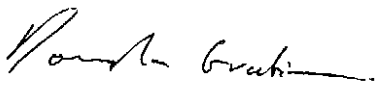
**Financial Reporting Council (FRC)**

Telstra supports the extension of the FRC's role. Telstra believes that it should also be responsible for the Financial Reporting Panel (FRP). Given the increased responsibilities of the FRC, its size, composition and qualifications for membership must be reviewed. The FRC should be independent and its membership should continue to comprise independent and eminent persons, appointed in their own right not having ties with professional organisations or lobby groups. As such, a mix of business and professional people and those from broader disciplines concerned with the public interest would be appropriate.

**Financial Reporting Panel**

Telstra supports the establishment of a FRP to deal with issues between the regulator and a company, including its auditors. Telstra also believes that the FRP could perform an important role by providing guidance on company-specific issues with potential regulatory consequences before a company determines its accounting policy. However, this power to refer items to the FRP should not be limited to ASIC - companies or other parties may also wish to refer items to the FRP.

Yours sincerely



**Douglas Gration**
Company Secretary

cc. Dr Kathleen Dermody, Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services