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

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Dear Committee Secretary

Telstra appreciates the opportunity to make the following submission to the Senate Employment, Workplace Relations and Education Committee inquiry into proposed changes to the Workplace Relations Act 1996, commonly referred to as the "fairness test" legislation. Telstra also appreciates that this submission is made after the 4 June due date, but trust that it can be properly taken into account by the Committee.

In making this submission, Telstra notes and generally endorses the principles outlined in the Australian Industry Group's submission to the Committee. Telstra's submission focuses on issues of particular relevance to Telstra.

Executive Summary

Telstra supports the introduction of a stronger safety net for working Australians, but we have a number of practical concerns about the draft legislation in its current form:

- Telstra's remuneration arrangements generally provide for fixed remuneration within an AWA, and incentive remuneration outside the AWA payable pursuant to Telstra policy. Under the draft legislation, this incentive remuneration will not be taken into account by the Workplace Authority Director in conducting the fairness test. Telstra submits that the fairness test should provide for the consideration of all monetary compensation received by an employee, not just remuneration within the terms of the AWA itself. This would be more consistent with the diverse approach that many contemporary employers take to rewarding employees.
- Telstra submits that the fairness test should be assessed by reference to industry awards and not enterprise awards. Telstra enterprise awards have had little application to wage structures within the company for many years. Further, and more significantly, these enterprise awards result in direct competitive disadvantage to Telstra across virtually all parts of our business.
- Telstra submits that an employer should be entitled to make an undertaking to the Workplace Authority Director at the time an AWA is lodged, or at least prior to any assessment against the fairness test (if, for example, the Workplace Authority Director expresses a concern that an AWA will not pass the test).

Background

Telstra is one of Australia's largest employers. We have more AWAs in place than any other employer (over 18,000 AWA employees) and have been using AWAs for approximately 10 years.

In many parts of our business, AWAs are the primary employment instrument in operation. For example, in Telstra Country Wide (which services regional Australia) all employees are on AWAs (or common law contracts for Telstra senior managers). Telstra Country Wide employees are also expressly excluded from the operation of Telstra's collective workplace agreements.

Telstra AWAs are structured to ensure that employees are properly rewarded for their performance. In general terms, Telstra AWAs provide for fixed remuneration and variable (or at-risk/incentive) remuneration. Telstra's fixed remuneration is a base salary, which is generally close to the relevant rate under the Australian Pay and Classification Scales, together with employer superannuation contributions. All employees are entitled to fixed remuneration under their AWA.

Variable/incentive remuneration is a payment under an incentive plan that rewards an employee based on their performance. Almost 70% of Telstra's AWAs incorporate variable/incentive remuneration. These incentive payments support Telstra's customer focus by linking a substantial part of an employees' pay to individual performance including customer service.

Narrow fairness test and application to Telstra's incentive arrangements

Variable/incentive remuneration *does not* form part of Telstra's AWA. There is a good reason for this. Telstra changes incentive plans annually to reflect business goals to which it wants to link performance in the coming year. Further, incentive plans in some parts of our business (e.g., Telstra call centres) are amended from time-to-time to allow us to focus on particular product initiatives (e.g., new Telstra BigPond customers or Telstra 3G Network mobile phone sales), with employees remunerated under Telstra policy based on achievement against incentive plan targets.

That said, incentive plan arrangements form a real and substantive part of our employee's remuneration. For example, in Telstra's field workforce, fixed remuneration in a recent AWA was set at \$46,000. However, the mean annualised salary of employees participating in this scheme was over \$84,000, attributable to their achievement of productivity targets under the relevant incentive plan. This can be favourably contrasted with the Telstra Enterprise Agreement applicable rate of pay (\$51,241/year).

By way of further example, Telstra employs over 2,000 Inbound Sales Consultants on AWAs. Typically, a Telstra Inbound Sales Consultant engaged on an AWA who achieves their 'on target' performance would receive \$45,000 per annum, made up of fixed remuneration of \$37,500 and an incentive payment of \$7,500. Additional incentive payments are payable to employees who exceed performance targets. Telstra estimates that under the relevant award, the same Sales Consultant may earn between \$35,000 - \$42,000 (including protected conditions), depending on the Workplace Authority Director's determination of the appropriate award and award classification. This is some \$3,000-\$10,000 less than they would earn under the AWA.

In both cases, Telstra's employees are clearly fairly compensated for any modified or excluded protected award conditions. However, the fairness test in its current form will only take into account the monetary and non-monetary compensation **under the AWA**. Telstra's incentive arrangements – although a real and substantial part of many AWA employees' income – will not be taken into account.

Telstra submits that the fairness test should allow for the consideration of all monetary compensation, including incentive remuneration outside of the AWA. A narrow test that operates on the basis of guaranteed monetary and non-monetary compensation under the terms of the AWA itself, without consideration of payments made by way of policy, may mean that some AWAs do not meet the new Fairness Test. As the examples above illustrate, this is not because Telstra's AWA employees are disadvantaged by comparison to what they would

otherwise be entitled to be paid under a relevant award. It is simply that we structure our remuneration arrangements in a particular way - fixed remuneration in the AWA and incentive payments outside the AWA.

In Telstra's view, the situation is not readily rectified by incorporation of incentive arrangements within the AWA itself. If an incentive plan were part of the AWA, it is likely that Telstra would have to vary each AWA every time the plan was varied (i.e., at least annually). This would require each of the 18,000 employees engaged on the AWA to agree to the variation and for Telstra to lodge the relevant variation documentation with the Workplace Authority. Further, and perhaps more significantly, if Telstra was required to increase fixed/guaranteed remuneration within the AWA itself (and correspondingly reduce incentive payments under policy so as to not increase overall costs), this would reduce our ability to reward employees for high productivity and excellent performance, a key feature of Telstra's AWA model.

Enterprise Awards

The proposed legislation requires the Workplace Authority to undertake the fairness test by reference to Telstra enterprise awards. These awards have had little or no practical application to employee salaries at Telstra for many years and, in essence, are a product of Telstra's public sector origins.

These Telstra enterprise awards do not apply to our competitors. They require Telstra to apply historical (and until now irrelevant) standards that result in a direct competitive disadvantage. Indeed, subject to the Workplace Authority Director's confirmation, Telstra estimates that hourly rates of pay under Telstra enterprise awards (in many parts of our business) are in the order of 20% higher than comparable hourly rates that are likely to apply to our competitors. In Telstra's view, this would be unfair.

Telstra submits that the Workplace Authority should designate an award for the purposes of the fairness test by reference to an appropriate industry award - not enterprise award. This will ensure that competing businesses in the same industry are not bound by different minimum salary standards. In Telstra's submission, this is of particular significance in circumstances where there has been limited progress by the Award Review Taskforce in relation to the simplification and rationalisation of awards.

Undertakings

The above issues could be partially resolved through an effective undertaking mechanism. For example, Telstra might undertake that an employee's actual total pay over any 12 month period would exceed what they would earn under the award, and to make up any difference to the employee if it did not. The figures cited above in relation to salary arrangements under our AWAs demonstrate that Telstra could give such an undertaking, and that the Workplace Authority Director could be satisfied that these arrangements fairly compensate employees.

While Telstra appreciates the ability to give undertakings set out in the draft legislation, they can only be given *after* an AWA has failed the fairness test and an employee will be entitled to compensation in the period between lodging the agreement and the undertaking being given.

Telstra submits that amendments should be made to the proposed legislation that enable the Workplace Authority Director to accept written undertakings from an employer *prior* to any fairness test assessment. The provision would be similar to section 170VPB(2) of the Workplace Relations Act 1996 (prior to the March 2006 reforms). That provided that if the Employment Advocate had concerns about whether an AWA passed the no-disadvantage test, but those concerns were resolved by a written undertaking given by the employer, the Employment Advocate was required to approve the AWA.

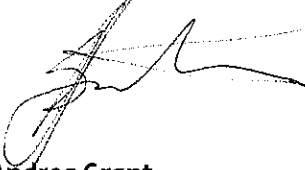
Telstra submits that a similar provision that allowed undertakings to be given either at the time of lodgement, or if the Workplace Authority Director raised a concern, prior to the fairness test assessment taking place should be included in the proposed legislation.

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In summary, Telstra's current remuneration arrangements fairly compensate employees for any modified or excluded protected award conditions. Telstra would like to support the legislation, and supports the introduction of a stronger safety net for working Australians, but we have real practical difficulties with it in its current form.

Telstra is happy to expand upon any of the above matters with the Committee. Darren Fewster, Director Workplace Relations and People Services (03 9634 2967), is available to assist the Committee with its consideration of this legislation.

Yours sincerely



per **Andrea Grant**
Group Managing Director, Human Resources
Telstra Corporation