Productivity Commission
National Compensation / OHS Frameworks
Telstra Corporation Limited Submission

Background

1. The safety of employees is an increasingly important societal expectation in Australia. Company Directors, managers, employees, staff associations and the public expect that during the course of employment, employees will not be injured. Where injuries do occur, the expectation is that the injured are rehabilitated, compensated appropriately and the cause of the injury is prevented from reoccurring.

2. Employers also realise that there are moral, productivity, and efficiency gains to be made in preventing injury and having a system of rehabilitation and compensation that is efficient and effective.

Telstra Corporation Limited

3. Telstra Corporation Limited is one of Australia's largest and best known companies, being 50.1% owned by the Commonwealth and employing approximately 43,000 staff (full time staff and equivalents).

4. Telstra operates in all States and Territories within Australia with occupational health and safety coverage under the Commonwealth *Occupational Health and Safety (Commonwealth Employment) Act 1991*(OHS [CE] Act) and as a self-insurer for workers' compensation under the Commonwealth *Safety, Rehabilitation and Compensation Act 1988* (SRC Act). The management of workers' compensation claims has been outsourced to a third party.

National Uniformity

5. Telstra is strongly of the view that because it has staff in each State and Territory it is critically important that Telstra have uniformity of OHS and workers' compensation legislation and regulation.

6. For employers with staff in a number of States and Territories, the lack of consistency in the various State jurisdictions results in duplication of costs, wasted resources, difficulties in benchmarking and an unnecessary financial burden to these employers and the community. Judging by the lack of reduction in injuries and compensation costs across the jurisdictions over recent years these difficulties are being encountered for little gain.

7. The Telstra experience supports the findings of other companies, as detailed in the attached claims and OHS comparisons (refer Attachments 1 and 2), that for companies operating across State boundaries, being subject to the provisions of separate State OHS and workers' compensation arrangements is less efficient than a nationally uniform system.

Some of the specific examples of difficulties that may arise for Telstra operating OH&S and workers' compensation under eight separate arrangements are:

8. The SRC Act provides for centralisation of strategies by allowing Telstra to self-insure its workers' compensation liabilities. In addition the Act allows Telstra to outsource the claims management function to a third party. While self insurance is an option in State and Territory jurisdictions in various formats, there are limitations on outsourcing the claims management function to a third party in every State or Territory.

9. Each jurisdiction has differing requirements, regulating the way return to work providers must operate, leading to confusion regarding differing forms, procedures and medical providers' understanding (particularly of SRC Act requirements).

10. In the area of OHS, the adoption of slightly different definitions for 'hazards' results in inconsistency, duplication and cost, without reducing the risk of injury.

11. Entry into confined spaces is just one example of this. Each jurisdiction has adopted a Confined Spaces definition based on the Australian Standard 2865 - 1995. However, a number of jurisdictions have modified the definition and the supporting documentation in their regulations. Telstra has developed its process to comply with the Commonwealth requirements. However Telstra contractors who enter Telstra sites have to comply with each of the State or Territory requirements. In some States, Telstra pits which are small and cannot be physically entered may require confined spaces entry procedures to be applied.

12. A further consideration is that for those States that allow self-insurers to outsource claims management, there is a shortfall in the number of national claims managers who are accredited in each State / Territory jurisdiction. As a result a national company would be required to have different claims managers in various States.

13. For some time the current failings have been recognised. Together with the outcomes of committees and inquiries at various levels, attempts have been made to improve matters by the establishment of consistent national legislation, developing mutual acceptance of the need for continuous improvement.

14. While the need for improvement seems to be accepted, the operational impediments to improvement are still substantial. Legislation which seeks to encourage improvements at the operational level needs to be practical and cost effective.

15. The inefficiencies are not solely the product of legislation. The adoption of different practices within the framework of legislation is also a major cause of inefficiency. In the main these differing practices arise due to emphasis placed by the regulator on specific agenda items. It is not uncommon for a local regulator to issue a requirement through policy or licence condition to achieve its own interpretation of the intent of the legislation.

16. Ultimately, the most appropriate manner to achieve efficiencies is to have a single national central regulator or regulatory environment. The current situation of differing state legislation and regulation is at odds with the process applied in areas of immigration, customs, work place relations for people subject to Federal awards and individual

workplace agreements, family law and the Corporations Act, where centralisation has been one of the cornerstones of success.

17. The existing Comcare regulated environment would be an effective model but is also in need of review and improvement. More detailed commentary of this is included in Attachment 3.

National / State implications for Telstra

18. The benefits to Telstra of a national uniform approach to OHS and workers' compensation are many.

19. Having one safety regime ensures that accountabilities and work practices do not change irrespective of where employees work within Australia. One set of workers' compensation obligations allows for ease of understanding, equity and consistency of benefits, ie one definition of "employee" and "injury / disease".

20. For the employer, one set of training, as distinct from eight (for each State and Territory), one set of rules to administer, a single regulator to deal with and the ability to consult at a national level, allows it to operate as a truly national company.

21. Economies of scale in the number of resources and costs required to administer against one jurisdiction, ie in the areas of reporting, auditing, safety activity, claims management services and licensing and prudential costs, provide for speedier implementation of initiatives throughout the organisation and continuous improvement of safe work practices.

22. There are efficiencies with across border issues such as easier staff movement between states when required during peak workloads, eg. the Sydney Olympics (2000) and Canberra bush fire emergency (2003), without any variation to staff incident notification requirements, inductions, training and benefits. Overall for the employer there is more chance of safety being a success within the company, ie reduction in number of lost time injuries.

23. Reduced administrative and regulatory costs result in maintaining lower costs to customers, while for shareholders there is reduced administrative and regulatory costs for the same benefits.

24. Should Telstra be required to drop down to the State and Territory jurisdictions there is no gain or likely improvement whatsoever in our performance and in fact there are financial penalties both directly and indirectly which will be imposed.

25. Telstra currently has a national OHS, workers' compensation and return to work management system consistent across the country, which will need to be rebuilt. The rebuild will include reviewing and rewriting 750 Intranet web pages, rewriting all existing work instructions and work practices.

26. Once documentation has been rewritten all OHS, workers' compensation and return to work training programs (of which there are 73) will need also to be rebuilt and

approximately 30,000 employees will need to be retrained as soon as practicable, ie within 3 – 6 months. In addition to the direct costs associated with this, there is the indirect cost of down time as all field staff will require retraining, (thus impacting on customers needs).

27. There are three other cost impacts which will be imposed for no benefit. All IT systems will need to be rebuilt to accommodate State / Territory needs; an additional 20 staff initially will be required to liaise with local regulators in the key areas of understanding Telstra, its risk profiles and its approach; and once all systems were in place, Telstra's internal auditing processes would need to be totally revamped to meet each of the State and Territory requirements.

Conclusion

28. Organisations in each jurisdiction vary in size, industry risk profile and safety performance. From a national consistency perspective the criteria most suitable to evaluate is the safety performance of the organisation.

29. In OHS there should be a single model inclusive of all organisations in the workplace. Depending on the organisation's ability to demonstrate performance in prevention of workplace injury they should be able to achieve a level in the model, perhaps similar in concept to the Victorian Safety Map achievement levels. Organisations are assigned to the appropriate level and enjoy degrees of autonomy or intervention from the regulator based on safety performance.

30. Similarly with workers' compensation there should be a national framework with one national regulator. Organisations wishing to self-insure should be able to do so based on their financial and prudential capabilities, rather than by the number of staff employed.

31. As previously demonstrated, a national approach contains many benefits for employees, employers and regulators and for Telstra any alternative other than a national approach would have an adverse effect on the company.

Attachment 1.

Comparison of Commonwealth vs. State Health and Safety Legislation

Introduction:

The below comparisons have been compiled principally from the Workplace Relations Ministers' Council August 2002 (2nd Ed) publication of *"Comparison of Occupational Health and Safety Arrangements in Australia and New Zealand"*.

It is noted that each of the jurisdictions has their own individual requirements and thresholds etc. However an overall comparison of the following areas shows that Telstra's existing requirements under the Occupational Health and Safety (Commonwealth Employment) Act 1991 are fundamentally mirrored in the State and Territory Jurisdictions:

- Duty of care provisions
- Reporting requirements
- OHS representatives and committees
- Consulting requirements
- Adoption of NOHSC national standards and codes

The following areas are highlighted, as there are significant differences between the Commonwealth and other jurisdictions:

1. Key Scheme Data

- **Estimated number of employees covered (inc. self-employed) 2000 - 2001**

Commonwealth	284,000
Victoria	2,246,450
New South Wales	2,937,200
South Australia	655,800
Western Australia	898,650
Queensland	1,513,300
Tasmania	191,450
Northern Territory	89,850
ACT	122,700

- **Scheme Administration Costs 2000 – 2001**

Commonwealth	$5M
Victoria	$243.2m
New South Wales	$183.2M
South Australia	$10.3M
Western Australia	$12.4M
Queensland	$35.3M
Tasmania	$3.4M
Northern Territory	$7.1M
ACT	N/A

2. Enforcement Activity

- **Number of on the spot fines issued 2000 - 2001**

Commonwealth**	N/A
Victoria	N/A
New South Wales	1,636
South Australia	N/A
Western Australia	N/A
Queensland	188
Tasmania	N/A
Northern Territory	49
ACT	N/A

3. Common Law Claims

- **Common Law claims for damages are awarded?**

Commonwealth	No
Victoria	No
New South Wales	Yes
South Australia	Yes, in some cases
Western Australia	Yes
Queensland	Yes
Tasmania	Yes
Northern Territory	No
ACT	Yes

4. Penalty Provisions

- **Provision for on the spot fines**

Commonwealth**	N/A
Victoria	No
New South Wales	Yes
South Australia	N/A
Western Australia	No
Queensland	Yes
Tasmania	No
Northern Territory	Yes
ACT	Yes

- **Maximum amount for on the spot fines**

Commonwealth**	N/A
Victoria	N/A
New South Wales	$1,500
South Australia	N/A
Western Australia	N/A
Queensland	$1,500
Tasmania	N/A
Northern Territory	$250
ACT	$1,000

- **Maximum penalty for individuals**

Commonwealth**	$5,500
Victoria	$50,000
New South Wales	$82,500
South Australia	$10,000
Western Australia	$20,000
Queensland	$60,000
Tasmania	$50,000
Northern Territory	$25,000
ACT	$25,000

- **Maximum penalty for corporations**

Commonwealth**	$100,000
Victoria	$250,000
New South Wales	$825,000
South Australia	$200,000
Western Australia	$200,000
Queensland	$300,000
Tasmania	$150,000
Northern Territory	$125,000
ACT	$125,000

- **Imprisonment term for serious offenders**

Commonwealth**	6 months
Victoria	Max. 5 years
New South Wales	Yes
South Australia	Max. 5 years
Western Australia	No
Queensland	Max. 2 years
Tasmania	N/A
Northern Territory	N/A
ACT	1 year

**** Note:** The *Occupational Health and Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002* (the OHS Bill 2002) is expected to go before the Spring sittings of Parliament in August – September 2003. This Bill contains some amendments to the above Commonwealth activities.

Comparison of Commonwealth vs. State Workers' Compensation Legislation

Introduction:

The below comparisons have been compiled principally from the Heads of Workplace Safety and Compensation Authorities November 2001 publication of *"Workers' Compensation Arrangements in Australia and New Zealand"*. This publication is produced annually, hence some data relates to the 2000/01 financial year. Additional information has been obtained from Telstra data sources, reference to the Corrs Report of 1998 as well as discussions with the State workers' compensation jurisdictions.

The items included in this document have been chosen due to the significant variations between the Commonwealth and relevant State legislation; ie outsourcing of the claims management function and coverage for journey incidents. Accordingly other topics, such as the definition of "injury" and death benefits etc, have not been included as whilst there are certainly some variations between the jurisdictions, there is no significant impact to Telstra in any comparison.

1. Ability to self-insure and outsource claims management function to 3rd party

Commonwealth	Can self-insure. Can outsource claims management delegation to 3rd party.
Victoria	Can self-insure. Can outsource claims management delegation to 3rd party.
New South Wales	Can self-insure. Can outsource claims management delegation to 3rd party. *This option has only been available since December 2001.*
South Australia	Can self-insure. However cannot outsource claims management delegation to 3rd party.
Western Australia	Can self-insure. Can outsource claims management delegation to 3rd party.
Queensland	Can self-insure. However cannot outsource claims management delegation to 3rd party. *Noted that recent review has recommended this be changed.*
Tasmania	Can self-insure. Can outsource claims management delegation to 3rd party.
Northern Territory	Can self-insure. Can outsource claims management delegation to 3rd party.
ACT	Can self-insure. Can outsource claims management delegation to 3rd party. *Noted that no self-insurers in this jurisdiction do so.*

Comment: Self-insurance provisions apply in all jurisdictions. Of significance however is that in both Queensland and South Australia the self-insurer cannot delegate the claims management function to a third party. It is noted that a recent review in Queensland has recommended that this situation should change; yet this recommendation has not been further progressed. New South Wales has only permitted self-insurers to outsource the claims function since December 2001.

A further consideration for Telstra in those States that allow self-insurers to outsource claims management, may be the lack of claims managers who are accredited in each relevant jurisdiction. As such a national company could be required to have different claims managers in each State.

Cont.

Whilst each jurisdiction has its own specific criteria for prospective self-insurers, in general these are consistent in that a self-insurer must have sufficient financial resources, be able to meet its liabilities, have safe working conditions, adequate resources and systems etc. There does not appear to be any specific requirements under the State jurisdictions that either Telstra does not currently fulfill or could not reasonably be expected to meet.

In addition, actual self-insurers in each jurisdiction must comply with licence conditions, as does Telstra under its current SRC Act Class B licence. Again, there does not appear to be any specific requirements under the State jurisdictions that either Telstra does not currently fulfill or could not reasonably be expected to meet.

Whilst not likely to impact on Telstra, it is noted that the Queensland model requires new applicants for self-insurance to have a minimum of 2,000 full time workers.

2. Employer Excess

Commonwealth	No excess. Scheme coverage from first day
Victoria	First 10 days of incapacity and first $466 of medical costs
New South Wales	First $500 of weekly payments
South Australia	First two weeks of incapacity per worker per calendar year. Option of buy out available
Western Australia	No excess. Scheme coverage from first day
Queensland	4 days excess plus day of injury. Option of buy out available
Tasmania	First 4 days of incapacity and first $200 of other benefits
Northern Territory	Day of injury only, no medical costs
ACT	No excess. Scheme coverage from first day

Comment: As a Class B Licence self-insurer under the SRC Act the issue of employer excess is not relevant in the current situation. Accordingly the assumption is that even under the State jurisdictions, Telstra would also seek self-insurance and as such the employer excess would similarly not be relevant.

3. Average Premium / Industry Rates

Commonwealth	1.00% for premium paying agencies only.
Victoria	2.22%
New South Wales	2.80%
South Australia	2.46%
Western Australia	2.63%
Queensland	1.55%
Tasmania	N/A
Northern Territory	N/A
ACT	N/A

Comment: The above industry rate averages were effective as at 1 July 2001.

The *"Workers' Compensation Arrangements in Australia and New Zealand"* publication makes extensive qualifications in respect of the above comparison due to the varying industry classifications, calculation methods used and differing application of GST within the jurisdictions. As such the above is considered a "best match" comparison only.

Telstra is not a premium-paying agency under the SRC Act; it pays a licence fee to Comcare for its SRC Act Class B Licence. The amount payable for 2002/03 is $521,208. A further amount of $512,350 is also payable by Telstra for its OHS contribution.

Premium estimates for each jurisdiction have not been included due to the many unknown factors which different jurisdictions include in their respective calculations.

4. Coverage of journey claims (to and from work)

Commonwealth	Included
Victoria	Not included
New South Wales	Included (with some restrictions)
South Australia	Not included unless there is a real and substantial connection with employment
Western Australia	Not included
Queensland	Included (with some restrictions)
Tasmania	Not included
Northern Territory	Included (with some restrictions)
ACT	Included

Comment: The differences in this provision would have significant impact on Telstra's claims numbers and costs due to the number of commuting to and from work claims which Telstra has and the fact that these claims are prone to being of a serious and long term nature. To show this point the following Telstra claims data is provided:

- There are currently 311 "open" commuting to/from work claims out of the total of 3,562 total open claims, or 8.7%.
- The cost to date of these 311 claims is $25.6M, or 12.5% of the total cost to date of all current open claims.
- The average cost to date of these 311 claims is $82,485.13 per claim, which is 44% higher than the average cost per claim of all open claims.
- Of the overall 22 open dependant claims within Telstra, 10 resulted from commuting to/from work claims.
- In 2001/02 the number of commuting to/from work claims received was 231 out of a total number of 1,739 claims received, or 11.2%

5. Weekly Benefit Rates

Commonwealth	100% Normal Weekly Earnings (NWE) <= 45 weeks. 75% NWE > 45 weeks. Includes regular overtime and other allowances.
Victoria	95% NWE <= 13 weeks. 75% NWE >13 weeks. In all but some instances weekly benefits cease after 104 weeks. Does not include any overtime or allowances.
New South Wales	NWE <=26 weeks. 80% NWE > 26 weeks, reducing further at 52 and 104 weeks. Does not include any overtime or allowances.
South Australia	NWE <=52 weeks. 80% NWE >52 weeks, can reduce further at 104 weeks. Includes regular overtime and other allowances.
Western Australia	Minor variations between award and non-award workers. However in all cases paid up to capped weekly rate as indexed annually, for duration of claim. Includes regular overtime and other allowances.
Queensland	85-100% NWE <= 26 weeks. 60-65% NWE > 26 weeks, can reduce further after 104 weeks. Does not include any overtime or allowances.
Tasmania	100% NWE <= 13 weeks. 85% NWE > 13 weeks. 70% NWE > 52 weeks. Includes regular overtime and other allowances.
Northern Territory	100% NWE <= 26 weeks. 75% NWE > 26 weeks. Does not include any overtime or allowances.
ACT	100% NWE <= 26 weeks. Indexed rate > 26 weeks. Does not include any overtime or allowances.

Comment: For consistency the standard term Normal Weekly Earnings (NWE) has been used above, as each jurisdiction has its own terminology and definitions.

In comparison to the majority of State jurisdictions, the SRC Act has a generous weekly benefit rate for the first 45 weeks of incapacity, with 13 or 26 weeks being the usual period before reducing, notably in the two largest employing States, Victoria and New South Wales respectively.

There has been some criticism in the past that by allowing injured workers 45 weeks incapacity under the SRC Act, there is a disincentive to the rehabilitation process. In addition to the 45-week period itself there is the possibility that the NWE may also include an additional component for allowances such as overtime, that this.

Note that the 45 weeks balance is based on actual periods of incapacity, not 45 consecutive weeks from date of injury.

Unlike the SRC Act, some States, notably Victoria and New South Wales, do not include additional allowances such as overtime when calculating their version of the NWE.

Considering Telstra's total incapacity payments for 2001/02 were approximately $14M, there would be overall savings on weekly benefits if Telstra were to come under the State jurisdictions, particularly in the largest employing States in Victoria and New South Wales. A blanket 10% saving = $1.4M per annum.

6. Medical and hospital limits

Commonwealth	No limits, all reasonable costs for duration of claim.
Victoria	Cease 52 weeks after weekly benefit payments cease. May continue in certain cases.
New South Wales	$50,000 or greater if prescribed by WorkCover Authority or Compensation Court.
South Australia	No limits, all reasonable costs for duration of claim.
Western Australia	Capped at $37,843.50, with certain discretion to increase.
Queensland	No limits, except capped at $10,000 for private hospitalisation for any one incident.
Tasmania	No limits, all reasonable costs for duration of claim.
Northern Territory	No limits, all reasonable costs for duration of claim.
ACT	No limits, all reasonable costs for duration of claim.

Comment: Overall there does not appear to be any significant savings to Telstra under the State schemes in relation to medical and hospital costs. Whilst capped amounts / timeframes exist in the two largest States, these would only apply in a limited number of severe claims in the overall scheme, and both have discretion to increase these limits.

7. Settlements and redemption

Commonwealth	Redemption of weekly benefits only, using set formula, if weekly rate below indexed level ($79.43 p/w).
Victoria	Lump sum settlements for weekly benefits when past 104 weeks. Some discretion for flexibility.
New South Wales	Commutation of future weekly entitlements is allowed by agreement of the worker and insurer. No mandatory legislative requirements.
South Australia	Liability for weekly payments and/or medical expenses may be redeemed by a capital payment.
Western Australia	Redemption of future weekly entitlements possible with some conditions including minimum of 6 months in receipt of benefits.
Queensland	Redemption of weekly payments after minimum of 2 years in receipt of weekly payments.
Tasmania	Claim can be settled by agreement after 12 months from date of lodgement.
Northern Territory	Scope for commuting weekly benefits using a set formula with a capped maximum.
ACT	Lump sum settlement based on table of maims or by agreed amount between insurer and worker.

Comment: The SRC Act appears to have the most onerous criteria for the redemption of weekly benefits. Based on information in the *"Comparison of Workers' Compensation Arrangements in Australia"* 2001 edition, only the Commonwealth and the Northern Territory require set formulas to be used in the calculation of the lump sum amount. In comparison, the rest of the States appear to be able to settle upon an amount agreed between the insurer and the worker.

In terms of savings to Telstra by way of the differing requirements between the jurisdictions, this would require an actuarial estimate to calculate any cost or benefit. However in terms of flexibility the SRC Act is very restrictive for Telstra in comparison to the States.

8. Common Law rights

Commonwealth	Most Common Law rights abolished with inception of SRC Act in 1988. No ceiling to 3rd party actions or those made by dependants.
Victoria	Common Law rights re established in 1999. Maximum pecuniary loss $823K, pain and suffering $358K.
New South Wales	Election between legislative tables and modified Common Law. No maximum for economic loss, $257K for non-economic loss.
South Australia	Common Law rights against employer abolished for injuries post 1992.
Western Australia	Common Law in accordance with certain thresholds. Unlimited amount where disability assessed as 30% or more, maximum of $265K if disability between 16%-29%.
Queensland	N/A
Tasmania	Common Law in accordance with certain thresholds. Unlimited amount.
Northern Territory	Common Law rights against employer abolished for injuries post 1987.
ACT	N/A

Comment: One of the perceived benefits of the SRC Act when it commenced in 1988 was the abolishment of the majority of Common Law actions by replacing this with the ability to make permanent impairment and non-economic loss payments under the Act. As such the only avenue for a worker to lodge a Common Law claim is after an assessment for permanent impairment has been made. At this time the worker must make an irrevocable election to accept the lump sum or chose Common Law.

The permanent impairment assessment was seen as a way providing lump sum payments without the need for costly and lengthy court proceedings.

Whilst I am not in a position to compare the benefits of any of the State Common Law measures with the SRC Act model, I do note that in both Victoria and New South Wales, Common Law rights exist. There is anecdotal evidence to suggest that there is a litigious culture within these States, particularly NSW, which in turn have the largest employment numbers. Therefore an unconfirmed assumption is that Telstra would most likely incur additional costs through Common Law if it were outside the coverage of the SRC Act.

Attachment 3

Telstra's view of the existing Commonwealth arrangements

The basic assumption is that the Commonwealth occupational health and safety regime is intended to achieve three principal objectives:

- to ***prevent*** the occurrence of work-related injury;
- to provide for the ***rehabilitation*** of injured workers, and
- to ***compensate*** workers where injury does occur.

These objectives are common to all regulatory regimes in this area in Australia, although there are inevitably significant differences as to matters of detail and emphasis.

The attainment of these objectives requires:

- that the regulatory mechanism should establish and maintain a positive correlation between prevention, rehabilitation and compensation;

- recognising that there is a continuing need for a regulatory mechanism, the system:
  - should permit those who operate within it the greatest possible freedom to manage their businesses in the manner which best suits their commercial objectives;
  - should not impose unnecessary financial and administrative imposts upon employing entities;
  - should incorporate minimal scope for third party intervention in the operation of business entities, and
  - should enable businesses to develop and implement occupational health and safety management programs which recognise and support the principle of full management accountability for occupational health and safety performance;

- that there be provision to ensure appropriate levels of employee involvement in the formulation and implementation of occupational health and safety policy at the level of the enterprise;

- that the system incorporate an appropriate recognition of the public interest in the prevention of injury, and the rehabilitation and compensation of injured workers, and

- that regulatory requirements be as simple and non-intrusive as is compatible with the achievement of the system objectives .

Telstra acknowledges that there has been some attempt to recognise these imperatives in recent years, both at the legislative and administrative level. Nevertheless, the *"Review of Commonwealth Occupational Health and Safety, Compensation and Rehabilitation Legislation and Administrative Arrangements"*, undertaken on behalf of Telstra and other Commonwealth licensees by Corrs Chambers Westgarth Lawyers in 1998 (the Corrs Report), found that the

system as it was structured and applied at that time was not conducive to the attainment of its objectives in a manner which took proper account of the underpinning assumptions noted above. Many of the findings have not yet been addressed. Examples of these include:

- While the OHS(CE) Act allows for State legislation to exist and apply in circumstances where no Commonwealth laws are present, there are some inconsistencies between the Commonwealth and States in respect of:

  - Working at heights
  - Asbestos management
  - Working in confined spaces
  - Plant licensing certification and registration
  - Electrical safety requirements
  - Indoor air quality requirements
  - Legionella reporting and management standards

- The OHS(CE) Act applies to the Commonwealth and "Commonwealth Authorities", being entities in which the Commonwealth retains a controlling or substantial interest. This means that following the Federal Government's recent announcement that it intends proceed with the introduction of legislation to fully privatise Telstra, the very real prospect is that Telstra will no longer come within the eligibility criteria of the OHS(CE) Act.

  The cost of liaising with and managing eight OHS regulators is considered to be in many millions of dollars. Standards of safety may also deteriorate due to the confusion of adapting to the new processes in the initial phase.

  As the SRC Act has different eligibility criteria, Telstra would retain its workers' compensation coverage under the Commonwealth after privatisation. This in itself would cause further administrative complexity by requiring Telstra to liaise with the Commonwealth regulator for workers' compensation and State and Territory regulators for OHS.

  The Department of Employment and Workplace Relations and relevant regulator (Comcare) are aware of this potential difficulty. The *Occupational Health and Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002* (the OHS Bill 2002) is expected to go before the Spring sittings of Parliament in August – September 2003. This Bill resolves this issue.

- It is recognised that the SRC Act has a range of benefits, which in some cases are more generous than those available under the State and Territory workers compensation schemes. Nevertheless some elements of the Commonwealth scheme appear to operate in a manner which imposes excessive financial and administrative burden, namely:

  - claims for journeys to and from work, which are not covered by all jurisdictions; and

  - the watered down interpretation by the courts of "material degree" in respect of disease claims.

In addition to issues raised in the Corrs Report, Telstra is also concerned that, like other companies, it has an increased presence of contractors and labour hire agency staff within its workforce who are not covered by the definition of "employee" under the SRC Act. Therefore different requirements for these staff are necessary and in many instances staff within the same work place are subject to different regulation, resulting in duplicity and confusion for both management and staff.

Irrespective of the particular workers compensation scheme that applies, there is a need for a careful and consistent approach to be adopted by the regulator, as additional financial and administrative burden results from constant changes made by the regulator to licence conditions. Changes such as those made to the prudential and reporting requirements over the past 24 months have added several hundred thousand dollars of additional costs to the business. Yet, it is doubtful that the changes have added any improvement to the safety of employees. Constant reporting change prevents accurate comparison of performance over the preceding period.