

15 March 2013

General Manager  
Corporations and Capital Markets Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [corporations.amendments@treasury.gov.au](mailto:corporations.amendments@treasury.gov.au)

Dear Sir/Madam

**Corporations Amendments – Improving Disclosure Requirements**

Thank you for the opportunity to make a submission on the Exposure Draft of the *Corporations Legislation Amendment (Remuneration and Other Measures) Bill 2012*, released by Treasury on 14 December 2012 for public consultation (Draft Bill).

Please find attached Telstra's submission in respect of the Draft Bill and we would welcome the opportunity to further discuss these issues with Treasury.

If you have any queries or would like to discuss our submission further, please contact my office on (03) 8647 2629.

Yours sincerely



Damien Coleman  
Company Secretary

## Exposure Draft of the Corporations Legislation Amendment (Remuneration and Other Measures) Bill 2012 ('Draft Bill')

### Submission by Telstra Corporation Limited

The Draft Bill contains reforms in the following two areas: (1) the test for payment of dividends; and (2) disclosure of executive remuneration.

In relation to the first area, Telstra welcomes the clarifications provided by the Draft Bill regarding the Corporations Act test for the payment of dividends.

In respect of the second area, Telstra wishes to make the following comments on key aspects of the proposed reforms.

#### General Comments

Telstra supports the underlying policy objective of proposed measures in the Draft Bill aimed at providing clearer and more transparent disclosure of executive pay, to enhance shareholder understanding of company remuneration arrangements. In particular, we support the measures aimed at simplifying remuneration reports by removing unnecessary (or duplicative) disclosure requirements relating to the value of lapsed options and the percentage of remuneration that consists of options.

While the simplifications embodied in the Draft Bill are supported by Telstra, we would welcome a broader review of current reporting requirements being conducted, with a view to deleting duplication and further simplifying existing reporting requirements (for example by improving and streamlining the existing disclosures rather than adding additional requirements), to provide a simpler, more effective reporting framework for shareholders. We refer to previous submissions to the Corporations and Markets Advisory Committee (CAMAC) by industry bodies and corporates (including Telstra) on this subject (most recently in relation to the CAMAC discussion paper on 'The AGM and Shareholder Engagement').

In addition, we are concerned that certain aspects of the new disclosure requirements lack sufficient clarity and may cause confusion for shareholders, contrary to the underlying policy objective of the Draft Bill. In this regard, Telstra wishes to comment on the following key areas:

#### Disclosure of 'past pay', 'present pay' and 'future pay'

The Draft Bill proposes a new requirement to disclose remuneration 'outcomes' for key management personnel (KMP) in the following three categories: (a) the amount that was granted before the start of the year and paid during the year ('past pay'); (b) the amount that was granted and paid during the year ('present pay'); and (c) the amount granted but not yet paid during the year ('future pay').

Telstra is supportive of measures to assist shareholders in understanding the elements of executive remuneration and the basis upon which executive remuneration and benefits have 'crystallised' for a particular year. We note that some corporates (such as Telstra) include voluntary information in their remuneration reports to provide shareholders with greater insight regarding actual pay and benefits received by KMP. However, we are concerned that the disclosure of remuneration 'outcomes' in the manner currently contemplated in the Draft Bill could lead to confusion for shareholders and other readers of the report, and increase the length and complexity of remuneration reports, as follows:

- *Double counting:* The requirement to disclose 'past pay', 'present pay' and 'future pay' would result in the same remuneration being double counted in successive remuneration reports. This could be confusing for shareholders without detailed and complicated explanations being provided, adding to the length and complexity of the remuneration report.
- *Disclosure of STI payments:* Under the new requirements, STI cash payments that are earned in respect of the financial year being reported on, but not paid until just after the finalisation of accounts, would be disclosed as 'future pay'. This results in the potential loss of the link between current year performance and executive remuneration outcomes and is likely to cause confusion for shareholders. If enacted as currently proposed, companies are likely to need to include additional explanation (again adding to the length and complexity of the report) to enable shareholders to understand that a portion of 'future pay' is directly linked to current year performance. For this reason, it is suggested that the definition of 'present pay' should be amended to include STI cash payments earned in respect of the financial year being reported on. In addition, further clarification regarding any deferred component of STI payments (for instance in the form of restricted shares)

and how they should be treated under the new disclosure requirement would be welcome (see comments below).

- *Concept of 'paid'*: The Bill does not provide guidance as to the meaning of the term 'paid'. Although the Explanatory Memorandum suggests that the intention is to capture amounts that have 'crystallised', it is unclear how this concept should be applied (for instance, are deferred STI or LTI equity grants to be classified as 'paid' when they vest or when they cease to be subject to restriction?). We would welcome further clarity on the meaning of 'paid' and how this concept is to be applied in practice.
- *Format of 'outcomes' table*: There is no clear guidance on how the categorisation of remuneration under the headings of 'past pay', 'present pay' and 'future pay' is to be applied in practice and how the remuneration 'outcomes' table is to be presented. We would welcome further guidance in respect of this to ensure that there is consistency and uniformity in approach to these disclosures to assist shareholders in understanding this information.
- *Multiple remuneration disclosures*: The disclosures provided for in the Draft Bill are in addition to (and not instead of) the statutory 'accounting value' remuneration disclosures required under the Corporations Regulations and AASB 124. This would result in duplication of remuneration disclosures in the remuneration report and may be confusing for shareholders unless additional detailed explanation is provided, adding to the length and complexity of the report. As noted above, we consider that it would be more beneficial for shareholders if existing disclosures were improved and streamlined rather than incrementally adding to them.

#### **Disclosure of clawback policy in the event of material misstatement**

The Draft Bill proposes to introduce a new requirement pursuant to which listed companies who become aware during the financial year of a material misstatement or omission in any of their three previous financial statements will be required to disclose in the remuneration report whether any reduction, repayment or other alteration of a KMP's remuneration will be made because of the misstatement or omissions (ie. whether any KMP remuneration has been or will be clawed-back). If no remuneration has been clawed-back, an explanation of 'why not' must be provided.

Given the complexities associated with implementing clawback arrangements, Telstra supports the 'if not, why not' approach that has been adopted by the Government in relation to this topic. However, we query whether it would be more appropriate for this reform to be incorporated in the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations* (ASX Principles), rather than the current approach which has been adopted of incorporating a 'principles-based' requirement in the Corporations Act (with supporting guidance provided in the Explanatory Memorandum to the Draft Bill). Incorporation of this requirement in the ASX Principles would allow greater flexibility for guidance in this area to be provided and updated, as practices and shareholder and other stakeholder expectations develop over time.

**Telstra Corporation Limited**

**15 March 2013**