



# Customer Circular

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## The High Court's Decision on Telstra v Worthing

### 1. Purpose

The purpose of this Circular is to provide a summary of the High Court's decision in this case.

### 2. Background

This Circular should be read in conjunction with *Customer Circular No. 22* issued in May 1998, which gave details of the decisions by the NSW Compensation Court and the NSW Court of Appeal.

The case involved Mr Worthing, a former Telstra (Telecom) employee, who claimed compensation under both the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act), and the *Workers' Compensation Act 1987 (NSW)* (the NSW Act), for injuries sustained in 1986, 1988 and 1993.

In the opinion of the NSW Courts, some Commonwealth employees could submit claims for compensation under both the SRC Act and the NSW workers' compensation scheme. Both Telstra and the Commonwealth Attorney-General appealed the decision of the NSW Courts to the High Court.

### 3. High Court Decision

A Full Court of seven justices of the High Court unanimously held that the NSW Compensation Court did not have jurisdiction to determine the workers' compensation application.

Telecom was Mr Worthing's employer when the 1986 and 1988 injuries were sustained. The High Court held that, as a matter of construction, the NSW Act did not apply to the Commonwealth, and that Telecom was not subject to any liability to which the Commonwealth was not subjected. Therefore, the NSW Act did not apply to render Telecom/Telstra liable in relation these two injuries.

Telstra was the employer at the time of the 1993 injury. The High Court held that the NSW Act and the SRC Act provide different regimes of workers' compensation entitlements, and application of the NSW Act to the employee's claim would 'qualify, impair and, in some respects, negate the application of federal law, with the consequence that, to the extent of the inconsistency thereby made out, the State law was invalid' (page 13 of the High Court's decision refers). (Section 109 of the Constitution provides that '[w]here a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.')

The effect of the High Court decision is that an employee to whom the SRC Act applies, cannot also claim under the NSW Act. The High Court's reasoning on the inconsistency between the NSW and SRC Acts would also apply to the workers' compensation schemes of the other states, the Northern Territory and the ACT.

The full citation for the case is *Telstra Corporation Limited v Worthing and Anor, Attorney-General of the Commonwealth v Telstra Corporation Limited & Anor*, and the date of the decision is 24 March 1999.

### 4. Agencies' Role

If you are aware of an employee who has applied under both the SRC Act and another scheme for compensation for an injury in Commonwealth employment, please contact Helen Bull, Manager, Policy and Co-ordination Group. Please see below for contact details.

### 5. Further Information?

If you would like further information on this topic, please contact Helen Bull on (02) 6275 0600, (or email: [bull.helen@comcare.gov.au](mailto:bull.helen@comcare.gov.au)).