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Fax Interception during litigation

We have compiled four reports that support the content of this Alan Smith and Graham Schorer Fax interception overview:

1. a draft report titled Australian Crimes Act 1914 dated December 2011, consisting of 56 pages;
2. a draft report titled Perversion of the Course of Justice (not fully completed) 86 to 90 pages;
3. the Alan Smith; Characterisation of misconduct, dated July 2012 consisting of 156 pages and
4. the other titled Graham Schorer; Characterisation of misconduct, dated June 2013 totalling 168 pages.

All four reports are supported by Exhibit documents which can be supplied on CD if requested.

Each entry in the report (e.g. GS 1 etc.) refers to an Exhibit with the same number (e.g. Exhibit 1 supports entry CAV GS 1) and the Exhibits on the CD are divided into separate folders called **CAV-GS 1-88**, **CAV-GS 89-154-b**, **CAV-GS 155-215**, **CAV-AS 1 to 47**, **CAV-48-A to 91** etc. Although the entries in the report are labelled GS (Graham Schorer) and AS (Alan Smith) followed by the appropriate number, the matching Exhibits in the CD are labelled as CAV (Concealment Adversity Victimisation), followed by GS or AS and the appropriate number. In the case of this overview the ‘CAV’ initials indicate that we have accessed that evidence from our CAV database.

We began compiling these Casualties of Telstra (COT) databases and reports in 2007 and have so far completed eight separate reports four of those reports are directly related to Graham Schorer (**GS**) and Alan Smith (**AS**) COT matters and the other four relate to public officials, the TIO officer and various government ministers who in some way were connected to the COT issues. We have also collated thousands upon thousands of evidential documents in support of each of those eight reports. To enable us to be positively sure of our facts, we also began a separate profile database to keep track of all the people we believe were important to our cases. We have recorded at least ten lines, and sometimes three-quarters of a page of information for each person and supported that information with at least one FOI or other document related to each individual we researched. That profile database now includes 171 individuals. We have decided to detail this research and record-keeping as testament to the amount of work that has gone into preparing our eight reports.

Although we originally planned to produce this overview in date order we quickly found that the details are easier to follow if they are sorted into separate topics, because each of those individual topics has been spread out over many years. The topics we have chosen include, among others, the general deception and corruption that contaminated our TIO administered arbitrations; the illegal interception of many documents legally submitted to the arbitration by the claimants; the details of documents that were lodged with the arbitration but never addressed or referred to in the awards; and documents that were apparently somehow lost in the fax system and therefore never reached the arbitrator. Taken together, these topics all contributed to the end result – an entirely undemocratic arbitration process.

[A brief history of events.](#)

Graham Schorer

The Graham Schorer story tells how Graham took the Telstra Corporation to the Federal Court in 1990, for deliberately misleading and deceiving him concerning the telephone switchboard Flexitel Commander System installed by Telecom/Telstra at his business, and then challenged Telstra again, through an arbitration process, four years later: it shows clearly that the Telstra Corporation was able to manipulate both the earlier Federal Court discovery process and the later arbitration process for their own benefit and with serious detriment to Graham's court actions and his business. In other words, even in a democratic country like Australia:

- ❖ The Australian Government Solicitor (AGS) **Exhibit GS 448-A** on the enclosed CD was allowed to get away with advising Graham's solicitor, in writing, that the AGS would only agree to provide the solicitor with the most important piece of evidence related to Graham's Federal Court case (i.e. an official North Melbourne Telephone Exchange report), if the solicitor was to guarantee that the report would **not** be provided to Graham, even though that report could well have won the case against Telstra;
- ❖ During Graham's Federal Court action his solicitor was then allowed to withhold, not only the North Melbourne Telephone Exchange report but also the letter from the AGS, even though his solicitor was fully aware that those actions denied his client (Graham) the legal right to demand full legal discovery of this North Melbourne Telephone Exchange report, through the Federal Court;
- ❖ Then, four years later, this most important AGS letter was again concealed during Graham's arbitration process, which was set up by the Federal Government Regulator to investigate Telstra's earlier poor supply of the Golden Messenger phone service, and their deceptive conduct towards Mr Schorer;

Alan Smith

By 1987, at age forty-four, I had enough experience behind me to know that I had the skills, the expertise and the knowledge to take a simple school camp and turn it into a successful venue for social clubs and family groups as well as schools. Unfortunately, what my wife Faye, and I did not know about, and could therefore not be prepared for, were the ensuing problems that would arise because of the 'elderly' phone system in the area. This local, unmanned phone exchange had only eight lines but, even back then, in 1987, it was being used by sixty other resident families (one hundred and twenty individuals), as well as the school camp. This meant that if four of the local residents were on the phone at the same time, then there were only four other lines left for calls to come in to the remaining one hundred and sixteen people, and my business, which was connected to this out-dated

telephone exchange for the first three and a half years after I moved in: three and a half crucial years in which I had expected to establish the business on a firm ground.

- ❖ By April of 1988 Faye and I were becoming seriously concerned about the telephone system. Some people were beginning to ask accusingly why we never answered our phone and others were suggesting that we should have an answering machine installed to take calls when we were away from the office. Even after we installed a new answering machine, the same complaints continued, coupled now with complaints about incredibly long intervals when the phone was apparently engaged. We both knew very well that the phone had not been engaged for long periods of time and often the phone didn't ring at all for days on end. These complaints continued for years and the business floundered as a result.
- ❖ Later, long after our first complaint to Telstra, we discovered that the previous owner of the business had been complaining, unsuccessfully, about these same phone faults long before we purchased the camp. This was clearly proved by a document I received once I began requesting information under Australia's Freedom of Information Act (FOI) which, for a small fee, allows any citizen to request copies of documents pertaining to themselves or their business, from any Government department or instrumentality. Over the ensuing years I accumulated literally thousands and thousands of FOI documents. The document which alerted me to the previous owner's troubles indicated that Telstra was aware of the phone faults as far back as 1987, before we moved to Cape Bridgewater and before I lodged my first complaint, which appears in Telstra's archives on 26th April 1988.
- ❖ Faye was still making regular visits to the hospital and was, of course, not able to participate in any of the work around the place, so found she had nothing to do and plenty of time to think. She discovered more and more reasons to travel away from the business: to her elderly parents, to the hospital, to see friends. Finally the burden of a failing business and the slow and difficult recovery from the broken leg became too much to bear: our marriage ended on 26th October 1989.

Story Line - Formation of the Casualties of Telstra (COT)

Between 1989 and July 1991, Telstra continued to deny there was even a phone problem affecting my business. About July of 1992, Karen a friend mentioned she had heard of someone in Melbourne who was complaining about the same phone problems that were crippling my business. Karen said her friend believed this was the proprietor of "The Society" restaurant in Bourke Street, in the centre of the city.

Of course, making phone contact with the restaurant was enormously difficult, but eventually I got through to Sheila Hawkins, who ran the restaurant. We arranged to meet and I travelled to Melbourne. By this time Sheila had contacted Graham Schorer who ran the Golden Courier Service out of North Melbourne. Like the rest of us, Graham had a very bad phone service. Finally our little group gathered together at the Society Restaurant in Bourke St, except for Maureen who couldn't make the journey from Brisbane.

During the following week I spoke to Sheila a couple of times on her mobile, ringing while she was on her way in to her office. It was Sheila who suggested we call ourselves C.O.T. — the Casualties of Telstra (jokingly, we referred to ourselves as the Cot cases). We were on our way down the path to justice, or so we thought. Unfortunately our battle had only just begun.

In October of 1992, at the Ibis Hotel in Melbourne, the COT group had our first official meeting with Telstra, presenting a united front of small-business telephone users. The Regulator AUSTEL (ACMA) was now involved, concerned at some of the facts the COT group were unearthing in relation to Telstra. We were seen, not just as a group of hot-heads, out to make trouble, but as a concerned group of small-business people who had been continually squashed and ignored by Telstra. Finally we felt that our claims were being taken seriously and were being seen as valid.

Also at this time, July/August 1992, the COT Cases were lodging many *Freedom of Information* FOI requests for documents to be supplied by Telstra. A letters from Telstra's management team stated however that Telstra had 'no past fault records prior to the various dates lodged by the four COT Cases'. It later became quite apparent that documented fault records DID exist in Telstra's archives, dating back as far as 1987 and continuing for many years after that. Why did Telstra deny the existence of these records and what else could be lurking in these archives, we wondered?

AUSTEL COT Cases (Public) Report

In April 1994, a report was released to the COT claimants as well as to the Minister. What was not revealed at the time, and has only been discovered in subsequent FOI documents, was that in March 1994 AUSTEL released an earlier 'Draft' version to Telstra. The more adverse findings against Telstra were left out of this formal report before the official copy was provided to the Minister. Such amendments were not in accord with the *Telecommunications Act 1991*, which in section 342 states that

- (2) After concluding an investigation under subsection 335 (3) AUSTEL must prepare and give to the Minister a report under this section.
- (3) A report under this section must cover
 - (a) the conduct of the investigation concerned; and
 - (b) any findings that AUSTEL has made as a result of the investigation.

AUSTEL Covert Reporting

AUSTEL's March 1994 **Golden Messenger** report Exhibit **GS 450** and **GS 453** on the enclosed CD proves that AUSTEL's investigation into Graham's complaints reached the conclusion that Telstra had knowingly misled and deceived him over the whole period of his claim but, even though they were the official decision makers when investigating Graham's case, AUSTEL still concealed their findings from the relevant Minister (the Hon Michael Lee MP) and the arbitrator throughout the whole of Graham's arbitration.

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In AUSTEL's further draft findings on Golden Messenger (Exhibit GS 453):

Telecom have maintained the position that network service was within acceptable standards despite having considerable information, obtained from internal investigations, that major problems did exist with the network and that these problems did impact on the level of service provided to the customer.

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In AUSTEL's further draft findings on Golden Messenger (Exhibit GS 453):

Telecom Minute of 30/3/88 states that advice from Legal and Policy Headquarters indicate that Golden Messenger appeared to have a case against us...and...the Australian Government Solicitor had advised Telecom that Golden

Messenger is likely to be successful in establishing that Telecom engaged in misleading and deceptive conduct contrary to the Trade Practice Act and that consequence of lost calls or calls not getting through was likely to lead to an immediate loss of business in relation to that call and potential loss of future business from the customer.

Cape Bridgewater Holiday Camp - A Smith draft findings (Exhibit AS 487)

Point 209 on page 68 'Cape Bridgewater Holiday Camp has a history of service difficulties dating back to 1988. Although most of the documentation dates from 1991 it is apparent that the camp has had ongoing service difficulties for the past six years which has impacted on its business operations causing losses and erosion of customer base '

Point 210 on page 69 'Service faults of a recurrent nature were continually reported by Smith and Telecom was provided with supporting evidence of this in the form of testimonials from other network users who were unable to make telephone contact with the camp'

Point 212 on page 69 'In view of the continuing nature of the fault reports and the level of testing undertaken by Telecom doubts are raised on the capability of the testing regime to locate the causes of faults being reported

Forces at work

20 June 2012: I wrote to the Hon Robert Clark MP, Attorney-General (Victoria) to remind him that, his office was already in receipt of a Statutory Declaration dated 7 July 2011, prepared by Graham Schorer, regarding three young computer hackers who had phoned Graham during the COT arbitrations of 1994 to warn him that they had discovered that Telstra and others associated with our arbitrations were 'acting unlawfully' towards the COT group. The following statements have been taken from that Statutory Declaration:

After I signed the arbitration agreement on 21st April 1994 I received a phone call after business hours when I was working back late in the office. This call was to my unpublished direct number. The young man on the other end asked for me by name. When I confirmed I was the named person, he stated that he and his two friends had gained internal access to Telstra's records, internal emails, memos, faxes, etc. He stated that he did not like what they had uncovered. He suggested that I should speak to Frank Blount (*Telstra's CEO*) directly. He offered to give me his direct lines in his Melbourne and Sydney offices, the numbers to in his Sydney and Melbourne vehicle phones plus his personal mobile phone number, plus the number for his Melbourne apartment at the Como Hotel and his home phone number in Sydney.

After this call, I spoke to Alan Smith about the matter. We agreed that while the offer was tempting we decided we should only obtain our arbitration documents through the designated process agreed to before we signed the agreement. I informed them of our decision when they next rang. I requested that they did not ring again.

PLEASE NOTE: Transcripts of an oral hearing regarding my Telstra arbitration matters on 11 October 1994, attended by representatives of Telstra, the arbitrator, TIO and me, record that I also reported (like Graham Schorer) documents that I needed to support my arbitration claim had somehow 'disappeared' from my office during the early part of my arbitration. It was during this early part of my arbitration that Garry Ellicott spent five days at Cape Bridgewater, assisting me with my arbitration claim. Mr Ellicott, who had been a Detective

Sergeant with the National Crime Authority and a body guard for American ex-President Jimmy Carter (when he was in Australia), warned me that I was under surveillance.

Stop These People At All Cost

Senate Estimates Hansard report for the 24 June 1997 it is reported that ex-Telstra employee Lindsay White told the Senate Estimates Committee (under oath) that while he was assessing the relevance of the technical information which had been requested by the COT Cases he advised the Committee that:

In the first induction - and I was one of the early ones, and probably the earliest in the Freehill's (Telstra's Lawyers) area - there were five complaints. They were Garms, Gill and **Smith, and Dawson and Schorer**. My induction briefing was that we - we being Telecom - had to stop these people to stop the floodgates being opened.

Senator O'CHEE - What, stop them reasonably or stop them at all costs - or what?

Mr White - The words used to me in the early days were we had to stop these people at all costs.

I have highlighted the name of **Smith** (my name) **Dawson** and **Schorer** because all three of our offices were broken into during the litigation period with Telstra where only Telstra related material needed for our arbitration claims went missing.

23 March 1999: after at least four Senate Estimates Committee hearings into some of the complaints raised by the COT Cases, the Australian Financial Review reported that the Chairman of the Committee, Senator Eggleston, had stated:

A Senate working party delivered a damning report into the COT dispute. The report focussed on the difficulties encountered by COT's members as they sought to obtain documents from Telstra. The report found Telstra had deliberately withheld important network documents and/or provided them too late and forced members to proceed with arbitration without the necessary information. Senator Eggleston said: "*They [Telstra} have defied the Senate working party. Their conduct is to act as a law unto themselves*

In July 2001, two senior Victorian Police Officers, who had been staggered to discover that the **Communications Minister's officers** had stopped the Senate Estimates Committee Investigation in 1997/99 from assessing my Telstra FOI matters, passed on to me a damning document headed **Senate Estimates Committee Hansard In-Camera [Confidential] 6th and 9th July 1998** report. I am convinced that this document was provided to me after the Victoria Police Major Fraud Group had been in contact with technical consultants who had dismissed as total rubbish Telstra's arbitration report that the Telstra laboratory had found a 'wet and sticky substance', which they identified as 'beer', inside my EXICOM TF200 phone after it was received by Telstra in a very dirty condition **Exhibit AS 634**, and that this had caused the phone to lock up.

PLEASE NOTE: this information may never see the light of day though, because I have already been threatened twice (on 16 August 2001 and again on 6 December 2004) with 'contempt of the Senate' charges, which could result in a jail sentence, if I releases those In-Camera Hansard records of 6 and 9 July 1998 into the public domain. The letters of 16 August 2001 and 6 December 2004, are enclosed as **Exhibits GS 530** and **GS 531** on the CD.

The 6 and 9 July 1998 in confidence Hansards can again be viewed (but not released) by the Victoria Police at a designated location.

Tampering with evidence

As part of my arbitration process, my EXICOM TF200 phone was taken away for investigation on **27 April 1994**. According to Telstra records, the phone did not arrive at the Telstra laboratories until **10 May 1994**, when it was recorded as being received 'in a very dirty condition'. We now know that, sometime between leaving my premises on **27 April 1994** and arriving at Telstra's laboratories on **10 May 1994**, Telstra employees introduced a sticky substance into the phone itself and the laboratory report then stated that it was that sticky substance that had caused the phone to lock-up. Exhibits **AS 73, AS 141, AS 142, AS 143, AS 634, AS 635, AS 636 and AS 637** (on the enclosed CD), provide clear proof of this illegal tampering with arbitration evidence. In fact, even though the TIO and the Chairman of the TIO Council received conclusive, documented evidence that, when Telstra laboratory staff began to suspect that the phone had been tampered with after it left my premises, they carried out further testing, between 24 and 26 May 1994, two weeks after the phone had arrived at the laboratories. When the laboratory staff then concluded that someone within Telstra had to have introduced the sticky substance (which Telstra's arbitration defence claimed was beer) into the phone, still neither the TIO (Mr Pinnock) nor the Chairman of the TIO Council (the Hon Tony Staley) did anything to rectify this fraudulent conduct.

This is particularly alarming because, in March 1994, just before this fraud was committed, the Australian Government and at least three Senators had been assured that the COT arbitrations would be conducted according to the ambit of the Commercial Arbitration Act 1984 (see **Exhibit GS 153** on the CD) which meant that the arbitrator could have called upon the **Victorian Supreme Court** for assistance and arranged for the Victoria Police to investigate Telstra's tampering with arbitration evidence. To add further to the appalling manner in which the arbitrator conducted our arbitrations, according to official Hansard records of a **Senate Estimates Committee** hearing on 26 September 1997 (see Official Senate Hansard), the TIO advised the Committee that:

the arbitrator had no control over the process, because it was a process conducted entirely outside the ambit of the arbitrations procedures".

To leave this unlawful conduct unaddressed for so long is even worse when it is considered that, on 18 April 1995, during our arbitrations, the TIO-appointed Arbitration Project Manager warned both the first TIO (Warwick Smith) and the arbitrator (Dr Hughes) see **Exhibit AS 160** on the CD, that there had been:

forces at work collectively beyond our reasonable control that have delayed us in undertaking our work.

Even though I met with Warwick Smith and told him of my concerns that Dr Hughes was not receiving all the claim documents I had submitted, and of the threats I had received from Telstra executives (see below), these *forces at work* were allowed to continue to act as a law unto themselves. Were these the same *forces at work* that the computer hackers had advised Mr Schorer were acting unlawfully towards us during our arbitrations.

Article 12 from the [Universal Declaration of Human Rights](#) notes:

'No one shall be subjected to arbitrary interference with his privacy, family home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference'.

Spying - Telstra's secret surveillance

Exhibit AS 765-G dated 3 June 1990 is a newspaper article (see below) from The Australian under the heading: *Telecom 'spying' on its employees* should also be read in conjunction with pages 1 to 6 from the previous referred to AFP transcripts mentioned above because the transcripts show that the AFP was most concerned that Telstra was hand-writing the names of the various people Alan did business with on the side column of the CCAS data which records all incoming and outgoing calls to Alan's business **Exhibit 765-f**

This newspaper article states:

'Democrat Senator Jean Jenkins told the Senate last week Telecom's activities including bugging workers homes. She said the accusations were contained in a statement by a former member of Telecom's Protective Services branch. Senator Jenkins said the man claimed:

- He and other Telecom employees and private investigators hired by Telecom did secret surveillance on hundreds of compensation recipients
- He had been directed by his superior to use whatever methods to get the desired results even when it was obvious the claimant was genuinely injured.
- Claimants have had a "C.CASS run" on their homes, which is a procedure where a computer can print out all numbers dialled on a home phone

PLEASE NOTE: Exhibit AS 765-F on the enclosed CD confirms the hand-written notes in the right hand column of this CCAS data include, against various dates, the names of people that I had telephoned and/or faxed on the 31 January 1994. e.g. *GM*" (Golden Messenger i.e. **Graham Schorer**); AUSTEL; and the Ombudsman. In one instance the name "*Faye Smith*" has been inserted when I had phoned my ex-wife (Faye). This supports the statements made by Senator Jenkins (above) regarding Telstra's secret surveillance of their own employees in 1990 because here we have Telstra using the same practices in January 1994, while they were in litigation with **Graham and me**. Pages three to five of the transcript of my interview with the Australian Federal Police on 26th September 1994 **Exhibit AS 765-D** on the CD relates to Telstra's recording of who I phoned or faxed, and when. These three pages **AS 765-D** from the AFP transcript, together with other documents that I provided to the AFP between February and November 1994, prove that Telstra had my business endeavours under surveillance prior and during my Government-endorsed arbitration.

Exhibit AS 771 on the enclosed CD dated 4 February, 1994 Telstra FOI document (folio M34363) was not made available to the arbitrator or me during my arbitration, even though Telstra's FOI numbering system (M followed by a number) clearly indicates to Telstra and the TIO's Office that I was still reporting problems with my fax transmissions

Exhibit AS 52-B on the enclosed CD dated 10 February, 1994 is a letter from the Government Regulator AUSTEL to Telstra's Steve Black notes:

'Yesterday we were called upon by officers of the Australian Federal Police in relation to the taping of the telephone services of COT Cases.

Given the investigation now being conducted by that agency and the responsibility impose on AUSTEL by section 47 of the Telecommunications Act 1991, the nine tapes previously supplied by Telecom to AUSTEL were made available for the attention of the Commissioner of Police.

25 February 1994: When this letter to Telstra's Corporate Secretary from Fay Holthuyzen, Assistant to the Minister for Communications, Michael Lee, **Exhibit 772-a** is compared to

the letter dated 3rd February 1994 **Exhibit 772-b** that I sent to the Minister's office it is clear that I was concerned that my faxes were being illegally intercepted **Exhibit AS 772-a**

25 February 1994: This internal Government Memo confirms that the then-Minister for Communications and the Arts had written to me to advise that the Australian Federal Police (AFP) would investigate my allegations of illegal phone/fax interception **Exhibit AS 773**

2 March 1994: This letter **Exhibit AS 774** from Ian Row, Telstra's Corporate Solicitor, to Jeff Penrose, Detective Superintendent, Australian Federal Police misinforms the AFP concerns the transmission fax testing process which **Exhibit AS 767 A** and **AS 767 B** above, clearly show major problems were experienced by Telstra when testing my facsimile machine when being tested in conjunction with a facsimile machine (which had originally been installed at **Graham Schorer North Melbourne office**). It is important to highlight how skilfully Mr Row did not disclose to the AFP the problems Telstra had experienced when sending and receiving faxes between my fax machine and Mr Schorer's.

3 March 1994: this article appeared in the Portland Observer newspaper **Exhibit AS 773-b** noting:

'Federal Police officers are investigating allegations of possible illegal activity on the part of Telecom Australia. Officers from the Federal Police visited Portland last week and interviewed Cape Bridgewater Holiday Camp proprietor, Alan Smith, who is one of the four original members of COT (Casualties of Telecom).

18 March 1994: This letter from Steve Black, Telstra's appointed arbitration liaison officer to Graham Schorer and my arbitration process wrote to Robin Davey, Chairman of AUSTEL **Exhibit AS 839** under the heading Tape Recorders - Us In Locating Fax Faults noting:

'In a small number of cases, where the customer indicates that the problem is specific to transmission between two particular facsimile machines then, with the consent of the customers controlling those facsimile machines, the test transmission between these facsimiles machines will be taped and analysed. In these cases, recording would be carried out in circumstances where:

- The customer's consent has been confirmed in writing by facsimiles or otherwise;
- a log is kept by Telecom (at the desk) to record the use of the tape recorder;
- the technician carrying out the test certifies in writing that;
- the customer has given written consent for the tests,
- the certification is filed with the log and audited accordingly.

Nether Graham Schorer or myself, was ever warned, either prior, during our arbitrations or, after our arbitrations, that Telstra had intercepted our his faxes as part of their testing process – or for any other reason for that matter – and neither did we ever provide Telstra with written permission for this interception to occur, even though the letter to Mr Davey **AS 839** is quite clear that it was mandatory for Telstra to apply for written permission to use tape recorders when intercepting phone calls and/or faxes.

14th April 1994: This letter from Telstra' Steve Black to Detective Superintendent Jeff Penrose **Exhibit AS 775** states that Telstra only voice-monitored my telephone service from June to August 1993. **Exhibit AS 765-D** is a transcript of an AFP interview me on **29 September 1994**, which records the police asking me about a hand-written reference to a bus

company that Telstra appeared to have added in the top right corner of a letter I had written previously to Telstra, on **10 September 1992**, to Telstra, when that name of this bus company was not mentioned in that letter see **Exhibit AS 765-E**.

It is important to note that I was tendering to a number of bus companies during 1992, including Nuline Bus Services, Centre Road, Bentleigh, Mooney Valley Bus Lines, Money Valley, Warrnambool Bus Lines and O'Meara's (the name that had been hand-written in the corner of this letter). I had contacted all four companies for the same tender in an attempt to use one of their services to bring people from Melbourne to Cape Bridgewater but, since O'Meara's was not mentioned anywhere in the letter it had been added to, it would seem that Telstra was actually voice monitoring my phone conversations or intercepting my faxes and/or mail as early as September 1992.

PLEASE NOTE: below, I have provided evidence confirming that Federal Court Magistrate Telstra related **Cape Bridgewater Holiday Camp documentation** was still being tampered with as late as December 2008.

Exhibit AS 765-D on the CD are copies of Australian Federal Police transcripts which also support my belief that, during late 1992 and early 1993 the Cape Bridgewater Holiday Camp was under surveillance. During this same period, Cathy Ezard (now my partner) was a professional associate of mine having previously visited my business with a social club from Ballarat. Cathy later signed a statutory declaration dated 20 May 1994, explaining a number of sinister happenings when she attempted to collect mail on my behalf from the Ballarat Courier Newspaper office **Exhibit AS 22**. This declaration leaves questions unanswered as to who collected my mail and how did they know there was mail to be collected at the Ballarat Courier mail office. On both occasions when this mail was collected by a third person, I had previously telephoned Cathy, informing her that the Ballarat Courier had notified me there was mail addressed to me waiting to be picked up.

On pages 12 and 13 on these transcript **AS 765-D** the AFP state at Question 59

'And that, I mean that relates directly to the monitoring of your service, where it would indicate that monitoring was taking place without your consent?

15th April 1994: this article from the Portland Observer newspaper **Exhibit AS 773-c** notes:

'Founding member of COT and operator of the Cape Bridgewater Holiday Camp, Alan Smith has claimed the release of the report as a major victory, not just for COT, but for all Australians. Mr Smith also welcomed a full-page advertisement taken out by Telecom chief executive Frank Blount, in major daily papers this week, addressing the report.

Although pleased with Mr Blount's statement, Mr Smith is concerned that the Telecom chief has so far not answered a question about the alleged bugging of a conversation between Mr Smith and former Prime Minister, Malcolm Fraser.

10th November 1994: Dr Hughes, as Arbitrator wrote to Graham Schorer **Exhibit GS 207** noting that:

'Telecom has indicated in its letter of 26 October 1994 that it is 'keen to have all issues in dispute' dealt with in the arbitration process. It is therefore, prepared to classify the allegations of unauthorised telephone tapping as falling within the description of 'alleged service difficulties, problems and faults.

If you submit a claim which makes no reference to the allegations of unauthorised telephone tapping, and if Telecom makes no comment about the exclusion of such allegations, then they will fall outside the scope of this arbitration **E GS 207**

As of 16 August 2013, nether Telstra, the TIO or the COT arbitrator have addressed these interception issues.

The Vetting of Arbitration Documents.

Exhibit (AS 64) is a letter dated **25 March, 1994** from the Commonwealth Ombudsman Ms Philippa Smith, to Telstra's CEO Frank Blount found that the delay in releasing FOI documents to Alan Smith:

'was due to the need for Telecom to check all documents prior to release so that Telecom is alert to the possible use/misuse of sensitive information. Your officers also informed Mr Wynack (Commonwealth Ombudsman Officer) that they expected the vetting of the documents would take only a couple of days"

Exhibits AS 85, and AS 86, confirm Telstra **threatened** me early in my arbitration that if I continued to co-operate with the Australian Federal Police by providing them FOI documents in the manner I was they would not supply any further FOI documents needed by me in which to support my arbitration claim.

Exhibit AS 87 is page 180 ERC&A from **Senate Hansard** dated 29 November 1994 in which it is reported that Senator Ron Boswell asked Telstra's Legal Directorate David Krasnostein:

'Why did Telecom advise the Commonwealth Ombudsman that Telecom withheld FOI documents from Alan Smith because Alan Smith provided Telecom FOI documents to the Australian Federal Police during their investigations?

In my original letter of 4 July 1994 to Telstra's Paul Rumble **Exhibit AS 85** I noted:

'I gave my word on Friday night that I would not go running off to the Federal Police etc, I shall honour this statement, and wait for your response to the following questions I ask of Telecom below.

At the time of writing this letter I had no intention of providing the AFP with anymore FOI documents. However, when the AFP came back to Cape Bridgewater 26th September 1994, they started asking a number of questions concerning this Paul Rumble letter. On page 12 of the AFP transcript of my interview at Question 57, the AFP stated

'The thing that I'm intrigued by is the statement here that you've given Mr Rumble your word that you would not go running off to the Federal Police etcetera

While I am full of praise for the Commonwealth Ombudsman I still believe that when the Commonwealth Ombudsman Office (see **Exhibit AS 64**, knew that Telstra was refusing to supply me any more FOI documents because I had already supplied sensitive FOI documents to the AFP assist them in their investigations into Telstra's interception of my telephone conversations as well as evidence suggestion Telstra may have also been intercepting my arbitration claim documents before they reached the arbitrator (see **Exhibit AS 778**) then surely the Commonwealth Ombudsman and the AFP had a duty of care to ensure that I was not penalised because I had carried out my civil duty by assisting the AFP with their official investigations.

What is so appalling about the withholding of these documents is that no one has ever investigated the disastrous affect to my over all submission to the arbitrator because it is now apparent relevant information was withheld from me which could further support my claims before the arbitrator. I am of the opinion that the AFP and the Commonwealth Ombudsman should have demanded that the Government (who at the time fully owned Telstra) instigate an investigation into why an Australian citizen could be so disadvantaged during a civil arbitration process all because that citizen (Alan Smith) assisted the AFP in their investigations into Telstra's unlawful interception of that citizens telephone conversations.

Telecommunications (Interception) Amendment Bill 1994.

Graham Schorer, COT Case Robert Bray and I at the requests of the **Legal and Constitutional Reference Committee and Legislation Committee** was asked to submit on the evening 21 March 1995, in Canberra, Parliament House, **Committee Room 2S1**, any evidence we might have which confirmed Telstra had intercepted our telephone conversations. This submission by the COT cases was part of the *Telecommunications (Interception) Amendment Bill 1994.*

Just prior to me providing this evidence to the Committee I had a conversation with Detective Superintendent Jeff Penrose of the AFP who was attending this meeting only as an observer. I asked Mr Penrose whether by my providing this interception evidence to the Committee would interfere with the present AFP investigations into my interception issues, Mr Penrose advised it would not. It was during this Committee meeting that COT Case Robert Bray (almost in tears – certainly traumatised) told of how he became aware that Ballarat Telstra technicians had intercepted his telephone conversations while he was a consultant listening to gay men and the troubles that these persons were suffering due to their homosexuality

PART TWO - FAX INTERCEPTION

Exhibit AS 900 and GS 900 on the CD dated 7 January, 1999 (attached) is the report by Steven Scandrett of Scandrett and Associates Pty Ltd provided to Senator Ron Boswell noting:

'We were briefed on the background situation and made several tests of Tivoli services. The hard evidence given to us, showing possible interception related to unexplained changes in the header strip of some faxes sent between these parties and others with an interest in COT matters. These changes are not normal, as the header strip is a record of a handshake between the machines to enable setup of the calls, that is to say it indicates a conversation or exchange of information between fax machines and is not normal to be modified by the receiving party (the human). For example the receiver of a fax from say the Ombudsman's office could not change the header information sent by the Ombudsman's machine.

We canvassed examples, which we are advised are a representative group, of this phenomena they show that:

- The header strip of various faxes is being altered
- The header strip of various faxes was changed or semi overwritten
- In all cases the replacement header type is the same
- The sending parties all have a common interest and that is COT
- Some faxes have originated from organisations such as the Commonwealth Ombudsman Office

- The modified type face of the header could not have been generated by the large number of machines canvassed, making it foreign to any of the sending services.

PLEASE NOTE: exhibit 19 attached to **EXHIBIT AS 900 & GS 900** dated 11 January 1999 is the sworn testament by Peter Ross Hancock, Victoria, acknowledges he has given Telecommunications services to Golden Messengers since 1992. Mr Hancock concurs that

'After extensive fax testing at Golden Messengers, Queensberry Street, North Melbourne on 4th January 1999, and 11th January 1999, (that he observed) "...the discrepancies (that is the second footprint) in the fax headers raised by the tests referred to above and the differences in the fax headers attached (marked "B") relating to faxes". Mr Hancock then investigated further exhibits of faxes that had either been received and/or sent between Golden Messengers and their Lawyers, COT case premises and "...Alan Smith at Cape Bridgewater.

In my experience there is no other explanation for the discrepancies in the facsimile footprints in question. I have read the report of Scandrett & Associates Pty Ltd and concur with it's findings

The following Exhibits are attached in the report titled Fax Interception

1. A copy of a letter that was faxed to the Hon Peter Costello on 3 November 1998, marked as **Exhibit 1**.
2. A second copy of the Costello letter, marked as **Exhibit 2** that was faxed to Graham Schorer (4 minutes after the version at point 3 was faxed to Peter Costello, (see page 3).
3. A copy of my telephone/fax account, marked as **Exhibit 3**
4. A copy of a letter dated 9 July 1998 from John Wynack, Commonwealth Ombudsman's Office (Senator Working Party) to Graham Schorer, marked as **Exhibit 4**
5. A copy of a letter dated 10 July 1998 from John Wynack (Senate Working Party) to Telstra's John Armstrong, marked as **Exhibit 5**
6. A copy of my letter dated 30 July 1998, to Wally Rothwell, Deputy TIO, marked as **Exhibit 6**.
7. A copy of a letter dated 12 May 1995, from Dr Hughes (arbitrator) to Warwick Smith TIO, marked as **Exhibit 7**.
8. A copy of four pages, all dated 12 May 1995, which were faxed from the TIO's office to Telstra's Ted Benjamin on 12 May 1995, marked as **Exhibit 8**.
9. Supreme Court related faxes intercepted leaving Owen Dixon Chambers **Exhibit 9**
10. After reading **Exhibit AS & GS 900** on the enclosed CD it will be clear that both **Exhibit 10-A** and **10-B** my two letters dated 4 July, 2001 to Tony Shaw, Chairman of the ACA were intercepted before being redirected to his office. **Exhibit 10-C** is a copy of my private residence phone account 55 267265 and is not my designated 55 267230 business fax account at the property next door. In other words, when **Exhibit 10-A** and

10-B were faxed to Mr Shaw at 04:42 am to 0262195200 they were intercepted via my private residence.

11. On 23 December, 2002 **Exhibit11** I again wrote to Tony Shaw, Chairman of the ACA concerning Telstra's systemic billing problem in their network. A Copy of letter was also returned to me from the ACA (now the ACMA). It is clear when using the findings contained in the Scandrett report **Exhibit AS** and **GS 900**, that this letter was also intercepted leaving my residence as I had already sold the business next door.
12. **Exhibit 12** is a Telstra document dated 29 October 1993, confirming that Telstra knew that my business fax line 055-267230 was experiencing major faxing problems during this testing period. This matter and point 13 and 14 is discussed in more detail below.
13. **Exhibit 13** a letter dated 2 March 1994, from Telstra to the Australian Federal Police states that my business was NOT experiencing major faxing problems when the above point 12 documents shows otherwise.
14. **Exhibit 14** -A is a testing document that was transmitted through my fax service line 055 267230 on 28 October 1993. At the bottom right hand corner of this document is the wording: "*STORED IN FAX STREAM*", which in simple terms, means that Telstra can store in their faxing storage facilities any faxed information that is transmitted through the network if that designated fax-line has been connected to Fax Steam. **Exhibits 14-B** are three other 28 October 1993 transmitted faxed test documents showing the problems experienced by Telstra during the date of these test.
15. **Exhibit 14** is page 99 from official Senate Hansard dated 26 September 1997, confirming the then Telecommunications Industry Ombudsman John Pinnock advised the Senate Estimates Committee that the arbitrator (who arbitrated on Graham Schorer and my arbitration) "*had no control over that process, because it was a process conducted entirely outside the ambit of the arbitration procedures*".
16. **Attachment 1** a copy of my letter dated 17 June 2013, to the Hon Michael D Kirby AC CMG, which discusses many matters associated with my arbitration including the interception privacy issues that were NOT addressed during the COT arbitrations. This letter has only been provided here as testament to how the matters are at this given time.
17. **Attachment 2** this letter from the Hon Michael D. Kirby dated 31 July 2013, is in response to my letter dated 17 June 2013 (see Attachment 1)

The various Exhibits in our attached report are addressed below

The two copies of my letter to Mr Costello are attached as **Exhibits 1 & 2** because the clearly demonstrate the problems described by Mr Scandrett & Associates AS & GS 900 on the CD:

- a. My fax identification on the first fax to Mr Costello **Exhibit 1** reads: Cape/Bridge/Camp – ID: 0355267230 – 03 Nov' 98 – 13:59, which is correct;
- b. The identification on the second copy of the letter to Mr Costello after it had been sent to Graham Schorer **Exhibit 2** at 03:15 on 3 November 1998 see **Exhibit 3**, reads: Fax from: 0355267 230 – 03/11/98 – 14:14, which is incorrect (allowing for day-light saving not being programmed into my fax machine.

- c. My telephone/fax account **Exhibit 3** lists **Exhibit 1**, (the letter to Mr Costello, with the correct fax identification) transmitting successfully to Peter Costello's Canberra office, 0262733420 at 03:02 (two minutes after my Telstra account **Exhibit 3** left my office and allowing for the one hour daylight saving).

In the case of these Costello faxes, all the documents were sent from 55 267 267, my business telephone line and **NOT** from my designated business fax line 55 267 230. The transmission of these documents started at 03:02 pm and took eight minutes and four seconds to send. In other words there was only four minutes between the correct transmission to Mr Costello and the intercepted and redirected fax to Graham Schorer, proving that Telstra's equipment had been programmed to *selectively* intercept a document using recognised key words by allowing one document to be transmitted correctly, without any interception, while another was intercepted.

Faxes Intercepted Leaving the Commonwealth Ombudsman's Office

Exhibit 4, a letter, dated 9 July 1998, to Graham Schorer from John Wynack (Commonwealth Ombudsman Office, (COO) was faxed to Graham without the Commonwealth Ombudsman Office proper identification (as is shown on **Exhibit 5** i.e. FROM COMM OMBUDSMAN. Instead of the correct COO identification on this fax only states: "Fax from: 61 5 249 7829" which, although it is the correct fax number for the Commonwealth Ombudsman's office, is not the correct fax identification. i.e. FROM COMM OMBUDSMAN.

Exhibit 5-A, Is a letter faxed from John Wynack, Chair of the Working Party, on the following day 10 July 1998 – to Telstra's John Armstrong at "11:25". This letter, however, has the correct Commonwealth Ombudsman's identification, which states: FROM COMM OMBUDSMAN – clear proof that this fax was NOT intercepted – because, after all, why would Telstra need to intercept a fax addressed to themselves?

PLEASE NOTE: Anyone who inspects my two lever arch interception files will quickly see just how rampant this fax interception process was, particularly when the members of COT attempted to fax documents to and/or receive documents from the Commonwealth Ombudsman's Office during the Senate Estimates Committee COT investigations and their respective lawyers. This then poses the question: was it only during the COT Case arbitrations of 1994 to 1998, and the joint investigations by Senate Estimates Committee and the Commonwealth Ombudsman's office of 1997 to 1999, that our faxes were intercepted via our lawyers and our business premises.

PLEASE NOTE: Exhibit 5-B is a letter to me from John Pinnock TIO dated 7 October, 2005 noting:

As you note, on 14 August 2003, the Commonwealth Ombudsman formally transferred to the TIO your complaint relating to 'fax screening and the blank fax pages...' In your letter of 2 October you claim that Telstra has had you under surveillance, including interception of your faxes, for a number of years. I have considered the information contained in that letter, as well as the more detailed information on this issue contained in your correspondence to the Commonwealth Ombudsman.

In my opinion, the information you have supplied amounts to no more than speculation and innuendo and I am not persuaded that there is credible evidence to warrant an investigation by the TIO"

The information supplied I supplied to Mr Pinnock was the same type of evidence attached to the report prepared by Steven Scandrett & Associates, **Exhibit AS 900 & GS 900**.

Exhibit 6-A, is a three page letter dated 26 April 1998, which I originally sent to Wally Rothwell, Deputy TIO on and around this date. However, on this occasion I was copying it to Graham Schorer's office at 14:49 on 29th December 1998 but the fax identification across the top of all three pages is not my correct business identification. My business identification for this period in 1998 see **Exhibit 6-B** was 'CAPE/BRIDGE/CAMP – ID 0355267230' (plus the date and time the fax was sent. It is clear from *Exhibit 6-A*, the correct identification had been replaced with '*Fax from: 055 267 230*'

PLEASE NOTE: I have attached as **Exhibit 6-C** my Telstra fax account for the date of 1 December 1998, which coincides with the date and time when it was faxed to Graham Schorer's fax number 0392877001 at 01:28 pm. In other words, this selective fax interception between Graham Schorer's office and mine was still in progress at least up to December 1998.

The fax identification at the top of the copied letter to Mr Schorer see **Exhibit 6-A** is the same as the identification "*Fax from*" across the top of the documents assessed by Scandrett & Associates and Peter Hancock (see above), which they identified as having been intercepted. Not only were they intercepted in the same way that earlier documents were intercepted, in this case they were intercepted after they left my private residence phone line, 55 267 265 see my fax account at Exhibit 6-c. This fax interception from my residence phone line as well as my business fax line is further discussed in **Exhibit 10** below, which confirms faxes leaving my residence 55 267 265 phone service line (NOT my designated business line were also intercepted when being sent to the ACA (now ACMA) in December 2002.

Faxes intercepted leaving the TIO office

Volume two of my interception files (which will be supplied to the Victoria police on request) includes copies of letters faxed from the TIO's office during the COT arbitrations. Some of these clearly arrived at the intended destination with the correct identification of the TIO's office and yet, when the same document was faxed to another party, fifty minutes later, the identification has changed to "*Fax from*" without the TIO's identification and logo – indicating, as described in the Scandrett report – that it had been intercepted. One of these intercepted documents from 12 May 1995 see **Exhibit 7** was Dr Hughes' letter to Warwick Smith (TIO), declaring that the rules used for my arbitration were not credible. Clearly though, whoever had access to Telstra's network, and therefore the TIO's office, knew – during the designated appeal time of my arbitration – that my arbitration had been conducted using a set of rules (the Arbitration Agreement) that the arbitrator had declared '**not credible**'.

Whoever had access to Telstra's network, and therefore the TIO's office service lines, knew – during the designated appeal time of my arbitration – that my arbitration had been conducted using a set of rules (the Arbitration Agreement) that the arbitrator had declared '**not credible**'. There are three fax identification lines across the top of the second page of Dr Hughes' letter:

- a) The third line down from the top of the page (i.e. the bottom line) shows that the document was first correctly faxed from Dr Hughes' office (Hunt & Hunt), on 12-5-95, at 2:41pm to the Melbourne office of the TIO – 61 3 277 8797;
- b) The middle line indicates that it was faxed on the same day, exactly one hour later, at 15:41, from the TIO's correct fax number, followed by the words "*TIO LTD*" to "*SMITH (HOME)*;

- c) The top line, however, begins with the words “*Fax from*”, followed by the correct fax number for the TIO’s office, and then the date (12/05/95) and the time (14:50).

If we look specifically at the order of the time stamps of these three fax processes it can be seen that the top line relates to the second sending of the document, at 14:50, nine minutes after the fax from Hunt & Hunt (bottom line) so, between the TIO’s office receiving the first fax, which was sent at 2.41pm (14:41) and sending it on at 15:41, exactly one hour later, to the TIO himself (Smith) at his home (middle line), someone else re-sent the fax at 14:50 (top line), nine minutes after it had been sent from Hunt & Hunt (Dr Hughes). In other words, the document sent nine minutes after Dr Hughes letter reached the TIO office, was intercepted **Exhibit AS 785**.

Exhibit 8 show that these four TIO documents were also faxed on 12 May 1995 (the same day) between 16:27 and 16:28, to the office of Telstra’s Ted Benjamin were received with the correct TIO identification on all pages, further confirmation that **selective fax interception** was rife during the COT arbitrations.

Faxes Intercepted Leaving Owen Dixon Chambers

Exhibit 9-A this *Memorandum of Advice re Supreme Court of Victoria proceeding, Graham Schorer (Golden Messenger) v Telstra*, prepared on behalf of Mr Schorer by Mr Paul Cosgrave, Barrister, was faxed from Mr Cosgrave’s office in Melbourne’s Owen Dixon Chambers to Graham’s Melbourne office, on **3 December 1999**. Mr Cosgrave’s office fax identification however, has been removed and replaced with the wording “*Fax from*”, followed by Mr Cosgrave’s correct office fax number, 61 3 9608 8776, on the top of all twelve pages.

Exhibit 9-B includes confirmation that a similar Telstra-related Supreme Court document was faxed from Mr Cosgrave’s same Melbourne office to Graham Schorer, C/- Canberra International Hotel, on the **8 December 1998**. On this occasion however, Mr Cosgrave’s correct fax identification appears on all seventeen pages of this fax. It seems that whoever had access to Telstra’s network was only able to use the ‘**recognised fax numbers**’ when intercepting faxes from Mr Cosgrave’s office en route to Graham’s Melbourne office. On this occasion, on the **8 December 1998**, who ever had access to Telstra’s network was unaware that Graham was in Canberra and therefore the fax was NOT intercepted. Other similar examples of the interception of Telstra-related, lawyer to client documents are also included in my two interception files.

When Graham Schorer and I began to suspect that Telstra was still intercepting their faxes I started faxing all my in-confidence documents from my residence (03 5526 7265) or from the Holiday Camp phone line (03 5526 7267), instead of using the designated business fax line (03 5526 7230).

Exhibit GS 485 on the CD is my residence phone service account, for 03 55267265, which confirms a fax sent to Graham’s fax number (0392877001) at 01:28pm and records that it took 3.55 minutes to transmit. Normal fax transmissions are recorded page by page at the receiving end, with the time that each page was received printed across the top of the page, but when a multi-page document has been intercepted the fax only records a single time for the entire, multi-page document. This letter dated 26 April 1998, originally addressed to Wally Rothwell (Deputy TIO), shows each of the pages that I faxed to Graham on 1 December 1998:

- Recorded the time that the first page left my fax machine, 12:27, but not individual transmission times for each page; and

- Showed that my business identification FROM/CAPE/BRIDGE/HDAY/CAMP', had been replaced with the words: "Fax from: 0355267230". (my fax machine was one hour out as it had not been re-programmed to the one hour day-light saving).

It is important to note that when my Panafax UF-123 facsimile machine was installed in March 1994, only my business identification – FROM/CAPE/ BRIDGE/HDAY/CAMP appeared on the received faxes. A new Xerox facsimile machine installed at my business in 1998 displayed the wording – CAPE/BRIDGE/CAMP – ID: 0355267230 on all the faxed documents received.

It is clear from **Exhibit GS 486** on the CD that my business identification FROM/CAPE/ BRIDGE/HDAY/CAMP was removed. However, it is also clear from **Exhibit GS 485** that the Telstra account is NOT advising me, that my private phone line 55 267265 had been connected to Telstra's FaxStream service. Further evidence confirming that my private life is not so private. The fact that the above examples **GS 484, 485, 486**, show clearly that faxes between Graham, Graham's Lawyers and my residence and business was subjected to prolonged interception.

Exhibit 12 dated 29 October, 1993 is a Telstra FOI document folio K01489 which confirms on this date Telstra's local technician Ross Anderson had major problems when trying to send and receive faxes from Alan Barrow a Telstra fax consultant in Melbourne

During testing the Mitsubishi fax machine, some alarming patterns of behaviour were noted, these affecting both transmission and reception. Even on calls that were not tampered with the fax machine displayed signs of locking up and behaving in a manner not in accordance with the relevant CCITT Group 3 fax rules.

Exhibit 13 dated 2 March, 1994 is a letter from Ian Row, Telstra's Corporate Solicitor, to Jeff Penrose, Detective Superintendent, Australian Federal Police misinforms the AFP concerning the transmission fax testing process which Exhibits **12, 14-A** and **14-B** clearly show major problems were experienced by Telstra when testing my facsimile machine when being tested in conjunction with a facsimile machine installed at Graham Schorer office. It is important to highlight how skilfully Mr Row did not disclose to the AFP the problems Telstra had experienced when sending and receiving faxes between my fax machine and Mr Schorer's. He likewise did not disclose to the AFP that Mr Schorer's service was were being tested in conjunction with mine.

The hand-written note in the bottom right corner of **Exhibit 14-A**, states: "**Stored in Fax Stream ?**", confirming that faxes intercepted via Telstra's testing process are stored in Telstra's Fax Stream service centre so the document can be read, at any time, by anyone with access to Telstra's fax stream centre. The Scandrett & Associates report proves that numerous COT arbitration documentation was definitely intercepted, including faxes travelling to and from Parliament House, the Commonwealth Ombudsman's Office (COO) and the COT's, include both Graham Schorer's case and that of mine. **Exhibit 14-A** shows that intercepted faxes were, perhaps still are, stored wherever it is that Telstra's fax stream documents were/are stored. This means, in turn, that Telstra, the defendant in the COT arbitrations, had free access to in-confidence documents that the claimants believed they were sending ONLY to their accountants, lawyers and/or technical advisors (as well as Parliament House and the COO) and those documents could well have included information that the claimants might **not have wanted disclosed to the defendants at the time**.

Exhibit 14-B are three similar faxed fault data records for the testing process conducted on 28 October 1993 referred to in **Exhibit 13** above, which also supports that Exhibit which discussed the many problems with sending and receiving faxes on this particular day. In other words, Telstra's Ian Row lied to Jeff Penrose, Detective Superintendent, Australian Federal Police regarding these faxing problems. It has since been acknowledged that Telstra's interception deeds were not released to the rank and file Telstra technicians because on most occasions when this interception took place without applying for a warrant from a magistrate.

The following information also supports our interception claims

Faxes Intercepted leaving Parliament House Canberra

In the Scandrett report **AS & GS 900** on the enclosed CD confirms that COT-related arbitration documents were intercepted after leaving Senator O'Chee's office in Parliament House, Canberra: if we compare that document with this intercepted document from the TIO's office, it is perfectly clear that we are dealing with very serious criminal conduct by someone with extensive access to Telstra's **intelligence network**.

29 April 2006: My letter to the Hon David Hawker, Speaker in the House of Representatives **Exhibit AS 574** notes:

'Over the years however I have explained to you some of the problems I have encountered with faxes and emails that 'go missing' or arrive late or faulty. The enclosed email from Sandra Wolfe is another demonstration of the kinds of problems I have had to deal with, although the recent, different email problems have only arisen since the DCITA process began. The apparent interference in my emails has now forced me to arrange for Ronda Fienberg, my Melbourne editing service (rondaf@optusnet.com.au) to send emails out on my behalf, from her computer and email address, because emails often don't arrive at their correct destination when I attempt to send them from my emails address.'

Please note the footnote in Alan's letter from Ronda Fienberg states:

Mr Hawker, I feel obliged to add to the information Alan has provided here. I have run a small editing support business from my home since 1991 and first began assisting Alan in mid-1994. Until then I had never had a problem receiving or sending faxes for myself, or on behalf of my clients, to anywhere in the world, but I continually (still) have problems with Alan's faxes which often come through with the words drawn out down the page and therefore unreadable, or with the page cut off half way down. Since I first began to use email, in August 1998, I have also never had problems with emails, either sending or receiving, except for those going to Alan. Emails that don't get to him don't 'bounce' as they would if I had attempted to send them to an incorrect email address, they simply vanish into the ether for days at a time, before finally finding him! I find it difficult to believe that this is all simple coincidences or that nothing can be done to either prove that someone is interfering in the transfer of faxes and emails between his office and mine, or to stop it occurring.

5 June 2006: My partner Cathy Ezard wrote to the Hon David Hawker, MP Speaker In the House of Representatives **Exhibit AS 575** noting:

I am writing to you to voice my current unease due to information Alan Smith has forwarded to the DCITA claim process. As you are aware our emails have been going missing throughout the above process.

Mail and faxes have gone missing at other times when the Telstra matters have been under scrutiny by various sources in the past. Our phones have also been monitored.

Exhibit AS 576 dated 13 June, 2006 from The Hon David Hawker, Speaker In the House of Representatives is his response to Cathy's letter (above) noted:

Whilst I sympathise with your ongoing concerns relating to your phone, fax and email service, it is difficult for me to offer any fresh suggestions those we have already canvassed in previous letters.

As you would be aware there are avenues of recourse, including the Commonwealth Ombudsman, Telecommunications Industry Ombudsman and in respect of your qualms about personal safety, the police.

6 and 10 August 2006: These two witness statements Exhibit **AS 766** on the enclosed CD prove that Bob Hynninen, Ex-Detective Sergeant of the Victoria Police and Bob Direen, a Ex-Telstra Senior Protective Services Officer, both believed that, during the 1999 to 2001 Victoria Police, Major Fraud Group investigations into the COT claimants' allegations of criminal conduct by the Telstra Corporation during the COT arbitration's:

- The St Kilda Road (Melbourne) Police Department telephone lines were 'bugged';
- The private residential phone line of Senior Detective Rod Kueris (the co-ordinator of the Major Fraud Group investigation) was 'bugged';
- Detective Kueris was under covert surveillance during the course of his investigations;
- Faxes sent from Cape Bridgewater to the St Kilda Road complex were illegally intercepted ;

Also at points 20, 21 and 22 in Des Direen's witness statement he notes that:-

(20 I had cause to travel to Portland in western Victoria in relation to a complaint involving suspected illegal interference to telephone lines at the Portland telephone exchange.

(21 As part of my investigation, I first attended at the exchange to speak to staff and check the exchange log book which was a record of all visitors to the exchange and a record of work conducted by the technical officers.

(22) When I attended at the exchange, I found that the log book was missing and could not be located. I was informed at the time by the local staff that a customer from the Cape Bridgewater area south of Portland was also complaining about his phone service and that the log book could have been removed as part of that investigation. I was not told about this complaint prior to travelling to Portland and when I made inquires by telephone back to Melbourne I was told not to get involved and that it was being handled by another area of Telstra. I later found that the Cape Bridgewater complainant was part of the COT cases,

Exhibit AS 800-B is a copy of my fax journal dated between 18 and 25 August 1998 showing that 29 transactions during this period all but three transaction registered as being received successfully at the intended destination. However, the three transactions that registered problems being received at the other end (intended destination) fax number 0395266614 was the St Kilda Road (Melbourne) office of Neil Jepson, Barrister for the **Major Fraud Group**.

23 August 2006: My letter Exhibit AS 577 to the Hon David Hawker, Speaker in the House of Representatives, notes:

'At our last meeting in Portland it seemed to me you were finding it hard to comprehend all that Cathy and I have had to deal with over the past years, in relation to our claims against Telstra and their Protective Services division. You will find attached a section of a recent fax journal printout from my fax machine. This is the third fax machine I have installed at my business since my arbitration – each one purchased in a futile attempt to improve the fax service. As I have explained to you, I still have problems receiving and sending faxes from my residence, even during my recent DCITA Independent Assessment Process during February to May this year.

31st August 2006: David Hawker MP wrote to me **Exhibit AS 578** noting:

'Many thanks for keeping me informed. As requested, issues concerning privacy breaching have been raised with Senator Coonan's office for your meeting with the Minister set for 6 September 2006 (AS 578)

PLEASE NOTE: my privacy concerns were not addressed during this meeting.

Exhibit AS 682 on the enclosed CD is a letter dated 1 October 2006, Darren Lewis, the new owner of my business, to the Hon David Hawker MP, Speaker in the House of Representatives, noting:

'I then described to him (a Telstra technician) the latest fax problem – the one that I raised with you last Wednesday – when Alan Smith's fax (intended for a destination in Melbourne) arrived at my business, cutting off my conversation with Cathy (Alan's partner) as it came through.

9 February 2011: in another AAT FOI investigation in relation to the ACMA and similar FOI matters, I formally requested that the ACMA assess two lever arch files of fax interception evidence as part of those AAT matters noting:

I believe most Australians would want to know, if the ACMA has nothing to hide on behalf of Telstra, then why would they not investigate these on-going interception issues in the public interest? Surely, if a Government Communications Regulator refuses to address fax interception evidence I have offered to provide them, that confirm someone with access to Telstra's network was intercepting faxes during and after the end of their arbitrations, then this is a matter of public interest?

It is most important to note that the ACMA, however, declined to investigate this evidence which is still available today for assessment.

Federal Magistrate Documents Disappear

Exhibit AS 629 is a letter dated 13 December 2008, from Darren Lewis the new owners of the Cape Bridgewater Holiday Camp (see also above) to Registrar Caporale of the Federal Magistrates Court of Australia, noting:

'Yesterday I telephoned Ms McCormic because I was concerned I had not received clarification from the Federal Court that they had received my latest submission dated 2nd & 3rd December 2008 prepared in support of my petition File No (P) MLG1229/2008 before the Magistrates Court. I was advised by Ms

McCormic that the Federal Magistrates Court had only received, on 5th December 2008, an affidavit prepared by Alan Smith dated 2nd December 2008. PLEASE NOTE: I originally enclosed with Alan Smith's affidavit in the (envelope) overnight mail the following documents."

This letter from Mr Lewis discusses four Telstra-related files that I prepared to help with Mr Lewis's court case and relates how he had put those four files in an envelope, along with my affidavit, but that none of the files were in the envelope when it arrived at its intended destination noting:

I have attached herewith dated 3rd December 2008, a copy of the Australia Post overnight mail receipt docket numbers SV0750627 and SV0750626 confirming the total cost to send the above aforementioned information was \$21.80. I am sure Australia Post would confirm that a large amount of documents would have been enclosed in these two envelopes when they left Portland.

Exhibit AS 616-B is a copy of a letter dated 17 May 2007, which I received from Senator Helen Coonan, then the Minister for Communications, which notes:

'I have now made both formal and informal representations to Telstra on behalf of the CoTs. However, Telstra's position remains that this is a matter that is most appropriately dealt with through a Court process. Telstra is not prepared to undertake an alternative means of pursuing this matter. I also appreciate the depth of feeling regarding the matter and suggest you consider whether any court proceedings may be your ultimate option.

Why should an ordinary Australian citizen have to take the Telstra Corporation to court in relation to illegal activities carried out by Telstra while it was still Government owned, including Telstra's interception of in-confidence faxes, some of which were intercepted as they were leaving Parliament House, Canberra; the Commonwealth Ombudsman's Office; the TIO's office; and the office of the Government Telecommunications Regulator (the ACA). It should have been the Government taking Telstra to court, on my behalf, since I had been the recipient of Telstra's illegal activities, both during my arbitration and for at least seven years after.

Exhibit GS 354 on the CD dated 28 May, 1998 from Ted Benjamin, Telstra arbitration liaison officer to Graham's arbitration process notes:

In respect to the conditions you have placed at point 2), Telstra will need to seek advice from its professional legal and accounting advisors and therefore reserve its rights to disclose contents of documents to the above mentioned parties solely for the purpose of assessing Golden's claim.

The fax imprint at the top of Ted Benjamin's letter shows that the letter was faxed back to Graham from William Hunt's office at 16:28, after Mr Hunt had read the document. By using **Exhibit GS 355** on the CD (an earlier faxed document from Mr Hunt's office dated 4th May 1998) it will be observed that William Hunt's usual fax identification display for the 4th May 1998, states: Fax from – May 04 '98 61 1155AM 61 3 96706598 – yet the Ted Benjamin letter shows the fax identification a completely format for time, date and fax number identification.

Exhibit GS 455 on the CD dated 10 June, 1998 shows the fax imprint on this letter from Graham Schorer to Telstra's Neil Mounsher was faxed on 19 June 1998 see fax imprint at the top of pages 2 and 3 which note "*Fax sent by 613 9287 2001 – Golden – 19/6/98 11:14*") confirms that it was faxed to, and received by Telstra, without being intercepted, at 11:14am

On the second and third pages of this fax, under the heading WITHOUT PREJUDICE, Grahams records his losses at \$12,681 million but he was forced to accept only \$3,846 million, which is less than 30% of this estimation of his losses, a figure that was calculated before Graham discovered that the Regulator had warned Telstra that they knew that Telstra had knowingly misled and deceived Graham during the Flexitel matter, which led to Graham accruing even more expense as he fought this conduct so, by 1998, his losses had actually run into hundreds of thousands of dollars.

The \$3,846 million that Telstra chose to offer Graham is particularly interesting because, in the lead-up to settlement, and as the result of a number of faxes exchanged between Graham and his lawyers, Graham had finally decided that he could not accept anything less than \$4 million, and that would only be as a last resort because it came nowhere near what he had actually lost. Astonishingly, this was almost the figure that Telstra offered! Since the Scandrett report **GS 900 and AS 900** enclosed on the CD has now proved that Telstra was intercepting faxed, in-confidence COT documents during their arbitrations, could it be that Telstra also intercepted discussion papers that had been exchanged between Graham and his lawyers finding out what Graham would finally agree as his bottom figure?

As stated above, I am of course willing to supply the Victoria Police any further interception evidence that they may see appropriate to conclude their investigations into Graham Scherer's complaint. I advise that it would serve all interested parties if I was permitted to explain the various relevance of those files so that a correct understanding of that information is reached.

Thank You

Alan Smith