

**CAV  
CHRONOLOGY  
LGE**

**Exhibit 258 to 323**



# Hunt & Hunt LAWYERS

Rec'd  
3.45 pm  
16/2/97  
DAN

**Partners**  
David M. Scarlett  
Edward S. Boyce  
James G.F. Harrowell  
Gordon L. Hughes  
David P. Cooper  
Ian S. Craig  
Peter J. Ewin  
Wayne B. Cahill  
Neville G.H. Debney  
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William P. O'Shea

**Consultants**  
Kenneth M. Martin  
Richard J. Kellaway  
Graeme J. Armstead

**Associates**  
Francis V. Gallichio  
John D.F. Morris

To  
~~9334~~  
9287 7001

18 February 1997

Our Ref: GLH  
Matter No: UNKMEL1

William R Hunt  
Hunts  
Solicitors & Consultants  
358 Lonsdale Street  
MELBOURNE VIC 3000

Dear Sir

## TIO AND SCHORER

I acknowledge receipt of your letter dated 14 February 1997.

Your request for an extension of time is based in part upon the anticipated outcome of your client's meeting with the Administrator on 26 February next, and in part upon the pressures of work which your client is presently experiencing.

I have subsequently received a copy of Mr Pinnock's facsimile to you, dated 17 February 1997, which suggests the meeting proposed for 26 February next is unlikely to have any relevance to the matters immediately in issue.

As to your client's work pressures, I remain sympathetic but point out that this arbitration will shortly enter its fourth year. Much, but not all, of the delay in resolving this matter is attributable to your client's requests for extensions of time due to work pressures. I am entitled to form the view that your client does not place a high priority on the resolution of this claim and this in turn raises the question of whether Telstra should continue to incur the expense of defending it.

In my letter of 4 February 1997, I indicated that I would provide each party with an opportunity to make a submission as to what documentation or other material should now be produced.

In its response of 12 February, Telstra submitted that it had no case to answer; in the alternative, it requested the production of further specified information from your client.

In the absence of a submission by your client relating to the production of further information from Telstra, I propose to proceed with a ruling as to what documentation, if any, must now be produced by each party.

melbourne

sydney

sydney west

brisbane

canberra

newcastle

represented in

adelaide

darwin

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 9617 9200.  
Facsimile: (61-3) 9617 9299. G.P.O. Box 1533N, Melbourne 3001. DX 252, Melbourne.  
11960467\_GLH/RB Email: Mail/hunt.hunt@interlaw.org

258

My determination could be along any of the following lines:

- one or both parties are to produce additional material, as specified by me. In relation to your client, this may or may not be the documentation requested by Telstra in its letter of 12 February 1997. In the case of Telstra, I would take into account past submissions by your client; or
- neither party need produce further documentation, and the Resource Unit to now proceed with its own assessment of the financial and technical issues; or
- neither party need produce further documentation, no Resource Unit involvement is required and the matter will proceed to a final award forthwith; or
- in accordance with Telstra's submission, there is no case to answer and the claim is dismissed.

Bearing in mind these options, I again invite you to respond to the request for submission contained in my letter of 4 February 1997. I am prepared to extend the deadline until 5.00 p.m on 26 February 1997 in deference to your client's business pressures. As soon as practicable subsequent to 26 February 1997, I propose issuing formal directions.

Yours sincerely



**GORDON HUGHES**

CC E Benjamin, J Pinnock, N MacLachlan, P Bartlett, S Hodgkinson

CONSULTANTS:  
T. M. BUTLER  
F. J. R. HUNT, B.A., LL.B.

MITCHELL HOUSE  
358 LONSDALE STREET  
MELBOURNE 3000  
(CNR. ELIZABETH & LONSDALE STREETS)

YOUR REF. GLH - 5126900

PHONE: 9670 5694\*  
FAX: 9670 6598

OUR REF. 93/194 WRH:DF

25th February, 1997.

Dr Gordon Hughes  
Messrs Hunt & Hunt  
Lawyers  
Level 24  
459 Collins Street  
MELBOURNE VIC 3000

Dear Dr. Hughes,

RE: Arbitration - Schorer and Telstra

We have referred your letter of 18th February last to the Claimants, and are instructed to advise you as follows.

The FTSP arose from an acceptance by Austel that the Claimants had cause for complaint against Telstra, that reasonable proof of the nature and extent of the complaint could come only from within Telstra, and that it was reasonable in Telstra's interest for the sorting out of the dispute and the amount of compensation payable (if any) to be kept confidential.

From the FTSP there emerged the FTAP.

It is beyond dispute that the Claimants were entitled to rely on material to support their claim (whether being made under FTSP or under FTAP) being provided by Telstra through accelerated procedures. (Indeed the term "Fast Track" appears to have emerged from the acceptance of the principle that relevant information sought under FOI procedures would be made available with reasonable speed.)

In your letter of 4th February to the parties in dispute, and to others you wrote thus:-

"I am prepared to make a ruling on this matter but would prefer the parties to reach agreement. In any event, I require submissions from each party as to what documents or other material should now be produced".

Based on long running and fruitless experience in dealing with Telstra about the provision of necessary information under FOI procedures the Claimants feel it would be

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259

impossible to reach any even faintly useful agreement with Telstra about "what further documentation (if any) should be produced" by the Claimants. This is because Telstra is not prepared to produce requested material. The Claimants will elaborate on this contention at any time if required.

Hence it was hoped a meeting with the Administrator might result in arrangements being made whereby the present impasses could be over come.

Difficulties were experienced in fixing a meeting time acceptable to the Administrator. The meeting has now been fixed for the afternoon of the 26th inst. - the same time now as your last extension of time to reply to your letters of 4th and 18th February expire.

There exists in Telstra's control several Disks which comprise simply a list of documents which came into existence in the ordinary conduct by Telstra of its business over the years relating to the Claimants' problems.

Production of the Disks under FOI procedures to the Claimants has been refused on the grounds of privilege. The Claimants on advice believe the claim of privilege is not valid.

It was hoped that perusal of the information on the Disks would enable the Claimants to specify with exactitude what documents should be produced for the present arbitration purposes. Inspection might also indicate what and when various documents have been "historically destroyed".

It is unfortunate that the Administrator has misunderstood what (as to part) the Claimants wished to discuss with him - namely the possibility of a meeting with Telstra under the Administrator's chairmanship (acting perhaps as a mediator) to see if any agreement could be reached to provide the Disks and possibly some other documents which the Claimants seek.

You will appreciate that other COT cases have experienced difficulty in obtaining required FOI documentation, and that later when further material did come to hand the "Statements of Claim" needed revision.

Because of the continual lack of information being provided by Telstra (whether or not under FOI procedures or as indicated by you) the Claimants simply cannot at present usefully supply you with a list of all the documentation it requires nor provide you with "a full description of that information or other material".

The Claimants again respectfully request you re-consider your rulings contained in your letters of 4th and 18th February, and schedule a Directions Hearing for 11th March or later as you may consider appropriate to enable submissions to be made to you on the problems created for the Claimants by the continuing failure of Telstra to supply information in breach of the basis on which the FTSP and FTAP were entered into.

If that is not acceptable to you for whatever reason, (and the Claimants are already indebted to you for your courtesy in taking into account the Claimants current business pressures) then it is requested that you note that so far as they are capable of being set out in part at the moment the Schedule A set out hereunder constitutes the initial documentation which the Claimants require to access so to be able to begin the presentation of their case.

In the light of the legalistic aura that now surrounds the FTAP and the selective nature of copying correspondence to and from various persons or bodies, the Claimants formally reserve all their rights.

Yours truly,



HUNTS'

Copy: E. Benjamin  
J. Pinnock  
P. Bartlett

SCHEDULE A

(i) All documentation about the performance of the North Melbourne ARF & ARE 11 Exchange for the individual thousand groups, commencing with the prefix 329-0 and 329-7 as set out in page 137 of the April 1994 AUSTEL Report identified as Table 6.1 named as Performance Report of Selected Exchanges - January 1991 - September 1992, for the periods of:-

01 January 1983	to 31 May 1985	(ARF Exchange)
01 June 1985	to 30 June 1986	(ARE 11 Exchange)
01 July 1986	to 30 June 1987	(ARE 11 Exchange)
01 July 1987	to 31 December 1987	(ARE 11 Exchange)

27th February, 1997

FILE NOTE:           SCHORER  
                  GOLDEN MESSENGER & TELSTRA

On Wednesday, 26th February engaged from 2.30 p.m. to 6.00 p.m. with Mr. Pinnock at TIO's office. Present were Telstra's solicitor, Armstrong and TIO special counsel, Mr. Bartlett and Miss                   (?), solicitor.

In support of Pinnock's own views as well as what was put to him by me, he will ring Gordon Hughes to advise that with Telstra's and his permission, I am to ring Hughes on Thursday or Friday afternoon - the idea being that the problem of obtaining information from Telstra via FOI is to be abandoned in effect by getting it specifically under directions from Dr. Hughes and that there will be a need to get certain information first before usefully any further information can be obtained.

260



# Hunt & Hunt LAWYERS

27 February 1997

Our Ref: GLH:GLH  
Matter No: 5126900

Mr William R Hunt  
Hunts'  
Solicitors and Consultants  
358 Lonsdale Street  
MELBOURNE VIC 3000

**Partners**  
David M. Scarien  
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Neville G.M. Debney  
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William P. O'Shea

**Consultants**  
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Graeme J. Amatead

**Associates**  
Francis V. Calichio  
John D.F. Morris

Dear Mr Hunt

## ARBITRATION - SCHORER AND TELSTRA

I acknowledge receipt of your letter dated 26 February 1997.

At this stage, I am not inclined to hold an oral hearing to discuss "the continuing failure of Telstra to supply information in breach of the basis on which the FTSP and FTAP were entered into".

As previously foreshadowed, I propose analysing the submissions of the parties to date and making a ruling, based on those submissions, as to what information and documentation (if any) should be provided by either party in order to progress this matter as expeditiously as possible.

It may be that, when I have completed this analysis I will consider there are grounds for an oral hearing.

Yours sincerely

  
**GORDON HUGHES**

cc E Benjamin, J Pinnock, L McCullagh, P Bartlett, S Hodgkinson

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sydney west  
brisbane  
canberra  
newcastle  
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261

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3 March 1997

**FAXED**  
3/3/97

Regulatory & External Affairs

Level 37  
242 Exhibition Street  
Melbourne Vic. 3000

Telephone (03) 9634 2977  
Facsimile (03) 9632 3235

Dr Gordon Hughes  
Hunt & Hunt  
Lawyers  
Level 21  
459 Collins Street  
MELBOURNE VIC 3000

✓ By facsimile: (03) 9617 9299

Dear Dr Hughes

**Re: Schorcr Arbitration - Golden Messenger**

I refer to your letter dated 18 February 1997 and the Claimants' letter dated 25 February 1997.

In my letter dated 12 February 1997 I made various submissions in relation to how this arbitration should, in Telstra's opinion, be progressed.

Considering the options you outlined in your letter dated 18 February 1997 Telstra does not propose, at this stage, to respond in detail to the Claimants' request for documents as such a response may be irrelevant. However please advise if you require submissions in relation to any of the matters raised in the Claimants' letter. Should you decide to give directions for the production of documents by Telstra, Telstra requests an opportunity to make submissions in relation to what further documents should be produced.

Yours faithfully

**Ted Benjamin**  
Director  
Consumer Affairs

CC: See over page

cc: Mr Graham Schorer  
Golden Transport Agency  
493-495 Queensberry Street  
NORTH MELBOURNE VIC 3051

By facsimile: (03) 9287 7001

Mr John Pinnock  
Telecommunications Industry Ombudsman  
321 Exhibition Street  
MELBOURNE VIC 3000

By facsimile: (03) 9277 8797

Mr Wm R Hunt  
Hunts' Solicitors  
358 Lonsdale Street  
MELBOURNE VIC 3000

By facsimile: (03) 9670 6598

Mr Peter Bartlett  
Minter Ellison  
40 Market Street  
MELBOURNE VIC 3000

By facsimile: (03) 9229 2621



# Hunt & Hunt LAWYERS

COPY

5 March 1997

Our Ref: GLH  
Matter No: 5126900

**Partners**  
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James G.F. Harrowell  
Gordon L. Hughes  
David P. Cooper  
Ian S. Craig  
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Grant D. Sifton  
William P. O'Shea

**Consultants**  
Kenneth M. Martin  
Richard J. Kellaway  
Graeme J. Armstead

**Associates**  
Francis V. Gallichio  
John D.F. Morris

Mr E Benjamin  
Director  
Consumer Affairs  
Telstra Corporation Limited  
Level 37, 242 Exhibition Street  
MELBOURNE VIC 3000

**By Facsimile: 9632 3235**

Dear Sir

### TIO - SCHORER

I acknowledge receipt of your letter dated 3 March 1997.

As foreshadowed, I propose giving directions regarding the production of documents by each party. This may or may not involve a direction that Telstra produce documents. In the circumstances, I invite a submission on the matters raised in the letter from Mr Hunt dated 25 February 1997 although, with one exception, I believe the issues are by now quite clear.

The one exception relates to the claimant's request for a copy of certain computer disks. In addition to any other submission you may wish to make, I would be grateful if you could advise me:

- (a) whether you consider the contents of the disks are relevant to these proceedings;
- (b) your attitude towards producing the disks for inspection by the claimant as part of these proceedings, whether or not pursuant to a direction by me;
- (c) any other observation you may wish to make regarding the origins or contents of the disks.

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sydney

sydney west

brisbane

canberra

newcastle

represented in

adelaide

darwin

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Email: Mail/hunt.hunt@interlaw.org

263

I would appreciate your response within 7 days.

Yours sincerely



**GORDON HUGHES**

cc W Hunt, J Pinnock, S Hodgkinson, L McCullagh, P Bartlett



Customer Response Unit  
Commercial & Consumer

Level 37  
242 Exhibition Street  
Melbourne Vic. 3000

Telephone (03) 634 2977  
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12 March 1997

Dr Gordon Hughes  
Hunt and Hunt  
Lawyers  
Level 21/459 Collins Street  
MELBOURNE VIC 3000

By facsimile: (03) 617 9299

Dear Sir

**Arbitration - Golden Messenger**

I refer to your letter dated 5 March 1997 in which you foreshadowed giving directions in relation to the production of documents, and allowed the parties until today to provide you with their submissions by way of comment.

As Telstra has not completed its submission, I propose that subject to your consent, the parties be allowed until the close of business this Friday 14 March 1997, to provide their submissions to you. However, if this proposal is unacceptable, please advise Telstra by return facsimile.

Yours faithfully

  
Ted Benjamin  
Director - Consumer Affairs

cc: Mr Graham Schorer  
Golden Transport Agency  
493-495 Queensberry Street  
NORTH MELBOURNE VIC 3051

By facsimile: (03) 9287 7001

Mr Wm R Hunt  
Hunts' Solicitors  
358 Lonsdale Street  
MELBOURNE VIC 3000

By facsimile: (03) 9670 6598

Mr John Pinnock  
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Minter Ellison  
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264

Telstra Corporation Limited  
ACN 061 775 558

**FAXED**  
14/3/97

**Telstra**

Corporate Legal Directorate  
Freedom of Information Unit

Level 38  
242 Exhibition Street  
MELBOURNE VIC 8100

Locked Bag 5691  
MELBOURNE VIC 8100

Telephone (03) 9632 3371  
Facsimile (03) 9634 2788

14 March 1997

Mr Graham Schorer  
Golden Transport Agency  
493-495 Queensberry Street  
PO Box 313  
NORTH MELBOURNE VIC 3051

✓ By facsimile: (03) 9287 7001

Dear Mr Schorer

Your Freedom of Information Act request of 14 January 1997 ("your FOI request")

I refer to Telstra's letter to you of 28 January 1997, wherein Telstra set out its understanding of your FOI request. I have now completed my investigations pursuant to your FOI request and set out my decision below.

Telstra's understanding of your FOI request was set out in Telstra's letter to you of 28 January 1997. In that letter I noted that:

*"[In your FOI request you seek] documents detailing the performance of the North Melbourne ARF & ARE 11 Exchange for the individual thousand groups, commencing with the prefix 329-0 and 329-7, as set out in page 137 of the April 1994 AUSTEL report.*

*[I advised] that I understand the nature of the request to be for data of the type that is presented in Table 6.1 of the AUSTEL report, but for the above mentioned thousand groups and for the following date ranges:*

1 January 1983	to	31 May 1985	ARF Exchange
1 June 1985	to	30 June 1986	ARE 11 Exchange
1 July 1986	to	30 June 1987	ARE 11 Exchange
1 July 1987	to	31 December 1987	ARE 11 Exchange
1 January 1988	to	31 December 1988	ARE 11 Exchange
1 January 1989	to	31 December 1989	ARE 11 Exchange
1 January 1990	to	31 December 1990	ARE 11 Exchange
1 October 1992	to	31 December 1992	ARE 11 Exchange
1 January 1993	to	31 December 1993	ARE 11 Exchange
1 January 1994	to	31 December 1994	ARE 11 Exchange
1 January 1995	to	30 April 1995	ARE 11 Exchange"

rk-gs013.doc

265 A

## Background

Tables of data of the type presented at page 137 of the AUSTEL Report are not tables which are ordinarily prepared by Telstra. I understand the tables of data at page 137 of the AUSTEL Report to have been compiled from Traffic Observation (TROB) data, which was specifically extracted and analysed for AUSTEL in the course of preparing its report of April 1994. TROB data is generated by built in software in Ericsson AXE switching equipment, and performs call traffic supervisory functions. TROB is the recorded result of approximately one in a thousand randomly selected originating live traffic call attempts. In order to create the tables at page 137 of the AUSTEL Report, it was necessary to extract all available TROB sampled calls from the network which were destined for the thousand groups listed therein. I am informed that the reason why these tables include statistics commencing January 1991, is because the TROB system was only introduced at about that time.

As part of the preparation of its defence in the present arbitration proceeding between Telstra and you, Telstra undertook a similar analyses of TROB data to the analyses undertaken for AUSTEL, and produced the information you seek in your FOI request, for the period September 1991 to April 1996. This information is set out in:

1. graph form at paragraph 3.3.3., page 18, Part A, Volume 1 of Telstra's Defence documentation filed in Telstra's current arbitration proceeding with you; and
2. the form of tables set out in documents J06008-J06011 and J05483-J05490 respectively, included in Volume 5 of the appendices to Telstra's Defence.

These documents were prepared by Telstra staff for the sole purpose of use in relation to the present arbitration proceeding between Telstra and you. Neither is in precisely the same format as the tables you refer to in the Austel Report. However, each contains similar information. Consequently I am treating these documents as falling within the scope of your FOI request.

You have also asked for this documentation for the period 1 January 1983 to 31 December 1990. As noted above, the TROB system was introduced during 1991, and consequently no TROB data exists for the period prior to December 1990. Nevertheless, prior to the introduction of TROB another system existed which performed similar functions to TROB. This system was known as Service Assessment.

Although no documentation containing an analysis relating specifically to telephone numbers commencing with the prefix 329-0 and 329-7 exists, the results of analyses relating to the broader Melbourne Metro Region and the Footscray District (which NMEL is part of) for this period does exist. This information is set out in graph form at paragraph 3.3.1., page 17, Part A, Volume 1 of Telstra's Defence documentation filed in Telstra's current arbitration proceeding with you. This graph was created solely for the purpose of use in relation to the present arbitration proceedings between Telstra and you. The information supporting the graph is contained in documents J06525-J06527 included in Volume 5 of the appendices to the Defence.

265A

## Decision

I have made my decision in two parts:-

### Section 42 decision.

Save for the information set out in graph form at paragraph 3.3.3., page 18, Part A, Volume 1 of Telstra's Defence, and supporting documents J06008-J06011 and J05483-J05490, filed in Telstra's current arbitration proceeding with you, I am aware of no other documents falling within the scope of your FOI request. I have decided that these documents are exempt documents under the provisions of Section 42 (1) of the FOI Act.

Section 42 (1) of the FOI Act states "*A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.*"

A document is privileged if it is a confidential communication between a person and his or her solicitor or barrister brought into existence for the sole purpose of seeking or giving advice, or for the sole purpose of use in relation to existing or anticipated litigation. As noted above, the documents which fall within the scope of your request are documents which were brought into existence for the sole purpose of use by Telstra in relation to the current arbitration proceeding with you. Consequently, the documents are of such nature that they are subject to legal professional privilege.

I have considered whether the privilege should be waived in relation to these documents. I have decided that it should not be waived because the documents are properly the subject of legal professional privilege in an ongoing dispute between you and Telstra.

In making my decision under the FOI Act, I have taken into account the provisions of sections 3 and 14 of the FOI Act.

Section 3 of the FOI Act states:

*3.(1) The object of this Act is to extend as far as possible the right of the Australian community to access to information in the possession of the Government of the Commonwealth by: ...*

*(b) creating a general right of access to information in documentary form ... limited only by exceptions and exemptions necessary for the protection of essential public interests and the private and business affairs of persons in respect of whom information is collected and held by departments and public authorities; ..."*

Section 14 of the FOI Act provides that:

*"14. Nothing in this Act is intended to prevent or discourage ... agencies from publishing or giving access to documents (including exempt documents), otherwise than as required by this Act, where they can properly do so ..."*



Telstra has determined not to release these documents to you outside the provisions of the FOI Act. Telstra has reached this decision as it is apparent that copies of the documents you seek which Telstra has in its possession have already been provided to you by Telstra as part of Telstra's Defence documents in the current arbitration. Telstra has considered further that that arbitration process requires such information to be kept confidential by the parties to the arbitration. Consequently, as you have already had access to the documents you seek and as an obligation of confidentiality exists in relation to the provision of those documents to you, Telstra has determined that it is not appropriate to release those documents to you outside the provisions of the FOI Act.

Telstra further took into account that the documents are subject to legal professional privilege, and for that reason also considers that it is not appropriate to release those documents to you outside the provisions of the FOI Act.

#### Section 24A decision.

As stated above, I have been unable to find any documents falling within the scope of your request for the period 1 January 1983 to 31 December 1990. I am satisfied that documents for this period do not exist. Under Section 24A of the FOI Act Telstra may refuse a request for access to documents if all reasonable steps have been taken to find the documents and Telstra is satisfied that the documents do not exist.

Section 24A of the FOI Act states that:

*"[Telstra] may refuse a request for access to a document if all reasonable steps have been taken to find the document(s) and [Telstra] is satisfied that the document(s) are in [Telstra's] possession but cannot be found, or do not exist."*

I am satisfied that the documents you seek for the period 1 January 1983 to 31 December 1990 do not exist. Under these circumstances I have decided to refuse tis part of your FOI request.

#### Appeal rights

My decision is made in accordance with the Act and is subject to review under Section 54 of the Act. If you wish to apply for review, you should write to:

The Freedom of Information Unit  
Locked Bag 5761  
Melbourne Victoria 8100

You should make this application within 30 days of the date of receipt of this letter. The *Freedom of Information (Fees and Charges) Regulations* require you to submit a \$40.00 fee with your request for internal review.

Section 30A of the Act provides that an applicant can request a remission of the application fee in whole or in part. Telstra will consider anything you wish to put in writing including any of the following grounds for remission:

- (a) the payment of the charge would cause financial hardship; or

- (b) the giving of access is in the general public interest or in the interest of a substantial section of the public.

If you seek remission on the first ground, it would be helpful if you provided brief details of your current financial position. If you seek remission on the second ground, it would be helpful if you provided details of why it would be in the public interest to give access to the documents sought.

Section 57 of the *Freedom of Information Act* provides that a person may complain to the Ombudsman concerning action taken by Telstra in the exercise of powers or the performance of functions under this Act. A complaint to the Ombudsman may be made orally or in writing and should be directed to:

The Commonwealth Ombudsman  
GPO Box 442  
Canberra ACT 2601  
Telephone: (06) 276 0111

The Ombudsman usually prefers applicants to seek internal review before complaining about a decision.

Yours faithfully,

  
Rod Kearney  
Manager FOI

2/3/97

cc: Mr John Pinnock Telecommunications Industry Ombudsman ✓ By facsimile: (03) 9230 0505	Mr J Wynack Director of Investigations ✓ By facsimile: (06) 249 7829
Dr Gordon Hughes Arbitrator Hunt & Hunt, solicitors ✓ By facsimile: (03) 9617 9299	Mr Peter Bartlett Solicitor Minter Ellison, solicitors ✓ By facsimile: (03) 9229 2621

265A

	A	B	C	D	E	F	G
1	Date	Count er	Type of Info	Description	From	To	New File Ref No
749	12-Feb-93	S17		Don went and swapped sub's cards in the RCM to eliminate any possible problems. Will follow up.	RM (Ray Morris?)		A11
750	12-Feb-93	S18		Smith said his female helper had become so distraught with ongoing telephone problems that she was now in hospital with pneumonia and his son had wondered how he (Smith) had handled the problems.	RM (Ray Morris?)		A11
751	12-Feb-93	S19	Diary	On trip back to Melbourne - made test calls from public telephone at Terang and Colac. Further call from mobile at Geelong. Dropped out due to flat battery. I explained this to Smith later.	RM (Ray Morris?)		A11
752	14-Feb-93	C49	Letter	Report fault with calls with Cindy Mentas and Pat Marshall	Alan Smith		A4
753	15-Feb-93	B2	fax	Taken personal interest in case. Commits Telecom staff for ongoing support and mentions all customer responses have been in a timely manner	Pittard	Stockdale	A7
754	15-Feb-93	m318	CRIS Output Report	CRIS Output Report and handwritten notes on congestion on Warrnambool/Portland lines. Notes congestion on Sunday nights on MOP, GEEX, and congestion daily on MELQ & MELU.	Gordon Hansen		a19
755	15-Feb-93	m320	TRAXE Report *	Traffic Data Acquisition System Report: half hour summaries. Pages o02725 to o02727.	Gordon Hansen		a19
756	18-Feb-93	J69	Form	D Bloomfield visits Cape B'water and tests line for current			A6
757	18-Feb-93	J70	Form	Switch on Smith's cordless phone not operated properly by Smith - discovered by D Bloomfield resulting in not being able to receive incoming calls			A6
758	18-Feb-93	J71	Form	Smith admits happy with service "since Telecom last visit"			A6
759	18-Feb-93	m319	TRAXE Report *	Traffic Data Acquisition System Report: half hour summaries.	Gordon Hansen		a19
760	19-Feb-93	m317	Memo	Reply to F Wood's request for congestion data in Warrnambool/Portland. Notes that b/w 2 & 16 Feb, Bendigo-Warrnambool route (which handles overflow traffic from GEEX/MOLP to WBOX) was unavailable, so some calls lost due to congestion on 8 & 15 Feb only.	Gordon Hanse	Trevor Hill	a19
761	19-Feb-93	S20	Diary	Bloomfield tried to ring from RCM believe going to measure line current, but got no answer.	RM (Ray Morris?)		A11
762	19-Feb-93	S21	Diary	On arrival told by Smith he was having problems with Telecom cordless phone. Bloomfield identified misoperation by Smith.	RM (Ray Morris?)		A11
763	19-Feb-93	S22	Diary	Smith had loud sounding Alan turned down - could not have heard calls if not in office.	RM (Ray Morris?)		A11
764	19-Feb-93	S23	Diary	Bloomfield measured the current at 42 ma for fax, answering machine and phone.	RM (Ray Morris?)		A11
765	23-Feb-93	MS16 7	Memo	Bendigo TCS does not have a teamleader named Mary.	Jessie Bell	Bruce Pendlebury	A25.2
766	24-Feb-93	J72	Form	Fault report via 1100 that call from Ballarat to Cape B'water could not get through i/c			A6
767	24-Feb-93	J73	Form	Telecom experiences background noise and faint voice on call to Smith - Similar problem experienced by others calling Smith	*		A6
768	24-Feb-93	J74	Form	Both Smith's lines changed to seperate systems			A6
769	24-Feb-93	J75	Form	Several test calls made to 267267 after change to seperate systems - no failures or problems found			A6
770	24-Feb-93	S101	Form	Bloomfield advised a Ballarat customer of Smith put in fault to 1100 - could not get through	RM		A11
771	24-Feb-93	S102	Form	I attempted to ring Smith - when ring expired - got "carrier noise" and "faint hello" then hang up	RM		A11
772	24-Feb-93	S103	Form	Half hour later - rang Smith got through - Smith assured me only had normal phone and cordless phone plugged in. (Why is this important)	RM		A11
773	24-Feb-93	S104	Form	Smith said people had rang and reported same problem - Kathy Lindsay (053 42675) and Brian Sprague 592 7032)	RM		A11
774	24-Feb-93	S105	Form	I organised Bloomfield to change both of Smith's lines into separate systems 267 267 in sys. 3 ch. 16, 267 320 in sys. 2 chanel 28	RM		A11
775	24-Feb-93	S106	Form	Bloomfield and I made several test calls to 267 267 - all OK	RM		A11
776	24-Feb-93	S107	Form	267 230 does not have a fax on it as fax has been returned as faulty	RM		A11

**FAXED**  
14/3/97**Telstra**Customer Response Unit  
Commercial & ConsumerLevel 37  
242 Exhibition Street  
Melbourne Vic. 3000Telephone (03) 634 2977  
Facsimile (03) 632 3235

14 March 1997

Dr Gordon Hughes  
Hunt and Hunt  
Lawyers  
Level 21/459 Collins Street  
MELBOURNE VIC 3000

By facsimile: (03) 617 9299

Dear Sir

**Arbitration - Golden Messenger**

I refer to your letter dated 5 March 1997 in which you indicated that you proposed giving directions in relation to the production of documents. I assume that you are not seeking Telstra's comments in relation to the history of the Fast Track Arbitration Procedure. If this assumption is incorrect, please advise and Telstra's submission will be provided to you as soon as possible.

In the Claimants' letter dated 25 February 1997, the Claimants identified two types of information/documents that they claimed they had not received and that would be useful to them in preparing their defence. These items were:

- (a) certain performance information for the Claimants' thousand groups at the North Melbourne exchange (a portion of which was set out in the Austel Report) for the period 1 January 1983 to 30 April 1995; and
- (b) computer discs described as "Schorer 1", "Schorer 2", "Schorer 3" and "merged Schorer files".

The above information/documents have been the subject of Freedom of Information requests made by the Claimants. Telstra has responded to these requests. Copies of these responses are attached, Attachment 1 being Telstra's response in relation to the documents referred to in paragraph (a) above and Attachment 2 being Telstra's response in relation to the documents referred to in paragraph (b) above. I consider these responses adequately provide the background to what these documents are and whether Telstra should be ordered to produce them.

266

In essence, in relation to the Claimants' requests, Telstra submits that:

- (a) There is little point directing Telstra to produce the documents sought by the Claimants in paragraph (a), as whatever such documents Telstra possesses have already been provided to the claimants (and you) in Telstra's defence documents. Telstra has in its defence (where possible) provided to the Claimants the performance information for the Claimants' thousand groups at the North Melbourne exchange, which is the very information the Claimants seek in this part of their request. The details of where this information appears in the defence is set out in the attached response to the Claimants' FOI request.

Telstra also explained in the attached letter why this information is not available for the whole period identified by the Claimants. The Claimants' request to you demonstrates that the Claimants have not in fact considered Telstra's defence in any detail; and

- (b) in relation to the computer files, Telstra identified in November 1996 the three computer files it believes the Claimants are referring to (see Attachment 2). These files contain an analysis of numerous documents. In this regard disks 1 and 2 appear to be identical. The analysis was performed for the purpose of assisting Telstra in the preparation of its defence in this arbitration. Not all the documents analysed were relevant or useful. The files do not contain a complete list of all documents relevant to the Claimants' telecommunications service. No such list exists although a more current version of the "file" has been prepared by Telstra. These files are clearly subject to a claim for legal professional privilege as they were prepared at Telstra's solicitors request, for the sole purpose of use in this arbitration. Telstra has not waived its privileged in these files and is not prepared to release the whole files to the Claimants.
- ↳ However, Telstra is concerned that the Claimants are using these files (amongst other things) as an excuse for not progressing the arbitration. Telstra has decided, on the conditions set out below, to release these files in the arbitration with two columns deleted. The deleted columns contain Telstra's analysis of each document and a reference that could identify the person who performed the analysis. The conditions are that:
- the Claimants agree that by releasing these modified files, Telstra has not waived its privilege in relation to the whole files or any subsequent versions and that the Claimants agree not to raise any argument to the contrary; and
  - the Claimants will treat the files and the information contained in them as required by the Arbitration Rules (ie confidentially) and only use them for the purpose of this arbitration.

Telstra will make these modified files available on receipt of written confirmation that these terms are acceptable to the Claimants.

In light of the above and the Claimants' continuing delays and refusal to provide appropriate documentation, Telstra submits that it should not be directed to produce any further documents and that the arbitration should be progressed in the manner Telstra had previously submitted.

Please advise if you require further clarification or submissions in relation to any of the matters raised in this letter.

Yours faithfully



**Ted Benjamin**  
Director - Consumer Affairs

cc: Mr Graham Schorer  
Golden Transport Agency  
493-495 Queensberry Street  
NORTH MELBOURNE VIC 3051

By facsimile: (03) 9287 7001

Mr John Pinnock  
Telecommunications Industry Ombudsman  
321 Exhibition Street  
MELBOURNE VIC 3000

By facsimile: (03) 9277 8797

Mr Wm R Hunt  
Hunts' Solicitors  
358 Lonsdale Street  
MELBOURNE VIC 3000

By facsimile: (03) 9670 6598

Mr Peter Bartlett  
Minter Ellison  
40 Market Street  
MELBOURNE VIC 3000

By facsimile: (03) 9229 2621

266

**GOLDEN**

Our Ref: 3187.doc

17 March, 1997

TELEPHONE (03) 9287 7099

FAX (03) 9287 7001

Attention: Dr Gordon Hughes

Hunt & Hunt  
Lawyers  
Level 21/459 Collins Street  
Melbourne Vic 3000493-495 QUEENSBERRY STREET  
NORTH MELBOURNE VICTORIA 3051  
PO. BOX 313 NORTH MELBOURNE 3051

Dear Dr Hughes,

**Re: Arbitration - Telstra**

Enclosed herewith please find a List of Documents now sought from Telstra if you, as Arbitrator, are prepared to direct same to be made available.

Please note that this List is part only of the documents required. As soon as I complete the List I will forward same to you.

Based on experience, especially that of other C.o.T. members, I anticipate that when certain documents are made available, it may be then necessary to seek additional documents as the documents supplied might indicate ought to be released.

I have read Telstra's letter to you of 14 March 1997 (copy received only today) and reject what Telstra has to say.

Yours sincerely,

  
Graham Schorer

267



# Hunt & Hunt LAWYERS

COPI

1 April 1997

Our Ref: GLH

Matter No: 5126900

**Partners**  
David M. Scarlett  
Edward S. Boyce  
James G.F. Harrowell  
Gordon L. Hughes  
David P. Cooper  
Ian S. Craig  
Peter I. Ewin  
Wayne B. Cahill  
Neville G.H. Debnev  
Grant D. Sefton  
William P. O'Shea

**Consultants**  
Kenneth M. Martin  
Richard J. Kellaway  
Graeme J. Armstead

**Associates**  
Francis V. Gallichio  
John D.F. Morris

Mr Ted Benjamin  
Director - Consumer Affairs  
Telstra Corporation Limited  
Level 37  
242 Exhibition Street  
MELBOURNE VIC 3000

**By Facsimile: 9632 3235**

Dear Mr Benjamin

## ARBITRATION - GOLDEN MESSENGER

I have perused the submissions of each party in relation to the production of further documents by the other.

I have noted the offer by Telstra, in its letter of 14 March 1997, to make available certain computer disks requested by the claimant, subject to specific conditions. In this regard, I note Telstra asserts the disks are the subject of legal professional privilege.

I presume Telstra maintains the position espoused in its letter of 12 February 1997, namely, that there is no basis for making an award in the claimant's favour and that I should find accordingly.

In my letter of 18 February 1997, I foreshadowed four possible determinations which I could now make. This remains the case. I believe it would assist me in determining which of these options I should follow if Telstra were to make the disks available to the claimant.

I am not in a position to judge whether Telstra's claim of legal professional privilege is well-founded. I do believe, however, that there is no reason why the disks should not be made available under the conditions proposed by Telstra. This will clearly be the most expeditious manner of progressing this arbitration.

I accordingly direct that, subject to receipt from the claimant or his solicitor of written confirmation that he will comply with the qualifications set out below, that the computer disks known to Telstra as "1scorer.xls", "2score.xls" and "mgscor2.xls" be made available to the claimant.

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 9617 9200.  
Facsimile: (61-3) 9617 9299. G.P.O. Box 1533N, Melbourne 3001. DX 252, Melbourne.  
11996685\_GLH/KS Email: Mail/hunt.hunt@interlaw.org

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canberra

newcastle

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adelaide

darwin

268



The qualifications are that:

- (a) prior to release of the disks to the claimant, the claimant (through his representatives) must acknowledge in writing that by releasing these modified files, Telstra has not waived its privilege in relation to the whole files or any subsequent versions and that the claimant will not raise any argument to the contrary; and
- (b) the claimants will treat the files and the information contained in them as confidential and shall only use them for the purposes of this arbitration.

I require the claimant, through his representative, to indicate on or before Monday 7 April 1997 whether these conditions are acceptable. In the event that I receive confirmation that the conditions are acceptable, I shall direct Telstra to make the disks available within 48 hours.

Yours sincerely



**GORDON HUGHES**

cc W Hunt, J Pinnock, P Bartlett, L McCullagh, S Hodgkinson



# Hunt & Hunt LAWYERS

CONFIRMATION  
OF FAX

1 April 1997

Our Ref: GLH  
Matter No: 5126900

**Partners**  
David M. Scarlett  
Edward S. Boyce  
James G.F. Harrowell  
Gordon L. Hughes  
David P. Cooper  
Ian S. Craig  
Peter J. Ewin  
Wayne B. Cahill  
Neville G.H. Debney  
Grant D. Sefton  
William P. O'Shea

**Consultants**  
Kenneth M. Martin  
Richard J. Kellaway  
Graeme J. Armstead

**Associates**  
Francis V. Gallichio  
John D.F. Morris

Mr William R Hunt  
Hunts  
Solicitors and Consultants  
358 Lonsdale Street  
MELBOURNE VIC 3000

Dear Mr Hunt

## ARBITRATION - GOLDEN MESSENGER AND TELSTRA

I have perused the submissions of each party in relation to the production of further documents by the other.

I have noted the offer by Telstra, in its letter of 14 March 1997, to make available certain computer disks requested by the claimant, subject to specific conditions. In this regard, I note Telstra asserts the disks are the subject of legal professional privilege.

I presume Telstra maintains the position espoused in its letter of 12 February 1997, namely, that there is no basis for making an award in the claimant's favour and that I should find accordingly.

In my letter of 18 February 1997, I foreshadowed four possible determinations which I could now make. This remains the case. I believe it would assist me in determining which of these options I should follow if Telstra were to make the disks available to the claimant.

I am not in a position to judge whether Telstra's claim of legal professional privilege is well-founded. I do believe, however, that there is no reason why the disks should not be made available under the conditions proposed by Telstra. This will clearly be the most expeditious manner of progressing this arbitration.

I accordingly direct that, subject to receipt from the claimant (or you on the claimant's behalf) of written confirmation that he will comply with the qualifications set out below, that the computer disks known to Telstra as "1scorer.xls", "2score.xls" and "mgscor2.xls" be made available to the claimant.

The qualifications are that:

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 9617 9200.  
Facsimile: (61-3) 9617 9299. G.P.O. Box 1533N, Melbourne 3001. DX 252, Melbourne.  
11997838\_GLH/AC Email: Mail/hunt.hunt@interlaw.org

*melbourne*

*sydney*

*sydney west*

*brisbane*

*canberra*

*newcastle*

represented in

*adelaide*

*darwin*

269

- (a) prior to release of the disks to the claimant, the claimant (through his representatives) must acknowledge in writing that by releasing these modified files, Telstra has not waived its privilege in relation to the whole files or any subsequent versions and that the claimant will not raise any argument to the contrary; and
- (b) the claimants will treat the files and the information contained in them as confidential and shall only use them for the purposes of this arbitration.

I require the claimant, through you, to indicate on or before Monday 7 April 1997 whether these conditions are acceptable. In the event that I receive confirmation that the conditions are acceptable, I shall direct Telstra to make the disks available within 48 hours.

Yours sincerely



**GORDON HUGHES**

cc E Benjamin, J Pinnock, P Bartlett, L McCullagh, S Hodgkinson

Our Ref: 3199.doc

2 April, 1997

TELEPHONE (03) 9287 7099

Attention: Dr Gordon Hughes

FAX (03) 9287 7001

Hunt & Hunt  
Level 21/459 Collins Street  
Melbourne Vic 3000

493-495 QUEENSBERRY STREET  
NORTH MELBOURNE VICTORIA 3051  
PO. BOX 313 NORTH MELBOURNE 3051

Dear Dr Hughes,

Re: ARBITRATION - GOLDEN AND TELSTRA

I am in receipt of your facsimile dated 1 April 1997 regarding my request for discovery of documents from Telstra, sent to my solicitor.

I note Telstra still asserts that the requested disks are the subject of legal professional privilege.

I still maintain Telstra are wrongly claiming these disks are the subject of legal professional privilege which is in accordance with the legal advice I have received.

I appreciate you are not in a position to judge whether Telstra's claim of legal professional privilege is well-founded.

I understand you are only prepared to direct Telstra to supply the requested disks to myself if I totally accept your qualifications which are:-

- a) prior to release of the disks to the claimant, the claimant (through his representatives) must acknowledge in writing that by releasing these modified files, Telstra has not waived its privilege in relation to the whole files or any subsequent versions and that the claimant will not raise any argument to the contrary; and
- b) the claimants will treat the files and the information contained in them as confidential and shall only use them for the purposes of this arbitration.

In order to enable me to finalise my claim and progress my arbitration, I accept the Arbitrator's qualifications and undertake to treat the files and the information contained in the disks as confidential and shall only use the information contained in the disks for the purposes of this arbitration.

Yours sincerely,

  
Graham Schorer

cc E Benjamin, J Pinnock, P Bartlett, L McCullagh, S Hodgkinson

270



Customer Respo  
Unit  
Commercial  
Consumer

Level 37  
242 Exhibition Str  
Melbourne Vic.

Telephone (03) 634 2977  
Facsimile (03)  
3235

9 April, 1997

Dr Gordon Hughes  
Hunt and Hunt  
Lawyers  
Level 21/459 Collins Street  
MELBOURNE VIC 3000

✓ By facsimile: (03) 617 9299

Dear Sir

**Arbitration - Golden Messenger**

I refer to the facsimile from Mr Schorer to you dated 2 April 1997 and to the facsimile from Mr Hunt to you dated 3 April 1997.

I am not satisfied that the undertaking provided by Mr Schorer in his facsimile of 2 April 1997 adequately responds to the issues raised in your letter of 1 April 1997.

While Mr Schorer states that he accepts the qualifications set out in your letter he does not positively state that he acknowledges that Telstra is not waiving its privilege in relation to the whole files or any subsequent versions or that he acknowledges that he will not raise any arguments to the contrary.

This matter could be simply addressed by Mr Schorer or by Mr Hunt writing to you and stating that, further to Mr Schorer's letter of 2 April 1997, Mr Schorer:

1. Acknowledges that by releasing the modified files, Telstra has not waived its privilege in relation to the whole of the files or any subsequent versions and that Mr Schorer will not raise any arguments to the contrary; and
2. that Mr Schorer will treat the files and the information contained in them as confidential and shall only use them for the purposes of this arbitration.

Once an undertaking in the above form is given, Telstra will provide Mr Schorer with the disks sought.

Yours faithfully

Ted Benjamin  
Director - Consumer Affairs

cc: See over page

271

cc: Mr Graham Schorer  
Golden Transport Agency  
493-495 Queensberry Street  
NORTH MELBOURNE VIC 3051

✓ By facsimile: (03) 9287 7001

Mr Wm R Hunt  
Hunts' Solicitors  
358 Lonsdale Street  
MELBOURNE VIC 3000

By facsimile: (03) 9670 6598

Mr John Pinnock  
Telecommunications Industry Ombudsman  
321 Exhibition Street  
MELBOURNE VIC 3000

✓ By facsimile: (03) 9277 8797

Mr Peter Bartlett  
Minter Ellison  
40 Market Street  
MELBOURNE VIC 3000

By facsimile: (03) 9229 2621



# Hunt & Hunt LAWYERS

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**Consultants**  
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Graeme J. Armstead

**Associates**  
Francis V. Gallichio  
John D.F. Morris

15 April 1997

Our Ref: GLH  
Matter No: 5126900

Mr E Benjamin  
Director  
Consumer Affairs  
Telstra  
Level 37  
242 Exhibition Street  
Melbourne

COPY

Dear Mr Benjamin

## ARBITRATION - SCHORER

I acknowledge receipt of your letter dated 9 April 1997. I do not necessarily agree that the claimant's response is inadequate. I would be prepared to accept that the intention of his letter dated 2 April 1997 is to accept the conditions initially proposed by Telstra.

Given that you have raised concerns, however, I shall ask Mr Hunt to seek a brief written confirmation from his client that he is willing to provide an acknowledgement and undertaking in the terms set out in your letter of 9 April 1997.

Yours sincerely

  
**GORDON HUGHES**

cc. W. Hunt, J Pinnock, P Bartlett, L McCullagh, S Hodgkinson

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111009659\_GLH/KR Email: Mail/hunt.hunt@interlaw.org

272

**FAXED**  
17/4/97

**GOLDEN**  
Transport Agency

A Division of G.M. (MELBOURNE) HOLDINGS PTY. LTD. A.C.N. 005 905 048

**IMPORTANT: WE ARE NOT COMMON CARRIERS.** The Carrier directs your attention to its trading **TERMS AND CONDITIONS OF CONTRACT.** It is in your interests to read them to avoid any later confusion.

To: Dr Gordon Hughes  
Date: 17 April 1997  
Our Ref: 3215  
Company: Hunt & Hunt  
Fax No: (03) 9617 9299  
From: Graham Schorer  
Total Pages (including Header): 2  
Mailed: Yes ( ) No ( X )

**PRIVACY AND CONFIDENTIALITY CLAUSE**

The information in this facsimile is private, privileged and strictly confidential and intended only for use of the individual or entity named above. If you are not the intended recipient, please call by telephone the sender immediately upon receiving this facsimile as any dissemination, copying or use of the information is strictly prohibited.

Dear Dr Hughes,

**Arbitration - Telstra / Golden re Direction for Discovery of Documents.**

I refer to the Telstra facsimile sent to you dated 9 April 1997 and to your facsimiles to Mr W Hunt and Telstra both dated 15 April 1997.

As to the content of Telstra's letter of 9th April 1997 to you, this letter is now to be read with my letter of 2 April 1997 as having added to it the words required by Mr Benjamin thus:-

I acknowledge that by releasing the modified files, Telstra has not waived its privilege in relation to the whole of the files or any subsequent versions and that I will not raise any argument to the contrary; and

I will treat the files and the information contained in them as confidential and shall only use them for the purposes of this arbitration.

This letter is not to be taken as an acknowledgement that Telstra does have the privilege it claims nor is this letter to be taken as an acknowledgement to my detriment or the detriment of any of the claimants in this arbitration in respect of any matters the subject of FOI procedures already set in hand or which may later be set in hand.

Yours sincerely,

  
Graham Schorer

273

Voice: (03) 9 287 7099

Page No. 1

Fax: (03) 9 287 7001

493-495 Queensberry Street, North Melbourne Vic. 3051

17:02 No. 015 P. 01  
APR 18 1997 05:01PM

18 APR 1997

ID:03-92872001

GOLDEN



cc: See over page

cc: Mr Graham Schorer  
Golden Transport Agency  
493-495 Queensberry Street  
NORTH MELBOURNE VIC 3051

By facsimile: (03) 9287 7001

Mr Wm R Hunt  
Hunts' Solicitors  
358 Lonsdale Street  
MELBOURNE VIC 3000

By facsimile: (03) 9670 6598

Mr John Pinnock  
Telecommunications Industry Ombudsman  
321 Exhibition Street  
MELBOURNE VIC 3000

By facsimile: (03) 9277 8797

Mr Peter Bartlett  
Minter Ellison  
40 Market Street  
MELBOURNE VIC 3000

By facsimile: (03) 9229 2621



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Gordon L. Hughes  
David P. Cooper  
Ian S. Craig  
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Wayne B. Cahill  
Neville G.H. Debney  
Grant D. Seton  
William P. O'Shea

**Consultants**  
Kenneth M. Martin  
Richard J. Kellawav  
Graeme J. Armistead  
Melissa A. Henderson

**Associates**  
Francis V. Gallichio  
John D.F. Morris

18 April 1997

Our Ref: GLH

Matter No: 5126900

Mr E Benjamin  
Director  
Consumer Affairs  
Telstra  
Level 37  
242 Exhibition Street  
Melbourne Vic 3000

**COPY**

*rec'd By hand 12.40.  
Di*

Dear Sir

## ARBITRATION - SCHORER

You will have received the claimant's facsimile dated 17 April 1997, addressed to me.

Assuming Telstra is satisfied with the claimant's acknowledgement, I would expect Telstra to make the disks available to the claimant within 48 hours as directed in my letter of 1 April 1997.

Yours sincerely

  
**GORDON HUGHES**

cc.  W Hunt, S Hodgkinson, J Pinnock, P Bartlett, L McCullagh

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sydney

sydney west

brisbane

canberra

newcastle

represented in

adelaide

darwin

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Facsimile: (61-3) 9617 9299. G.P.O. Box 1533N, Melbourne 3001. DX 252, Melbourne.

111013647\_GLH/KR

Email: Mail/hunt.hunt@interlaw.org

**274A**

**FAXED**  
18/4/97**Telstra**

18 April, 1997

Customer Respo  
Unit  
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ConsumerLevel 37  
242 Exhibition Str  
Melbourne Vic.Telephone (03) 634 2977  
Facsimile (03)  
3235Dr Gordon Hughes  
Hunt and Hunt  
Lawyers  
Level 21/459 Collins Street  
MELBOURNE VIC 3000

By facsimile: (03) 617 9299

Dear Sir

**Arbitration - Golden Messenger**

I refer to the facsimile from Mr Schorer to you dated 17 April 1997.

On the basis of the acknowledgment set out in that letter and in Mr Schorer's letter of 2 April 1997, Telstra will make the disks available to Mr Schorer, by no later than close of business 21 April 1997.

Yours faithfully

  
**Ted Benjamin**  
Director - Consumer Affairs

274B

# GOLDEN

Our Ref: 3222.doc

**FAXED**  
18/4/97

TELEPHONE (03) 9287 7099

18 April, 1997

FAX (03) 9287 7001

Attention: Dr Gordon Hughes

Hunt & Hunt  
Level 21, 459 Collins Street  
Melbourne VIC 3000.

493-495 QUEENSBERRY STREET  
NORTH MELBOURNE VICTORIA 3051  
PO. BOX 313 NORTH MELBOURNE 3051

By facsimile (03) 9617 9299 and post.

Dear Dr Hughes,

I refer to Telstra's facsimile to the Arbitrator dated 18 April 1997.

It is pleasing that Telstra will make the disks available to Golden by no later than close of business 21 April 1997.

I am concerned that Telstra will supply Golden disks with data deleted as suggested in Telstra's 14 March 1997 correspondence to the Arbitrator.

Golden's discovery upon Telstra does encompass all of the data contained within the disks that Telstra have in their possession.

Telstra has contested Golden's right to discovery by claiming legal professional privilege.

Graham Schorer has met all of Telstra's requirements and provisions regarding confidentiality and restricted use of information contained in the original disks.

Golden draws the Arbitrator's attention to the fact that:-

- Golden has never agreed to Telstra's condition for Telstra to delete data from the unabridged disks,
- nor are Golden prepared to accept disks containing an abridged version of the data contained in the original disks.
- Golden has met all of Telstra's undertakings on the basis that Golden are provided with the unabridged mirrored copy of the original disks.

If Telstra do intend to supply Golden with an unabridged version of the data contained in the original disks, Telstra should provide the Arbitrator with a copy of an unabridged version of the data contained in the original disks to enable the Arbitrator to decide whether Telstra are entitled to supply Golden with an abridged version of the data contained in the original disks.

A Division of G.M. (MELBOURNE) HOLDINGS PTY. LTD. A.C.N. 005 906 046  
IMPORTANT: WE ARE NOT COMMON CARRIERS. The Center draws your attention to its trading TERMS AND CONDITIONS OF CONTRACT which appear on the REVERSE SIDE OF THIS DOCUMENT. It is in your interests to read them to avoid any later confusion.

17:09 No. 016 P. 01  
APR 18 '97 05:08PM

18 APR '97

ID:03-92877001

GOLDEN

275

If this event does take place, I will formally request that the Arbitrator directs Telstra to provide him with the unabridged disks to enable him to make an impartial assessment as to whether Telstra are entitled to delete data from the disks given that Golden has met all of Telstra's requirements and provisions regarding confidentiality and restricted use of information contained in the disks.

Please advise if you require any further clarification or submission in relationship to the matters raised in this letter.

Yours sincerely,



Graham Schorer  
DIRECTOR

275

A Division of GM (MELBOURNE) HOLDINGS PTY. LTD. ACN. 005 905 046  
IMPORTANT: WE ARE NOT COMMON CARRIERS. The Carrier directs your attention to its trading TERMS AND CONDITIONS OF CONTRACT which appear on the REVERSE SIDE OF THIS DOCUMENT. It is in your interests to read them to avoid any later confusion.

22nd April, 1997,

RE: COT CASES

On 21st April several times attending Schorer who phoned having sent an example of the disk discovery. Two columns were heavily blacked out rendering the disks of no value at all. Extrapolated from the computer disks on to type they turn out to be useless for this purpose.

I suggested that he consider an application to the Court or to the Appeals people.

276A

**FAXED**  
24/04/97

**GOLDEN**  
Transport Agency

A Division of G.M. (MELBOURNE) HOLDINGS PTY. LTD. A.C.N. 005 905 048

**IMPORTANT: WE ARE NOT COMMON CARRIERS.** The Carrier directs your attention to its trading **TERMS AND CONDITIONS OF CONTRACT.** It is in your interests to read them to avoid any later confusion.

To: Dr Gordon Hughes Date: 24 April, 1997  
Our Ref: 3230  
Company: Hunt & Hunt Fax No: (03) 9617 9299  
From: Graham Schorer Total Pages (Including Header): 3  
Mailed: Yes ( ) No ( X )

PRIVACY AND CONFIDENTIALITY CLAUSE

The information in this facsimile is private, privileged and strictly confidential and intended only for use of the individual or entity named above. If you are not the intended recipient, please call by telephone the sender immediately upon receiving this facsimile as any dissemination, copying or use of the information is strictly prohibited.

Dear Dr Hughes,

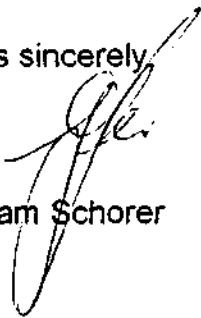
- The Telstra disk supplied to GOLDEN in accordance with your directive has had 9 columns of data deleted, leaving only 6 columns of data of little relevance to GOLDEN.

Enclosed with this facsimile is a one-page example that accurately mirrors each page printout from the disk.

I formally request for the Arbitrator to give consideration to arrange for a directive hearing between Telstra and GOLDEN in the Arbitrator's presence to enable this lesion of data to be rectified.

Should you require any further information or clarification, please do not hesitate to make contact.

Yours sincerely,



● Graham Schorer

**276B**

# GOLDEN FACSIMILE TRANSMISSION



DATE: 17 April 1997

TO: Dr Gordon Hughes  
Hunt & Hunt  
Arbitrator  
By facsimile: (03) 9617 9299  
& Hand Delivery.

RE: Arbitration - Telstra

FROM: Graham Schorer  
Facsimile No: (03) 9287 7001  
Telephone: (03) 9287 7099

CC: Mr John Pinnock  
TIO Office  
Administrator  
By facsimile: (03) 9277 8797

Mr Ted Benjamin  
Telstra  
Director Consumer Affairs  
By facsimile: (03) 9632 3235 ✓

Mr Peter Bartlett  
Minter Ellison  
Special Counsel to the Administrator  
By facsimile: (03) 9229 2621 ✓

Ferrier Hodgson  
Accounting Resource Unit  
By facsimile: (03) 9629 8361 ✓

Lanes Telecommunications Pty Ltd  
Technical Resource Unit  
By facsimile: (08) 8364 5335 ✓

Mr John Wynack  
Commonwealth Ombudsman  
By facsimile: (06) 249 7829 ✓

Mr W R Hunt  
Hunt's Solicitors  
By facsimile: (03) 9670 6598 ✓



276B

## PRIVACY AND CONFIDENTIALITY CLAUSE

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	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
	Date	Count er	Page Ref No.	Type of Doc.	Description	To	From								
1	Undated	L201	R20135	Report		?	?								
2	Undated	L202	R20136	Report		?	?								
3	Undated	L203	R20137	Report		?	?								
4	Undated	L204	R20139	Report		?	?								
5	14-Sep-89	L205	R20140	Report		?	?								
6	14-Sep-89	L206	R20141	Report		?	?								
7	Undated	L207	R20142	Report		?	?								
8															

276  
C

24 April, 1997

**FAXED**  
24/4/97

**Telstra**

Regulatory & External Affairs

Level 37  
242 Exhibition Street  
Melbourne Vic. 3000

Telephone (03) 9634 2977  
Facsimile (03) 9632 3235

Dr Gordon Hughes  
Hunt & Hunt  
Lawyers  
Level 21  
459 Collins Street  
MELBOURNE VIC 3000

By facsimile: (03) 9617 9299

Dear Sir

**Re: Arbitration - Golden Messenger**

I refer your letter dated 22 April 1997, received at the close of business on 23 April 1997.

In relation to Mr Schorer's letter of 18 April, I respond as follows:

1. In my letter of 14 March 1997, it was made clear that
  - 1.1 the disks had been prepared at the request of Telstra's solicitors, for the sole purpose of the arbitration, and are privileged. Telstra does not waive its claim for privilege;
  - 1.2 the disks contained Telstra's analysis of each document and references which would identify the person who performed the analysis. The analysis and the identity of those performing the analysis would be deleted from the disks provided to the Claimant;
  - 1.3 in releasing the modified files Telstra was not waiving its privilege. Accordingly Telstra required Mr Schorer to provide certain undertakings;
2. The letter of 14 March 1997, which was copied to Mr Schorer, made it clear that only the modified files would be released to the Claimant. At no time prior to his letter of 18 April 1997 has Mr Schorer objected to this.
3. It is therefore incorrect for Mr Schorer to contend that he has met all of Telstra's required undertakings and should therefore be provided with an unabridged version of the disks.

277

4. Telstra maintains its claim for privilege and again reiterates its concern that the Claimant is using the issue of the production of these files as an excuse to delay the conduct of the arbitration. Telstra has provided the Claimant with the information requested for the purpose of progressing the arbitration. Telstra however has no obligation to provide the Claimant with clearly privileged documents and does not propose to provide the Claimant with the unmodified files.

In relation to the Claimant's letter to you of 24 April 1997, Telstra opposes the convening of a Directions Hearing as sought by the Claimant, as the basis upon which and the form in which the disks were to be provided to the Claimant were clearly set out by Telstra and accepted by the Claimant. The Claimant simply seeks to reopen an issue which was resolved with his agreement.

Yours faithfully



**Ted Benjamin**  
Director - Consumer Affairs

cc: Mr Graham Schorer  
Golden Transport Agency  
493-495 Queensberry Street  
NORTH MELBOURNE VIC 3051

By facsimile: (03) 9287 7001

Mr Wm R Hunt  
Hunts' Solicitors  
358 Lonsdale Street  
MELBOURNE VIC 3000

By facsimile: (03) 9670 6598

Mr John Pinnock  
Telecommunications Industry Ombudsman  
321 Exhibition Street  
MELBOURNE VIC 3000

By facsimile: (03) 9277 8797

Mr Peter Bartlett  
Minter Ellison  
40 Market Street  
MELBOURNE VIC 3000

By facsimile: (03) 9229 2621

CONSULTANT:  
F. J. R. HUNT, B.A., LL.B.

MITCHELL HOUSE  
358 LONSDALE STREET  
MELBOURNE 3000  
(CNR. ELIZABETH & LONSDALE STREETS)

YOUR REF. **WRH:DF**  
OUR REF.

PHONE: 9670 5694\*  
FAX: 9670 6598

28th April, 1997.

MEMO: GRAHAM SCHORER  
FAX TO: 9287-7001

Please ring me about the following which is a partial re-draft of the proposed FOI Application (dated 18th April 1997) to Kearney.

The suggested alterations to the draft are:-

Re: Paragraph 1

All agenda and minutes of Telstra meetings related to identifying various methods or ways by which Telstra could investigate and maintain electronic (or other) surveillance of C.o.T. members' activities.

Re: Paragraph 2

All E-mail messages, notes, diary entries of or to Mr. Frank Blount, Mr. Doug Campbell, Mr. Paul Rizzio, Mr. David Krasnostein, Mr. Jim Holmes, Mr. Michael Montalto, Mr. Charlie Zoi and any other Telstra personnel which relate or refer to engagement and/or use by whatever means by Telstra of services by INGE Detective Agency.

Re: Paragraph 6

After "result of" in the second line insert "or relating to".

Please ring me when read.

I understand we are not dealing with the other proposed letters for the moment.

Yours truly,



HUNTS'

278A

Our Ref: 3218.doc

8 May, 1997

Attention: Mr Rod Kearney  
National FOI Manager  
Telstra  
Cnr Exhibition & Lonsdale Sts  
Melbourne VIC 3000.

Dear Mr Kearney,

Re: **New FOI Application titled**

**Telstra Engagement of "INGE" DETECTIVE AGENCY PTY LTD for the Surveillance of Journalists reporting on C.o.T. matters within Audio, Visual and Print Media.**

GOLDEN formally requests the supply of copies of all documents within Telstra associated with the "INGE" Detective Agency Pty Ltd for the calendar year periods of 1992, 1993, 1994, 1995, 1996 & 1997 to current date.

The scope of this FOI request includes copies of:-

1. The agenda and minutes of Telstra meetings convened for the purpose of identifying alternative methods or ways Telstra could investigate and maintain electronic surveillance of Journalists reporting on C.o.T. matters within audio, visual and print media.
2. All E-mails, messages, diary entries, notes of or to Mr Frank Blount, Doug Campbell, Paul Rizzio, David Krasnostein, Bruce Akhurst, Jim Holmes, Michael Montalto and Charlie Zoi, written comments exchanged between Telstra personnel, relating to Telstra's engagement and/or use of "INGE" Detective Agency.
3. The agenda and minutes of meetings between Telstra and "INGE" Detective Agency Pty Ltd.
4. All correspondence between Telstra and "INGE" Detective Agency Pty Ltd.
5. All "INGE" Detective Agency reports provided to Telstra.
6. All copies of hard disks, tapes and/or transcripts created by "INGE" Detective Agency provided to Telstra as a result of electronic surveillance of Journalists' conversations with C.o.T. members, Politicians, and their activities.

278 B

7. All of Telstra documents identifying the Telstra personnel aware of Telstra's engagement of "INGE" Detective Agency to investigate, monitor and engage in the electronic surveillance of Journalists' conversations and activities.
8. All of Telstra documents identifying the Telstra personnel who authorised Telstra's engagement of "INGE" Detective Agency.
9. All of Telstra documents identifying the Telstra personnel responsible for the day to day Management of the Telstra engagement of the "INGE" Detective Agency.
10. All of "INGE" Detective Agency invoices and statements received by Telstra for services provided to Telstra.
11. All of Telstra accounting records of payments made to "INGE" Detective Agency.
12. The agenda and minutes of Telstra Board meetings addressing the issue of Telstra using private detective agencies to investigate and/or monitor the activities of Journalists reporting on C.o.T. matters.
13. All of Telstra Files kept on Senator Ron Boswell.
14. All of the Telstra files kept on Neil Mitchell, Clinton Porteous, Quinton Fogerty, Jill Singer, Paul Maloy, Kirsty Simpson, Ben Potter, Fia Cummings, Helen Meredith and Steve Lewis.

Enclosed is a Golden cheque for thirty dollars (\$30.00) to register this FOI application, drawn on the ANZ Bank, Cheque No. \_\_\_\_\_

I formally request that Telstra waiver all processing costs and charges associated with this FOI application on the grounds of financial hardship and as the subject matter associated with these files is of public interest. Telstra has already accepted the Commonwealth Ombudsman's recommendations that FOI applications lodged to obtain documents to be used in the FTSP and FTAP processes should be supplied free of cost.

Should you require any further information, please do not hesitate to make contact.

Yours sincerely,

Graham Schorer

**Graham Schorer & Alan Smith**  
**FAX INTERCEPTION EXHIBIT 3**  
 PREPARED FOR ALLEN BOWLES, JANUARY 2007

Towards the end of September 1993 I advised Graham Schorer that I had received a telephone call from a lady in Cairns, Queensland, followed by a letter I believe to be from the same person. The letter was badly written, but the phone call was very much to the point and warned me not to enter into litigation with Telecom because their lawyers had easy ways to access a claimant's legal documents during litigation.

Late in May 1994 I went with Clair Allston of Waterford Farm in Yarra Junction, Victoria to a meeting with Warwick Smith, then the TIO. Ms Allston, who is wheelchair-bound, described to the TIO the many problems she was experiencing with her own telephone service, along with similar problems she had when trying to phone me. At this same meeting I warned Warwick Smith that I believed I should not be involved in the Telstra arbitration process while my privacy complaints (which were part of my pending arbitration claim) were still being investigated by the Australian Federal Police (AFP). I also explained that I could not properly complete my arbitration claim until the AFP had completed their findings.

At a later impromptu meeting with Warwick Smith, at Tullamarine airport, I again alerted him to my concerns regarding the AFP investigation and the way my arbitration claim was being affected because the AFP had not yet completed their findings. The TIO told me that he understood my concerns; that he had reached the conclusion that Ann Garms and I were not paranoid in relation to issues of interception; and that the AFP's findings would be made available under the confidentiality agreement included in the Fast Track Arbitration Procedure rules. None of the AFP's findings were ever provided, either by the AFP or the TIO, to enable me to correctly complete this part of my claim

The information included in the documents called "Interception 1" and "Interception Fax Exhibit 1 & 2" show that Telstra has learnt nothing from the 1994 AFP investigations into the COT interception issues.

DATE	FROM	TO	COMMENT
4 May 98	William Hunt, Solicitor	Graham Schorer	Confidential legal information faxed from Mr Hunt's office to Graham Schorer's office at Golden Messengers.  <b>Comment:</b> Note the correct business fax identification of William Hunt 61 3 96706598.
25 May 98	William Hunt, Solicitor	Graham Schorer	Confidential legal information faxed from Mr Hunt's office to Graham Schorer's office at Golden Messengers.  <b>Comment:</b> Between sending the fax recorded directly above (4 <sup>th</sup> May 98) and this fax (25 May 98) Telstra put William Hunt and Godfrey and Godfrey onto FaxStream 1 - without permission. (see below). Godfrey and Godfrey

278c

			shared Mr Hunt's fax service.
29 Jun 98	William Hunt, Solicitor	Alan Smith	I faxed this letter and attachments to William Hunt. Two of the 7 pages arrived blank, without even any fax identification. On the second page, signed by William Hunt, there is a faint square with a cross inside it in the top right corner.  <b>Comment:</b> The information in the letter and attachments was all related to Telstra.
19 Oct 98	William Hunt, Solicitor	Graham Schorer	Freehill Hollingdale & Page, Telstra's lawyers, first sent this eleven-page document to William Hunt. Mr Hunt then faxed it on to Graham Schorer.  <b>Comment:</b> This information was received via Telstra's Fax Streaming service
21 Oct 98	William Hunt, Solicitor	Graham Schorer	The same letter as noted immediately above (19 Oct 98) was faxed again to Graham Schorer, from William Hunt's office.  <b>Comment:</b> This information was received via Telstra's Fax Streaming service.
4 Nov 98	Paul Cosgrove, Barrister	Graham Schorer	This document was faxed to Graham Schorer via the same FaxStreaming process. Mr Cosgrove has told Graham that neither he nor anyone on his staff has ever authorised Telstra to put his business onto FaxStream.
5 Nov 98	William Hunt, Solicitor	Graham Schorer	Fourteen-page legal document sent from William Hunt to Graham via FaxStream
9 Nov 98	William Hunt, Solicitor	Graham Schorer	Fifteen-page legal document sent from William Hunt to Graham via FaxStream
12 Nov 98	Paul Cosgrove, Barrister	Graham Schorer	Six page document also received via FaxStream
10 Feb 99	William Hunt, Solicitor	Graham Schorer	Confirmation that neither William Hunt nor Godfrey & Godfrey (who share Mr Hunt's fax service) have ever authorised Telstra to put their businesses onto Telstra's FaxStream.
26 Feb 99	Alan Smith	Graham Schorer	Graham's fax journal confirms that only two of three faxes I sent to Graham actually arrived, even though I was charged for all three.

**SUMMARY:**

Considering all the information now on file, including information not yet tabled, it is now clearly proved that Telstra has selectively intercepted faxes between my office and Graham's office during 1998 – and possibly longer.

On each of the FaxStream accounts I received I was charged a \$20 fee a month for a FaxStream service I never requested, authorised or signed for.

**278 C**





Regulatory &amp; External Affairs

Level 37  
242 Exhibition Street  
Melbourne Vic. 3000Telephone (03) 9634 2977  
Facsimile (03) 9632 3235

20 May, 1997

Dr Gordon Hughes  
Hunt & Hunt  
Lawyers  
Level 21  
459 Collins Street  
MELBOURNE VIC 3000

By facsimile: (03) 9617 9299

Dear Dr Hughes

Re: Schorer Arbitration

On 4 February 1997 you requested submissions from the parties as to the further documentation they required to be produced. By letter dated 12 February 1997, Telstra outlined the documents it required from Mr Schorer. On 17 March 1997, Mr Schorer provided you with a list of documents which he requires Telstra to produce.

Mr Schorer has also sought a direction with respect to the provision of the entire version of the disks 1Schorer.xls, 2Schorer.xls and MGSchor2.xls. Telstra responded to the concerns raised by Mr Schorer on 24 April 1997. However, no ruling has been made.

Telstra is eager to progress this matter as expeditiously as possible and therefore requests advice as to when it could anticipate a ruling from you with respect to the provision of further documents

Effectively, until these issues are resolved, there can be no further progress of the arbitration.

I look forward to receiving your rulings.

Yours faithfully

Ted Benjamin  
Director Consumer Affairs

279

cc: Mr Graham Schorer  
Golden Transport Agency  
493-495 Queensberry Street  
NORTH MELBOURNE VIC 3051

By facsimile: (03) 9287 7001

Mr John Pinnock  
Telecommunications Industry Ombudsman  
321 Exhibition Street  
MELBOURNE VIC 3000

By facsimile: (03) 9277 8797

: Mr Wm R Hunt  
Hunts' Solicitors  
358 Lonsdale Street  
MELBOURNE VIC 3000

By facsimile: (03) 9670 6598

Mr Peter Bartlett  
Minter Ellison  
40 Market Street  
MELBOURNE VIC 3000

By facsimile: (03) 9229 2621



# Hunt & Hunt LAWYERS

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 Gordon L. Hughes  
 David P. Cooper  
 Ian S. Craig  
 Peter J. Ewin  
 Wayne B. Cahill  
 Neville G.H. Debney  
 Grant D. Sefton  
 William P. O'Shea

**Consultants**  
 Kenneth M. Martin  
 Richard J. Kellaway  
 Graeme I. Armstead  
 Melissa A. Henderson

**Associates**  
 Francis V. Gallichio  
 John D.F. Morris

22 May 1997

Our Ref: GLH

Matter No:

Mr E Benjamin  
 Director - Consumer Affairs  
 Telstra Corporation Limited  
 Level 37  
 242 Exhibition Street  
 MELBOURNE VIC 3000

**By Facsimile: 9632 3235**

Dear Mr Benjamin

*Recd 22/5/97  
 4.35 pm  
 WDM*

## ARBITRATION - SCHORER

I acknowledge receipt of your letter dated 20 May 1997.

On 1 April 1997, I directed that Telstra provide specified computer disks to the claimant, subject to certain qualifications. The qualifications included an undertaking to be provided by the claimant.

The claimant subsequently provided an undertaking which acknowledged that Telstra had not waived its privilege in relation to the contents of the diskettes.

melbourne

On 18 April 1997, the claimant expressed concern that Telstra had previously, in a letter to me dated 14 March 1997, undertaken only to make "modified files" available, meaning that columns would be deleted which would otherwise reveal Telstra's analysis of each document and the reference which would identify the person who performed that analysis. The deleted portions were said to be the subject of legal professional privilege.

sydney

sydney west

brisbane

canberra

The claimant suggested that Telstra should make an unabridged version of the data available to me so that I could decide whether Telstra was entitled to claim legal professional privilege.

newcastle

I accept that Telstra has complied with my directions of 1 April 1997. I also accept that if, as Telstra claims, the disks were prepared at the request of its solicitors for the sole purpose of the arbitration, they are subject to legal professional privilege. The claimant's query relates to whether the claim of legal professional privilege is well founded.

represented in

adelaide

darwin

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 9617 9200.  
 Facsimile: (61-3) 9617 9299. G.P.O. Box 1533N, Melbourne 3001. DX 252, Melbourne.

111044154\_GLH/KS

Email: Mail/hunt.hunt@interlaw.org

280

Telstra is entitled to claim legal professional privilege in these proceedings. Legal professional privilege extends to all communications from a legal adviser for the sole purpose of obtaining legal advice or for the purpose of actual or anticipated litigation. Litigation in this context extends to arbitration.

The test for establishing the existence of the privilege is the sole purpose test. As in a court of law, all documents which satisfy this test are excluded from evidence for the purposes of the arbitration. I accept that if Telstra can satisfy the sole purpose test, I am not able to admit the disks as evidence in this arbitration without committing an error of law or misconduct.

Telstra having made a claim of privilege, it is open to me as arbitrator, or the claimant, to question or cross-examine Telstra concerning the claim for privilege. It is also open to me as arbitrator to inspect and examine the documents themselves to determine if privilege attaches.

I consider I have legal authority, reinforced by clauses 7.5 and 7.6 of the Fast Track Arbitration Procedure, to require the production of the disks in an unabridged form so that I can inspect them and decide whether the claim for legal professional privilege is sustainable. Indeed, the query having been raised by the claimant, I believe it would be improper for me to accept Telstra's claim for legal professional privilege without testing it in this matter.

In the circumstances, subject to one qualification, I propose directing that Telstra produce the disks to me in an unabridged form and provide such co-operation as necessary to enable me to inspect the contents and determine whether the claim for legal professional privilege is well founded. The one qualification is that if Telstra wishes, I am prepared to hear argument at an oral hearing before formalising this direction.

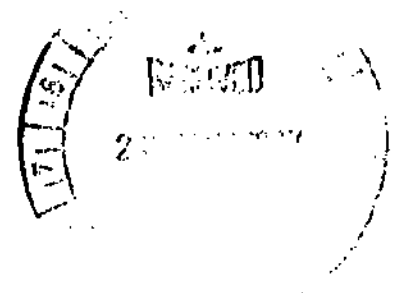
Subject to Telstra's right to seek an oral hearing, I seek the production of the unabridged diskettes within seven days.

Yours sincerely



**GORDON HUGHES**

cc W Hunt, J Pinnock, P Bartlett, L McCullagh, S Hodgkinson



27 May 1997

**CONFIRMATION  
OF FAX**

**Telecommunications  
Industry  
Ombudsman**

Mr Graham Schorer  
Golden Messenger Agency  
493-495 Queensberry Street  
NORTH MELBOURNE 3051

John Pinnock  
Ombudsman

Dear Mr Schorer -

**Sale of Lane Telecommunications to Ericsson Australia**

I have recently been advised that Lane Telecommunications business has been purchased from Pacific Star by Ericsson Australia. The settlement took place on 7 May 1997.

Lane Telecommunications will remain an independent telecommunications consultancy, forming part of the Services Corporate Business Unit of Ericsson Australia.

I have been advised that Ericsson business such as equipment sales to Telstra and other carriers is conducted by different Business Units.

I am of the view that the Arbitrators and all parties to the remaining arbitrations should be advised of the sale and I enclose a copy of the press release announcing the purchase for your information. I would be pleased to discuss this with you should you have any queries.

Yours sincerely

**JOHN PINNOCK  
OMBUDSMAN**

281

*"... providing independent, just, informal, speedy resolution of complaints."*

M.MAT1PR273464\_1

Telecommunications Industry Ombudsman Ltd  
ACN 057 634 787  
National Headquarters  
315 Exhibition Street Melbourne Victoria 3000

Box 18098  
Collins Street East  
Melbourne  
Victoria 3000

Telephone (03) 9277 8777  
Facsimile (03) 9277 8797  
Tel. Freecall 1800 067 058  
Fax Freecall 1800 630 614

**FAXED**  
30/5/97



Regulatory & External Affairs

30 May, 1997

Level 37  
242 Exhibition Street  
Melbourne Vic. 3000

Dr Gordon Hughes  
Hunt & Hunt  
Lawyers  
Level 21  
459 Collins Street  
MELBOURNE VIC 3000

Telephone (03) 9634 2977  
Facsimile (03) 9632 3236

By courier

Dear Mr Hughes

Re: Arbitration - Schorer

I refer to your letter dated 22 May 1997.

With respect, you appear to have misunderstood Telstra's position in relation to the provision of the disk to Mr Schorer.

As stated in my letter of 24 April 1997, the entire disk was prepared at the request of Telstra's solicitors for the sole purpose of the arbitration. Telstra claims privilege for the entirety of the disk. Telstra is not, and has never asserted that only parts of the disk are privileged.

The basis of Telstra's claim for privilege is set out in my letters of 14 March and 24 April 1997. The three files contained on the disk were created in November 1994, after Mr Schorer had agreed to the Fast Track Arbitration Process. The files contain Telstra's analysis of numerous documents. The analysis was performed for the purpose of assisting Telstra in the preparation of its Defence in this arbitration.

In these circumstances, neither Telstra nor its independent legal advisers can see how there can be any serious argument as to whether privilege has properly been claimed.

I am advised that before inspecting the disk you ought to determine whether Telstra has made out its claim for privilege. In this respect you should consider the submissions made in my letters of 14 March and 24 April 1997. If you consider that there is any reason to doubt whether the claim made by Telstra is well founded you should take the course of inspecting the unmodified documents contained on the disk. However, Telstra is concerned that if you were to review the material you may find it difficult in practice, to put the material wholly out of your mind in making your Award in this arbitration. I am advised

➤ that it is for this reason the judges are generally most hesitant to review the documents where a claim for privilege is made, unless there is legitimate cause to doubt the validity of the claim. ↙

I note that Telstra provided the modified disk to Mr Schorer, upon receipt of his undertaking. The modified disk was provided as a means of expediting the arbitration. Telstra again reiterates its concern that the Claimant is using these files [amongst other things] as an excuse for not progressing the arbitration.

Notwithstanding the above, in order to expedite the matter I enclose:

1. Masked disk sent to Mr Schorer;
2. Unmasked disk;

I look forward to receiving your ruling.

Yours faithfully



Ted Benjamin  
Director Consumer Affairs

Enc: 2 disks

cc: Mr Graham Schorer  
Golden Transport Agency  
493-495 Queensberry Street  
NORTH MELBOURNE VIC 3051

Mr John Pinnock  
Telecommunications Industry Ombudsman  
321 Exhibition Street  
MELBOURNE VIC 3000

✓ By facsimile: (03) 9287 7001  
Letter only

✓ By facsimile: (03) 9277 8797  
Letter only



# Hunt & Hunt LAWYERS

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Neville G.H. Debney  
Grant D. Setton  
William P. O'Shea

**Consultants**  
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Richard J. Kellaway  
Graeme J. Armistead  
Melissa A. Henderson

**Associates**  
Francis V. Gallichio  
John D.F. Morris

12 June 1997

Our Ref: GLH

Matter No: 5126990

Mr E Benjamin  
Director  
Consumer Affairs  
Telstra Corporation Limited  
Level 37  
242 Exhibition Street  
Melbourne Vic 3000

COPY

Dear Sir

**TIO - SCHORER**

I have considered the matters raised in your letter of 30 May 1997.

Clearly I need to be satisfied that the diskettes in question were prepared at the request of your solicitors for the sole purposes of this arbitration. Are you able, and do you wish, to provide further evidence in support of your contention that this was the sole purpose for which the diskettes were prepared?

I look forward to your immediate reply.

Yours sincerely

**GORDON HUGHES**

CC W Hunt, J Pinnock, P Bartlett, L McCullagh, S Hodgkinson

*melbourne*

*sydney*

*sydney wes*

*brisbane*

*canberra*

*newcastle*

*represented in*

*adelaide*

*darwin*

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 9617 9200.

Facsimile: (61-3) 9617 9299. G.P.O. Box 1533N, Melbourne 3001. DX 252, Melbourne.

111062386\_GLH/RB

Email: Mail/hunt.hunt@interlaw.org

283



CONSULTANT:  
F. J. R. HUNT, B.A., LL.B.

MITCHELL HOUSE  
358 LONSDALE STREET  
MELBOURNE 3000  
(CNR. ELIZABETH & LONSDALE STREETS)

YOUR REF.                   **GLH 5126990**  
OUR REF.                   **WRH:myc**

PHONE: 9670 5694\*  
FAX: 9670 6598

13th June, 1997

**BY FACSIMILE NO: 9617-9299**

Dr. Gordon Hughes  
Messrs Hunt & Hunt  
Lawyers  
Level 21, 459 Collins Street  
MELBOURNE VIC 3000

**COPY**

Dear Sir,

RE: TIO and Schorer

We are in receipt this morning of your copy letter dated 12th June, 1997 addressed to Mr. E. Benjamin.

On information supplied by our client, we believe that Column E of the printout of the diskettes as made available by Telstra is not privileged from disclosure.

It would appear that the description is simply a description of documentation which already was in existence before there was any arbitration proceedings on foot.

In any event, it is also our client's understanding that the collection and compilation of the material on the diskettes came into existence not for the purpose of litigation. It came into existence as part of the process by Telstra's technical staff of separating and identifying documentation relating to our client's early applications for material to be supplied under FOI. As such it should not be privileged from production.

The reference to "TIO" in the heading of your letter is not understood.

Yours truly,

  
**HUNTS'**

c.c. J. Pinnock, P. Bartlett, L. McCullagh, S. Hodgkinson  
E. Benjamin

Ltrs\13thJune\myc3

284



Regulatory &amp; External Affairs

Level 37  
242 Exhibition Street  
Melbourne Vic. 3000

Telephone (03) 9634 2077  
Facsimile (03) 9632 3239

19 June, 1997

Mr Graham Schorer  
Golden Transport Agency  
493-495 Queensberry Street  
NORTH MELBOURNE VIC 3051

By facsimile: (03) 9287 7001

Dear Mr Schorer

Re: Confidentiality Waiver for Senate Estimates Committee

Telstra is to appear before a Special Parliamentary Committee of the Senate on 24 June 1997.

→ Telstra will be asked questions relating to the "Casualties of Telecom" cases. You may have been invited to appear before the committee.

As you are aware, pursuant to the Fast Track Arbitration Procedure, Telstra, the Administrator, the Arbitrator and you have agreed to keep confidential the subject matter of the arbitration proceedings, the conduct of the procedure and any documents provided as part of the arbitration. A copy of those provisions is attached. Before a previous Senate Estimates hearing, Telstra's compliance with its confidentiality obligation to you was the subject of criticism by some Senators.

Telstra would like to be in a position to openly answer any questions that are put at the parliamentary committee session and to make its own submissions in a comprehensive and open way. To enable Telstra to do this Telstra seeks your consent to waiving the confidentiality provisions in your arbitration agreement solely for the purposes of this parliamentary committee session. Telstra has also sought the consent of the Administrator and the Arbitrator to waive the confidentiality provisions, solely for the purposes of this parliamentary session.

↙ Telstra views its obligations of confidentiality seriously. Telstra will not disclose any confidential information regarding the arbitration process before the parliamentary committee unless you, and the Arbitrator and the Administrator specifically agree

I attach for your consideration, a document acknowledging that you and the Claimants in your arbitration agree not to be bound by the confidentiality provisions of the arbitration agreement at the parliamentary committee session. I also attach for your information a copy of my letters to the Administrator and the Arbitrator seeking their consent to waive the confidentiality provisions. If this waiver is given by all of these parties, Telstra will make a mutual waiver.

schorer/DKCLAIM6.DOC

Telstra Corporation Limited  
ACN 061 778 558

285

13:39 NO.004 P.04 JUN 30 '97 01:38PM

30 JUN.97

ID:03-92877001

GOLDEN

As Telstra is due to appear before the parliamentary committee on Tuesday 24 June 1997 I would appreciate your response by no later than close of business Monday 23 June 1997. If I do not receive a response from you I will assume that you do not wish to waive the confidentiality provisions of the arbitration agreement.

Yours faithfully

*per Bruce Kaven*

**Ted Benjamin**  
Director Consumer Affairs

- Encs: 1. Provisions FTAP 16 and 17
- 2. Confidentiality Waivers x 9
- 3. Letter to Administrator
- 4. Letter to Arbitrator

cc: Mr John Pinnock  
Telecommunications Industry  
Ombudsman  
321 Exhibition Street  
MELBOURNE VIC 3000

By facsimile: (03) 9277 8797

Dr Gordon Hughes  
Hunt & Hunt  
Lawyers  
Level 21  
459 Collins Street  
MELBOURNE VIC 3000

By facsimile: (03) 9617 9299



**Hunt & Hunt**  
LAWYERS

CO

**Partners**  
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 James G.F. Morrison  
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 Ian S. Craig  
 Peter I. Dain  
 Wayne R. Cahill  
 Neville C.H. O'Brien  
 Grant D. Selwyn  
 William P. O'Shea

**Consultants**  
 Kenneth M. Martin  
 Richard J. Sullivan  
 Graeme J. Anderson  
 Melissa A. Henderson

**Associates**  
 Francis V. Callaghan  
 John D.P. Morris

23 June 1997

Our Ref: GLH

Matter No: 5120900

Mr Ted Benjamin  
 Director Consumer Affairs  
 Telstra Corporation Limited  
 Level 37  
 242 Exhibition Street  
 MELBOURNE VIC 3000

By Facsimile: 9632 3235



Dear Mr Benjamin

**CONFIDENTIALITY WAIVER FOR SENATE ESTIMATES  
 COMMITTEE  
 SCHORER ARBITRATION**

I acknowledge receipt of your letter dated 19 June 1997.

I consider it would be inappropriate for me to waive the requirement for Telstra to comply with its confidentiality obligations in this arbitration.

I consider the requirement for confidentiality to be a fundamental feature of this arbitration and the other COT Case arbitrations. A waiver for the purposes outlined would potentially undermine both the integrity of past rulings and my ability to continue the present arbitration involving Schorer.

Yours sincerely

  
**GORDON HUGHES**  
 Arbitrator

CC J Pinnock, A Garms, G Schorer

Melbourne  
Sydney  
Sydney West  
Brisbane  
Canberra  
Newcastle  
Perth  
Adelaide  
Darwin

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 9617 9200.  
 Facsimile: (61-3) 9617 9299. G.P.O. Box 1533N, Melbourne 3001. DX 252, Melbourne.  
 111071497\_GLN/RB Email: Mail/hunt.hunt@intlrlaw.org

286

IN THE MATTER OF an arbitration  
pursuant to the Fast Track Arbitration Procedure

Between

**GRAHAM JOHN SCHORER and Ors**  
Claimants

and

**TELSTRA CORPORATION LIMITED**  
trading as  
**TELSTRA**

Telstra

**CONFIDENTIAL STATUTORY DECLARATION OF  
ROGER LAURENCE LEVY**

I, **ROGER LAURENCE LEVY** of Floor 19, 222 Exhibition Street, Melbourne do solemnly and sincerely declare:

1. This statutory declaration is provided to the Arbitrator to set out the circumstances of the creation of certain diskettes recently provided in the above arbitration over which Telstra has claimed legal professional privilege. Given that this declaration necessarily refers to confidential matters relating to the manner in which Telstra has conducted the preparation of its defence, Telstra claims confidentiality in relation to this declaration.
2. I have since October 1994 been contracted to Telstra as a project manager. In October 1994 and at relevant times I held the post of Principal Consultant to the Group General Manager of Customer Affairs. In that position I was responsible for co-ordinating and managing the preparation of the technical aspects of Telstra's defences in, amongst others, the Arbitrations under the *Fast Track Arbitration Procedure*. A number of employees and contractors of Telstra with relevant technical qualifications and experience worked under me ("the Technical Team"). The overall responsibility for the preparation of Telstra's defence rested with Telstra's Group General Manager advised by Telstra's internal and external lawyers.
3. In the case of the Arbitration involving Mr Graham Schorer, I and other members of the Technical Team attended a number of meetings with Telstra's external lawyers Freehill Hollingdale & Page ("FHP"). During the initial meetings, the precise dates of which I am unable precisely to recall, we agreed that one of the things that needed to be done, before work could substantially begin in preparing Telstra's defence, would be to organise the vast quantities of documentation pertinent to Mr Schorer's complaints which had been provided to Mr Schorer under the *Freedom of Information Act*. Leo Gore, the solicitor of FHP then responsible for this Arbitration, directed me to arrange for this documentation

FHPMELCD\97174007.0 - 23 June 1997 (16:46)

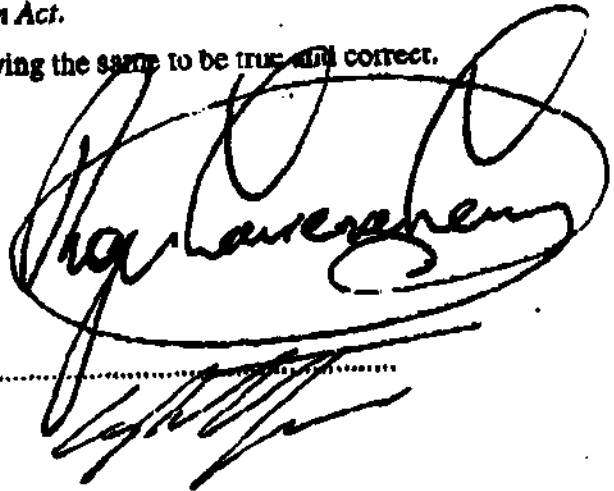
287

to be indexed in an Excel spreadsheet, together with other information including interpretive comments in respect of the documents. I duly instructed the Technical Team to compile this information and I believe the information on the disks in question was compiled primarily between November 1994 and April 1995.

- 4. Leo Gore advised me and I understood that the *only* purpose of preparing index was to allow the documentation to be readily accessed, by both the lawyers and the Technical Team, for the purpose of preparing Telstra's defence documents. So far as I was advised and understood, there were no ancillary purposes. In particular, the spreadsheet was not prepared in order to carry out investigations into Mr Schorer's level of service, was not prepared for internal management purposes and was not prepared for any purpose connected with the *Freedom of Information Act*.

And I make this declaration conscientiously believing the same to be true and correct.

**DECLARED by ROGER LAURENCE LEVY**  
at Melbourne, Victoria  
on 23 June 1997



Before me .....

**CAMPBELL P THOMPSON**  
*Federal Solicitor in Charge*  
 101 Collins Street, Melbourne  
 Australian Capital Territory  
 Commonwealth of Australia  
 The Legal Profession Act 1983.



Regulatory &amp; External Affairs

Level 37  
242 Exhibition Street  
Melbourne Vic. 3000Telephone (03) 9634 2977  
Facsimile (03) 9632 3236

24 June 1997

Dr Gordon Hughes  
Hunt & Hunt  
Lawyers  
Level 21  
459 Collins Street  
MELBOURNE VIC 3000

By facsimile: (03) 9617 9299

Dear Sir,

Re: Schorer Arbitration

I enclose a confidential Statutory Declaration of Roger Laurence Levy.

This statutory declaration relates to the circumstance of the creation of the Schorer disks. As such, the statutory declaration should not be provided to Mr Schorer. A copy of this letter has been sent to Mr Schorer without the statutory declaration.

Given the time that has elapsed since the disks were created, Mr Levy is the most appropriate person currently retained by Telstra to make the declaration. For your information, the Group General Manager, Mr Stephen Black and Ms Joy Geary Special Counsel Dispute Resolution are no longer employed by Telstra. Mr Gore, the solicitor at Freehill Hollingdale & Page (FHP) primarily involved in the matter is no longer employed by FHP.

We look forward to receiving your ruling

Yours faithfully

Ted Benjamin  
Director Consumer Affairs

288

Telstra Corporation Limited  
ACN 051 776 888

/TB-GHS3.DOC

forms?

**Mr Benjamin**—He keeps raising issues that he raised in the arbitration and he does write to many people making that complaint. The complaints that he makes, from memory, would have been raised before the arbitrator. He certainly brought them to the attention of the TIO. We do not accept the complaints as valid, but the opportunity is there for people to whom he writes to take the issue up, if they believe that is warranted.

**Senator CARR**—In terms of the cases outstanding, do you still treat people the way that Mr Smith appears to have been treated? Mr Smith claims that, amongst documents returned to him after an FOI request, a discovery was a newspaper clipping reporting upon prosecution in the local magistrate's court against him for assault. I just wonder what relevance that has. I am sure you would be familiar with the documentation that he has distributed far and wide. He makes the claim that a newspaper clipping relating to events in the Portland magistrate's court was part of your files on him.

**Mr Armstrong**—I am not aware of the document that you have there. I have not seen that document. I am not aware of any such article being any part of our files.

**Senator CARR**—I draw it to your attention. Yes, that is fine. I will give you a photocopy of that.

**Senator SCHACHT**—It does seem odd if someone is collecting files. That is a matter that has nothing to do with his telecommunications business. It seems that someone thinks this is a useful thing to keep in a file that maybe at some stage can be used against him. If it is true, I do not know why you would be collecting that information.

**Mr Benjamin**—I know of no-one who is collecting that information.

**Senator CARR**—Mr Ward, we have been through this before in regard to the intelligence networks that Telstra has established. Do you use your internal intelligence networks in these CoT cases?

**Mr Ward**—I think the issue that we were talking about at the estimates committee was in relation to market intelligence around the market and general competition forces, et cetera, not in relation to any such act.

**Senator CARR**—Would you not use them in regard to your customers?

**Mr Ward**—Certainly not. Senator, can I just say that the process that has resolved 11 out of the 16 was—

**Senator SCHACHT**—Eleven out of the 16?

---

ENVIRONMENT, RECREATION, COMMUNICATIONS AND THE ARTS



Our Ref: 3334.doc

30 June, 1997

Attention: Dr Gordon Hughes  
Arbitrator  
Hunt & Hunt  
Level 21, 459 Collins Street  
Melbourne VIC 3000

Dear Dr Hughes,

**Re: Telstra's supply of Roger Levy's Statutory Declaration to the Arbitrator.**

The contents of Mr Levy's Statutory Declaration contradicts what I have directly been told by the person who alleges to have created the Excel spreadsheet file.

With good reason, I am confident that I will be in a position to obtain, in the next two or three weeks, a Statutory Declaration from the person who alleges have created the Excel file setting out where Mr Levy's Declaration has erred in fact.

The delay in my ability to obtain a Statutory Declaration from this person is due to an event taking place before this person will sign a Statutory Declaration.

The occurrence of this important event is totally beyond my control.

I look forward to receiving your considered decision and ruling.

Yours sincerely,

Graham Schorer

290



# Hunt & Hunt LAWYERS

Partners  
David M. Swaffell  
Edward S. Bruce  
James G.F. Harrowell  
Gordon L. Hughes  
David P. Cooper  
Ian S. Craig  
Peter J. Ewin  
Wayne B. Canill  
Neville G.H. Debnis  
Grant D. Sefton  
William P. O'Shea

7 July 1997

Our Ref: GLH

Matter No: 5126900

Consultants  
Kenneth M. Martin  
Richard J. Kellavin  
Graeme J. Armstead  
Melissa A. Henderson

Mr Ted Benjamin  
Director Consumer Affairs  
Telstra Corporation Limited  
Level 37  
242 Exhibition Street  
MELBOURNE VIC 3000

Associates  
Francis V. Calchio  
John D.F. Morris

Dear Mr Benjamin

*Received  
in mail  
15-7-97  
[Signature]*

## ARBITRATION - SCHORER

I have considered Mr Levy's statutory declaration and Mr Schorer's comments in response.

In the process, I have found it necessary to view the contents of the unmasked disk forwarded to me by Telstra on 30 May 1997. In doing so, I was mindful of the concerns expressed by Telstra in its letter of 30 May 1997 that I might compromise my position as arbitrator. I do not believe I have in the circumstances been compromised.

I have given serious consideration to the nature of the information contained on the diskette, the reasons why that information is being sought by the claimants and, as an overriding consideration, the objectives of the parties in agreeing to enter what was intended to be a fast-track, non-legalistic arbitration procedure.

I do not consider that a disclosure of information contained on the diskette could prejudice Telstra's position in this arbitration, save that the task of the claimant in preparing his claim would be greatly facilitated. By having access to a description of the documents held by Telstra, the claimant would be able to quickly identify documents of potential significance. Some or all of the relevant documents may already be in his possession. If the claimant is assisted in this manner, I expect the ultimate resolution of this claim would be greatly expedited. My understanding is that both parties share this goal.

By requiring Telstra to hand over the unmasked diskette, I would be making no judgment as to whether individual documents listed on the diskette were relevant or were the subject of legal professional privilege. These issues can be dealt with if and when they arise.

- melbourne
- sydney
- sydney west
- brisbane
- canberra
- newcastle
- represented in
- adelaide
- darwin

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 9617 9200.  
Facsimile: (61-3) 9617 9299. G.P.O. Box 1533N, Melbourne 3001. DX 252, Melbourne.  
111085233\_GLH/RB Email: Mail/hunt.hunt@interlaw.org

291

Accordingly, **I direct** that Telstra make available to the claimant, in unabridged form, the materials described in my direction of 1 April 1997. Unless I hear from the contrary from Telstra prior to 5.00pm on 16 July 1997, I will assume that it is in order for me to copy the diskette previously supplied to me by Telstra and to pass on copies to both the claimant and the Resource Unit.

I am conscious this arbitration is proceeding at an unacceptably slow pace. Each party has made a request for further and better particulars and I remain unable to make a meaningful determination as to the reasonableness of those requests in every respect. I am concerned that this situation may prove to be the basis for further extended delays.

Whilst I am prepared to receive submissions on the point, my inclination is to progress this matter by initiating a technical evaluation of the claim on the basis of evidence submitted to date. To the extent that the Resource Unit considers, or I determine, that additional information is required in order to complete a meaningful evaluation, this can be the subject of further directions by me. The outstanding requests for further and better particulars could be considered, on interim bases, in this context.

I invite submissions from each party on this proposal prior to 5.00pm on Wednesday, 16 July 1997. I appreciate that there are issues regarding the ongoing involvement of Lane Telecommunications which must be dealt with simultaneously but I do not seek submissions on that issue at present.

Yours sincerely

**GORDON HUGHES**

CC W Hunt, J Pinnock, P Bartlett, L McCullagh, S Hodgkinson



Regulatory &amp; External Affairs

Level 37  
242 Exhibition Street  
Melbourne Vic. 3000Telephone (03) 9634 2977  
Facsimile (03) 9632 9236

11 July, 1997

Dr Gordon Hughes  
Hunt & Hunt  
Lawyers  
Level 21  
459 Collins Street  
MELBOURNE VIC 3000

By facsimile: (03) 9617 9299

Dear Dr Hughes,

Re: Schorer Arbitration

I attach a supplementary statutory declaration of Roger Levy.

The declaration corrects the period for which Mr Levy has been a consultant to Telstra and seeks to clarify the time at which work on the disks commenced. The attached declaration does not change the substance of Mr Levy's earlier declaration.

I look forward to receiving your ruling as soon as possible, so that the arbitration of this matter may be progressed.

Yours faithfully

Ted Benjamin  
Director Consumer Affairs

/TB-GH056.DOC

Telstra Corporation Limited  
ACN 801 770 008

292 A

**IN THE MATTER OF** an arbitration  
pursuant to the Fast Track Arbitration Procedure

Between

**GRAHAM JOHN SCHURER and Ors**  
Claimants

and

**TELSTRA CORPORATION LIMITED**  
trading as  
**TELSTRA**

**FURTHER STATUTORY DECLARATION OF**  
**ROGER LAURENCE LEVY**

I, **ROGER LAURENCE LEVY**, of Floor 19, 222 Exhibition Street, Melbourne do solemnly and sincerely declare:

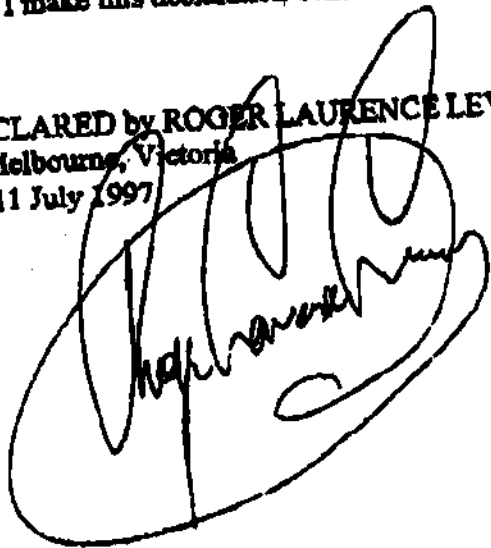
1. I refer to my statutory declaration made on 23 June 1997. I make this declaration to correct an incorrect statement in paragraph 2 and to supplement paragraph 3 which, unless corrected may lead to an inaccurate impression of when the disks were created.
2. I commenced at Telstra on 15 November 1994, not in October 1994 as stated in paragraph 2 of my earlier declaration. The date in my earlier declaration was based on a recollection of the approximate date of commencement. I have since had the opportunity to check the date in my personal records.
3. When I commenced at Telstra, rudimentary work had already commenced compiling the Excel spreadsheet. I do not know precisely when that work commenced.

/LEVYSTAT.DOC

292B

And I make this declaration conscientiously believing the same to be true and correct.

DECLARED by ROGER LAURENCE LEVY  
at Melbourne, Victoria  
on 11 July 1997



Before me: *Mick Batsick*  
MICK BATSICK  
525 COLLINS STREET MELBOURNE  
A NATURAL PERSON HOLDING A CURRENT  
PRACTISING CERTIFICATE UNDER THE  
LEGAL PRACTICE ACT 1976.

LEVYSTAT.DOC

292B



**Telecommunications  
Industry  
Ombudsman**

**John Pinnock**  
Ombudsman

21 March, 1997

**Mr Ted Benjamin**  
Director, Consumer Affairs  
Regulatory & External Affairs  
Telstra Corporation  
37 Floor/242 Exhibition Street  
MELBOURNE 3000

Dear Ted

**Mr Alan Smith**

I enclose a copy of a letter received from Mr Smith.

I would appreciate your advice concerning the matters raised by Mr Smith, in particular and arising out of your letter of 23 December 1994 to Dr Hughes:

1. any explanation for the apparent discrepancy in the attestation of the witness statement of Ian Joblin
2. were there any changes made to the Joblin statement originally sent to Dr Hughes, compared to the signed statement?
3. the nature of the queries raised by Ferrier Hodgson
4. are you aware whether the Ferrier Hodgson letter was sent to Mr Smith?

Yours sincerely

**JOHN PINNOCK**  
OMBUDSMAN

*"... providing independent, just, informal, speedy resolution of complaints."*

293 A



PARLIAMENT OF AUSTRALIA - THE SENATE

BILL O'CHEE  
SENATOR FOR QUEENSLAND  
NATIONAL PARTY WHIP IN THE SENATE

PARLIAMENT HOUSE  
CANNBERRA ACT 2600  
TEL: (02) 6277 3922  
FAX: (02) 6277 3319

Mr Graeme Ward,  
Regulatory and External Affairs,  
Level 39,  
242 Exhibition Street,  
MELBOURNE, VIC 3000,

Dear Mr Ward,

**Report to the Senate Committee on Various Matters Relating to Telstra and CoT and CoT-related Cases**

I refer to your letter of 22<sup>nd</sup> June, 1998 to Senator the Hon. Richard Alston in relation to the above matter, and I thank you for your courtesy of copying same to me.

I note in your letter's last page you suggest the matter of the alteration of documents attached to statutory declarations should be dealt with by the relevant arbitrator. I do not concur. I would be grateful if you could advise why these matters should not be referred to the relevant police.

Alternatively, you might be able to clarify these matters by return and eliminate the need for any further action at this stage.

Yours sincerely,

BILL O'CHEE  
Senator for Queensland and  
National Party Whip in the Senate

Canberra, this 26<sup>th</sup> June, 1998.

12-14 LAKE STREET  
(PO BOX 7513)  
CAIRNS QLD 4870  
TEL: (07) 4031 3649  
FAX: (07) 4031 3244

COMMONWEALTH PARLIAMENT OFFICES  
1 EAGLE STREET  
(GPO BOX 228)  
BRISBANE QLD 4001  
TEL: (07) 3244 4190  
FAX: (07) 3229 4140

161 2 0277 3319

16-7-98: 0:54AM:O'CHEE CANBERRA

293 B



WRH:DF

15 July 1997

Dr Gordon Hughes  
Messrs Hunt & Hunt  
Lawyers  
Level 21  
459 Collins Street  
MELBOURNE VIC 3000

Dear Sir,

RE Arbitration - Schorer and Telstra

Sometime after 10 a.m. this morning, in the ordinary course of events, Australia Post delivered the day's mail to my office.

I was unable to peruse the mail intended for me personally after it had been sorted until about an hour or so later.

In the mail was a copy of your letter of 7th July 1997 to Mr. Ted Benjamin of Telstra Corporation Limited.

At the time of writing I have already faxed a copy of it to Mr. Schorer who was not in his office at the time I made the call shortly before dictating this letter.

A photo-stat of the envelope showing postal date of the letter to me is enclosed. The date of posting is shown as yesterday.

In the circumstances, having regard to the other commitments of this office, it will be impossible for me to comply on behalf of my clients with the invitation to make representations to you prior to 5 p.m. tomorrow as set out on the second page of your letter under review.

It is respectfully suggested therefore that my clients be given until the 30th July or such later date as may appeal to you for them to make appropriate submissions. K

Yours truly,

HUNTS'  
Enc. 1

294

# Telstra

Regulatory & External Affairs

Level 37  
242 Exhibition Street  
Melbourne Vic. 3000

Telephone (03) 9634 2977  
Facsimile (03) 8832 3236

16 July, 1997

Dr Gordon Hughes  
Hunt & Hunt  
Lawyers  
Level 21  
459 Collins Street  
MELBOURNE VIC 3000

By facsimile: (03) 9617 9299

Dear Dr Hughes,

**Re: Schorer Arbitration**

I refer to your letter dated 7 July 1997 but received on 14 July 1997, and respond as follows:

1. Telstra notes your direction and that you will provide the unabridged version of the disk to the Claimant;
2. In making that direction you have not made any ruling as to whether Telstra's claim that the three computer files, namely 1schorer.xls, 2schorer.xls and mgachor2.xls are privileged is well founded. You have further made no judgement as to whether the individual documents described in those files are relevant to the proceeding or whether the individual documents could be subject to a claim of legal professional privilege;
3. In Telstra's letter to you of 14 March 1997, Telstra made it clear that:
 

*"The analysis [contained in the three computer files] was performed for the purpose of assisting Telstra in the preparation of its defence to the arbitration. Not all documents analysed were relevant or useful. The files do not contain a complete list of documents relevant to the Claimant's telecommunications service. No such list exists although a more current version of the "file" has been prepared by Telstra".*
4. In light of the comments you have made, to assist the Claimant and to expedite the resolution of this matter, Telstra considers that in addition to the three files, the current version of the file may assist the Claimant. Again Telstra makes no warranty that the documents contained in that file are relevant or useful. However, Telstra is prepared to provide the Claimant with that more current version of the file, within 48 hours of you making a direction in similar terms to that set out in your letter dated 7 July 1997.

/TB-GH057.DOC

Telstra Corporation Limited  
ACN 051 778 888

295

17/07 '97 13:02

061 3 632 0868

IP GROUP

Again Telstra reserves its rights to later contend that the current version of the file is privileged and that the individual documents referred to in that file are privileged.

5. In relation to the three files of which you have a copy and in relation to the more current version of the file, it must be stressed that the summaries of documents are Telstra's working summaries of documents. Those summaries do not stand in place of Telstra's defence. Further, Telstra makes no warranty as to the accuracy of the summaries contained in the files. Where there is any discrepancy between the summary and Telstra's defence, Telstra's defence prevails;
6. Telstra agrees with your proposal to now refer the matter to the Resource Unit;

As a final comment, I note that recently I have been receiving your letters many days after the date on which the letter was apparently sent. I would greatly appreciate it if you could forward all correspondence to me by facsimile.

Yours faithfully



**Ted Benjamin**  
Director Consumer Affairs

cc: Mr John Pinnook  
Telecommunications Industry  
Ombudsman  
321 Exhibition Street  
MELBOURNE VIC 3000

By facsimile: (03) 9277 8797

Mr Graham Schorer  
Golden Transport Agency  
493-495 Queensberry Street  
NORTH MELBOURNE VIC 3051

By facsimile: (03) 9287 7001

295



16 July 1997

**Telecommunications  
Industry  
Ombudsman**

**John Pinnock  
Ombudsman**

Mr W Hunt  
Solicitors and Consultants  
Hunts'  
358 Lonsdale Street  
MELBOURNE 3051

**CONFIRMATION  
OF FAX**

**Facsimile 03 9670 6598**

Dear Mr Hunt

**Status of Lane Telecommunications ('Lane')**

On 7 May 1997 Lane's business was purchased from Pacific Star by Ericsson Australia ('Ericsson'). Lane is now 100% owned by Ericsson and forms part of Ericsson's Services Corporate Business Unit as an independent telecommunications consultancy.

Lane is the Technical Advisor to the Resource Unit in various arbitrations administered by the Telecommunications Industry Ombudsman ('Administrator'). Lane is appointed by Ferrier Hodgson Corporate Advisory, the Financial Advisor to the Resource Unit, with the approval of the Administrator. The Resource Unit is appointed to assist the Arbitrator and the Arbitrator may request the Resource Unit to examine documents, inspect premises or systems, or carry out other enquiries or research.

↓ Lane is presently involved in arbitrations between Telstra and Bova, Dawson, Plowman and Schorer. The change of ownership of Lane is of concern in relation to Lane's ongoing role in these arbitrations.

↓ The first area of concern is that some of the equipment under examination in the arbitrations is provided by Ericsson. For example, the commander system and the exchange which are of primary concern in the Dawson complaint, are provided by Ericsson.

↓ The second area of concern is that Ericsson has a pecuniary interest in Telstra. Ericsson makes a large percentage of its equipment sales to Telstra which is one of its major clients.

↓ It is my view that Ericsson's ownership of Lane puts Lane in a position of potential conflict of interest should it continue to act as Technical Advisor to the Resource Unit.

*"... providing independent, just, informal, speedy resolution of complaints."*

**296A**

M\_MATTER314953\_1 Telecommunications Industry Ombudsman Ltd ACN 057 634 787

Website: [www.tio.com.au](http://www.tio.com.au)  
E-mail: [tio@tio.com.au](mailto:tio@tio.com.au)  
National Headquarters  
315 Exhibition Street Melbourne Victoria 3000

Box 18098  
Collins Street East  
Melbourne  
Victoria 3000

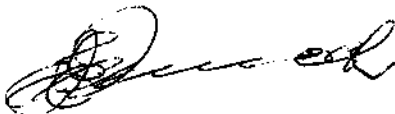
Telephone (03) 9277 8777  
Facsimile (03) 9277 8797  
Tel. Freecall 1800 062 058  
Fax Freecall 1800 630 614

The potential conflict of interest clearly arises from the date on which Lane Management was advised that Ericsson had been chosen by Pacific Star as the preferred purchaser of Lane - 15 April 1997. It is arguable that the potential conflict of interest arose at an earlier time, perhaps between 25 February and 3 March 1997.

↘ The effect of a potential conflict of interest is that Lane should cease to act as the Technical Advisor with effect from a date shall be determined. An alternative Technical Advisor will need to be appointed, on terms yet to be decided, but with the agreement of all parties.

I am aware that this process will cause some delay to your arbitration procedure, but have determined that this is the most appropriate course of action in the present circumstances.

Yours sincerely



**John Pinnock**  
**Ombudsman**

enclosure

cc Mr G Schorer  
Golden Transport Agency  
Facsimile 9287 7001

Mr Peter Bartlett, Special Counsel



Telecommunications Industry Ombudsman

Warwick L. Smith LLB Ombudsman

March 9, 1995

Mr. Alan Smith  
Cape Bridgewater Holiday Camp  
Blowholes Road  
RMB 4408  
CAPE BRIDGEWATER VIC. 3306

By facsimile: (055) 267 230

Dear *Alan*

Re: Resource Unit - Technical Support

As the executive of DMR Group Australia Pty. Ltd. is unavailable to provide locally based technical assistance, I propose to utilise the services of Mr. David Read and Mr. Chris Soutter of Lane Telecommunications (based in Adelaide) who are suitably qualified and independent.

Messrs. Read and Soutter will assist Mr. Paul Howell of DMR Group Inc. (Canada) in the technical assessment under the Fast Track Arbitration Procedure. Mr. Howell the principal technical advisor to the Resource Unit will be in Australia within two weeks. The technical enquiries will commence on Thursday 16th March, 1995.

Could you please confirm with me in writing that you have no objection to this appointment so the matter can proceed forthwith.

Yours faithfully,

*Warwick L. Smith*  
Warwick L. Smith  
Ombudsman

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296 B

TIO LTD ACN 057 634 787  
National Headquarters  
471 Exhibition Circuit

Rm 1908B  
Collins Street East

CONFIRMATION

Telephone (03) 277 8777  
Facsimile (03) 277 8769

TOTAL P.01

FREEHILL  
HOLLINGDALE  
& PAGE

Our Ref: FREEHILL/COM/1997/3

17 July 1997



Ms Sue Laver  
Customer Affairs Solicitor  
Legal Directorate  
Telstra Corporation Ltd  
Level 38  
242 Exhibition Street  
MELBOURNE VIC 3000

Dear Ms Laver

**Schorer Arbitration Procedure  
Legal professional privilege in Telstra Disk Document**

We refer to your instructions to advise whether the database of information produced for the purpose of preparing Telstra's defence in the Schorer Arbitration and which is contained on computer disks (the 'Telstra Disk Document') is subject to legal professional privilege.

**A. EXECUTIVE SUMMARY**

For the reasons outlined below, we are of the opinion that the Telstra Disk Document is subject to legal professional privilege.

Accordingly, Telstra may properly claim legal professional privilege in respect of the Telstra Disk Document.

**B. WHAT IS LEGAL PROFESSIONAL PRIVILEGE?**

As you are aware, legal professional privilege 'protects' communications and documents which have been made or brought into existence for the *sole purpose* of:

- (1) seeking or receiving legal advice by a practising lawyer; or
- (2) preparing for existing or contemplated judicial or quasi-judicial proceedings.

The relevant communications and documents are 'protected' in the sense that they cannot be compelled to be given in evidence or otherwise disclosed by the party holding the privilege.

101 Collins Street  
Melbourne Victoria 3000 Australia  
Telephone (03) 9288 1334 Intra (61 3) 9269 1334 Facsimile (03) 9288 1567  
DX 340 Melbourne

MELBOURNE SYDNEY PERTH CANBERRA BRISBANE TRENTOURNE MANGALORE SINGAPORE HANOI HONG KONG  
CORPORATE COMPLAINTS DEPARTMENT OFFICE IN JAKARTA

Liability is limited by the Solicitors Scheme under the Professional Standards Act 1994 (NSW)

297

FREEHILL  
HOLLINGDALE  
& PAGE

17 July 1997

Although in some contexts the relevant test is no longer a sole purpose test but a dominant purpose test, the Schorer Arbitration process is not one of those instances and the sole purpose test therefore continues to apply.

**C. THE FACTS**

Based on our records and recollection of events (which is supported by the recollection of relevant personnel from Telstra and Deloitte Touche Tohmatsu, the forensic accountants engaged by our firm on behalf of Telstra to assist in the preparation of Telstra's defence documents in the Schorer Arbitration), the Telstra Disk Document:

- (1) was prepared in our offices after the commencement of the Schorer Arbitration during the latter part of 1994 and the early part of 1995;
- (2) was prepared at our direction by personnel from our firm, technical personnel engaged by Telstra and Deloitte Touche Tohmatsu personnel;
- (3) summarises, describes, indexes and comments upon documents relating to Telstra's historical dealings with Mr Schorer and Mr Schorer's telephone service (which documents were delivered by Telstra to our firm's premises for the purpose of preparing Telstra's defence in the Schorer Arbitration);
- (4) was brought into existence for the sole purpose of preparing Telstra's defence in the Schorer Arbitration. Telstra's defence could not be properly and adequately prepared without first summarising and commenting upon the relevant documents held by Telstra. This fact gave rise to the need for the Telstra Disk Document.

**D. LEGAL IMPLICATIONS**

The above facts are entirely consistent with and give rise to the existence of legal professional privilege in the Telstra Disk Document.

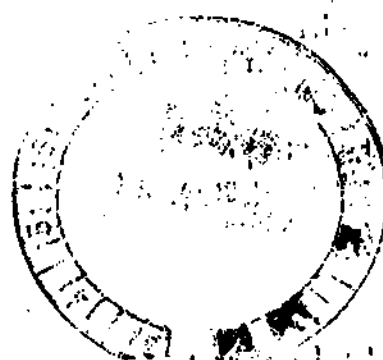
The right to claim privilege in the Telstra Disk Document rests with Telstra.

\*\*\*\*\*

Yours faithfully

*Freehill Hollingdale Page,*  
FREEHILL HOLLINGDALE & PAGE

F.01





24 July 1997

## CONFIRMATION OF FAX



**BY FACSIMILE 07 3257 1583**

Mrs Ann Garms  
Tivoli  
48-42 Costin Street  
FORTITUDE VALLEY QLD 4075

**Telecommunications  
Industry  
Ombudsman**

**John Pincock  
Ombudsman**

Dear Ms Garms

**Conflict of Interest: Lane Telecommunications ('Lane') and Ericsson Australia ('Ericsson')**

I refer to your letter dated 18 July 1997.

I have a number of comments to make in relation to that letter.

1. By letter dated 14 November 1995 I advised you that I did not have the power to dismiss the Arbitrator or the Resource Unit. I advised that pursuant to the *Commercial Arbitration Act 1984 (Vic)* the Supreme Court has the power to remove an arbitrator in certain circumstances. Contrary to the assertion in your letter of 18 July 1997, I did not advise you to take the matter to the Supreme Court, but stated that 'if you and your legal adviser believed that the circumstances warrant such an application to the court, it is a matter for you'. I did not force you to take an application to the Supreme Court and indeed, you did not make such an application. Subsequently, you lodged an Appeal concerning the Arbitrator's Award.
2. In November 1995 you had concerns regarding the independence of Lane. By letter dated 6 November 1995, having made considerable enquiries of the relevant parties on this issue of independence, I advised you of my view that your concerns regarding the independence of Lane were unfounded. I stated that 'none of the evidence produced to me has displaced by confidence in the independence of...Lane'.
3. On 8 March 1995 you advised the TIO that Mr David Read of Lane was unacceptable on the basis that he was a former employee of Telecom. However on 13 March 1995 you advised the TIO that 'after meeting with Mr David Read I feel confident that he and his company Lane Telecommunications Pty Ltd possess the necessary integrity, professionalism and expertise to do justice to the assessment of our Claim'.

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298

Telecommunications Industry Ombudsman Ltd ACN 057 634 787

4. The present situation in relation to the sale of Lane to Ericsson concerns a potential conflict of interest and is of a completely different nature to the concerns regarding the independence of Lane which you raised in 1995. Your concerns that Lane employees may have formerly worked for Ericsson or Telstra did not create a situation of conflict.
5. You have quoted from a letter of mine to Mr Graham Schorcr, which states that 'The effect of a potential conflict of interest is that Lane should cease to continue to act as Technical Advisor'. Contrary to the implication in your letter, this does not imply, and I have not stated, that the TIO has the power to dismiss the Resource Unit. The TIO does not have such power. Rather, the Arbitrator has the power to dismiss the Resource Unit.

In relation to previous correspondence concerning material furnished directly by you to the Resource Unit in the course of your Arbitration, I have written to Ferrier Hodgson Corporate Advisory, requesting that material directly to you. I understand that, apart from various exchanges of correspondence in the course of the Arbitration, the Special Counsel holds no documents or material supplied by you which relate to the Arbitration.

If you consider you have been 'mislead' then this is a matter for you to pursue in your Supreme Court appeal.

Yours sincerely



John Pinnock  
Ombudsman



# Hunt & Hunt LAWYERS

Partners 5  
 David M. Scallen  
 Edward S. Boyce  
 James C.F. Harrowell  
 Gordon L. Hughes  
 David P. Cooper  
 Ian S. Craig  
 Peter J. Ewin  
 Neville G.H. Debney  
 Grant D. Sefton  
 William P. O'Shea  
 Ashley M. Peiman

Consultants  
 Kenneth M. Martin  
 Richard J. Kellaway  
 Graeme I. Armstead  
 Melissa A. Henderson

Associates  
 Francis V. Gallichio  
 John D.F. Morris

25 July 1997

Our Ref: GLH  
Matter No: 5126900

Mr Ted Benjamin  
Director  
Consumer Affairs  
Telstra  
Level 37  
242 Exhibition Street  
Melbourne Vic 3000

Dear Mr Benjamin

### ARBITRATION - SCHORER

I acknowledge receipt of your letter dated 16 July 1997.

Taking into account the matters which you raised, I direct that in addition to the files embraced by my direction of 7 July 1997, Telstra make available to the claimant its current version of those files on or before 29 July 1997.

Yours sincerely

  
GORDON HUGHES

cc. W. Hunt, J. Pinnock, P. Bartlett, L. McCullagh, S. Hodgkinson

melbourne

sydney

sydney west

brisbane

canberra

newcastle

represented in

adelaide

darwin

.LMH:CAT  
Leibler

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 9617 9200.  
Facsimile: (61-3) 9617 9299. G.P.O. Box 1533N, Melbourne 3001. DX 252, Melbourne.

111102058\_GLH/KRI

Email: Mail/hunt.hunt@interlaw.org

JUDGMENT

299



# Hunt & Hunt LAWYERS

**Partners**  
 David M. Scarlett  
 Edward S. Boyce  
 James G.F. Harrowell  
 Gordon L. Hughes  
 David P. Cooper  
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 Peter J. Ewin  
 Neville G.H. Debney  
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**Consultants**  
 Kenneth M. Martin  
 Richard J. Kellaway  
 Graeme J. Armstead  
 Melissa A. Henderson

**Associates**  
 Francis V. Gallichio  
 John D.F. Morris

25 July 1997

Our Ref: GLH

Matter No: 5126900

Mr William R Hunt  
 Hunts  
 Solicitors and Consultants  
 358 Lonsdale Street  
 Melbourne Vic 3000

Dear Mr Hunt

### ARBITRATION - SCHORER

I refer to your letter of 15 July 1997 and would be pleased to receive your submission regarding my proposal for the future conduct of this arbitration by 5.00pm on 30 July 1997.

I appreciate that you would prefer to await the outcome of the meeting scheduled to take place with the Administrator on 29 July 1997 before finalising your position in this regard.

Yours sincerely

**GORDON HUGHES**

cc. E. Benjamin, J. Pinnock, P. Bartlett, L. McCullagh, S. Hodgkinson

*Attention Mr J. Schorer*

*Following receipt by courier on  
 Friday afternoon last ~~at~~ at what  
 4.30pm.*

melbourne

sydney

sydney west

brisbane

canberra

newcastle

represented in

adelaide

darwin

.LMH:CAT  
Leibler

JUDGMENT

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 9617 9200.

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Email: Mail/hunt.hunt@interlaw.org

111102058\_GLH/KR]

300



Regulatory & External Affairs

Level 37  
242 Exhibition Street  
Melbourne Vic. 3000

Telephone (03) 9634 2977  
Facsimile (03) 9632 3235

29 July, 1997

Dr Gordon Hughes  
Hunt & Hunt  
Lawyers  
Level 21  
459 Collins Street  
MELBOURNE VIC 3000

Dear Dr Hughes,

**Re: Schorer Arbitration**

I refer to your facsimile dated 25 July 1997 and enclose a disk containing the following files:

1. MASTER2.XLS - which contains a list of documents which was last modified on 10 December 1996;
2. SCHORERD.XLS - which contains a list of documents last modified on 17 July 1997;

I note that there may be duplication in the summaries contained in the disk. Like the earlier disk supplied to Mr Schorer these files are Telstra's working summaries of the documents. Those summaries do not stand in the place of any formal document provided to you in the course of this arbitration.

Yours faithfully

**Ted Benjamin**  
Director Consumer Affairs

Enc: 1 Disk

/TB-GH058.DOC

301

**FAXED**  
07/08/97

**GOLDEN**  
Transport Agency

A Division of G.M. (MELBOURNE) HOLDINGS PTY. LTD. A.C.N. 005 905 046

**IMPORTANT: WE ARE NOT COMMON CARRIERS.** The Carrier directs your attention to its trading **TERMS AND CONDITIONS OF CONTRACT.** It is in your interests to read them to avoid any later confusion.

To: MR W. R. HUNT

Date: 07/08/97

Company: HUNT'S SOLICITORS

Our Ref:

From: GRAHAM SCHONER

Fax No: 9670 6598

Total Pages (Including Header): 5

Mailed: Yes ( ) No ( X )

**PRIVACY AND CONFIDENTIALITY CLAUSE**

The information in this facsimile is private, privileged and strictly confidential and intended only for use of the individual or entity named above. If you are not the intended recipient, please call by telephone the sender immediately upon receiving this facsimile as any dissemination, copying or use of the information is strictly prohibited.

Dear Mr Hunt,

Enclosed are copies of printout from 1st disk (OLD) = 2 files, first page of each, and from the 2nd disk (NEW) = 2 files, first page of each.

ff: ~~DS~~  
Graham.

302A

Total 4 pages

Date	Counter	Reference	Type	FILE DESCRIPTION	To	From
1988-1994	sh25	J05111	Printout	North Melb Exchange Route, circuit details. Billing details.		Ian Thomas
1996	sh26	J05112-J05116	Flexcab	Records for Schorer's private lines		
unknown	sh27	J05117-J05125	DCRIS	Records fro Schorer's pstn lines		
1993	sh28	J05126 & J05127	printout	Junction records NMEA-NMEL		
1996	sh29	J05128	TRAC	Cable Records ISDN link		
8/1/96	sh30	J05129	Email	Request for further documentation	R. Simpson	S. Hodgson
6/15/95	sh31	J05130	Email	Private line RAS information	J Mitchell	P. Riddle
7/8/96	sh32	J05131 & J05135	printout	Incoming categories for GM possible problem		W. Jeffs
3/15/96	sh33	J05136 - J05141	memo	fault report GM 11/3/96		G. Potts
1995-1996	sh34	J05142	notes	fault reports by GM 95/96		
5/27/96	sh35	J05143 - J05144	memo	fault report GM 23/5/96		G. Potts
Apr-95	sh36	J05146 - J05147	printout	project completion for NMEE S-12 exchange		D. Haustorfer
Jun-05	sh37	J05150 - J05155	records	GM isdn macrolink records		
1995/1996	sh38	J05156 - J05180	printout	NMEE SYS 12 Degradation Reports.		
various	sh39	J05181 - J05259		Letters of Complaint, Rubas Traffic Readings, North Melbourne Exchange, Lonu Traffic.		
Apr-96	sh40	J05260 - J05265	letters	Golden Messenger correspondence service complaints April/96		
Apr-96	sh41	J05266 - J05306	printouts	Fault investigation notes April 96		
1992 - 1996	sh42	J05307 - J05308	printout	Schorer's company telephone directories listings		
Jul-96	sh43	J05309 - J05310	flexcab	Service provision records GM pstn lines		
Jun-05	sh44	J05311 - J05348	printouts	GM service difficulties 1996 and investigation records		
1996	sh45	J05349 - J04409	printouts	NMA Log Circuit Administration, System 12 Cutover Report, System 12 Procedure Checklist, Network Changes.		
1996	sh46	J05410 - J05411	email	ARE11 SLM Fault.		
1993-1994	sh47	J05412 - J05444	printouts	EPMS Data for Nth Melb Exchange (NMEL and Regions).		
1994	sh48	J05445 - J05446	report	ISDN performance GM		

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NEW

TED - 307 f 28/80

MASTER2.XLS

302A

Date	Counter	References	Type of Doc	Description	To	From
3/4/80	JM1657	A95029 -033	Private line details	Details of Private Line N3062049P Malvern Town hall to 59 Leveson St North Melbourne.	N/A	L Phillips file
2-Oct-81	Cal	J05460 to J05464		ARF Equipment for interim modification of PBX-PT relay set drawing CE-14039 MOD 1 Issue 1	Engineering Dept / Telecom	Switching Design & Practises Section
2/4/85	A209	R27814 to R27827 (Whole File)	File Copies	Test comments and results on Flexicom.	C. Walton Phillips	B. Hepburn SBS
6/1/85	L251	A03378 to A03649	Document	Large document detailing all Specifications relating to Philips K B X ( Flexitel ) series systems = pre acceptance approx 270 pages.	Telecom	Philips
6/1/85	L252	K33756 to K33925	Document	Acceptance testing and compliance to safety testing of flexitel Supplied by Philips ( U.K ) Very large submission approx 170 pages.	Telecom	Philips
6/20/85	MZ103	R15677	note	note on suspected metering fault, 328/1-4 and 329/0-2 & 5-9 with an initial category of 7 are not metered for any calls.	unknown	unknown
11/13/85	SK166	103810 - 103834	Minute	This report recommends that a period contract be placed with Philips and AWA.	B. Anderson	N.A. Cameron
12/24/85	SK159	K07559 - K07560	Minute	Flexicom presentation in Canberra - notes of attendee.	Mr. Lynch	N.A. Cameron
1/1/86	SK169	R27788 - R27801	Tender	Blank tender forms for the supply and delivery of Standard Maintenance Terminal for the period 1/1/86 to 31/12/86.	N/A	N/A
1/9/86	MZ22	R27900	note	he is not aware of any problems with the KRONR UK modules installed into the Flexitel System Distributing Frame	B. Hepburn	John Biagini
1/29/86	SK165	103470 - 103487	Letter of Acceptance	Large Key Telephone system/Multicom Replacement.	Philips	Telecom
2/7/86	E 33	R28055-R28129	Course Questionnaires	training of Telecom technicians - participants raise problem of noise on the line, speech synthesis and system should have wall mounting capabilities. Also would like Australian version of the documentation.	Telecom	SBS Division
2/17/86	E 34	R28135-R28136	memo	review of the training course held 10/2/86-14/2/86 summarising questionnaire results	Mr Wiatr	BG Anderson
2/18/86	A137	K03051	File Copy	Copy of junction schedule request for 37 additional circuits Footscray exchange to North Melbourne exchange.		

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OLD

mgschor2.xls

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W
	Date	Client No	Page Ref No	Type of Doc	Description	Client No	From																
1	34-Feb-85	A209	R27814	File Copies		C. Walton Phillips	B. Hepburn SBS																
2	20-Jun-85	NZ103	R15577	note		unknown	unknown																
3	13-Nov-85	SK186	103810	Minute		B. Anderson	N.A.																
4	24-Dec-85	SK159	K07555	Minute		Mr. Lynch	N.A.																
5	01-Jan-86	SK169	R27788	Tender		N/A	N/A																
6	09-Jan-86	NZ22	R27500	note		B. Hepburn	John Biegni																
7	29-Jan-86	SK165	103470	Letter of Acceptance		Philips	Telcom																
8	07-Feb-86	E33	R28055	Course Questionnaires		Telcom	SBS Division																
9	17-Feb-86	E34	R28135	memo		Mr. Wray	BG Anderson																
10	18-Feb-86	A137	K03051	File Copy																			
11	12-Mar-86	MZ01	K07751	minutes		various	N/A																
12	11-Apr-86	NZ25	R27524	notes		N/A	N/A																
13	01-May-86	SK175	R23043	Notes - General Flexibel testing		N/A	A. Lehmann																
14	15-May-86	PM297	R29187	Notes		Not known	Not known																
15	28-May-86	SK178	R23188	Notes - General Flexibel testing		N/A	A. Lehmann																
16	01-Jun-86	PM301	R29196	Minute		S. Sanders	A. Lehmann																
17			R29198	Minute		Manager Testing & Evaluation Centre																	

302A  
5 December 1994

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OLD

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W
Date	Count	Page Ref	Type of Doc.	Description	To	From																
1	18/07/93	L01	0003999	Fault Report																		
2	06-Feb-93	L02	0000100	Fault history Report																		
3	02-Jul-93	L03	0004101	Report																		
4	26-May-93	L03	000402	Report																		
5	31/05/93	L04	000403	Report																		
6	31/05/93	L05	000404	Report																		
7	01-Oct-92	L06	#####	Report																		
8	15-Sep-92	L07	000423	Log entry -Scharer																		
9																						
10	30-Aug-93	L08	000428	Scharer Diary Doc.																		
11	16 July 93	L10	000427	Telecom letter																		
12	13 Aug. 93	L11	000428/30	letter																		
13	17 Sept 93	L12	000431	Letter																		
14	31-May-93	L13	000398	Log entry origin unknown																		
15																						

302A

302A 24 October 1994

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Date	Com Number	Type of Info	Description	To	From	New File No	Page Ref No	Page Ref No	Fault date	Response date	Smith Admission date	Other date	Test Data	
1			<i>ALAN SMITH</i>											
128	3-Jul-92	243 Fax	NRR and no dial tone fault report - Smith's phone was replaced	A Smith	Telecom	A6	K02904		19-Jul-91	19-Jul-91				
	5-Jul-92	C315 Letter	26-6-92 spoke to Smith - previously received RVA - because I knew of your problem I persisted	Allan Smith	Peter Turner (A Singles Centre)	A33	C04040		26-Jun-92					
129	6-Jul-92	B125 fax	Fax response to customer NRR complaint. Vic & interstate is such that MELU is the only one of these major trunk exchanges, others are Bendigo, MELQ, Ballarat, Morwell or Modrap(Geelong). If call was switched via these other exchanges, call would be OK.	G Davies	Mike Robins	A10	K02563		16-Mar-92	6-Jul-92				
130	6-Jul-92	B126 fax	Problem does not appear to be data production error but rather a fault condition quite specific in nature	G Davies	Mike Robins	A10	K02564			6-Jul-92				
131	6-Jul-92	B127 fax	Smith had answering machine problems. Non Telecom supplied. Complaints of callers not reaching him have been checked with the customers and NO problems have been found	G Davies	Mike Robins	A10	K02564			6-Jul-92				
132	6-Jul-92	B128 fax	All nodes in country and metro Victoria have been checked and call checks done to verify access. All proved OK.	G Davies	Mike Robins	A10	K02564			6-Jul-92				
133	6-Jul-92	D152 Memo	NRR complaint - problem found at MEL U - trunking arrangements - calls would get through to other major trunk exchanges	G Davies	Hamilton Office	A23	K04626		16-Mar-92	17-Mar-92				
134	6-Jul-92	D153 Memo	Answering machine problems - side mention	G Davies	Hamilton Office	A23	K04627					17-Mar-92		
135	7-Jul-92	B56	Record of Bruce Pendlebury now handling the problem. Bruce queried (1) origins/ conversati - no evidence of where complaints from in some cases. (2) Auto blocking of HMOX-PORK. (3) Part Melbourne Testing - any further testing after PTARS.	Pendlebury	Commercial Vic/Tas	A7	K04485			7-Jul-92				
136	7-Jul-92	B57	Record of Bruce believed Smith wouldn't complain further and customer conversati considered the problem cleared. He is not seeking compensation.	Pendlebury	Commercial Vic/Tas	A7	K04485				7-Sep-92	7-Sep-92		
137	11-Jul-92	m321 Fax	Hansen states no congestion according to TRAXE on WBOL.	Phil Taylor	Gordon Hansen	a19	o02728			11-Jul-92				
138	11-Jul-92	m322 TRAXE Report	Traffic Data Acquisition System Report: half hour summaries. Pages o02729 to o02733	Phil Taylor	Gordon Hansen	a19	o02729						11-Jul-92	
139	11-Jul-92	m327 TRAXE Report	Traffic Data Acquisition System Report: half hour summaries. Pages o02735 to o2736.	Phil Taylor	Gordon Hansen	a19	o02735						11-Jul-92	
140	13-Jul-92	m323 File Note	Notes 13min outage in Warrnambool 13/7/92 caused delays for extended time due to backlog of calls.	Gordon Hansen	Gordon Hansen	a19	o02734			13-Jul-92				
141	13-Jul-92	m324 File Note	Re congestion term Sunday evenings. Congestion b/w Bendigo & Warrnambool results in a few lost calls b/w 7:30pm & 9:00pm. No congestion at other times.	Gordon Hansen	Gordon Hansen	a19	o02734			13-Jul-92				
142	13-Jul-92	m325 File Note	High level of congestion noted Sunday evenings b/w Bendigo & Melbourne due to congestion into Queensland.	Gordon Hansen	Gordon Hansen	a19	o02734			13-Jul-92				
143	13-Jul-92	m326 File Note	Fault at MELU would cause 50% loss at first call attempt, but would likely be successful second attempt.	Gordon Hansen	Gordon Hansen	a19	o02734			13-Jul-92				
144	13-Jul-92	S167 Letter	Campbell responds to Hawker's letter to David Hoare - says matters under investigation	Hawker	Campbell	A2	K03213			13-Jul-93		13-Jul-93		

302B

A	B	C	D	E	F	G	H	I	J	K	L	M	N
Date	Count per	Type of Info	Description	From	To	New File Ref No	Page Ref No	Fault date	Response date	Smith Admission date	Other date	Test Date	
1			<i>ALAN SMITH</i>	MERGC82									
15-Aug-91	S128	Diary	Rang Smith 15-8-91 - Told him we believe problems due to exchange and would be solved by takeover to Portland AXE.	Unknown		A11	K02509	15-Aug-91			15-Aug-91		
9-Oct-91	m266	Test Data	PORX Charging Control Data Lists K03437-K03443	Graham Stokes		a22(1)	K03437					9-Oct-91	
31-Oct-91	B164	call monitoring data	call monitoring data 31/10/91 to 14/8/92			A10	K02654					31-Oct-91	
1-Jan-92	B121	letter/ pg 3 of only	"I have 1 feel, arrived at an extremely fair assessment of compensation for the last three months of 91 and advanced bookings for the balance of the year. December to April is the good season, regarding full occupancy.	Smith	???	A10	K02560			1-Jan-92			
1-Jan-92	B122	letter/ pg 3 of only	Other camps Smith contacted booked out for Easter 92, he had no bookings at all. Smith calculates loss as 50% calls lost 6% of advertising response on 400 to 450 units equals 12 lost groups, less 2 not confirmed is 10 groups lost	Smith	???	A10	K02560			1-Jan-92			
1-Jan-92	B123	letter/ pg 3 of only	Average camp tariff is \$1,509 to \$6,000, therefore 10 lost groups is \$35,000	Smith	???	A10	K02560			1-Jan-92			
2-Feb-92	J92	Form	Smith gets no progress in trying to call Ballarat O/G			A6	K02696	2-Feb-93					
2-Feb-92	J93	Form	C Stokes to test the 3 no.s which Smith was trying to contact, problem found at terminating PABX. Ballarat staff working to fix problem. Smith informed of progress			A6	K02696	2-Feb-93	2-Feb-93				
3-Feb-92	J96	Form	Smith gets one burst of ring then ANV only dial tone i/c			A6	K02696	3-Feb-93					
6-Feb-92	D112	Letter	Testimonial of visit to camp from Hadden & District Community House	Hadden & District	Smith	A14	K02195						
9-Feb-92	B76	exchange data	Data at MELU as at 9/2/92			A7	K04510					9-Feb-92	
10-Feb-92	B31	test data summary	test data for period 10/2/92 to 22/7/92 file ref smith2.xlt			A7	K04444					10-Feb-92	
10-Feb-92	C142	Fault Summary	Summary faults in table form from 18-02-92 to 22-07-92 (both A and B party) document headed "SMITH2-XLT"			A4	RO1534	10-Feb-94					
21-Feb-92	B26	Technical staff diary note	Data changes for MELU, assist Stoney DPG with query about a new ? for NACD - CLM-1 working (MPU)			A7	K04438		21-Feb-92				

302B

A	B	C	D	E	F	G	H	I	J	K	L	M	N
Date	Count er	Type of Info	Description	From MERGCB2	To	New File Ref No	Page Ref No	Page Ref No	Fault date	Response date	Smith Admission date	Other date	Test Data
1			ALAN SMITH										
29-Feb-92	B25	Data change request	Notes changes required - route codes			A7				4-Mar-92			
35													
29-Feb-92	C140	Data Change Request	MELU data change request for 29-02-92 completed 4-3-92 (handwritten)			A4	RO1528		4-Mar-92	4-Mar-92			
36													
2-Mar-92	IC94	Letter	Difficulty trying to make reservation on Friday 2 April - multiple attempts and line gave engaged signal. Rang 1100 who could not help. Tried again on Saturday and line was clear.	Connie ?	Alan Smith	A4	RO1384 to RO1387		2-Apr-92				
37													
5-Mar-92	B120	technicians diary	Swapped SSB with SSA board MBL & tested OK. Restarted 11.10am. Also codes 03-204 was going RC 450 and now RC 441. 005525 wasn't going anywhere, should be RC 250			A10	K02552		5-Mar-92				
38													
5-Mar-92	B27	Technical staff diary note	Describes maintenance activity in AXE 104 exchange			A7	K04439			5-Mar-92			
39													
5-Mar-92	C141	Work sheets	Calendar work sheets - include work causing MELU RYA - dates suggest remedied 19 March 1992 (need to be analysed)			A4	RO1529 to RO1533		4-Mar-92	19-Feb-92			
40													
10-Mar-92	m307	File Notes	Sub indicated fault in MELU 055 267.	Graham Stokes		a22(2)			19-Mar-92				
41													
16-Mar-92	B28	Technical staff diary note	Update database B not update latest revisions state, test MBL - OK, changed SSB board.			A7	K04440			16-Mar-92			
42													
16-Mar-92	J249	Data	CCAS data showing RYA complaints for 267 267 line between 16-3-92 and 19-3-92			A6	K02893		16-Mar-93				
43													
17-Mar-92	m308	File Notes	Tom Leyden to carry out tests on RYAs. Ross Tonkin called back 19/03/92 MELU didn't analyse 267 correctly.	Graham Stokes		a22(2)	K03689		17-Mar-92	19-Mar-92			
44													
18-Mar-92	D77	Diary	Discussion with R Pittard - Smith still complaining about noise but using cordless phone with broken aerial	Julian Hunter		A14	K02083						
45													
19-Mar-92	B29	Technical staff diary note	found with no RC - fixed with RC = 250			A7	K04441			19-Mar-92			
46													
19-Mar-92	m308	File Notes	incorred Data MELU X54 NH - RYAs.	Graham Stokes		a22(2)	K03688		19-Mar-92				
47													
26-Mar-92	B131	technicians notes	Pat Breton reports following. Complaint by Smith re incoming calls - RYA's. Problem ongoing for past 12 months. Technician told him its an intermittent problem, originating from Hamilton, NB original K02506	Pat Breton Mal	Mal	A10	K02571			26-Mar-92			
48													
26-Mar-92	B132	technicians notes	Smith currently Leopard fault clearance status as "Minor Domestic" - needs to be changed to "Business" - (he is paying ELB S&E)	Pat Breton Mal	Mal	A10	K02571		26-Mar-92	26-Mar-92			
49													

A	B	C	D	E	F	G	H	I	J	K	L	M	N
Date	Count er	Type of info	Description	From MERGCB2	To	New File Ref No	Page Ref No	Response date	Fault date	Smith Admission date	Other date	Test Date	
1			<i>ALAN SMITH</i>										
26-Mar-92	B133	technicians notes	Stokes reported fault cleared 19/3/92 when it was discovered CB was not in database of one of the trunk exchanges in Melbourne. Traffic shared equally by the 2 trunk exch. so calls coming through Melb had 50% chance of RVA.	Pat Breerton	Mal	A10	K02571	19-Mar-92					
26-Mar-92	B134	technicians notes	called Mrs Smith to tell her of problem. she says problem still there re Greyhound caller got RVA 3 out of 4 calls. Re-reported to 1100 & Gordon 2.30pm	Pat Breerton	Mal	A10	K02571	25-Mar-92					
26-Mar-92	C222	Note	MELU fault cleared 19-3-92 when discovered CB not in database. Told Mr Smith but said problem still there because RVA from Greyhound Bus Terminal 25-March-1992			A48	D00011		25-Mar-92				
2-Apr-92	B30	Technical staff diary note	RP 332 blocked causing error - Routing case 230 incorrect fixed & TOK			A7	K04442	2-Apr-92					
10-Apr-92	C308	Letter	Two members of Australian Singles Centre unable to phone Smith	Australian Singles Centre	Alan Smith	A33	C04029		10-Apr-92				
16-Apr-92	m310	Fault Status Enquiry	Fault History 17/03/92, 26/03/92, 13/04/92. Stokes noted didn't know as no complaint.	Graham Stokes		e22(2)	K03690				16-Apr-92		
28-Apr-92	D76	Letter	Telecom sending copy of settlement agreement acknowledges that since Nov 92, Smith reported further faults, currently being investigated. Smith agreed to release of agreement	J. Holmes	Ombudsman	A14	K02036						
1-May-92	S121	Diary	Document undated - probably May 92 from position in file. Smith reported conversation with Robin Campbell (W/Boob lines) tried to call several times on 10 April - rang out. Campbell wrote to Smith	Unknown (Ross?)		A11	K02505		10-Apr-92				
1-May-92	S122	Diary	Smith thinks local (M Gambier) calls OK. Also Hamilton calls OK. Also external hooter getting softer. Reported to 1100 on 13 April.						13-Apr-92	1-May-92	1-May-92		
4-May-92	B146	letter	letter from David Hawker requesting Telecom to reimburse Smith for \$3,400 in advertising	Hawker	Rob Seal	A10	K02607				4-May-92		
5-May-92	S123	Diary	Rang Stokes to find results of latest report on 13/4 and 16/4. External bell has been turned up and answering machine connection adjusted - very minor service OK. NFA	Unknown (Ross?)		A11	K02505	5-Sep-92					
12-May-92	B141	minute	full history of customer Smiths complaint. Smith grade of service complaint originally raised March 1991, inspection found no problems. contact with CB users found only 1 customer had experienced problem.	M Ross	J McCreery	A10	K02604	1-Mar-91	1-Mar-91	12-May-92			
12-May-92	B142	minute	1/8/1991 in Aug 91 complained of rc receiving engaged tone even though his line wasn't busy - report from exch OIC advised Smiths service fully investigated - change of cable pairs & equipment no reason for fault found. test on STD showed service OK.	M Ross	J McCreery	A10	K02604	1-Aug-91	1-Aug-91	12-May-92			
12-May-92	B143	minute	RVA problem - MELU problem. fault rectified 19/3/92. Subsequent tests on 26/3/92 after Greyhound complaint found no faults. SI brought in again no faults. Minor adjusts to his tone ring & socket connecting his answering machine.	M Ross	J McCreery	A10	K02605	17-Mar-92	17-Mar-92	12-May-92			
63			Page 4										

302 B

# Telstra

11 August, 1997

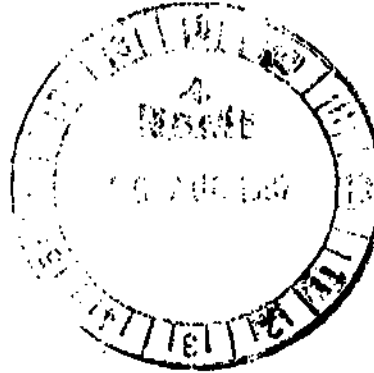
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Customer Affairs Counsel  
Legal Directorate

Mr Wynack  
Commonwealth Ombudsman  
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242 Exhibition Street  
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Telephone (03) 8634 8496  
Facsimile (03) 8832 0885

By facsimile: 06 249 7829



Dear Mr Wynack

Mr Graham Schorer

I refer to your letter dated 21 July 1997, in which you have asked for details of the basis of Mr Kearney's decision to decline to grant Mr Schorer access to the files "1schorer.xls", "2schore.xls", "mgschor.xls" and the draft Defence document, which Mr Schorer had sought in his Freedom of Information request dated 15 September 1996.

You have also sought clarification from Mr Kearney of the basis on which he formed the view that the files were of a contentious nature. Mr Kearney's explanation of the process he followed in making his decision not to provide Mr Schorer access to the files is set out in Attachment 1.

Telstra has recently made files 1schorer.xls, 2schorer.xls and mgschor.xls (the "files") available to Mr Schorer pursuant to a direction of the arbitrator made on 7 July 1997. The arbitrator has not ruled on Telstra's claim to privilege for either the files or the documents described in the files. Telstra has also provided to Mr Schorer, in the course of the arbitration 2 additional disks, in a similar form to the files, which contain a more current version of the files.

Further, as directed by the Senate, Telstra has sought advice as to its claim for privilege. A copy of that advice is enclosed for your reference.

Yours faithfully

*per the above*

John Armstrong  
Customer Affairs Counsel

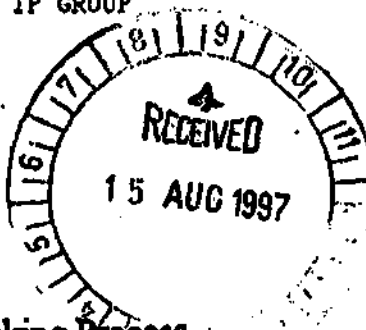


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ATTACHMENT 1

## Decision making Process

Schorer Freedom of Information request - 15 September 1996.

## 1. Document Search.

Mr Schorer's request dated 15 September 1996 sought access to four spreadsheets titled "Schorer 1", "Schorer 2", "Schorer 3" and "merged Schorer files". At the time of receiving Mr Schorer's request I had not been aware of the existence of the spreadsheets he sought. Telstra met with Mr Schorer on 1 October 1996 to discuss several of his outstanding FOI requests. Pages 18-23 of the transcript of the meeting (enclosed) relate to my discussion with Mr Schorer's regarding his request for the spreadsheets listed above.

At that meeting I asked Mr Schorer if he could shed any light on where the spreadsheets were located. In replying to my question Mr Schorer indicated that the Telstra solicitor present at that meeting might object to us discussing the whereabouts of the spreadsheets because he had expected the issue of the disks to be contentious.

Mr Schorer indicated that he believed that the spreadsheets had been created some time in early 1994. He then went on to outline that the spreadsheets contained lists of documents which technical staff employed by Telstra had sorted into different categories and then arranged the documents in chronological order. Mr Schorer indicated that he believed the spreadsheets contained "a brief description of the documents, like dates of the document, the FOI number, name of the author and a description of what category the document slipped into".

As to the purpose of the spreadsheets, Mr Schorer advised me that he believed that "they were provided and given to the solicitors or legal people who are involved in advising Telstra or are preparing Telstra's defence against my proposed claim."

Mr Schorer indicated that he believed that the lists of documents contained in the spreadsheets might contain reference to documents which "were alleged to have been supplied under FOI, which weren't". He then indicated that he expected Telstra to claim professional privilege on the documents (the spreadsheets) however, he had advice that "if Telstra chose to do so that they would be proven wrong".

Mr Schorer then directed me to the "DNF group on the 19th floor, the analysis section".

## 2. Document Retrieval

I approached Mr Levy and asked if he was aware of the spreadsheets that Mr Schorer had sought in his FOI request. Mr Levy provided me with the three spreadsheets and pointed out that the three spreadsheets he had in his possession were not titled "Schorer 1", "Schorer 2", and "Schorer-merged", but rather "1schorer.xls", "2schore.xls" and "mgachor2.xls". Mr Levy could not locate a file titled "Schorer 3.", nor any file similarly named. I explained to Mr Levy the description of the spreadsheets and their purpose that Mr Schorer had outlined at our meeting on 1 October 1996 and on the basis of that information Mr Levy believed that the three spreadsheets he provided me were those sought in Mr Schorer's request.





### 3. The Decision

The three spreadsheets and the information contained in them were clearly created solely for the purposes of developing Telstra's Defence documentation. This fact had already been acknowledged by Mr Schorer at our meeting and by also by Mr Levy when he confirmed that the three spreadsheets he provided matched Mr Schorer's request in terms of contents and the purpose for which they had been created.

As the FOI delegate making the decision, I considered the spreadsheets were privileged for two reasons, firstly, because they were created solely for the purposes of developing Telstra's defence to Mr Schorer's claim under the Fast Track Arbitration process, and secondly, because the spreadsheets were new documents which had been created to provide advice to Telstra's solicitors as to the content and relevance of the documents in the context of Telstra's defence. I therefore considered the spreadsheets as constituting technical advice provided which had been specifically requested by Telstra's legal representatives to assist in developing the case strategy and estimating the quantum associated with Mr Schorer's claim. I decided that legal professional privilege applied.

### 4. The issue of contentiousness.

Having decided that the spreadsheets were privileged, I then took into account the Government Policy that non-contentious material should be released wherever possible. The major factor which impacted upon the issue of whether the three spreadsheets were contentious or non-contentious was the timing of Mr Schorer's FOI request. At the time that I was considering this issue Mr Schorer had yet to lodge his final claim with the Arbitrator.

I was aware that the spreadsheets had been used by Telstra as the basis of preparing the early drafts of Telstra's defence documentation and that the spreadsheets contained information which in my view provided an insight into the methodology which Telstra employed in determining the significant technical factors affecting the operation of Mr Schorer's telephone service over the period of his Arbitration claim.

Providing Mr Schorer with the spreadsheets prior to him having lodged his final claim, would clearly provide Mr Schorer with an insight into Telstra's defence strategy and its technical analysis of events. This would have therefore severely undermined the integrity of Telstra's defence of Mr Schorer's \$10 million Arbitration claim and could have resulted in financial harm to Telstra.

I therefore decided that the three spreadsheets were contentious. I note for the record that Mr Schorer indicated at our meeting on 2 October 1996 that he expected privilege to be claimed and that he expected the spreadsheets to be considered contentious.

### 5. Consideration of partial release.

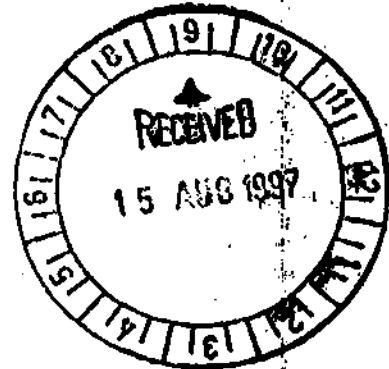
I considered releasing information relating to selected documents contained in the spreadsheets, however, I decided that to provide details for some documents and not others would indicate Telstra's assessment that those documents released were not considered to have significant relevance to its Defence. I also considered releasing selected columns of the spreadsheet.

however, once again to release selected information about all documents on the list could also indicate the relevant significance of the information being released.

6. Final Decision

I advised Mr Schorer that the three spreadsheets he had sought in his FOI request dated 15 September 1996 were subject to privilege and that he would be denied access to them. Mr Schorer was also advised of his appeal rights. Mr Schorer chose not to seek internal review of my decision in respect to the three spreadsheets.

Prepared by Rod Kearney - Manager FOI Unit - 5 August 1997.



Internal Memo



To As listed

From Alan Humrich  
General Manager

Subject REQUEST FOR TELECOM RECORDS

Date 21 January 1994

Network Operations  
Central Area

6th Floor East Tower  
Transit Centre 151 Roma St  
Brisbane Q 4000  
Australia

Telephone 07 837 3212

Facsimile 07 236 4247

Attention *2.5/11* Ross Marshall - National General Manager, Network Operations  
Rick Barry - A/General Manager, Network Operations Eastern Area  
John Seamons - National Manager, Network Performance  
Ian Comport - National Manager, Operations Processes & Support  
Les Chamberlain - Network Operations Manager, Metro Brisbane  
Greg Bannister - Chief Engineer, Multiplex & Transmission Technology

The attached request is referred for your action. The author of the request, Simon Chalmers, is from Freehill Hollingdale & Page, Telecom's solicitors. I suggest that you action this request not just for the two customers mentioned but also for Mr G Schorer and Mr A Smith. Information that has previously been sent to the Viewing Room will be accessed from there. It is important to note that material that is not produced for this request cannot be used in Telecom's defence.

*Alan Humrich*  
Alan Humrich  
GENERAL MANAGER  
NETWORK OPERATIONS  
CENTRAL AREA

*Managers - Difficult Material Issues (M.C. Dandy West/2)*  
*(M.P. Jones Melbourne)*

*Line*  
*Referred for your attention 10. 303-B*  
*25/1/94*

R15696

Facsimile

# URGENT

**Telecom**  
AUSTRALIA

To Duncan Wallace

From Simon Chalmers

Commercial & Consumer

Facsimile 654 4601

File

10th Floor  
242 Exhibition Street  
MELBOURNE VIC 3000  
Australia

Company Telecom

Date 17 January 1994

Location

Total Pages

Telephone (03) 634 8490  
Message Bank  
Facsimile (03) 634 8444

Distrib.

## Requests for Telecom records - Mr Alan Smith / Mr Graham Schorer

Duncan

As you are aware, Telecom has received requests from various COT customers for copies of all records relating to them. We are processing these requests on an urgent basis in an effort to have the outstanding disputes with those customers resolved by arbitration. It is in Telecom's interest that the records be provided to enable that arbitration process to begin.

To this end, I need your assistance to ensure that all documents, memos, notes, outputs of network monitoring or testing, and all other records ("records") concerning Mr Alan Smith's or Mr Graham Schorer's telephone services, are made available as quickly as possible. Every such record relating to those customers' telephone services must be made available, whether it is in paper, tape or disk form, and whether it contains analysed or raw data. If any records are not provided, not only could we be in breach of the FOI Act, but also we may be prevented from relying on those records for our defence of the arbitration proceedings.

This is obviously a large task. David Stockdale has indicated that it will require 5-6 working days just for him to obtain some of Mr Smith's records. In addition, locating and copying/printing the records is only part of the task. An outline of the steps we need to take in order to prepare the documents for release is as follows:

1. Physically locate and copy/print the files.
2. Review the copied files to determine whether any of the FOI exemptions apply to any parts of them. If so, then:
  - (a) those parts need to be blanked out from the copy.
  - (b) a cumulative record needs to be kept of which specific FOI exemptions have been relied on to delete information from the file copies.
3. Make a copy of the marked-up copied files, so that Telecom has a record of what has been sent to the customer.

I suggest that the task be split into stages so that we are at least in a position to provide the most relevant files to Mr Smith / Mr Schorer as soon as possible. To this end, our priorities are as follows:

1. Interpreted/analysed data (provide within 2 working days)

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2. Raw data which can be interpreted by these customers themselves with little explanation (provide within 4 working days) ie TBAX, Leopard, TIMS, ELMI
3. Raw data which can be interpreted by the customers themselves only after detailed explanation (be in a position to provide within 10 working days)

As discussed, I would prefer that steps 2 and 3 be done centrally from my office, for consistency. Where you have concerns that our people will not pick up information appearing on particular printouts which should be exempted, please highlight that type of information on a copy of one of those printouts, for us to use as an example.

Could you please ensure that the above materials are delivered urgently to me, at level 10, 242 Exhibition Street Melbourne. I am helping to co-ordinate the release of documents to Mr Smith and Mr Schorer. Please call me on 634 8490 if you have any concerns.

*Simon Chalmers*  
Simon Chalmers

*Andrew Romanic is coming to photocopy your files at 9am tomorrow.*

**303c**

R11705



# Hunt & Hunt LAWYERS

14 August 1997

Our Ref: GLH

Matter No: 5126900

Your Ref: 93/194WRH;DF

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Hunts'  
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358 Lonsdale Street  
MELBOURNE VIC 3000

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Melissa A. Henderson

**Associates**  
Francis V. Gallichio  
John D.F. Morris

**By Facsimile: 9670 6598**

Dear Mr Hunt

## ARBITRATION - SCHORER

I refer to our discussion on 6 August last and the subsequent letters received from Mr Schorer dated 8 August and 11 August 1997.

As you are aware, I proposed on 7 July 1997 that, in order to overcome the current impasse in this arbitration, a technical evaluation be initiated on the basis of evidence submitted to date.

Telstra indicated its concurrence on 16 July 1997.

Mr Schorer has commented that at best an interim technical evaluation could only proceed "on the evidence [submitted] to date by Telstra". I do not agree with this observation. Your client has received a substantial amount of material from Telstra to date. There may well be more material of significance which has not been made available to him and I am aware that there are outstanding requests for further and better particulars. One of the immediate advantages of an interim technical evaluation however, would be that the Resource Unit could expeditiously and objectively assess whether (and if so what) additional information should be made available by the parties. I therefore maintain that the interim evaluation should proceed "on the basis of evidence submitted to date by the parties".

The first step in the process would be for the resource unit to assess the nature and content of material submitted to date, prior to referral to the technical expert for evaluation. If the resource unit forms the view that additional material of a technical nature should be made available, and if I agree with this opinion, then an appropriate direction can be made.

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**304A**

Mr Schorer has queried the independence of Mr Paul Howell as an independent expert. I see no basis for Mr Schorer's concern. There is no evidence that Mr Howell has, or has had, a conflict of interest in this matter.

Mr Schorer has asserted that there is "no technical resource unit in place at the moment, and until there is Mr Howell cannot act, if at all". This is not correct. The resource unit is "in place" and comprises Mr Howell.

On 1 August 1997 I forwarded you a diskette containing a list of documents held by Telstra. The contents of the diskette had been, by Telstra's admission, modified twice in recent times. Mr Schorer has asked that the original list be made available. There will be no value to Mr Schorer in obtaining the "original list" if the subsequent modifications have only had the effect of supplementing the earlier list. Accordingly, I propose seeking clarification from Telstra as to whether any material was deleted when the modifications were effected on 10 December 1996 and 17 July 1997 respectively.

Accordingly, I **direct** that:

- (a) the evidence submitted by the parties to date now be referred to the Resource Unit;
- (b) the Resource Unit examine the materials submitted to date and inform me whether, in their opinion, further material should be produced by either party before a technical evaluation takes place;
- (c) subject to (b), or may the materials submitted by the parties be referred to Mr Howell for technical evaluation;
- (d) noting that Mr Howell may not be able to reach a conclusive opinion the progress of this matter be reviewed by me upon receipt of an interim technical evaluation report from Mr Howell;
- (e) in the meantime, Telstra advise me by 20 August 1997 whether any modifications to the disks enclosed with its letter to me of 29 July 1997 involved the deletion of any material and, if so, specifying what material was deleted.

Yours sincerely



**GORDON HUGHES**

cc E Benjamin, G Schorer, J Pinnock, P Bartlett,  
L. McCullagh, S Hodgkinson



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18 August 1997

Our Ref: GLH

Matter No: 5126900

Ms Sue Hodgkinson  
Ferrier Hodgson Corporate Advisory  
Level 25  
140 William Street  
Melbourne Vic 3000

COPY

Dear Sue

## ARBITRATION - SCHORER

You have previously been forwarded a copy of my letter to Mr Hunt dated 14 August 1997.

I now wish to formally instruct you to examine the material submitted to date with a view to submission, as soon as practicable, of the technical materials to Mr Howell for technical evaluation.

Specifically, could you please advise me whether, in your opinion, further material should be produced by either party before a meaningful technical evaluation can take place. I ask you to bear in mind that the production of further documentation may be directed at any time in the future, particularly following an initial perusal of the existing materials by Mr Howell.

I believe you have been copied with all relevant materials previously and I seek your confirmation in this regard. I would also appreciate your estimate of time involved in carrying out your initial assessment of these materials.

Yours sincerely

  
GORDON HUGHES

cc. E. Benjamin, W Hunt, G Schorer, J. Pinnock, L. McCullagh,  
P. Bartlett

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 9617 9200.

Facsimile: (61-3) 9617 9299. G.P.O. Box 1533N, Melbourne 3001. DX 252, Melbourne

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Email: Mail/hunt.hunt@interlaw.org

melbourne

sydney

sydney west

brisbane

canberra

newcastle

represented in

adelaide

darwin

304 B



## Sources of Information

The information provided in this report has been derived and interpreted from the following documents:

- Smith - Letter of Claim (SM1)
- Smith - George Close Report dated 5/7/94 (SM8)
- Smith - George Close Report dated August 1994 (SM9)
- Smith - Telecom Defence Witness Statements
- Smith - Telecom Defence B004 Service History
- Smith - Telecom Defence B004 Appendix File 1
- Smith - Telecom Defence B004 Appendix File 2
- Smith - Telecom Defence B004 Appendix File 3
- Smith - Telecom Defence B004 Appendix File 4
- Smith - Telecom Defence B004 Appendix File 5
- Smith - Telecom Australia - Ref 1 Statutory Declaration of Ross Marshall. Ref 2 An Introduction to Telecommunications in Australia. Ref 3 Telecom Australia's Network Philosophy. Ref 4 Glossary of Terms
- Smith - FOI Material 19 December 1994 (SM44)
- Smith - George Close & Associates Report 20 January 1995 - Reply to Telecom's Defence (SM50)
- Smith - Samples of FOI Telecom Documents (SM49)
- Smith - Appendix C Additional evidence (SM48)
- Smith - Summary of TF200 Report (SM47)
- Smith - Bell Canada International Inc. Further information (SM46)
- Smith - Additional information (SM45)

A site visit was conducted on Wednesday 4th April 1995 covering:

- inspection of the Cape Bridgewater RCM exchange
- inspection of the CPE at the Cape Bridgewater Holiday Camp
- inspection of the exchange equipment at Portland (RCM, AXE 104, ARF)
- discussions with Mr Alan Smith, accompanied by Mr Peter Gamble of Telecom Australia.

304C

## Sources of Information

The information provided in this report has been derived and interpreted from the following documents:

- Smith - Letter of Claim (SM1)
- Smith - George Close Report dated 5/7/94 (SM8)
- Smith - George Close Report dated August 1994 (SM9)
- Smith - FOI Material 1994 (SM44)
- Smith - George Close & Associates Report 20 January 1995 - Reply to Telecom's Defence (SM50)
- Smith - Samples of FOI Telecom Documents (SM49)
- Smith - Appendix C Additional evidence (SM48)
- Smith - Summary of TF200 Report (SM47)
- Smith - Bell Canada International Inc. Further information (SM46)
- Smith - Assessment Submission (SM2)
  - 1-200
  - 200 - 400
  - 400 - 600
  - 600 - 800
  - 800 - 1,000
  - 1,000 - 1,289
  - 2,001 - 2,158
- Smith - Reply 18 January 1995 (SM53)
- Smith - Reply - Brief Summary January 1995
- Smith - Further Examples of Additional Evidence Two Volumes (SM16)
- Smith - Further FOI Material (SM17)
- Smith - Cape Bridgewater Par 1 & 2 (SM 20 & 21)
- Smith - Additional information (SM45)
- Smith - Telecom Defence Witness Statements
- Smith - Telecom Defence B004 Service History
- Smith - Telecom Defence B004 Appendix File 1
- Smith - Telecom Defence B004 Appendix File 2
- Smith - Telecom Defence B004 Appendix File 3
- Smith - Telecom Defence B004 Appendix File 4
- Smith - Telecom Defence B004 Appendix File 5
- Smith - Telecom Australia - Ref 1 Statutory Declaration of Ross Marshall. Ref 2 An Introduction to Telecommunications in Australia. Ref 3 Telecom Australia's Network Philosophy. Ref 4 Glossary of Terms
- Smith - Telecom Defence Principal Submission
- Smith - Telecom Defence Legal Submission
- Smith - Telecom Supplement to Defence Documents

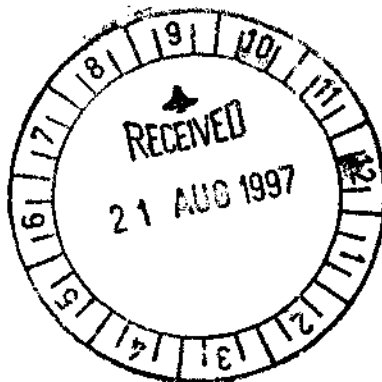
M34219

Telstra FOI Number

ASTA TAURINS

20 August, 1997

Mr Graham Schorer  
Golden  
493-495 Queensberry Street  
NORTH MELBOURNE VIC 3051



Telecommunications  
Industry  
Ombudsman

John Pinnock  
Ombudsman

Dear Mr Schorer

**Appointment of technical adviser to the Resource Unit**

At the TIO meeting held at Minter Ellison on Tuesday 29 July 1997, it was agreed that a new technical adviser to the Resource Unit would have to be appointed to your arbitration, to replace Lane Telecommunications. The new advisor will assist Mr Paul Howell.

I advise that Lane has formally withdrawn from your arbitration.

As administrator I now outline a proposed procedure for the appointment of the new advisor:

1 . Ferrier Hodgson Corporate Advisory have met with various technical consultants and compiled a short list of possible technical consultants for the parties to consider.

1 . The parties have two weeks to consider the consultants recommended by FHCA.

1 . If a party wishes to speak with any of the proposed consultants, the party may do so only in the presence of a representative of the TIO. A party should contact Ms Lucy McCullagh on 9229 2173 to arrange a mutually convenient time for such a meeting. The parties should not contact the proposed consultants without the TIO or a representative thereof being present.

1 . The parties are to rank the proposed consultants in their order of preference as follows:

- Those consultants which are acceptable to the party are to be listed in order of preference from 1 (being most preferred) to 3 (being least preferred).
- Those consultants which are unacceptable must be listed as such and reasons provided as to why they are unacceptable.

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305

Telecommunications Industry Ombudsman Ltd ACN 057 634 787

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National Headquarters  
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Box 18098  
Collins Street East  
Melbourne  
Victoria 3000

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Fax Freecall 1800 630 614

1 . Should a party find that none of the proposed consultants are acceptable, the party is requested to suggest an alternative consultant who is acceptable.

1 . The parties must forward their list of preferred advisers to the Administrator, Telecommunications Industry Ombudsman, 315 Exhibition Street, Melbourne, Vic, 3000, within 14 days from the date of the letter.

1 . The Administrator will consider the parties responses and on the basis of agreement and consensus appoint the new technical adviser.

**FHCA recommended technical consultants (in order of preference)**

1 . Itcom Australia Pty Ltd - Information Technology and Telecommunications Consultants

1 . Consultel - Telecommunications, ITN Security Services

1 . TCP - Telecommunications Consultants Pty Ltd

Enclosed are corporate profiles of each consultant for your consideration.

Should you have any queries please do not hesitate to contact me.

Yours sincerely



John Pinnock  
Ombudsman

305



# Hunt & Hunt LAWYERS

Partners  
David M. Scarien  
Edward S. Boyce  
James C.F. Marrowell  
Gordon L. Hughes  
David P. Cooper  
Ian S. Craig  
Peter J. Ewin  
Neville G.H. Oabner  
Grant D. Seaton  
William P. O'Shea  
Ashley M. Pelman

25 August 1997

Our Ref: GLH  
Matter No: 5126900

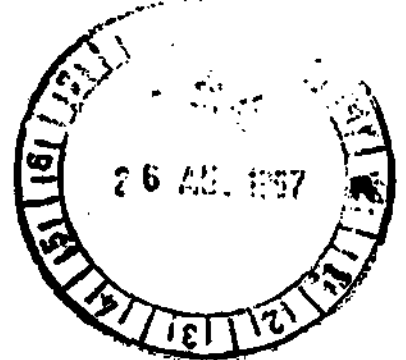
Consultants  
Kenneth M. Martin  
Richard J. Kellaway  
Graeme J. Armistead  
Maissa A. Henderson

Mr Ted Benjamin  
Director  
Consumer Affairs  
Telstra Corporation Limited  
Level 37  
242 Exhibition Street  
Melbourne Vic 3000

Associates  
Francis V. Gallichio  
John D.F. Morris

By Facsimile: 9632 3235

COE



Dear Mr Benjamin

## ARBITRATION - SCHORER

Following my letter to Mr Hunt of 14 August 1997, a copy of which was forwarded to you, I had a subsequent discussion with Mr Hunt in which he requested on behalf of his client that the unmodified, original diskette, which was the subject of my order of 7 July 1997, be made available. The purpose of the request is to enable the claimant to compare the original diskette and the diskette as supplied which was subjected to modification by Telstra.

In view of my directions of 14 August 1997, which I consider to be adequate, I do not propose directing that you comply with this request. At the same time, it may assist in the arbitration process if you were to comply with the request.

Yours sincerely

  
GORDON HUGHES

cc. W Hunt, G Schorer, J. Pinnock, P. Bartlett, L. McCullagh, S. Hodgkinson

- Melbourne
- Sydney
- Sydney West
- Brisbane
- Canberra
- Newcastle
- Perth
- Adelaide
- Darwin

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Email: Mail/hunt.hunt@interlaw.org

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306

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Our Ref: 3404.doc

**GOLDEN**

27 August, 1997

**FAXED**  
27/8/97

TELEPHONE (03) 9287 7099

Attention: Mr John Wynack  
Commonwealth Ombudsman  
Commonwealth Ombudsman's Office  
6th Floor, 1 Parallel Place  
Canberra ACT 2601

FAX (03) 9287 7001

493-495 QUEENSBERRY STREET  
NORTH MELBOURNE VICTORIA 3051  
PO. BOX 313 NORTH MELBOURNE 3051

By facsimile (06) 249 7829 and post.

Dear Mr Wynack,

**Re: Hunt & Hunt correspondence dated 25 August 1997 relating to the supply of the unabridged, unmasked, unmodified original diskette containing the Excel files.**

I refer to the content of the Arbitrator's letter dated 25 August 1997 sent to Telstra (copy enclosed).

It would appear that the Arbitrator has failed to grasp the significance to GOLDEN in not being supplied by Telstra with the unabridged, unmasked, unmodified original diskette containing the Excel files in accordance with his original directive.

It appears that the only way GOLDEN is going to be able to obtain a copy of the original unabridged, unmasked, unmodified original diskette containing the Excel files from Telstra will be because Telstra has been pressured by the Commonwealth Ombudsman to, with reasonableness, correctly process the original FOI application.

I again draw the Commonwealth Ombudsman's attention to the following facts previously reported:-

- Telstra provided GOLDEN with a written notification (signed 8 November 1996), it was exempting the supply of documents requested under FOI as it was claiming the documents were covered under legal professional privilege.
- Just after I received Telstra's written notification, I spoke to John Armstrong who stated to me my request for documents under arbitration would be processed and supplied quicker and would overcome exemptions under legal professional privilege applied to documents requested under FOI.
- Immediately after my conversation with Mr Armstrong, I advised the Commonwealth Ombudsman's Office I would not immediately lodge an official complaint, I would make the same request under arbitration in order to test the speed and Telstra's willingness to supply these same documents under arbitration.

307

A Division of C.M. (MELBOURNE) HOLDINGS PTY. LTD. A.C.N. 005 905 046  
IMPORTANT: WE ARE NOT COMMON CARRIERS. The Carrier directs your attention to its fulling TERMS AND CONDITIONS OF CONTRACT which appear on the REVERSE SIDE OF THIS DOCUMENT. It is in your interests to read them to avoid any later confusion.

17:11 No. 012 P. 01  
AUG 27 '97 05:11PM

27 AUG 97

ID:03-92877001

GOLDEN

I believe sufficient time has past for me to form an opinion based upon experience that the continual assertions made since February 1994 by the Administrator, Special Counsel to the Administrator, the Arbitrator and Telstra that it is easier and faster to obtain from Telstra all documents requested under arbitration than it is under FOI is untrue as it is not a fact of life.

My experience to date has demonstrated to me that FOI is the only way to obtain all documents originally requested from Telstra, even when Telstra has first failed to correctly discover, identify, supply or exempt documents requested.

It must be stated that the success of FOI has only been possible because of the continual investigations and involvement of the Commonwealth Ombudsman's Office.

I humbly request the Commonwealth Ombudsman request Telstra to provide me with the unabridged, unmasked, unmodified copy of the originally requested FOI files.

I do appreciate that the Commonwealth Ombudsman's investigations to this and other like FOI C.o.T. matters is now exceeding forty-four (44) months of continuous effort by the diligent and dedicated Ombudsman's officers in order to remedy Telstra's systemic conduct involving continual violation and breaches of the FOI Act.

Should you require any further information or clarification, please do not hesitate to make personal contact.

Yours sincerely,

  
Graham Schorer

307

Ref No: C/97/12777

27 August 1997



Mr Graham Schorer  
Golden  
PO Box 313  
NORTH MELBOURNE 3051

ADDRESS:  
6TH FLOOR  
1 FARRELL PLACE  
CANBERRA ACT 2601

POSTAL:  
PO BOX 442  
CANBERRA ACT 2601

TELEPHONE:  
(06) 274 0111

TOLL FREE:  
1 800 133 037

FACSIMILE:  
(06) 249 7829

INTERNATIONAL  
FACSIMILE:  
01-4249 7829

Dear Mr Schorer

I refer to your letter of 27 August 1997 and to our telephone conversation on 27 August 1997 concerning your complaint about the XLS spreadsheets.

I telephoned Ms Laver of Telstra to inform her that you informed me that you did not receive the computer files 1schorer.xls, 2schorer.xls and mgachor.xls from Telstra. I reminded Ms Laver that she advised me on 11 August 1997, that Telstra has recently made files 1schorer.xls, 2schorer.xls and mgachor.xls [the files] available to Mr Schorer pursuant to a direction of the arbitrator made on 7 July 1997. Ms Laver said that Telstra did not send the files to you because she understood that the Arbitrator was giving the files to you.

Matters relating to the arbitration are out of the Ombudsman's jurisdiction. As I explained to Ms Laver, I inquired about this matter only to enable me to set my priorities for my investigations. I had placed a low priority on my investigation of this complaint because I understood that Telstra had given you the files under arbitration.

I did, however, inform Ms Laver that I would pass on to you the above information and also Ms Laver's opinion that she believes that Telstra has complied with the Arbitrator's directions in respect of the computer files. Ms Laver stated that the matter is one between you and the Arbitrator.

11 AUGUST

For my part, I advise you that we will continue our investigation of the complaint about Mr Kearney's FOI decision of 6 November 1997; but it will be some time before we conclude the matter and it may be that we will form the opinion that Mr Kearney's decision is reasonable. In the circumstances, you may wish to consider taking the matter up with the arbitrator as that would appear to be your best chance of obtaining the files quickly.

308



I sent a copy of this letter to Ms Laver together with a copy of your letter to me dated 27 August 1997.

Yours sincerely

~~\_\_\_\_\_~~

John Wynack  
Director of Investigations

308

**GOLDEN**

Our Ref: 3446.doc

16 September, 1997

TELEPHONE (03) 9287 7099

Attention: Mr John Pinnock  
Telecommunication Industry Ombudsman  
Telecommunication Industry Ombudsman's Office  
321 Exhibition Street  
Melbourne VIC 3000

FAX (03) 9287 7001

493-495 QUEENSBERRY STREET  
NORTH MELBOURNE VICTORIA 3051  
PO. BOX 313 NORTH MELBOURNE 3051

**FAXED**  
17/9/97

By facsimile: 9277 8797 and post.

Dear Mr Pinnock,

**RE: The selection and appointment of a New Technical Resource Unit.**

Further to my correspondence of 12 September 1997, Ref. No. 3446, late yesterday I was advised by one proposed member of a consortium of his withdrawal of his interest to participate in the New Technical Resource Unit.

This person had given serious consideration to the task for more than a week before arriving at the decision that he would personally be subconsciously biased towards Telstra owing to his involvement in the development and maintaining of those parts of the Telstra network contributing to the C.o.T. dispute.

The search continues to find a Consultant who has the like expertise of this person who has withdrawn.

I will keep the TIO informed of my successful progress.

Should you require further information or clarification, please do not hesitate to make contact.

Yours sincerely,



Graham Schorer

309



Telecommunications  
Industry  
Ombudsman

John Pinnock  
Ombudsman

16 September 1997

Mr Graham Schorer  
Golden Transport Agency  
493-495 Queensberry Street  
NORTH MELBOURNE 3051

Facsimile 9287 7001

Dear Mr Schorer

Technical Resource Unit

I refer to your letters of 5 and 12 September 1997, concerning a replacement for Lane Telecommunications.

I look forward to receiving a nomination from you for a replacement for Lane, as soon as possible.

I remind you, however, as noted in the Arbitrator's letter of 14 August 1997 to your solicitor, that the Resource Unit currently comprises Mr Paul Howell. I note also the various directions concerning the Resource Unit in that letter. I also note the Arbitrator's instructions to Ferrier Hodgson Corporate Advisory in his letter of 18 August which was copied to you.

Yours sincerely

JOHN PINNOCK  
OMBUDSMAN

310

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01/Arch/tra/6/8

telecommunications industry Ombudsman LTD ACN 051 634 787

Website: [www.tio.com.au](http://www.tio.com.au)  
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Telecommunications  
Industry  
Ombudsman

John Pinnock  
Ombudsman

**Senate Environment, Recreation,  
Communications and the Arts Legislation  
Committee**

**Statement by the Telecommunications  
Industry Ombudsman, John Pinnock**

**26 September 1997**

**311**

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Telecommunications Industry Ombudsman Ltd

ACN 057 634 787

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**Senate Environment, Recreation, Communications and the  
Arts Legislation Committee**

**Statement by the Telecommunications Industry Ombudsman,  
John Pinnock**

**26 September 1997**

The Committee's proceedings on 24 June 1997 were concerned with administrative problems revealed by Telstra's handling of the COT (Casualties of Telstra) cases, and tended to focus on individual cases.

I thought it might be of assistance to the Committee if I provided an assessment of the COT Arbitration Procedures from my perspective as Administrator of the process, focusing on the essential features, analysing any deficiencies and drawing some conclusions and recommendations for the future.

Before doing so, however, it is appropriate to advise the Committee on the status of the remaining Arbitrations.

Four claims remain to be determined by the Arbitrators.

Lane Telecommunications, which is one part of the technical component of the Resource Unit has withdrawn from the process as a result of a conflict, or perceived conflict, of interest, after being purchased from Pacific Star by Ericsson Australia, a major supplier of equipment to Telstra, including equipment whose performance is central to some of the claims.

Mr Paul Howell remains as a technical adviser to the Resource Unit, but a decision will have to be made by the Arbitrators as to whether to replace Lane Telecommunications and if so, who that replacement should be. The Arbitrators may also have to determine when the conflict of interest arose, there being no consensus on this issue.

I am consulting with three of the four Claimants as to a number of possible replacements, but at the moment no agreement or consensus has been reached.

At the time of Lane's withdrawal one of the claims was very close to being determined, while the second and third claims are at various stages. In one case, the Arbitrator has already made a direction to refer information obtained to date to Mr Howell for preliminary technical assessment.

In the fourth matter, the claimant has elected to proceed with the Arbitration on the basis of Lane Telecommunications continuing as part of the Resource Unit. I expect this Arbitration to be completed in the near future, with a Financial Evaluation Report to be issued by the Resource Unit in the next week.

Turning to the process itself, the COT (Casualties of Telstra) arbitration procedures were designed to provide a means of resolving a number of outstanding claims which had several common features:

- the Claimants were all small business customers of Telstra;
- the businesses were heavily dependent on their telephone service and/or other telecommunications services;
- all claimed to have suffered substantial business losses as a result of Telstra's failure to provide a reasonable level of fault-free service and a failure to properly record and investigate reports of a variety of faults characterised by Telstra as 'Difficult Network Faults';
- although some Claimants had previously sought and been paid compensation by Telstra, all of the claims had been outstanding for a long time.

Initially, the Fast Track Arbitration Procedure (FTAP) was developed to deal with claims by Claimants described as the 'original COT' or 'COT 4'. This was followed by a Special Arbitration Procedure (SAP) developed to handle claims by the remaining COT Claimants.

Both procedures provided for the Telecommunications Industry Ombudsman to act as Administrator of the processes. Independent Arbitrators with the power to give directions to the parties and to make a final determination of the claims were appointed by the Administrator, either with the express consent and approval of, or after consultation with, the Claimants.

The procedures also provided for the Administrator, upon the request of the Arbitrator, to appoint an independent Resource Unit, comprised of expert technical and financial components, to assist the Arbitrator in reaching his determination. Again, the components of the Resource Unit were appointed either with the express consent and approval of, or after consultation with, the various Claimants.

Finally, the procedures provided for the appointment of an independent Special Counsel to advise the Administrator. In addition, a solicitor from the Special Counsel's firm was seconded on a full-time basis to the TIO to assist the Administrator.

All of these administrative costs of the arbitration procedures, with the exception of the Administrator's time, were to be met by Telstra.

Subsequently, a 'third generation' procedure known as the Standard Arbitration Rules (SAR) was developed by the TIO, in consultation with Telstra, Optus and Vodafone, and approved by AUSTEL, to deal with any future cases which would otherwise involve claims for compensation, beyond the usual powers of the TIO to make binding Determinations or Recommendations. Most of the features of the Standard Arbitration Rules are derived from and in common with the earlier procedures.

The FTAP and SAP required the Claimants and Telstra to maintain confidentiality as to the proceedings. However, under the rules of the FTAP the 'original COT' Claimants were entitled to discuss their respective proceedings and claims with each other.

Where the rules of the FTAP, and the SAP were silent, the proceedings were to be governed by the Victorian Commercial Arbitration Act, 1984. This provides that an Award by the Arbitrator is registerable as an order of the Victorian Supreme Court. The Act also confers a limited right of appeal against any Award by the Arbitrator.

The FTAP and SAP had amongst their objectives that they were to:

- be non-legalistic;
- operate in accordance with the principles of natural justice (procedural fairness); and
- allow the Arbitrator to relax certain rules of law or evidence.

The procedures required that:

- a claimant was to lodge a written Claim;
- Telstra was to lodge a written Defence in response;
- the claimant was to lodge a Reply to the Defence.

Time limits were set for each of these steps, although these could be varied by Direction of the Arbitrator, upon request of either party.

The Arbitrator also had a specific power to order a party to produce documents to the other party, upon request by the other party.

Evidence was to be supported by Statutory Declaration and although provision was made for evidence to be given on oath during an oral hearing ordered at the discretion of the Arbitrator, cross-examination of parties or witnesses was not permitted.

When Claim, Defence and Reply documents had been lodged, the Resource Unit could be formally appointed to review the issues, carry out any necessary site inspections and other investigations and to prepare separate Technical and Financial Evaluation Reports, in that

order, for the Arbitrator. The Arbitrator was required to provide these reports to the parties for comment and submissions.

At the completion of these stages, the Arbitrator would make a determination and Award.

Those are the salient features of the process.

The procedures as developed, envisaged a number of benefits both for the Claimants and for Telstra. From the point of view of the Claimants, the benefits were to be:

- a fast, non-legalistic, procedure, operating in accordance with natural justice to produce a fair outcome;
- all administrative costs were to be borne by Telstra;
- strict rules of evidence and of law were relaxed, in favour of the Claimants.

From Telstra's point of view the benefits were:

- finality and certainty in the determination of the Claims, as opposed to the uncertainties of other methods of resolution such as mediation or negotiated settlements which had already occurred with some of the COT cases
- confidentiality of the process.

Experience has shown that not all of these benefits have materialised. In my view, however, one of the potential deficiencies should have been obvious from the outset.

This deficiency revolves around the vexed question of the best method of enabling the Claimants to obtain documents held by Telstra. In the process leading up to the development of the Arbitration procedures, the Claimants were told that documents would be made available under the Freedom of Information Act.

The Commonwealth Ombudsman has reported on the problems encountered by Claimants in using the FOI process and I won't reiterate her findings. For present purposes, it is enough to say that the process was always going to be problematic, chiefly for three reasons.

Firstly, the Arbitrator had no control over the process, because it was conducted outside the ambit of the Arbitration Procedures.

Secondly, in providing documents, Telstra was entitled to rely on exemptions under the FOI Act. This often resulted in the Claimants receiving documents which were difficult to understand, because information had been deleted.



In contrast, the Claimants could have sought access to documents under the Arbitration Procedures. Provided that documents were relevant the Arbitrator could have directed Telstra to produce the documents without deletions. The Arbitrator could also have directed Telstra to produce documents to him for inspection, in order to determine any argument as to relevance. However, the Claimants would have been bound by the confidentiality provisions of the Arbitration Procedures in relation to documents provided to them in this way.

Thirdly, the FOI process as administered by Telstra was extremely slow and this contributed to much, but not all, of the delay in some Claimants prosecuting their claims.

As to the lessons learnt from experience, while Arbitration is inherently a legal or quasi-legal process, Telstra's approach to the COT Arbitrations was clearly one which was excessively legalistic. In many instances it made voluminous requests for further and better particulars of the legal basis of a Claimant's case when it was in a much better position to judge this issue than almost all the Claimants.

Since my appointment as Telecommunications Industry Ombudsman, my public comments on this aspect have been recorded in the Annual Reports of the TIO, and through the medium of AUSTEL's quarterly reports, on Telstra's implementation of the recommendations flowing from AUSTEL's original COT Report.

One consequence of Telstra's approach was that the Claimants tried not only to match their opponent's legal resources, but also felt it necessary to engage their own technical and financial experts. This was a significant expense for the Claimants because these costs were not 'administrative costs' of the Arbitration Procedures, and those Procedures made no provision for the payment of a Claimant's legal or other costs where the Claimant received an Award in his or her favour.

Although this deficiency has been largely remedied by Telstra agreeing to contribute to a successful Claimant's reasonable costs, by way of an ex gratia payment, the absence of such a guarantee in the Arbitration Procedures was a deficiency.

Next, there have been significant delays, over and above those delays associated with the FOI process in bringing the Arbitrations to completion. In some cases these delays have been due to Claimants being unable to provide information to substantiate their business losses.

These delays have been exacerbated by the extensive arguments by both sides as to the accuracy and merits of the Technical Evaluation and Financial Evaluation Reports produced by the Resource Unit.

↓  
Finally, as I have remarked previously, the Arbitrations have been bedevilled by the inability of the parties to treat the disputes as matters of a commercial nature and to put

behind them the atmosphere of mutual suspicion and mistrust that had built up over a long period of time.

An objective and dispassionate analysis of the Arbitration Procedures must, however, recognise that the Claimants have benefited from certain aspects of the process.

First, the Claimants under the FTAP had the significant benefit of Telstra effectively waiving any statutory immunity it may have otherwise been able to plead in legal proceedings.

In particular, Clause 10.1 of the FTAP provides:

In relation to Telecom's liability, if any, to compensate for any demonstrated loss on the part of the Claimant, the Arbitrator will:

- 10.1.1.3 recommend whether, notwithstanding that in respect of a period or periods that Telecom Australia is not strictly liable or has no obligation to pay, due to a statutory immunity covering that period or periods, Telecom Australia should, having regard to all the circumstances relevant to the Claimant's claim, pay an amount in respect of such a period or periods and, if so, what amount.

Clause 13 of the FTAP provides:

Telecom commits in advance to implementing any recommendations made by the Arbitrator pursuant to sub Clause 10.1.1.3.

Secondly, the Claimants under both the FTAP and SAP had the general benefit of the relaxation of rules of law.

In particular, Clause 7.1.1 of the SAP provides:

In relation to loss the Arbitrator will make a determination:

- 7.1.1.3 giving due regard to the normal rules of evidence and legal principles relating to causation, subject to any relaxation which is required to enable the Arbitrator to make a determination on reasonable ground as to the link between the Claimant's demonstrated loss and alleged faults or problems in the Claimant's telephone service, and to make reasonable inferences based upon such evidence as is presented by the Claimant and by Telstra.

(emphasis added)

Although one must be cautious in assessing their effect, these provisions may have been the difference between Claimants succeeding under the Arbitration Procedures, where they might have otherwise failed, or failed in relation to parts of their claims, if they had litigated the matters.

Based on the above analysis, if the Standard Arbitration Rules are to be, and are seen to be effective, changes clearly need to be made to the process.

Before suggesting any changes a number of matters need to be borne in mind.

Firstly, the SAR were developed in consultation with Telstra, Optus and Vodafone to deal with commercial disputes involving customers of those carriers. If the SAR are to be generally available through the TIO, those and other new members of the TIO will have to be consulted about any changes.

Secondly, the SAR have been developed to deal with commercial disputes involving small business which have suffered losses due to faults or problems with their telecommunication services. The procedure is not well suited to deal with other varieties of disputes involving e.g. breaches of privacy, or other conduct unrelated to the provision of telecommunication services.

Thirdly, in conformity with the concept of the TIO as an alternative dispute resolution forum, neither a Claimant nor a member of the TIO can be forced to enter arbitration, although Telstra was required to advise AUSTEL of any occasion when it declined to do so.

The following changes to the SAR need to be considered:

1. Where Telstra is a party to the SAR, Claimants should be encouraged to obtain relevant documents through the Arbitration process, rather than under FOI, thus putting this matter under the control of the Arbitrator.

While a Claimant could not properly be required to give up rights under the FOI Act, the Arbitrator could ensure that documents were produced speedily.

In the case of a carrier other than Telstra, a Claimant would only be able to obtain documents through the SAR.

2. Provision must be made for successful Claimants to recover their reasonable legal and other costs.
3. The Resource Unit was intended to provide expert assistance to the Arbitrator. The requirement that its reports were to be provided to the parties appears to have

been written into the arbitration procedures to meet the perceived requirements of natural justice or procedural fairness. However, those principles do not necessarily require this step.

Much time could be saved if the Resource Unit provided expert advice solely to the Arbitrator, as occurs in other types of commercial arbitration where technical expertise is made available to assist an Arbitrator.

4. The problem of excessive legalism is easy to identify but, given the nature of Arbitration, much less easy to remedy.

One solution would be to prohibit the parties from making requests for further and better particulars of any aspect of their respective cases. In the event of any obvious 'gap' the Arbitrator would have a discretionary power to direct a party to provide more material.

5. In general, the Arbitrator should have greater discretionary powers to control delays which have otherwise been inherent in the process to date.

6. Above all, major disputes which might be candidates for Arbitration should be identified at an early stage and a Claimant offered this option if the carrier considers it appropriate.

Because of adverse perceptions about the Arbitration Procedures, only one dispute has been dealt with under the SAR since that procedure was established.

It is interesting to note that of the 43 Dispute cases finalised by the TIO in 1996-97 only 15 were the subject of a formal and binding determination or direction by the Ombudsman.

The balance of 28 cases, which involved claims in excess of the TIO's powers to make a determination or recommendation, were resolved either by conciliation or by mediation.

**JOHN PINNOCK**  
**TELECOMMUNICATIONS INDUSTRY OMBUDSMAN**

resolution by mediation or negotiation. In several cases settlements had already occurred in the past with some of the CoT claimants, but had not achieved finality. The second benefit was the confidentiality of the process as opposed to, for instance, litigation in open court. The experience has shown that not all of these benefits have emerged or materialised.

In my view, there was one potential difficulty that should have been obvious from the outset. I do not make any apology for coming along to this committee and saying that outright, because it should have been obvious, in my view, to the parties and everyone involved from the beginning. This deficiency revolves around the vexed question of how the claimants were to obtain, and the best method of obtaining, documents from Telstra which were to assist them in the process. In the process leading up to the development of the arbitration procedures—and I was not a party to that, but I know enough about it to be able to say this—the claimants were told clearly that documents were to be made available to them under the FOI Act. The Commonwealth Ombudsman has already reported on the problems encountered by the claimants in that process, and I do not propose to reiterate her findings.

Senator SCHACHT—Do you disagree with her findings?

Mr Pinnock—No. For present purposes, though, it is enough to say that the process was always going to be problematic, chiefly for three reasons. Firstly, and perhaps most significantly, the arbitrator had no control over that process, because it was a process conducted entirely outside the ambit of the arbitration procedures. Secondly, in providing documents Telstra was entitled to rely on whatever exemptions it might be entitled to under the FOI Act, and this often resulted in claimants receiving documents, the flow of which made them very difficult to understand. In some cases, there were obviously excisions of information. In contrast to this, the claimants could have sought access to documents on a regular basis under the arbitration procedures. Provided that those documents were relevant, the arbitrator could have directed Telstra to produce those documents without any deletions. If there was any argument as to the relevance of documents, the arbitrator would have had the power to require their production and inspection by him to make that determination in the first place. Thirdly, we know that the FOI process as administered was extremely slow, and this contributed to much, but certainly not all, of the delay which the claimants encountered in prosecuting their claims through the arbitration procedures.

With the benefit of hindsight, I will turn now to the lessons that are learnt from experience of the process. Firstly, arbitration is inherently a legalistic or quasi-legalistic procedure. It does not really matter how you might finetune any particular arbitration. It has the normal attributes of a quasi-legal procedure, where you have parties opposing each other with someone in the middle having to make a determination. Even having said that, I am on record as saying that Telstra's approach to the arbitrations was clearly one which was excessively legalistic. For instance, in many instances it made voluminous requests for

further and better particulars of the legal basis of claimants' cases when in fact it was probably in a much better position to judge those issues than almost any or all of the claimants.

I am on record as making some general remarks about that issue, both in the reports through the TIO and through the medium of Austel's quarterly reports on Telstra's implementation of its recommendations flowing from its original CoT report. One consequence of Telstra's approach was that the claimants tried not only to match their opponent's legal resources, but also felt it necessary to engage their own technical and financial experts. This was a significant expense for the claimants because those costs were not administrative costs of the arbitration procedures. Those procedures, as we know, made no provision for the payment of a claimant's legal or other costs when the claimant received an award in his or her favour. Although this deficiency has now largely been remedied by Telstra agreeing to contribute to a successful claimant's reasonable costs by way of its ex gratia payment agreement which Mr Ward referred to, the absence in my view of such a guarantee in the arbitration procedures at the outset was a deficiency.

Next, there have been significant delays over and above those delays associated with the FOI process and, in some of those cases, some of those delays have been due not to Telstra but to claimants being unable to provide the sort of information that was required to substantiate their business losses. Those delays have also been exacerbated by extensive arguments by both sides, but particularly by the claimants, as to the accuracy and merits of the technical evaluation and financial evaluation of reports produced by the resource unit, so much so, I might say, that the resource unit has almost been in danger of being dragged into the fray when the original intention of that process was for it to be exclusively and really a matter for advice to the arbitrator. However, perhaps the most difficult issue, and one that has bedevilled the arbitrations almost from the beginning, was the inability of the parties to treat these disputes as matters of a purely commercial nature. They simply were unable to put behind them the attitude of mutual suspicion and mistrust that had built up over those years. It is natural but, nevertheless, it has been an issue which has turned these arbitrations into mini-battles.

On an objective and dispassionate analysis in my view of the procedures, there are nevertheless benefits that have been derived, particularly for the claimants, although I am the first to admit that they do not necessarily agree with my view on these matters. I should interpolate there that when we talk of the CoT payments it is a self-descriptor, and beyond those common features that I mentioned earlier, in my view one cannot talk of the claimants as a homogeneous group. They have very many different views on a whole range of issues, although I suppose the CoT four—the original claimants with perhaps the exception of one—do tend to feel some common cause. I simply put that on record to indicate that, with any proposition that is put forward by anyone who says, 'Well the CoTs say this', I deal almost on a daily basis with various claimants saying to me, 'We do not agree with this; we do agree with that.'

**PART II—APPOINTMENT OF ARBITRATORS AND  
UMPIRES**

**6. *Presumption of single arbitrator***

An arbitration agreement shall be taken to provide for the appointment of a single arbitrator unless—

- (a) the agreement otherwise provides; or
- (b) the parties otherwise agree in writing.

S. 6  
substituted by  
No. 15/1993  
s. 7.

**7. *Presumption as to joint appointment of arbitrator***

Unless otherwise agreed in writing by the parties to the arbitration agreement, an arbitrator who is to be appointed for the purposes of an arbitration to be conducted under an arbitration agreement shall be jointly appointed by the parties to the agreement.

**8. *Default in the exercise of power to appoint an arbitrator***

- (1) Where a person who has a power to appoint an arbitrator defaults in the exercise of that power, a party to the relevant arbitration agreement may, by notice in writing—
  - (a) require the person in default to exercise the power within such period (not being a period of less than seven days after service of the notice) as may be specified in the notice; and
  - (b) propose that in default of that person so doing—
    - (i) a person named in the notice (“a default nominee”) should be appointed to the office in respect of which the power is exercisable; or
    - (ii) specified arbitrators (being the arbitrators who have prior to the date of the notice been appointed in relation to the arbitration) should be the sole arbitrators in relation to the arbitration.
- (2) A notice under sub-section (1) (or, where appropriate, a copy of the notice) must be served upon—

Turning to what I regard as the benefits—firstly under the fast-track arbitration procedure, the claimants had the significant benefit of Telstra effectively waiving any statutory immunity it may have otherwise been entitled to plead in legal proceedings. In particular, clause 10(1) of that procedure provides that in relation to Telecom's liability—the ability to compensate for any demonstrated loss on the part of the claimant—the arbitrator would recommend whether, notwithstanding that in respect of a period or periods that Telecom Australia was not strictly liable or had no obligation to pay due to a statutory immunity covering those periods, nevertheless it should, having regard to all the circumstances relevant to the claim, pay an amount in respect of such a period or periods and, if so, what amount. Clause 13 of the same procedures stated that Telecom commits in advance to implement any recommendations made by the arbitrator pursuant to that clause.

Secondly, under both the fast-track and special arbitration procedures, the claimants had the general benefit of relaxation of rules of law and evidence which might have otherwise made it difficult for them to prove their claims. In particular, in the special arbitration procedure, clause 7(11)(3) said that the arbitrator is to make a determination giving due regard to the normal rules of evidence and legal principles relating to causation subject to any relaxation which is required to enable the arbitrator to make a determination on reasonable grounds as to the link between the claimants' demonstrated loss and alleged faults or problems in the claimants' telephone service and to make reasonable inferences based on such evidence as presented by the claimants and by Telstra. One has to be cautious in assessing the effect of those particular provisions, but in some cases they may well have been the difference between claimants succeeding under the arbitration procedures in obtaining an award where they might have otherwise failed or failed in significant parts of their claim if they had been litigated in the normal amount.

My view, based on that analysis, in relation to the standard arbitration rules which now exist, is that if they are not only to be effective but to be seen to be effective, then some changes clearly need to be made.

Senator SCHACHT—Would they be the rules or notification?

Mr Pinnock—Both. The process should follow from the rules that the rules should specifically spell out certain limitations and certain other provisions. But it is important that this committee understand that the standard arbitration rules are not just rules developed by the TIO in consultation with Telstra; they are rules which have been developed in consultation with Telstra, Optus and Vodafone. Not only would those three carriers have an interest if they were to, as it were, sign up to any amendments to those rules, but there may well be other newer members of the TIO who will also want an opportunity, if they were to be expected to commit to those rules, to also be involved in any review of them.

The other point I want to make clear to the committee is that the arbitration rules—whether it is the first, the second or the now existing standard arbitration rules—



Senator BOSWELL—Could Mrs Garms make a request?

Mr Pinnock—Could she?

Senator BOSWELL—Yes. Could she or Mr Schorer make a request?

Mr Pinnock—Mrs Garms could no longer make a request.

Senator BOSWELL—Could Mr Schorer make a request that he wants disclosure of the documents?

Mr Pinnock—Yes. As long as he can say, 'I want the arbitrator to order Telstra to produce documents relevant to my arbitration', he is entitled to make such an application. It would have to have some degree of specificity, obviously. The arbitrator is not going to be able, with confidence, to make an order that Telstra produce all relevant documents. One would need some boundaries to the request. However, the power has always been there. I might say, Senator, that in the early days when Mr Schorer and I were discussing this matter, we clashed very much on this point.

Senator BOSWELL—In what way?

Mr Pinnock—I put to Mr Schorer precisely what I put to the Senate committee today about the deficiencies of the FOI process. I said that I was of the very strong view that applications for documents ought to be made under the arbitration procedures and, equally forcefully, Mr Schorer put to me that the CoTs had always been promised by all concerned that access to documents would be made and that the best way to do that was under FOI.

Senator SCHACHT—I ask Mr Wynack: with all the requests that you have made to Telstra on FOI, have you felt that there has been any deficiency in your powers, even though it may be a belated process, to finally get the information that you need?

Mr Wynack—I do not believe that there is any deficiency in our powers. I think that our extremely limited resources have limited the processes we can apply to investigations.

Senator SCHACHT—I can understand that, with the amount of paper that apparently could be floating around.

Mr Wynack—Precisely.

Senator SCHACHT—So the main issue for you is the resources, if there are 60,000 pages. All members of the CoT cases and others have given you authority to act on their behalf to get the FOI matters completed; is that correct?

22-APR-1997 09:33 FROM COMM OMBUDSMAN TO 035267230 P.01/01

Ref No: C/94/225

22 April 1997



Mr John Armstrong  
Telstra  
Level 38  
242 Exhibition Street  
MELBOURNE VIC 3000

ADDRESS:  
6TH FLOOR  
1 FARRIS PLACE  
CANBERRA ACT 2601  
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(06) 276 0111  
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1800 13 3057  
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(06) 249 7829  
INTERNATIONAL  
FACSIMILE:  
01-6-249 7829

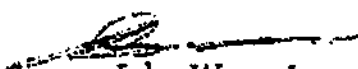
Dear Mr Armstrong

I refer to your letter of 21 April 1997 to Mr Alan Smith concerning the assessment of the amount of compensation payable to Mr Smith.

I note with concern that you sent a copy of that letter to the TIO. Please inform me as soon as possible why you have made the TIO privy to what I understood to be a confidential process involving Mr Morgan, Telstra, Mr Smith and the Ombudsman. Please also inform me of the extent to which Telstra has involved the TIO in this process.

I have sent copies of this letter to Mr Morgan and to Mr Smith.

Yours sincerely

  
John Wynack  
Director of Investigations

317

**SENATOR CHRIS SCHACHT**  
 SHADOW MINISTER FOR COMMUNICATIONS  
 Suite S1 31, Parliament House, Canberra  
 Phone: (06) 277 3844 Fax: (06) 277 3121

**FACSIMILE MESSAGE**

**TO:** Senator Ron Boswell

**FAX:** 3246

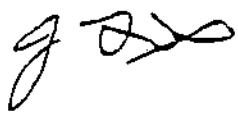
**FROM:** Jenny Fox

**DATE:** 23 October 1997

**PAGES (incl. cover sheet):** 5

**MESSAGE:**

Further revised draft Terms of Reference follow for your consideration. Please feel free to call me or Chris if you would like us to explain any of the new amendments.



Jenny Fox

318A

## TELSTRA AND COT/COT RELATED CASES

### Working Party Terms of Reference

Amended by the Senate Environment, Recreation, Communications and the Arts  
Legislation Secretariat following Legislation Committee Meeting 8:40am-9:27am  
23 October 1997 FURTHER AMENDED BY SENATOR SCHACET 1:00 pm 23  
OCTOBER 1997

(Draft prepared for Senators Schacht and Tierney - 22 October 1997 8.50 pm)

Part 1: The Working Party is to be chaired by a representative of the  
Commonwealth Ombudsman's Office

Part 2: List of Documents

1. The Working Party must develop a list ("List") of all documents which:

- were reviewed by Telstra in the course of preparation of its defence;
- were brought into existence after Telstra prepared its defence, but which would in the opinion of Telstra's solicitors have been reviewed by Telstra if it were preparing its defence today; or
- were lost or destroyed before Telstra prepared its defence, but which would in the opinion of Telstra's solicitors have been reviewed by Telstra if they had been in existence at the time Telstra was preparing its defence,

*including documents in relation to*

(a) the:

- arbitration cases
- responses to requests under FOI; and
- appeals in respect of cases already decided

described in Schedule A to these terms of reference.

Such arbitration cases, FOI requests, appeals, cases and issues are known in these terms of reference as "Proceedings"

(b) if the Working Party becomes aware of relevant cases additional to those listed in the Schedule, or relevant documents, the Working Party will advise the Senate Environment, Recreation, Communication and the Arts Legislation Committee in writing of these cases or documents and the reasons why the Working Party considers they are relevant. The Working Party will not proceed with any investigation of such additional cases or

318A

documents unless and until the Senate Environment, Recreation, Communications and the Arts Legislation Committee so agrees in writing

(c) the Senate Environment, Recreation, Communications and the Arts Legislation Committee reserves the right to amend the Schedules to this document.

*[DELETE (c)—NOT NECESSARY AS ERCA COMMITTEE ALREADY HAS THE POWER TO AMEND AT ANY TIME AS IT SEES FIT]*

The documents itemised in the List must include the documents itemised in the Excel files prepared by Telstra in relation to the Proceedings and any other relevant documents not previously provided to parties to the Proceedings ("Parties").

2. The List must be sorted into separate sections, so that all documents in relation to a particular party to the Proceedings ("Party") are contained in one section of the List.
3. Telstra must provide written advice, in respect of each Party, identifying the network or networks which were used by Telstra to service the business telephone service of that Party.
4. The List must clearly distinguish between
  - documents which refer to service difficulties, problems and faults of Telstra's network, or of a Party's business telephone services; and
  - documents which do not so refer.
5. The List must clearly distinguish between
  - documents which were provided by Telstra to a Party before 26 September 1997
  - documents which were provided by Telstra to a Party on or after 26 September 1997; and
  - documents which have not been provided by Telstra to a Party.
6. The List must clearly distinguish between
  - documents which Telstra claims are privileged;
  - documents which Telstra claims are confidential; and
  - documents which Telstra does not claim are privileged or confidential.

*INSERT NEW PARA: Telstra must provide a statutory declaration made by a senior solicitor employed by Telstra, whose responsibilities include management of the CoT cases, declaring that Telstra has made all necessary inquiries of its employees and agents to establish that all documents falling within these Terms of Reference have now been identified in the List in the manner required by these Terms of Reference.*

7. Where Telstra claims that a document is privileged or confidential, the description of that document in the List must include a statement of the basis on which Telstra claims that status for the document.
8. Telstra must provide a statutory declaration, made by a senior solicitor employed by Telstra, whose responsibilities include management of the CoT cases, declaring

that in respect of all documents described in the List which Telstra claims are privileged or confidential, Telstra believes in good faith after making reasonable inquiries of its employees and agents that these documents ought properly to be regarded as privileged or confidential, and the reasons for that status are accurately set out in the List.

9. Where a document was lost or destroyed before Telstra prepared its defence, the description of that document in the List must describe the manner in which the document was lost or destroyed.
10. Where the List is required to distinguish between documents in particular categories, the distinctions may be indicated in any manner which the Working Party considers appropriate.

### Part 3: Other Sources of Information

1. The Working Party must investigate whether there are avenues not yet explored by Telstra to locate documents which are relevant to the claim of a Party under a Proceeding.

### Part 4: Report to the Senate Committee

1. The Working Party must report to the Senate Committee regarding the matters with which it is charged under Parts 1 and 2 of these terms of reference. The Working Party is to report to the Senate Committee no later than Thursday, 27 November 1997.
2. The Working Party must include in its report to the Senate Committee an assessment of the processes used by Telstra in providing information to the Parties and, if the Working Party considers it appropriate, make recommendations as to additional or improved processes which should be adopted by Telstra.
3. The Working Party must include in its report to the Senate Committee recommendations as to whether:
  - any documents described in the List should be provided to the Parties
  - documents which Telstra claims are privileged or confidential should be provided to the Parties;
  - if the Working Party considers that documents described in the List should be provided to the Parties, the terms on which those documents should be so provided.
4. Any disagreement which cannot be resolved is to be advised to the Senate Committee in writing by the Chair of the Working Party.

**SCHEDULE A**

- Arbitration of dispute between Telstra and Mr Bova.
- Arbitration of dispute between Telstra and Mr Plowman.
- Arbitration of dispute between Telstra and Mr Schorer.
- Arbitration of dispute between Telstra and Mr Dawson.
- Appeal proceedings regarding the award in the arbitration of the dispute between Telstra and Mrs Garms.
- The proceedings undertaken by Mr Robert Bray.
- The proceedings undertaken by Mr A Honner.

**FREEDOM OF INFORMATION**

- Such proceedings as may have been commenced, or actions as may have been taken, under the Freedom of Information Act, to gain access to documents in the possession of Telstra, by Mr Bova.
- Such proceedings as may have been commenced, or actions as may have been taken, under the Freedom of Information Act, to gain access to documents in the possession of Telstra, by Mr Plowman.
- Such proceedings as may have been commenced, or actions as may have been taken, under the Freedom of Information Act, to gain access to documents in the possession of Telstra, by Mr Schorer.
- Such proceedings as may have been commenced, or actions as may have been taken, under the Freedom of Information Act, to gain access to documents in the possession of Telstra, by Ms Garms.
- Any matters of dispute concerning requests for documents under the Freedom of Information Act by any person listed below in Schedule B, and by Mr Dawson, Mr Honner and Mr Bray at Schedule A.

**UNRESOLVED MATTERS, INCLUDING THE AMOUNT OF SETTLEMENT OFFERED OR PAID IN RESPECT OF PERSONS LISTED IN SCHEDULE B.**

**SCHEDULE B**

- |                       |                    |
|-----------------------|--------------------|
| Davis                 | Smith, Alan Mr     |
| Dixon                 | Smith, Lorraine Ms |
| Dullard               | Trzcionka Mr       |
| Gillan Mrs            | Tuczynski, John Mr |
| Holmes, J F Mr & Mrs  | Turner             |
| Hynninen Mr           | Vogt, Mervyn Mr    |
| Love                  | Wiegmann           |
| Oldfield, Barbara Mrs | Wolfe, Sandra Mrs  |

[Further details to be circulated when available]

318A

## TELSTRA AND COT/COT RELATED CASES

### Working Party Terms of Reference

(Draft prepared for Senators Schacht and Tierney - 22 October 1997 8.50 pm)

Comment-Ann Garms on behalf of CoT/CoT Related Cases 23 October 1997 -10.20 am

1. *The Working Party must develop a list ("List") of all documents which:*

- *were reviewed by Telstra in the course of preparation of its defence:*
- John Armstrong, Telstra Solicitor admitted at the first Working Party Meeting on 21 October 1997 that Telstra did not review documents requested by CoTs, but simply refused access under Section 7 of the FOI Act. (Commercial activities-in competition) The meeting was taped.

Telstra in preparing their defence limited their responses to faults on the CoTs lines when the problem was in the network. Telstra did not review the Exchange and Network documents. In preparing their defence, the Commonwealth Ombudsman reported on this fact.

#### Example:

The Tivoli complained on 6 August 1992 that no incoming calls could be received. Telstra in their Defence stated that the Tivoli lines were tested and found to be within expected perimeters, when in fact the whole Fortitude Valley Exchange had collapsed(outage)

Telstra admitted to the Commonwealth Ombudsman "...Telstra informed me that the bulk of the documents, viewed by Mrs Garms...were not available to Telstra's Defence team prior to retrieval in late 1995" (Defence submitted December 1994)

Extract from pages - The Commonwealth Ombudsman Report-May 1996, Attachment 1.





Telecommunications  
Industry  
Ombudsman

John Menack  
Ombudsman

24 October 1997

Ms Pauline Moore  
Secretary  
Senate Environment, Recreation, Communications  
and the Arts Legislation Committee  
Parliament House  
CANBERRA 2600

CONFIDENTIAL

Dear Ms Moore

'Questions on Notice' by Senator Boswell

I refer to previous correspondence and discussions with the Committee's Research Officer, Mr Ducker, concerning a series of questions put on notice by Senator Boswell and arising out of the Committee's proceedings of 26 September 1997.

I understand that the questions are treated as tabled questions and hence questions of the Committee.

The COT Arbitration Procedures contain provisions relating to the confidentiality of the proceedings, which bind the parties. Those provisions also bind the Arbitrator, the Resource Unit, the Special Counsel and the TIO in my role as Administrator.

I have also advised the Committee on a previous occasion that one of the COT claimants, Mrs Gurns, has notified me in writing that she intends to join me as a party to Appeal proceedings she has commenced concerning the Arbitrator's Award.

Accordingly, I ask that the answers given below to the questions on notice be treated as confidential by the Committee and not be published.

1. In November 1995 I received correspondence from a COT member expressing concern about the Technical Resource Unit. The COT member:

- expressed concern that the purchase by Pacific Star of Lene Telecommunications compromised the independence of the Technical Resource Unit;
- \* • stated that there were inaccuracies and biases evident in the Lene Telecommunications/DMR Technical Evaluation Report;
- requested the Telecommunications Industry Ombudsman to dismiss the Resource Unit.

"... providing independent, fast, informal, speedy resolution of complaints."

Telecommunications Industry Ombudsman Ltd ACN 057 834 787

Website: [www.tio.com.au](http://www.tio.com.au)  
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Victoria 3000

Telephone (03) 9277 8777  
Facsimile (03) 9277 8797  
Tel. Freecall 1800 082 038  
Fax Freecall 1800 830 614

CONFIDENTIAL

318B

2. On 6 November 1995 I was advised by Mr Steve Black of Telstra that Lane Telecommunications and Pacific Star had already worked together on several Pacific Star contracts in Queensland and Western Australia and for the Federal Government.
3. I did investigate the commercial relationship between Telstra and Pacific Star. Based on the material provided to me by Telstra and Lane Telecommunications, it was established that:
- There were three Pacific Star separate operating entities, Pacific Star Mobile, Pacific Star Communications and Pacific Star Data Services.
  - Pacific Star Mobile was a significant reseller of Telstra MobileNet products, but did not provide products or services to Telstra.
  - Pacific Star Communications was in competition with Telstra.
  - Pacific Star Data Services ("Pacific Star") was the entity which acquired Lane Telecommunications. Pacific Star was independent of Telstra. It facilitated services provided by carriers and vendors on behalf of clients. I was advised that the core requirement of this business was to be independent so that selection was based on the optimum provision of the required facilities, performance and cost.

Further than this, I do not have details of different commercial arrangements between Telstra and Pacific Star.

4. When providing a response to a COT member on 6 December 1995 I had requested information from Lane Telecommunications and Telstra as to whether any conflict of interest arose out of the purchase by Pacific Star of Lane Telecommunications. To the best of my knowledge and based on the information I had received at the time, I concluded there was no conflict of interest.
5. I do not have and have never had available any details concerning the Arbitrator and/or associated companies off-shore work for Telstra and/or associates and I am unaware of any such information.
6. Apart from the evidence I gave to the Committee on 26 September 1997 concerning the purchase of Lane Telecommunications by Ericsson Australia, I have recently been advised by one of the Arbitrators that he will be transferring his legal practice to Blake, Dawson, Waldron, Solicitors. I am aware that that firm is currently acting for Telstra in relation to a number of matters. Arrangements are being made to discuss with Blake, Dawson, Waldron any possible conflicts of interest.
7. I refer to my letter to the Secretary of the Committee dated 29 September 1997. I referred this question to the TIO Council for consideration at its meeting on 16 October 1997 and I advise that the Chairman of the Council will be writing to the Chairman of the Committee on this matter.
8. It is my recollection that I have never stated in person or by telephone to individual COT members and/or their representatives that the arbitration has failed. My views on the arbitration procedure are contained in my written submission made to the Committee on 26 September 1997.

20/10/97

318  
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9. Yes, from time to time I received complaints from foundation COT members, concerning a range of matters, including alleged non-compliance with the rules of the Fast Track Arbitration Procedures by Telstra and/or the Arbitrator and/or the Technical and Accounting Resource Unit. Identifying individual instances of complaints and detailing the response taken will require a huge amount of administrative resources in searching TIO files. Please advise me whether the Committee requires the undertaking of this work and its relevance to the Committee's inquiry.
10. Yes, I have refused to provide COT members with a copy of Telstra's Preferred Rules of Arbitration. A copy of this document was not provided because it was of historical interest only, and the COT members did not advance any arguments as to why it was relevant to their arbitration. A copy is provided for the information of the committee.

Yours sincerely



JOHN PINNOCK  
OMBUDSMAN

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TELSTRA CORPORATION LIMITED  
"FAST-TRACK" PROPOSED RULES OF ARBITRATION

Scope of the Procedure

1. This Procedure ("the Procedure") provides arbitration as a final and binding method of resolving the disputes listed in Schedule A ("the Disputes") between the customers listed in Schedule B (jointly and severally "the Claimants") and Telstra Corporation Limited ("Telecom Australia").
2. The Claimants and Telecom Australia will be bound by the Arbitrator's decision, and the Claimants, by accepting the application of the Procedure to the Disputes will be deemed to have waived their respective rights to commence proceedings in any court or other forum in respect of the facts giving rise to the Disputes..
3. Arbitration under the Procedure will be administered independently by the Telecommunications Industry Ombudsman ("the Administrator") and conducted by X ("the Arbitrator").
4. A request for arbitration under the Procedure in respect of a Dispute does not relieve any Claimant from any obligation that Claimant may have to pay Telecom Australia any other amounts which are due and are not part of the Dispute the subject of arbitration.

**Commencement of Arbitration**

5. (a) Each Claimant will complete and sign a prescribed request for arbitration form as set out in Schedule C annexed in respect of their Disputes. The form must be completed and returned to the Administrator by the Claimant within X days of receipt of the form by the Claimant.

(b) On receipt of the duly completed request for arbitration form, the Administrator will immediately forward the application form to Telecom Australia for signature and return within X days. Upon return of the signed request for arbitration form to the Administrator Telecom Australia will become a party to the arbitration.

6. Arbitration commences for the purpose of this Procedure when the Administrator has received and accepted the request for arbitration form signed by the Claimant and Telecom Australia. Upon receipt and acceptance of the signed request for arbitration form the Administrator will dispatch written notice to the Claimant, Telecom Australia and the Arbitrator of that acceptance.

**Arbitration Proceedings**

7. Unless the Arbitrator otherwise specifies, the arbitration will be on documents and written submissions only. The Arbitrator may form the opinion that the arbitration requires one or more oral hearings in which event the Arbitrator will advise the parties of a date, time and venue for those hearings. Any oral hearing will not be open to the public nor any other non-parties to the arbitration. In an oral hearing no cross examination of any witnesses is to be allowed.

All written evidence shall be in the form of a statutory declaration. All oral submissions shall be on oath or affirmation. Either party may request a transcript of any oral evidence or submission given at the hearing. The cost of the transcript shall be borne by the party requesting the same.

8. Subject to any directions of the Arbitrator the Procedure will be as follows:

(a) The Claimant is required, within X weeks of receipt of notification of acceptance of the request for Arbitration by the Administrator, to send to the Administrator, in duplicate, its Statement of Claim and any written evidence and submissions ("the Claim Documents") in support of that claim. The Statement of Claim shall, with sufficient particularity, state the following:

(i) the identity of the Claimant or Claimants;

- (ii) the faults in the telecommunications service which are alleged to have occurred including the dates and periods over which such faults allegedly occurred;
- (iii) the loss allegedly suffered and particulars of how that loss is calculated.
- (b) A copy of the Claim Documents will immediately be sent by the Administrator to Telecom Australia which is required, within X weeks of receipt of the Claim Documents, to send to the Administrator, in duplicate, Telecom Australia's Statement of Defence, including any counterclaim or set off and any written evidence and submissions ("the Defence Documents") in support of that defence, counterclaim or set off. The Statement of Defence shall, with sufficient particularity state the following:
- (i) Telecom Australia's answers to the allegations referred to in the Statement Claim; and
- (ii) any affirmative defences which Telecom Australia will seek to rely upon.
- (c) A copy of the Defence Documents will immediately be sent by the Administrator to the Claimant. The Claimant may send to the Administrator within X weeks of receipt of the Defence Documents a defence to any counterclaim made by Telecom Australia and/or a reply to the Statement of Defence together with any supporting documents. Such reply will be restricted to points arising in the Statement of Defence, and may not introduce any new matters, points, or claims.
- (d) At any time after the commencement of the Procedure, either party may request the Arbitrator to require the other party to produce further documentary information and/or particulars of claim or defence. The request for further documentary information and/or particulars by a party must be made in writing to the Arbitrator and must be supported by written reasons for the request which shall state the relevance of that further documentary information and/or particulars to the arbitration. The Arbitrator will consider the request and if the Arbitrator reasonably believes that the further documentary information and/or particulars requested is or are relevant to the arbitration, the Arbitrator will require the other party, by notice in writing, to provide the further documentary information and/or particulars.
- (e) The Arbitrator may, through the Administrator, require by notice in writing, either the Claimant or Telecom Australia to provide any further documentary

information and/or particulars which the Arbitrator reasonably considers would assist the Arbitrator in the Arbitrator's decision.

- (f) If the documentary information and/or particulars are supplied within such time as the Arbitrator prescribes under Clause 9(d) and 9(e), then the documentary information and/or particulars shall be copied to the other party to the arbitration by the Administrator on the same basis as the Defence Documents are to be sent to the Claimant under clause 9(e), and the party receiving the copies of the documentary information and/or particulars shall be afforded an opportunity to make submissions in relation to them within such times as the Administrator reasonably prescribes.
- (g) If either party does not within X weeks of receiving a notice from the Arbitrator under clause 9(d) and (e), comply with the notice, the Arbitrator shall stay the arbitration until either the notice is complied with or the Arbitrator determines that the party receiving the notice has given a reasonable explanation for non-compliance.
- (h) If the Claimant does not furnish the Claim Documents within the time allowed and does not remedy this default within two weeks after dispatch to the Claimant by the Administrator of written notice of that default, the Claimant will be treated as having abandoned the Claimant's claim under the Procedure, and the arbitration will not proceed.
- (i) If Telecom Australia does not furnish the Defence Documents within the time allowed and does not remedy this default within X weeks after dispatch to Telecom Australia by the Administrator of written notice of that default, then subject to any directions the Arbitrator may give, the dispute will be decided by the Arbitrator by reference to the Claim Documents only.
- (j) Either party, may prior to the expiry of any of the deadlines specified in these Rules, request an extension of time to meet a deadline. No request for an extension made after the expiration of a deadline will be allowed. The other party will be notified of such request and if there is any objection then the Arbitrator will be asked to give directions and the Arbitrator may make such direction as to the grant of further time as the Arbitrator deems appropriate in the circumstances.
- (k) The Arbitrator will make an award having regard to the questions of Telecom Australia's liability and questions of loss as set out in this clause 9(k).

(aa) In relation to Telecom's liability, if any, to compensate for any demonstrated loss on the part of the Claimant the Arbitrator will:

(i) give effect to any contractual or statutory limitations on Telecom Australia's legal liability, and any limitations on Telecom Australia's liability to the Customer as determined by Austal pursuant to section 121 of the Telecommunications Act 1991 which limitations may apply to respect of some period or periods of time covered by the Claimant's claims and for that reason in making the findings the Arbitrator will:

(A) determine for the time covered by the claim, the period or periods for which Telecom Australia is not strictly liable or has no obligation to pay and the period or periods for which Telecom Australia is liable and has an obligation to pay;

(B) determine in respect of each such period the amount of loss, if any, incurred by the Claimant;

(C) recommend whether, notwithstanding that in respect of a period or periods that Telecom Australia is not strictly liable or has no obligation to pay, Telecom Australia should, having regard to all the circumstances relevant to the Claimant's claim, pay an amount in respect of such a period or periods and, if so, what amount.

(ii) set off against any amounts found by the Arbitrator to be otherwise owing by Telecom Australia to the Claimant any amounts paid to, rebates granted to, or services carried out for the Claimant by Telecom Australia to date.

(bb) In relation to any assessment as to the Claimant's loss, the Arbitrator:

(i) will take into account the Claim and Defence Documents, sworn written evidence and submissions made by the parties and, if applicable, any sworn or affirmed oral evidence presented to the Arbitrator by the parties to the arbitration;

(ii) will make a finding on reasonable grounds as to the causal link between each of the Claimant's claims and the alleged faults or problems with the relevant telephone service and, as appropriate, may make reasonable inferences based upon such evidence as is



presented by the Claimants and by Telecom Australia (ie. unless the Arbitrator is able to conclude on reasonable grounds that Telecom caused the loss claimed, there will exist no basis for a claim against Telecom.)

- (iii) apply normal Australian accounting standards as applicable at the time of the claimed loss and the rules of evidence relating to causation and assessment of loss.
- (l) The award made by the Arbitrator shall be compensatory only and not of a punitive nature.
- (m) The Arbitrator's reasons will be set out in full in writing and referred to the Arbitrator's award.
- (n) The parties shall not comment publicly on the conduct of the arbitration proceedings at any time after the commencement of the arbitration. The Arbitrator shall suspend, dismiss or otherwise refuse to deal with the arbitration proceedings in the event that the Claimant contravenes this rule.
- (o) Subject to Clause 9(p), confidential information relevant to the arbitration including the Claim and Defence Documents ("Confidential Information") shall not be disclosed by any party to the arbitration. The Arbitrator shall suspend, dismiss or otherwise refuse to deal with the arbitration proceedings in the event that any party contravenes this rule.
- (p) The following is not Confidential Information for the purposes of clause 9(o):
- (i) information which at the time of disclosure to a party to arbitration is in the public domain.
  - (ii) information which, after disclosure to a party to the arbitration, becomes part of the public domain otherwise than as a result of the wrongful act of the party to whom the information was disclosed.
  - (iii) information which was received from a third party, provided that it was not acquired directly or indirectly by that third party from a party to the arbitration.
- (q) The Administrator will publish the Arbitrator's award by sending copies of the award to each of the parties to the arbitration. The Arbitrator's award shall be kept strictly confidential by the Administrator, the Arbitrator and all of the parties to the arbitration. Telecom Australia has submitted to the arbitration in consideration

of the conduct of the Procedure, the Confidential Information and the Arbitrator's award being kept strictly confidential by the Claimant. Any disclosure of the conduct of the Procedure, the Confidential Information or the Arbitrator's award by the Claimant will render any obligation of Telecom Australia to pay any sum to the Claimant null and void. Any payment already made by Telecom Australia to the Claimants pursuant to the Arbitrator's award under these rules shall be wholly and immediately refundable by the Claimant to Telecom Australia as liquidated damages in the event of a breach of the obligation of confidence owed by the Claimant to Telecom Australia pursuant to the rules embodied in the Procedure.

- (r) Telecom commits in advance to implementing any recommendation made by the arbitrator pursuant to clause 9(k)(aa)(i)(C).
- (s) Subject to clause 9(q) and unless directed otherwise in the Arbitrator's award or the parties otherwise agree, within three weeks of dispatch to the parties of the Arbitrator's award, payment shall be made of any monies directed by the award to be paid. Such payment shall be made by the party liable direct to the party entitled, and not through the Administrator. If the Arbitrator determines in respect of a Claimant's claim an amount less than that paid under an earlier settlement, Telecom agrees not to recover the difference.
- (t) If either party has sent original or copy documents in support of its case to the Administrator that party may within six weeks of publication of the award request the return of those documents. Subject to that, case papers will be retained by the Administrator and may in due course be disposed of in accordance with the Administrator's policies from time to time.
- (u) The Arbitrator and Administrator shall conduct and progress the arbitration as quickly as justice to all the parties reasonably permits.

#### Costs

- 9. The Arbitrator's fees and expenses shall be paid by the Administrator and are part of the administrative costs of the Procedure.
- 10. The administrative costs of the Procedure are subject to a separate agreement between the Administrator and Telecom Australia.
- 11. Each party bears its own costs of preparing and submitting its case.

**Liability of Administrator and Arbitrator**

- 12. Neither the Administrator nor the Arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these Rules save that the Arbitrator (but not the Administrator) shall be liable for any conscious or deliberate wrongdoing on the Arbitrator's own part.

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319

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**Schedule A**

("the Disputes")

- (a) In respect of each of the Claimants other than Graham Schorer (+ other related claimants):
- (i) the liability of Telecom Australia to the Claimant in respect of alleged faults in the provision to the Claimant of telecommunication services;
  - (ii) the adequacy of the amounts paid by Telecom to the Claimant under earlier settlements in relation to alleged faults in the provision to the Claimant of telecommunication services;
  - (iii) the liability of Telecom Australia to the Claimant in respect of alleged faults in the provision to the Claimant of telecommunication services since the date of the settlement payment for the respective Claimant's earlier claims, up to the date of the Arbitrator's decision;
  - (iv) If Telecom Australia is found liable in accordance with (i) or (iii) above, the quantum of compensation payable by Telecom Australia to the Claimant for the Claimant's proven loss.
- (b) In respect of Graham Schorer (+ other related claimants):
- (i) the liability of Telecom Australia to Graham Schorer (+ other related claimants) in respect of alleged faults in the provision to Graham Schorer (+ other related claimants) of telecommunication services;
  - (ii) If Telecom Australia is found liable in accordance with (i) above, the quantum of compensation payable by Telecom Australia to Graham Schorer (+ other related claimants) for Graham Schorer's (+ other related claimants) proven loss.

Schedule 91  
("the Claimants")

- (a) Graham Schorer [+ other claimants - companies etc.]
- (b) Ann Garza [+ other claimants - companies etc.]
- (c) Maureen Gillan [+ other claimants - companies etc.]
- (d) Alan Smith [+ other claimants - companies etc.]

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319

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**B. REASONS**

**1. Appointment**

1.1 The background to my appointment as arbitrator in this matter is as follows:

- (a) on 18 November 1993, Mr J R Holmes, Corporate Secretary of Telecom, executed a document described as the "Fast-Track Settlement Proposal" on behalf of Telecom;
- (b) on 23 November 1993, the Fast-Track Settlement Proposal was signed by Graham Schorer on behalf of four persons describing themselves as "COT Cases";
- (c) COT is an acronym for "Casualties of Telecom";
- (d) the claimant was one of the four COT Case members to whom the Fast-Track Settlement Proposal applied;
- (e) paragraph 2(b) of the Fast-Track Settlement Proposal provided for the appointment of an assessor, nominated by the Telecommunications Industry Ombudsman, to conduct a review of the entitlement of each of the four COT Case members to compensation from Telecom;
- (f) on 17 January 1994 I was appointed assessor by the Telecommunications Industry Ombudsman;
- (g) I recommended to the parties that my functions could most effectively be discharged if the assessment process took the form of an arbitration;
- (h) at my request, an arbitration agreement was prepared by Mr (now Judge) Frank Shelton of Messrs Minter Ellison and settled by Messrs Minter Ellison in consultation with me, Telecom and the four COT Case members concerned;
- (i) Telecom and the claimant executed the arbitration agreement, titled the "Fast-Track' Arbitration Procedure" on 21 April 1994.

1.2 Neither party has challenged the validity of my appointment.

**2. Procedure**

2.1 For the record, I make the following observations about the conduct of the arbitration:

- (a) clause 7 of the arbitration agreement provided for the submission of a claim by the claimant within 4 weeks, the submission of a defence by Telecom within 4 weeks of receipt of the claim and the submission of a reply by the claimant within 4 weeks of receipt of the defence;



7 November 1997

**Telecommunications  
Industry  
Ombudsman**

John Pincock  
Ombudsman

Ms Pauline Moore  
Secretary  
Senate Environment, Recreation, Communications  
and the Arts  
Legislation Committee  
Parliament House  
CANBERRA 2600

Facsimile 02 6277 5818

Dear Ms Moore

Matters Arising from the Telstra Annual Report - Questions on Notice

↘ I refer to your letter of 31 October 1997, seeking further advice, on behalf of the Committee, arising out of my answers to Questions on Notice.

So far as my response to Question 9 from Senator Boswell is concerned, it is difficult to be precise about the time which would be involved in obtaining the information. However, having regard to the lengthy history of the Arbitration procedures and the quite voluminous files which have accumulated, I estimate that the task could take between 50-100 hours of my personal time.

↘ I also note that the Committee wishes me to identify any documents, provided in response to questions from the Committee, that I request remain confidential and to provide reasons for my request.

To date, the only document which I have supplied to the Committee has been a copy of Telstra's Preferred Rules of Arbitration, (see my answer to Q.10 of Senator Boswell's questions) in my letter of 24 October 1997. I set out my reasons for seeking confidentiality in relation both to information and documents supplied in that letter.

Yours sincerely

JOHN PINCOCK  
OMBUDESMAN

*... providing independent, just, informal, speedy resolution of complaints.*

Telecommunications Industry Ombudsman Ltd ACN 057 634 787

02/01/92

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E-mail: tio@tio.com.au  
National Headquarters  
315 Exhibition Street Melbourne Victoria 3000

Box 18098  
Collins Street East  
Melbourne  
Victoria 3000

Telephone (03) 6277 8777  
Facsimile (03) 6277 8797  
Tel. Freecall 1800 062 058  
Fax Freecall 1800 630 614



Question 9 from Senator Boswell to Mr Pinnock:

Have you received complaints from the foundation CoT members about the Rules of the Fast Track Arbitration Procedure not being complied with by Telstra and/or the Arbitrator and/or the Technical and Accounting Resource Units. Who made these complaints and if so what were the natures of the individual complaints and the action taken by you in response to these complaints.

Answer from Mr Pinnock (24 October 1997):

Yes, from time to time I received complaints from foundation CoT members, concerning a range of matters, including alleged non-compliance with the rules of the Fast track Arbitration Procedures by Telstra and/or the Arbitrator and/or the Technical and Accounting Resource Unit. Identifying individuals instances of complaints and detailing the response taken will require a huge amount of administrative resources in searching TIO files. Please advise me whether the Committee requires the undertaking of this work and its relevance to the Committee's inquiry.

# GOLDEN

Our Ref: 3563.doc

21 November, 1997

TELEPHONE (03) 9287 7099

Attention: Mr W R Hunt

FAX (03) 9287 7001

Hunt's Solicitors  
Level 3, 358 Lonsdale Street  
Melbourne VIC 3000.  
By facsimile: 9670 6598.

493-495 QUEENSBERRY STREET  
NORTH MELBOURNE VICTORIA 3051  
PO. BOX 313 NORTH MELBOURNE 3051

Dear Mr Hunt,

**Re: Telstra and TIO.**

Enclosed is a copy of the Preferred Rules of Arbitration Telstra provided to the then TIO, Mr Warwick Smith, on or before 12 January 1994, entitled "Telstra Corporation Limited - 'Fast Track' Proposed Rules of Arbitration", plus an interesting letter.

When I have the time, I am going to check the Clauses and wordings of this document against the Clauses and wording contained in:-

1. the arbitration process mentioned in the AUSTEL letter of 18 November 1993 to Garms, Gillan, Smith and Schorer;
2. the "Draft" of the Fast Track Arbitration Procedure (FTAP) allegedly drafted by Sheldon of Minter Ellison forwarded to the C.o.T.s in early February 1994;
3. the Final Draft of the Fast Track Arbitration Procedure.

When I have done so, I will be in touch to discuss my findings and options.

Regards,

  
Graham Schorer

## 322

IMPORTANT: WE ARE NOT COMMON CARRIERS. The Carrier directs your attention to its trading TERMS AND CONDITIONS OF CONTRACT which appear on the REVERSE SIDE OF THIS DOCUMENT. It is in your interests to read them to avoid any later confusion.

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# GOLDEN

Our Ref: 3571.doc

26 November, 1997

TELEPHONE (03) 9287 7099

Attention: Mr John Pinnock  
Telecommunications Industry Ombudsman  
Telecommunications Industry Ombudsman's Office  
321 Exhibition Street  
Melbourne VIC 3000.  
By facsimile: 9277 8797.

FAX (03) 9287 7001

493-495 QUEENSBERRY STREET  
NORTH MELBOURNE VICTORIA 3051  
PO. BOX 313 NORTH MELBOURNE 3051

Dear Mr Pinnock,

**Re: Dr Hughes' transfer of practice to Blake Dawson Waldron creating potential conflict of interest.**

I refer to our discussion on Tuesday, 25 November 1997 regarding the outcome of your investigation into and inquiries made of Blake Dawson Waldron regarding their existing relationship with Telstra.

I agree with your opinion that Blake Dawson Waldron's decision not to respond to your inquiries can only be taken as a silent acknowledgment that there is a real conflict of interest in one of its members being the Arbitrator in arbitrations involving its client, Telstra.

In order to protect my self interest, I can no longer support Dr Hughes being the Arbitrator in my arbitration against Telstra.

I want to make it abundantly clear my refusal to continue to support Dr Hughes as being the Arbitrator in no way is to be taken as a reflection on Dr Hughes' personal integrity.

As my arbitration has been declared, in effect, a "mistrial", and the offer of professional mediation is on the Agenda, I agree to meet with you and Telstra on Tuesday, 2 December 1997 to discuss this and the fall back positions to be adopted if it, for any reason, fails to produce resolution.

Please telephone me if you have any queries in the meantime.

Yours sincerely,

Graham Schorer

# 323

A Division of G.M. (MILITARY) HOLDINGS (PTY) LTD, A.C.N. 005 905 016  
IMPORTANT: WE ARE NOT COMMON CARRIERS. The Carrier directs your attention to its trading TERMS AND CONDITIONS OF CONTRACT which appear on the REVERSE SIDE OF THIS DOCUMENT. It is in your interests to read them to avoid any later confusion.

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