

- (j) on 21 February 1995, by which time I was satisfied that the submission of all relevant material by both parties was complete, I instructed the Resource Unit to conduct certain inquiries on my behalf;
  - (k) on 30 April 1995, I received a technical report and on 3 May 1995 a financial report from the Resource Unit, each of which furthered my understanding of the issues in dispute;
  - (l) both parties were provided with an opportunity to comment on the contents of the reports I received from the Resource Unit and both availed themselves of that opportunity.
- 2.2 In all, I have read in excess of 6,000 pages of documentary evidence submitted by the parties. ←

### 3. Overview

3.1 I do not intend summarising all the evidence submitted in connection with this claim. Any omission of a reference to any facts or evidence should not be interpreted as a failure on my part to take those facts or that evidence into account. This part sets out an overview of the dispute only.

#### 3.2 Overview of Claim

- (a) The claimant alleges that defective telecommunications services provided by Telecom have damaged his business and caused his health to suffer.
- (b) The claimant is a chef by occupation and is now 51 years of age. In December 1987 he purchased as a going concern the Cape Bridgewater Holiday Camp, commencing occupancy in February 1988. The camp included a homestead, an old church and a number of cabins which had a combined capacity to sleep in excess of 100 people.
- (c) Cape Bridgewater is 20 kilometres from Portland. The claimant regarded the area as a significant tourist attraction and says there was no documented evidence of any decline or predicted decline in tourism at the time of the purchase.
- (d) The former owner of the business now lives in India and has not provided evidence on behalf of either party in these proceedings. I know relatively little about the state of the business or the state of the telephone system used by the business as at the time of the purchase or beforehand. In any event, the claimant says he contemplated improving the existing facilities and hence the mix of clientele, thereby increasing revenue and profits.
- (e) The claimant asserts that the ongoing viability of the business was to a significant extent dependent upon his ability to take telephone bookings. He states that he first became aware of a problem with his



Sections 4 and 5 are an impact assessment and summary. We have ascertained that there were times when the service provided by Telecom to Mr Smith, quite aside from problems with CPE, fell below a reasonable level. These times ranged in duration from years in some cases, to 18 months in one case, to an estimated 70 days in one case, to shorter times in other cases. These durations of poor service were, in our judgement, sufficiently severe to render Mr Smith's service from Telecom unreliable and deficient.

#### Cape Bridgewater Documentation

↙ The "Fast Track" arbitration proceedings are "on documents and written submissions". More than 4,000 pages of documentation have been presented by both parties and examined by us. We have also visited the site. Not all of the documentation has real bearing on the question of whether or not there were faults with the service provided by Telecom. We reviewed but did not use Mr Smith's diaries (Telecom's examination of Mr Smith's diaries arrived in the week of 17 April 1995). Like Telecom, we separate the problems caused by Mr Smith's CPE from those in Telecom's service and concentrate only on the latter. A comprehensive log of Mr Smith's complaints does not appear to exist.

The Technical Report focuses only on the real faults which can now be determined with a sufficient degree of definiteness. We are not saying anything about other faults which may or may not have occurred but are not adequately documented. And unless pertinent documents have been withheld, it is our view that it will not be feasible for anyone to determine with certainty what other faults there might or might not have been.

A key document is Telecom's Statutory Declaration of 12 December 1994. Without taking a position in regard to other parts of the document, we question three points raised in Telecom's Service History Statutory Declaration of 12 December 1994 [Ref B004].

#### "Bogus" Complaints

First, Telecom states that Mr Smith made "bogus" complaints [B004 p74, p78, Appendix 4, p10]. What they mean is his calls in June 1993 from Linton to test Telecom's fault recording. As others have indicated (see Coopers and Lybrand Review of Telecom Australia's Difficult Network Fault Policies and Procedures, November 1993, p6) "Telecom did not have established, national, documented complaint handling procedures [...] up to November 1992," and "documented complaint handling procedures were not fully implemented between November 1992 and October 1993." Furthermore, [p7] "fault handling procedures were deficient." Smith's June 1993 calls from Linton were, as he has stated, to test Telecom's fault reporting procedures, because people who had been unable to reach him told him that Telecom did not appear to be doing anything when they reported problems. We find Smith's tests in this instance to be unlikely to effect any useful results, but the term "bogus" does not apply.

There were occasions when Mr Smith mistook problems with his own CPE for Telecom faults, but this is a normal occurrence in the operation of any multi-vendor system, which the end-to-end telephone system increasingly is. Telecom takes pains to separate these CPE problems from the legitimate faults, which they acknowledge.

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One issue in the Cape Bridgewater case remains open, and we shall attempt to resolve it in the next few weeks, namely Mr Smith's complaints about billing problems.

Otherwise, the Technical Report on Cape Bridgewater is complete.

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PRIVATE &  
CONFIDENTIAL

MEMORANDUM

DRAFT

TO : Warwick Smith

FROM : Susan Hodgkinson

DATE : 30 March 1995

SUBJECT : Telecom - Points of Interest

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You have asked for an overview of Telecom's approach to the COT claims. I have used Alan Smith's claim as an example and if you require a similar review done of the Garms and Gillan/Valkobi claim, I can complete one.

**ALAN SMITH, CAPE BRIDGEWATER HOLIDAY CAMP ("CBHC")**

Documents Provided

Alan Smith's claim has been presented in a fairly haphazard manner. He has included volumes of documents and the direct relevance of all this information is difficult to ascertain. Nonetheless, Smith has gone to a lot of trouble to assemble his FOI information which, as you may be aware, was not provided in full by Telecom until 23 December 1994. To support his claim, Smith has engaged experts, including George Close and Associates (technical) and DM Ryan Accountants (financial). Smith has provided a detailed, well set out reply to Telecom's defence.

Telecom has provided a very detailed submission with the main documents including:

- Principal submission
- Legal submission (one volume of appendices)
- Technical Report (five volumes of appendices)
- Deloitte Touche Thomatsu Report (Financial Report)
- Overview document - providing background information of Telecom Australia
- Telecom Australia's Networking and Management Philosophy

Progress of Fast Track Arbitration Process

- On 21 April 1994 Smith signed his Request for Arbitration.
- On 25 July 1994, Smith lodged his claim documents.
- Delays from July 1995 to December 1994 include:
  - detailed request for further particulars by Telecom
  - an oral hearing to settle request procedures

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Smith continued to "drip feed" lodgement of his claim documents based on the fact that Telecom "drip fed" his FOI request (this culminated in a complaint to the Commonwealth Ombudsman and subsequent FOI review by Telecom).

- Smiths claim was formally certified as complete in November 1994.
- On 25 November 1994, Telecom requested a two week extension to deliver their defence and this was granted.
- On 13 December 1994, Telecom delivered its defence to the Arbitrator.
- Smith has stated verbally to myself, that on 23 December 1994, he received 90 kilograms of FOI material. As his claim was "finalised" he did not have the ability to examine these documents and add to his claim.
- On 25 January 1995 Smith lodged his reply to the Telecom defence.

## EXTRACTS OF TELECOM'S DEFENCE

### Principle Submission

#### (A) Opening submission

- The total amount claimed by Smith of \$3.24 million is 11.5 times the 1988 purchase price of \$280,000 and represents 30 years of profit based upon a generous 30% return on investment.
- Claim documents submitted are in no apparent sequence or order.
- No where in the claim documents is there a statement, allegation or claim setting out the basis of any alleged legal responsibility which Telecom may have to the claimant in respect of provision of telecommunications service.
- Most of the allegations are unsubstantiated and many are not verified by statutory declaration.
- Smith has relied upon records kept in his diaries as his primary record of complaints.
- The magnitude of faults complaints reported is unsubstantiated and appears overstated.
- Of the few faults which occurred, most were trivial or short lived due to prompt rectification by Telecom.
- Those faults that did occur, many were due to misuse of telephone and associated equipment by the claimant or customers of CBHC.
- Of the 58 customers (66 by August 1991) connected to the Cape Bridgewater telephone exchange, only Smith has had a significant level of fault complaints. Is it virtually impossible that faults at this exchange can effect the claimant only.