

**CAV**  
**CHRONOLOGY**  
**LGE**

**Exhibits 589 to 647**

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: Dr. Gordon Hughes  
Company: The Arbitrator for  
Telecom / COT Cases  
"FAST-TRACK" arbitration procedure  
incorporating the FAST-TRACK  
SETTLEMENT PROPOSAL.

Date: 25 May 1994  
Fax No: 03 614.8730

From: Graham Schorer  
Total Pages (incl. Header) 2

MAILED: YES ( X ) NO ( )

Dear Dr. Hughes,

Due to circumstances and events experienced beyond the direct and/or indirect control of Graham Schorer plus other related claimants, companies etc., I am formally applying for an extension of time on behalf of Graham Schorer plus other related claimants, companies etc., pursuant to Clause 7.1 in the "Fast-Track" arbitration procedure to enable Graham Schorer plus other related claimants, companies etc. to finalise their interim claim for losses due to telephone service difficulties, problems and faults experienced.

In this letter henceforth, please accept that all that is stated relates to and includes both Graham Schorer and the other related claimants and companies connected with him.

It is respectfully requested that an extension of time to submit the interim Statement of Claim be granted to at least 15 June next.

The reason for the request are as follows:-

1. A substantial burglary in Golden's premises on the 4 March, 1994 and the theft of vital equipment and records.
2. The inability of suppliers to replace the equipment until 17 April, 1994.
3. The consequent difficulties in conducting any business accentuated by external auditors commencing part of their annual audit from 9 May last.
4. The requirement commencing from 2 May, 1994 to devote the entire staff as fully as possible to maintain a substantial part of its business with Westpac Bank and add A.N.Z.'s business. Competitive quotations had been called for by the A.N.Z. Bank.

Should Golden's quote be considered to be of great merit, placing Golden on the A.N.Z short list of selection.

Golden will be required to become immediately immersed in an extensive exercise requiring long hours to finalise a massive transport logistic exercise, which will involve Golden's current customer Westpac and the A.N.Z. to determine what additional savings can be enjoyed by A.N.Z. (and Westpac) as a result of Golden being able to provide to both A.N.Z. and Westpac shared services where appropriate without loss of service standards.

Since the initial indicators of savings to be identified in engaging in such a potential time and resource consuming logistic exercise to confirm the belief of a minimum of 15% up to 25% savings to both parties, where a future need may arise to substantiate savings to be gained of this magnitude on a

Voice: (03) 287 7099 Fax: (03) 287 7001

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potential contract exceeding \$1,000,000.00 just may be the deciding factor on who will be finally selected.

Transport Agency

Should such a major opportunity present itself to Golden in the near future where the time and resources of Golden have to be dedicated to meet this commitment, interferes or prevents Graham Schorer and other related claimants, companies etc., from being able to complete their interim claims for losses due to telephone service difficulties, problems and faults,

Graham Schorer will immediately notify the Arbitrator in writing to seek a further extension.

Being engaged in this extensive exercise to date, required long hours to finalise such a massive transport quotation to the A.N.Z. Bank have seriously compromised my ability to produce the interim Statement of Claim up to this point.

5. The inability to commence using outside resources to assist in preparation of the interim Statement of Claim etc. until such time as they are in receipt of new confidentiality clauses.

The equipment stolen on 4 March comprised:-

- (a) One of two word processors with its laser printer and back up disks containing Golden's sales quotas, customer agreements, facsimiles and all of the correspondence facsimiles and most of the documentation relating to telephone service difficulties, problems and faults in relating to our present claim.

*(Another processor with its back up disks which contained no information relating to the telephone service difficulties was not interfered with.)*

- (b) The facsimile machine, micro film and reading equipment, computer modems.

To retain insurance cover, and make good the damage caused by the burglary, the entrance door had to be replaced, and steel surrounds provided to repair structural damage to the buildings. As well as other repairs a new automatic alarm system also had to be procured and installed on 20 May, 1994.

The burglary, the loss of equipment, the time taken to replace it and the time taken to re-create files, reports, correspondence etc. *(with significant amounts of information nevertheless being permanently lost)* have had incalculable adverse effect on efficiency and the proper conduct of business generally.

The requirements to, maintain contact with customers, to maintain and gain new additional professional principle carriers.

If any further information or explanation is required to support this application, would you please kindly contact me as soon as possible.

Yours sincerely,



Graham Schorer

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Voice: (03) 287 7099 Fax: (03) 287 7001

493-495 Queensberry Street, NORTH MELBOURNE VIC. 3051

03-05-1999 13:04

FROM CAPE BRIDGE HAY CAMP

TO

0392877001

P.01



11 July 1994

COMMERCIAL AND CONSUMER  
CUSTOMER AFFAIRS

37/42 EXHIBITION STREET  
MELBOURNE  
VICTORIA 3000  
Australia

Telephone (03) 632 7711  
Facsimile (03) 632 3211

**F A X E D**

...1.7...1.94

Mr Warwick Smith  
Telecommunications Industry Ombudsman

Facsimile No. 277 8797

Dear Mr Smith

The purpose of this letter is to confirm our discussion of 7 July 1994 at which Telecom outlined a proposal to provide confidential information to the arbitrator subject to the confidentiality provisions of the Rules of Arbitration governing the claims of the four COT claimants.

As discussed, it is proposed that Telecom will provide to the arbitrator a series of confidential reports which the arbitrator may then make available to the four COT claimants subject to the confidentiality provisions of the Rules of Arbitration. It is understood that, if the arbitrator makes this information available to the COT claimants, they will be required to keep the information confidential and return all copies of such documents and material to Telecom at the end of the arbitration.

Telecom will also make available to the arbitrator a summarised list of information which is available, some of which may be relevant to the arbitration. This information will be available for the resource unit to peruse. If the resource unit forms the view that this information should be provided to the arbitrator, then Telecom would accede to this request. It is recognised that this information may then be made available to the four COT claimants, subject to the confidentiality provisions of the Rules of Arbitration.

Yours faithfully

  
Steve Black  
GROUP GENERAL MANAGER  
CUSTOMER AFFAIRS

M34276

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9 August 2001

Tony Shaw  
Chairman of the Board  
Australian Communications Authority  
Level 13, 200 Queen Street  
Melbourne Vic 3000

Dear Mr Shaw

I am in receipt of ACA's correspondence dated 30<sup>th</sup> July 2001 in response to my correspondence dated 4<sup>th</sup> and 11<sup>th</sup> July 2001.

I consider the ACA has failed to correctly respond to my written complaints, in particular, the reported conduct during Austel/TIO/Telstra/Fast Track Settlement Proposal/Fast Track Arbitration Procedure.

The ACA's decision is ignoring the following facts:-

- Austel/ACA is the Federal Government appointed guardian of all Australian Telecommunication consumers.
- Austel purposely drafted the Fast Track Settlement Proposal Agreement.
- Austel under its legislative charter, jurisdiction and obligation to the Telecommunications Consumer, delegated administration of the Fast Track Settlement proposal to the then to be formed TIO.
- When the TIO and Telstra jointly decided to abandon the Fast Track Settlement Proposal in favour of the Telstra preferred Fast Track Arbitration Procedure, Austel under its legislative charter was involved in that process.
- Austel now the ACA, as the Telecommunications Regulator, under its legislative charter was an involved party during the processing of the Fast Track Settlement Proposal, Fast Track Arbitration Procedure and Special Arbitration.
- The Minister for Communications, Office of the Minister for Communications, Austel, ACA, TIO, Telstra and the Arbitrators documentation identifies Austel/ACA Regulatory and guardian role during the processing of the Fast Track Settlement Proposal, Fast Track Arbitration Procedure and Special Arbitration.
- The Federal Senate Hansard has recorded the involvement of the Regulator in the Fast Track Settlement Proposal, Fast Track Arbitration Procedure and Special Arbitration as reported to the Senate by Austel's Chairman, Individual Board Members and Senior Officers plus their answers in response to questions asked of the Regulator by the Senate.

Due to ACA's refusal to fulfil its Regulatory Obligation to me, as a telecommunications consumer, with a legitimate complaint about the conduct of the TIO, the TIO Resource Unit, the appointed Arbitrator and Telstra, I am now seeking the intervention of others to have the ACA compelled to comply with its legislative charter.

As part of my decision, enclosed is an authorisation for Graham Schorer as spokesperson for CoT Cases Australia to act on my behalf.

Yours sincerely

  
Alan Smith

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## Holiday camp still plagued by phone and fax problems

By BILL MELDRUM

THE telecommunications problems which plagued former Cape Bridgewater Holiday Camp operator Alan Smith have continued to beset current owner Darren Lewis.

Mr Smith is a founding member of the Casualties of Telstra (originally known as Casualties of Telecom), formed in 1993.

Members of the group have been involved in a long-running feud with Telstra after having incurred income loss because of various phone faults.

Following pressure being brought to bear by the media and the Opposition, Telstra and Federal Communications Minister Richard Alston announced an Australian Communications Authority inquiry into new material supplied by one of the COT members, Queensland businesswoman Anne Garms.

Mr Lewis said this week he had experienced several problems with the phone and fax service since taking over the Cape Bridgewater Holiday Camp late last year.

"We've had instances where we will press the hash 10 star and get nothing, only to do the same a few days later and receive details of a phone call made to us three or four days earlier," he said.

"People will also ring through to us, only to have the phone ring out, yet we are in and at our end the phone is not ringing.

"Often you don't know there is a problem until someone tells you to get your phone fixed."

He said Telstra staff had been friendly and had been trying to resolve the problem.

"Telstra admits there is a fault and they are trying hard to solve it," he said.

"We will be happy once the problem is fixed.

"We are in the accommodation business and people trying to find accommodation tend not to wait when they are seeking somewhere to stay, they will move on to the next place."

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OFFICE OF HON MICHAEL LEE MP

Rep by Min  Information   
 Rep by SA  Action   
 Rep by Dept  Advice

Copy held for min to 500

Final writ: .....

54/0269-05  
22

Parliament House  
Canberra ACT 2600

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Circumstances and past actions of senior staff within Telecom have made it necessary to bring to your attention some very concerning activity that my colleagues and I feel can no longer be ignored or dismissed.

We hesitate to bring the following instances to your attention but decided it was necessary as this situation is far too serious to be allowed to continue, and attempts we have made within the organisation to bring our concerns to light have fallen unheard. In bringing this matter to your attention we do not wish to paint the picture that all staff are involved in certain activities, we strenuously would like to make the point here, there are staff within the whole framework of the staff of Mr Steven Black who have and are continuing to work towards the recommendations of the Cooper and Librand and Austel report toward addressing customer issues fairly and ethically.

Concerns and Issues.

Mr Steven Black Group General Manager of Customer Affairs who has the charter to work to address and compensate Telecom's "COT" customers as well as the management of other customer issues related to Telecom is involved in and initiates conduct and work practices that are totally unethical and he has managed to achieve certain results in relation to major cases due to the assistance of key senior executives past colleagues and friends with whom key strategic activities have been assigned. These individuals have not the skills or expertise required for the job and has jeopardised Telecom's position in attaining positive beneficial results for customers as the following instances will highlight.

1. Implementation of a complaint handling procedure throughout Telecom though outwardly giving the appearance of acceptance and uniformity of work practices, ~~is nothing more than outward deception to external regulating parties.~~ Mr David Fickling in association with Mr Steven Monro have deceived AUSTEL as to the implementation of core initiatives.

- Existing within Telecom nationally is different Regional offices operating in various ways to address customer complaints. This situation is attributable to a lack of:
- comprehensive documentation to staff at time of training
  - comprehensive training by competent individuals to all manner of staff
  - a complete database unable to capture and store required criteria for most purposes specifically reporting
  - continued failed deadlines to major initiatives resulting in blatant short cuts being needed.

To meet certain commitments to AUSTEL made by Mr Black and Mr Fickling a incomplete complaints handling process has been forced down staff throgh, resulting in much resentment and confusion whereby key initiatives are not in place.

2. The management of COT customers by Mr Rod Pollock is nothing more than a unprofessional, adversarial approach towards customers. Mr Pollocks approach to these customers has been one of manipulation and deception as in his dealings with the top four COT customers and subsequent eleven customers Mr Pollock has lied and deceived these customers. Degrading evidence against Telecom has been conveniently removed or altered to suit the case. Junior staff or temporary agency staff have been requested not to place pertinent information on customer files so as no to weaken Telecom's case further. COT customers that may prove to be a threat to Telecom have been expertly manipulated and paid settlements. *|| evidence?*

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↑

Warrick Smith has been critical of Pollock on some issues.

Union's copy  
with procedure  
moving to Field  
office

Fickling reported that they initially provided the med documentation in training - advice down sized

|| evidence?

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19/10

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3. Unfortunately the Legal advise and expertise that Telecom has sought from its internal legal group has also been sadly lacking in ethical direction. In the management of major customer disputes the legal area has sought to hide and skirt around the truth. ~~External legal attorneys have responded to external statutory authorities with only half of the information required fully aware of not providing all information. Their general position has been to sit behind the legal word and its many interpretations in so doing avoiding full disclosure of information. [redacted] where the legal area has been directed to produce full disclosure of information to external authorities, in so doing slowing down or even denying the pursuit of natural justice.~~

Not sure if contact of it could be by it tailman about A's COT in a HQ of 12 months

Senior allegation

4. There are three main areas which Steve Black and his senior executives have sought to influence and manipulate:

- 1. Remove or change clear information on the position of liability.
- 2. Diminish the level of compensation payable to COT customers.
- 3. Dismissive of breaches in relation to matters regarding customer Privacy.

In relation to the Robert Bray case Steve Black has sought to cover up the true facts of disclosure of customer information. Particularly he has sought to cover up "broadcasting" of the customers private information.

senior In has been do as stated this issue

As you can see from what I have mentioned to you something needs to done. As you can appreciate we are not in a position to go any deeper that what has already been outlined. As to where next that lies in your hands. We have done what is unfortunately our only form of address to the situation.

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FAXED



Telecommunications Industry Ombudsman ACN 057 634 787  
Ground Floor, 321 Exhibition Street, Melbourne, Victoria, 3000  
Telephone: 61 3 277 8777 Facsimile: 61 3 277 8797

Telecommunications  
Industry  
Ombudsman

## Facsimile Cover Sheet

TO: PLB  
Company: Makers  
Fax: 9677 4621

FROM: PAD  
Company: TIO  
Fax: 9277 8797  
Date: 22.6.95

Pages: 1 (including cover sheet)

Comments: Sorry to be so demanding on your first day  
Yeler,  
back . . . .

could you please have a look at Hughes' letter  
to Pinnock dated 21 June '95 re Alan Smith.  
John wants to discuss it on Monday, and  
what the approach should be re parties  
seeking to revisit issues post Arb'n. His position  
is not to open the can of worms, but would  
like to discuss strategy with you.  
Regards, Kai 594

**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**

**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

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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."*

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

Box 18098  
Collins Street East  
Melbourne  
Victoria 3000

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COMMONWEALTH & DEFENCE FORCE  
**OMBUDSMAN**

Prudential Building, over London Circuit & University Avenue, Canberra City  
GPO Box 442, Canberra, A.C.T. 2601, Australia  
Tel: 06 275 0111; fax: 06 245 7829; int. fax: 01 6 245 7829

10 November 1994

C/94/225

Mr Frank Blount  
Chief Executive Officer  
Telstra Corporation Ltd  
38th floor, 242 Exhibition Street  
MELBOURNE VIC 3000

Attention: Ms Joy Geary

Dear Mr Blount

At the request of Ms Geary, I am notifying you of the details of the complaints made to the Ombudsman by Mr Alan Smith.

20.1.94 Telecom unreasonably has decided to apply charges to his FOI request and has stated that the charges will be considerable.

2.3.94 Telecom has delayed providing access to documents.

2.3.94 Deletions from documents provided and exemptions were not explained.

24.3.94 Telecom claimed that documents given to Telecom by Mr Smith in 1992 had been destroyed or lost.

Telecom unreasonably refused to give any further documents to Mr Smith.

Telecom has lost or destroyed a number of files relating to his contacts with Telecom prior to 1991.

14.4.94 Telecom unreasonably refused to provide documents allegedly referring to discussions Mr Smith had with three Telecom officers concerning a discussion Mr Smith had with Mr Malcolm Fraser.

Telecom unreasonably deleted information from documents released.

Telecom unreasonably denied Mr Smith access to 460 documents (letters of 14.4.94 and 15.4.94 from Mr Smith to Mr Black refer)

5.5.94 Telecom unreasonably delaying providing access to many documents.

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Telecom denied access to ELMF tapes for 21, 22, and 23 October 1992.

Telecom imposed unreasonable charges for access to documents sought under the FOI Act.

25.5.94 Telecom failed to provide fault reports for the period after 22/6/93, particularly from 9/8/93 to November 1993.

14.9.94 Telecom refused access to documents relating to voice monitoring for fault finding during 1993.

18.9.94 Telecom acting unreasonably in refusing to provide access to 'Bell Canada Raw Data'.

2.10.94 Telecom delayed providing access to documents under the FOI Act while Telecom's solicitors examined the documents.

23.10.94 Telecom unreasonably refused access to 'ELMF Smart 10 tapes' for the period May to July 1993. (Mr Smith's letter to Mr Benjamin on 23.10.94 refers).


27.10.94 Telecom unreasonably refused access to CCS7 Call Statistics documents dated 4/11/93, 5/11/93, 6/11/93 and 9/11/93. (Mr Smith's letter to Mr Benjamin dated 27.10.94 refers).

26.10.94 Telecom incorrectly informed Mr Smith that Telecom did not have in their possession 'any of the raw data and working papers to do with the Bell Canada testing and report.'

7.11.94 Telecom unreasonably refused to provide the 'Portland/Cape Bridgewater Log Book associated with the RCM at Cape Bridgewater' for the period 2 June 1993 to 6 March 1994.

I think the above is comprehensive; but I have sent a copy of this letter to Mr Smith and invited him to apprise me of any complaints he has made which I may have omitted inadvertently.

Yours sincerely

  
John Wynack  
Director of Investigations

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Pinef, Don

From: Pittard, Rosanne  
To: Hambleton, Dennis V  
Cc: Pinef, Don; Campbell, Ian; Marshall, Ross  
Subject: AUSTEL DIRECTIONS REGARDING COT CASES  
Date: Thursday, 19 August 1993 5:02PM

I believe the directions from Austel regarding COT cases have a number of shortcomings and misunderstandings and believe these need to be addressed.

1. The requests for files and other documents are onerous. How far back do we go? Some of these cases go from before Austel had any jurisdiction (even existed). How much do they want? A warehouseful is not out of the question. Who will copy these? I don't have resources or money for agency people to spend time photocopying. Will Austel pay? (The last question was a joke - I know the answer.)
2. Some of the documents on the files are Telecom Secret, some are Legal professional privilege. Some have been used in a court case (settled out of court); some are still with the lawyers. Some papers relate to settlements with non-disclosure clauses. Where do we stand with these? I believe we should quarantine any papers associated with legal action, refuse to supply papers associated with settlements and refuse to supply any papers marked Legal professional privilege - but we should seek legal advice on same.
3. The results of the tests are a concern to me. What confidentiality will be guaranteed? Austel has had close contact with these customers - what will ensure they don't pass test results on? What are the legal implications if they do?
4. What is Austel's capability to interpret the results and reports? What standards will they compare them with? (There are none) What will their reaction be to a failed call? Within acceptable limits or not?
5. What conclusions will they dare to draw? If they conclude that Telecom was in some way negligent or at fault, there are serious implications for our liability; we could be vulnerable to some form of action by the COTS - would the Austel report be admissible as evidence?
6. What promises have been made to the COTS as a result of the testing? None I hope.
7. The testing at customers premises causes great difficulties for us. Test equipment of this sort is very expensive; NNI informs we do not have enough to do this testing for all these customers at the one time. In addition it would tie up a valuable resource which is required in other cases where we consider customers have a legitimate condition which requires monitoring.
8. In addition these machines do not work well at customers premises because of power supply conditions; these power supply conditions can actually cause incorrect readouts.
9. There have been instances with some of the customers at issue, where the customer has interfered with the machine - eg., switching the machine off, tearing off the printout and sticking it back together with parts that don't appear to match.

I know I have raised many questions, but they are all important. The most critical is what happens with the results and how can they be used in resolving these cases.

I know your interim reply to John Macmahon addresses some of these, but I am concerned that we will be locked into something with no way forward.

Rosanne Pittard

CONFIDENTIAL

FREEHILL  
HOLLINGDALE  
& PAGE

CONFIDENTIAL

Melbourne Office

To:	Ian Row Corporate Solicitor Telecom Australia	From:	Denise McBurnie
At:		Direct line:	(03) 288 1383
		Switch:	(03) 288 1234
To fax:	634 8832	From fax:	(03) 288 1567
		Date:	10 September 1993
Phone:	634 3300	Matter No:	1660521 Pin No: 274
Page 1 of		Approval:	<i>Denise McBurnie</i>

The information in this facsimile is privileged and confidential, intended only for the use of the individual or entity named above. If you are not the intended recipient, any dissemination, copying or use of the information is strictly prohibited. If you have received this communication in error, please immediately telephone us (we will accept reverse charges) on:

(03) 288 1341 Fax (03) 288 1567 (International phone codes + (61 3)) or Telex AA33004  
and return the original facsimile to  
Level 43, 101 Collins Street, Melbourne Vic 3000 Australia

Dear Ian

N00749

"COT" Case Strategy

- \* As requested I now attach the issues paper which we have prepared in relation to Telecom's management of "COT" cases and customer complaints of that kind.
- \* The paper has been prepared by us, together with input from Duesburys, drawing on our experience with a number of "COT" cases. If there are any aspects of the issues paper which you would like us to expand upon or if there are any other issues you would like us to consider please don't hesitate to contact us. Both Freehills and Duesburys would be happy to assist you should any further presentations to Telecom management be required on any of the matters raised in the issues paper or with regard to any other matters concerning management of "COT" cases and customer complaints.

Yours sincerely  
FREEHILLS HOLLINGDALE & PAGE  
per:

*Denise McBurnie*

Denise McBurnie

Enc

copy to: Deanne Weir

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LEGAL PROFESSIONAL PRIVILEGE

CONFIDENTIAL/COMMERCIAL IN CONFIDENCE

The contents of this document are privileged and confidential and no part thereof shall be disseminated, copied or used without the express permission of the Telecom Corporate Solicitor.

A. PROFILE OF A "COT" CASE

Set out below are some of the common characteristics attributed to "COT" cases. The particulars are drawn from FHP's experience with the following "COT" cases:

- Golden Messengers/Graham Schorer
- Tivoli Theatre Restaurant/Ann Garms
- Japanese Spare Parts/Ann Gillan
- Cape Bridgewater Holiday Camp/Alan Smith

It should be recognised, however, that this list is neither definitive nor exhaustive of those characteristics.

Common Characteristics

1. Single operators of small businesses generally operating in service industries. If partnerships are involved it is usually a husband/wife partnership.
2. Questionable business stability or viability regardless of alleged telecommunications problems.
3. Common distrust of Telecom's network performance and distrust of Telecom's claims that network performance accords with "acceptable standards".
4. Claims of dissatisfaction by the claimant as to the handling of the case by Telecom.
5. Distrust of Telecom's testing procedures. N00750
6. Numerous faults alleged and claimed to be supported by documentary evidence collected by the claimant, but which do not match Telecom's fault reporting records.
7. A high level of understanding (acquired by experience) with FOI procedures and the procedures involved in accessing Telecom documentary information. However, this level of understanding is not necessarily matched with the ability to accurately or correctly interpret the information obtained.
8. There is usually a reluctance to pursue a claim through court action. Apparent or claimed reasons being:
  - cost
  - difficulty of proof
  - claim has a component relating back to when Telecom's statutory immunities applied
  - Telecom's size and ability to defend action proves to be oppressive.

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**MEMORANDUM OF ADVICE: PRIVILEGED AND CONFIDENTIAL - Advice on Legal Professional Privilege - re CoTs**

- (i) The cases of *NCA v S* and *Esso*, referred to above, make it clear that a claim to privilege must expose sufficient facts to justify the claim. A vague or bald assertion of the privilege is seen as no claim at all.
- (ii) The definition of privilege indicates that only communications between a lawyer and a client for the dominant purpose of providing or receiving legal advice or for litigation (and communications between a lawyer or client and a third party for the dominant purpose of litigation) will be protected by privilege (see *Baker v Campbell* and *Esso's* case referred to above).

It is difficult to see how a document, or documents, merely described as "Network Data" would fall within the definition of a communication between a lawyer and client for the dominant purpose of advice or for litigation, or communication between a lawyer or client and a third party for the dominant purpose of litigation.

There appear to be 39 claims to legal professional privilege, which are merely listed as LPP in *Attachment 1*, being further detailed in *Attachment 2*. Further, there appear to be 74 claims to legal professional privilege listed in *Attachment 2* (it is not clear why there is such a variation between these two amounts of claims). A perusal of the file descriptions in *Attachment 2* indicates not only incomplete and inadequate claims to privilege but also claims which appear to be erroneously made.

For example, it is difficult to see, without further information being supplied, how a "Chart - Call analysis with handwritten annotations", a "Map - Bova Enterprises Call per exchange", a "Table - Bova's directory listings" or a "Fax confirmation report" could be covered by legal professional privilege.

**(3) made defective or erroneous claims to privilege, and/or**

There is also some evidence of (3) i.e. making defective or erroneous claims to privilege.

For example, in the letter from Mr John Armstrong of Telstra to Mr Ross Plowman dated 28 September 1998, Telstra concedes that it has erroneously classified some documents as privileged.

**(4) knowingly made false or spurious claims to privilege?**

There is also some potential prima facie evidence of (4) i.e. knowingly making false or spurious claims to privilege. For example, there is a potential structure set up for the possible abuse of the doctrine of legal professional privilege in the faxed document entitled "COT" Case Strategy, marked "Confidential" dated 10 September 1993 from Ms Denise McBurnie of Freehill Hollingdale and Page, Melbourne Office to Mr Ian Row, Corporate Solicitor, Telecom Australia.

I refer in particular to section 4 on page 6, which states:

"Of critical importance in the constitution and function of the DMA (Dedicated Management Area) is the direction of the first referral of the claim by Business Unit Management. The initial point of referral should always be to the Corporate Solicitors Office. This is in order to bring into operation the potential protection of legal professional privilege for documentation and other reporting procedures. It may also be appropriate for the Corporate Solicitors Office to continue as the point of referral and control in order to maintain legal professional privilege (where possible). Over information and documentation created during the handling of the 'COT' case."

**DRAFT - IN CONFIDENCE**

Consumer will undertake an immediate inspection of all elements of the CAN and certify that the service is constructed in a manner that complies with standard practice. Any defects/abnormalities will be noted and corrected. Pairs will be "clean" between the exchange and the customer's premises with any common pairs cut away. Consumer will formally certify that the inspection has been carried out and record the results of their investigation.

Commercial will test the customer's service and record the test results. This test will be repeated at regular intervals (at least weekly) to ensure stability and consistency. Where appropriate, CPE will be tested. On occasions it may be desirable to install recording equipment at the customer's premises.

---

All technical reports that relate to the customer's service are to be headed "Legal Professional Privilege", addressed to the Corporate Solicitor and forwarded through the dispute manager.

---

The only contact with the customer will be by the dispute manager or the Regional Manger unless the MD Commercial chooses to become personally involved. All contacts with other individuals will be referred back to the dispute manager.

The Regional General Manager will ensure that all other elements of Telecom are advised of the declaration of a Category A dispute. The managers of these other elements will ensure that all parts of their organisation are aware of the existence of a dispute and that staff are advised that they are not to comment on the customer's service. On all occasions only staff with exceptional "intelligence" and who have been fully briefed on the dispute are to be assigned to any dealings with the customer or related activities.

It is important that operational systems (including DCRIS, LEOPARD, Service\*Plus) should be made capable of displaying an appropriate warning mark against the customer's record indicating that a sensitive customer dispute is in progress and identifying the dispute manager. Local instructions should be issued to advise staff to refrain from commenting on service performance issues but to refer these to the dispute manager.

SEP/-

R00524

601

DEC 16 '93 11:54 FREEHILLS MELB. 03 2881567

P.2

FREEHILL  
HOLLINGDALE  
& PAGE

23-6-94

16 December 1993

Mr Alan Smith  
Cape Bridgewater Holiday Camp  
RMB 4408  
CAPE BRIDGEWATER VIC

By facsimile

Dear Mr Smith

Cape Bridgewater Holiday Camp  
Our Ref: RAB:DLM:1660839

I refer to your letter of 6 December 1993 and to our subsequent telephone conversation. In your letter you asked for information concerning recent testing of your 008 number undertaken by Bell Canada International (BCI) at the request of our client, Telecom Australia.

With respect to your first question, our client has informed us that BCI's testing of your 008 service was conducted from the central database. A 008 services works by providing a translation of the 008 number to an ordinary telephone number. When a call is made to a 008 number, that call is switched through to the central database system. At this point, the 008 number called is checked in the database and the appropriate number that it translates to is determined. From this point the call is then switched to the translated number.

With respect to your second question, BCI did not test your 008 number from locations other than the central database system.

With respect to your comment concerning a customer from Mount Gambier, South Australia who has reported to you that he had difficulty contacting you on your 008 service, if you are able to provide our client with more details (such as the caller's telephone number) our client may be able to investigate and comment further on the problem which this customer has reported to you.

Yours faithfully  
FREEHILL HOLLINGDALE & PAGE  
per:

*Denise M. Burnie*

Denise McBurnie  
Solicitor

BARRISTERS & SOLICITORS  
101 COLLINS STREET  
MELBOURNE 3000 AUSTRALIA  
GPO BOX 128A MELBOURNE 3001  
TELEPHONE (03) 288 1234 FACSIMILE (03) 288 1547

602

My Telstra account for my fax line, below, also covers the time span during which I sent these faxes.

Item **STD Calls - Itemised** *continued*

**STD calls** *continued*

	Date	Time	Place	Number	Rate	Min:Sec	\$
	<b>Telephone Service 03 5526 7265</b> <i>continued</i>						
247	21 Feb	06:15 pm	Melbourne	0398761853	Economy	1:17	0.30
248	21 Feb	06:17 pm	Melbourne	0398761254	Economy	0:50	0.20
245	21 Feb	06:39 pm	Colac	0352322448	Economy	1:08	0.30
219	22 Feb	12:12 pm	Melbourne	0392877099	Day	8:40	2.50
221	22 Feb	12:28 pm	Melbourne	0395266614	Day	2:34	0.80
220	22 Feb	12:32 pm	Melbourne	0395266614	Day	0:07	0.10
222	22 Feb	12:33 pm	Melbourne	0395266616	Day	9:30	2.70
258	22 Feb	02:41 pm	Melbourne	0398761254	Afternoon	4:05	1.10
271	22 Feb	03:40 pm	Warrnambool	0355616193	Afternoon	1:36	0.40
273	22 Feb	04:31 pm	North Geelong	0352794444	Afternoon	0:55	0.30
239	22 Feb	08:08 pm	Melbourne	0398761254	Economy	1:08	0.30
194	22 Feb	09:12 pm	Warrnambool	0355614038	Economy	1:14	0.20
207	24 Feb	07:42 pm	Melbourne	0395114336	Economy	17:22	2.50
216	24 Feb	08:30 pm	Grovedale	0352414045	Economy	3:39	0.60
284	24 Feb	08:34 pm	Melbourne	0395538030	Economy	34:05	3.00
265	24 Feb	09:19 pm	Buderim	0754453198	Economy	14:03	2.10
268	24 Feb	09:57 pm	Buderim	0754453198	Economy	1:09	0.30
218	25 Feb	09:41 am	Melbourne	0392877099	Day	18:22	5.20
217	25 Feb	10:00 am	Melbourne	0392877001	Day	2:13	0.70
223	25 Feb	11:41 am	Grassmere	0355654227	Day	3:11	0.70
224	25 Feb	11:58 am	Port Fairy	0365681057	Day	1:36	0.40
198	25 Feb	12:26 pm	Melbourne	0392877099	Day	8:58	2.60
253	25 Feb	01:07 pm	Melbourne	0392877099	Afternoon	1:05	0.40
258	25 Feb	03:51 pm	Melbourne	0398761254	Afternoon	4:50	1.30
259	25 Feb	03:56 pm	Melbourne	0398761853	Afternoon	1:02	0.40
257	25 Feb	03:57 pm	Melbourne	0398761254	Afternoon	1:34	0.50
231	25 Feb	08:48 pm	Melbourne	0392877001	Afternoon	0:52	0.30
209	25 Feb	07:18 pm	Melbourne	0398761853	Economy	1:19	0.30
195	26 Feb	08:39 am	Melbourne	0398761853	Day	0:57	0.40
244	26 Feb	10:48 am	Melbourne	0398761254	Day	0:19	0.20
243	26 Feb	10:55 am	Melbourne	0392877001	Day	0:47	0.20
229	26 Feb	11:05 am	Melbourne	0392877099	Day	10:12	2.90
228	26 Feb	11:20 am	Melbourne	0392877001	Day	1:57	0.60
227	26 Feb	11:24 am	Canberra	0262711000	Day	0:10	0.20
230	26 Feb	11:46 am	Melbourne	0392877099	Day	7:40	2.20
197	26 Feb	01:04 pm	Melbourne	0392877099	Afternoon	7:55	2.30
196	26 Feb	01:37 pm	Melbourne	0392877001	Afternoon	0:46	0.20
277	26 Feb	03:36 pm	Melbourne	0392877099	Afternoon	0:35	0.20
276	26 Feb	04:01 pm	Melbourne	0392877099	Afternoon	2:32	0.80

SID : GOLDEN

Number L1 : 613 9287 7881  
Number L2 :

Date : 26-02-99 14:14

Date/Time	Subscriber	Mode	Pages	Durat.	Status	Note
25-02 15:29	3266229	FINE	1	2'14"	Correct	L1
25-02 15:39	61339509446	NORMAL	1	0'27"	Correct	L1
25-02 16:45	+61 7 3257 1583	NORMAL	3	1'37"	Correct	L1
25-02 17:11	61 9 98287389	NORMAL	3	0'49"	Correct	L1
25-02 17:17	61 3 92138849	FINE	1	0'49"	Correct	L1
25-02 18:12	+61 7 3257 1583	NORMAL	3	1'44"	Correct	L1
25-02 18:46	855 267238	NORMAL	1	0'47"	Correct	L1
26-02 7:51	93281881	NORMAL	1	0'47"	Correct	L1
26-02 8:28	61 6 249 7829	NORMAL	1	0'21"	Correct	L1
26-02 9:01	61 3 96865838	NORMAL	2	0'48"	Correct	L1
26-02 10:21	61 3 96328875	NORMAL	11	5'24"	Correct	L1
26-02 10:38	61 3 9432 4716	NORMAL	1	0'37"	Correct	L1
26-02 10:48	61 3 96328875	NORMAL	12	5'41"	Correct	L1
26-02 10:53	855 267238	NORMAL	1	0'42"	Correct	L1
26-02 11:08	61 3 96328875	NORMAL	3	1'12"	Correct	L1
26-02 12:01		FINE	1	0'39"	Correct	L1
26-02 13:36	855 267238	NORMAL	1	0'41"	Correct	L1
26-02 14:12	+6132652556	NORMAL	3	0'54"	Correct	L1

**FAX FROM:** ALAN SMITH

Cape Bridgewater  
Holiday Camp

Portland 3305

**FAX NO:** 03 55 267 265

**PHONE NO:** 03 55 267 267

**FAX TO:** Mr John Pinnock  
TIO  
Melbourne, Victoria.

**DATE:** 9.3.99

**NUMBER OF PAGES** (including this page)

*If you have received this document in error, please phone us on 03 55 267 267.*

Dear Mr Pinnock,

The enclosed copy of a fax and attachments dated 9.3.99, to Senator Ian Campbell, is forwarded for your information.

As you can see from this one example, my fax problems continued for some considerable time after the completion of my arbitration.

My main concern is not with the phone/fax line to my residence, since I have only experienced two fax faults since I connected the fax machine to this line. What does seriously concern me, however, are all the problems I experienced with the fax line prior to July of 1998, when it was not uncommon to lose faxes on a regular basis, even after my arbitration had completed.

I certainly hope that Senator Campbell can understand how significantly my business has been damaged as a result of these matters not being correctly addressed.

Sincerely,

Alan Smith


605

: - DOES NOT EXIST  
 :CUS - CUSTOMER  
 SOLUTION = 10/05/94 CSR: ZV333FIELD EMPLOYEE: E767 TONY WATSON  
 IN HAND TONY WATSON  
 10/05/94 I reported this incident in LEOPARD on 055217777  
 and notified Chris Doody. We were able to duplicate the  
 incident during testing; 217777 was diverted to 236101 with  
 easycall and when 236101 was busy, a call to 217777 would  
 return one burst of ring then busy.  
 11/05/94 Chris Doody called me this morning and said the  
 incident is caused by AXE104 system limitation, that is the  
 incident is normal and the customer is aware of that.  
 11/05/94 09:25, Mr Alan Smith was notified of the result.  
 Tony Watson.....  
 SOLUTION = 11/05/94 10:33 ZV333  
 Chris Doody is sending a report on the incident.  
 Tony Watson.....  
 DATE START END SYMPT CAUSE ACT'N EMP  
 10/05/94 13.47 13.48 NF WJ YT E767  
 \*\*\*\*\* NO PART DETAIL \*\*\*\*\*

-----  
 ORDER = S6701981 STATUS = CL  
 CUSTOMER = 259289 TELEPHONE = 055 267267  
 CAPE BRIDGEWATER HOL. CAMP ALAN SMITH  
 BLOWHOLE RD  
 CAPE BOWTR VIC 3306  
 CALLED IN = 04/05/94 14.03  
 CLOSED = 04/05/94 14.04  
 DESCRIPTION = 27/04/94 13:30 visit to Alan Smith by Ross Anderson.....  
 NARRATIVE = 4/05/94 13:48 ZV333  
 27/04/94 13:30 Apointment for Ross Anderson to visit Alan  
 Smith to investigate the report of 267230 possibly holding  
 up, after the phone was hung up.

:BNU - BUSY NOT IN USE  
 : - DOES NOT EXIST  
 :CUS - CUSTOMER  
 SOLUTION = 4/05/94 CSR: ZV333FIELD EMPLOYEE: E767 TONY WATSON  
 This fault report was initiated by Peter Gamble. Peter was  
 doing some testing with Alan Smith and apparently they were  
 able to hang up Smith's phone and while Peter was still  
 listening at his phone he could hear Mr Smith talking in his  
 office. In fact Mr Smith counted to 10 then picked up his  
phone again and Peter had been able to hear the count to 10.  
 On the 27/04/94 at 13:30 Ross Anderson visited the premises  
 to investigate these claims. Ross called Peter Raphael on  
 03 5507309 and made 10 test calls, Ross was hanging up then  
 counting to 10 and picking the phone up again, each test  
 call was released ( that is line was heard to drop out ) at  
 5/05/94 9:10 ZV333

SOLUTION =  
within 1 second of hanging up. Peter was able to hear Ross  
count 1 then the line released.  
 I spoke to Ross whilst he was on site and we made further  
 test call ( 18 calls of which 2 were from 267267 ), during  
 these test calls we obtained the same result as previous,  
that is the line released within 1 second. We also tried the  
 T200 from 267267 on 267230 and it released immediately on  
 hanging up. We then tested the suspect T200 on 267267 and it  
 displayed the same symptom on this different line. This T200  
 is an EXICOM and the other T200 is an ALCATEL, we thought  
 that this may be a design "fault???" with the EXICOM so Ross

SOLUTION = 5/05/94 9:27 ZV333  
 tried a new EXICOM from his car and it worked perfectly,  
 that is, released the line immediately on hanging up. We  
 decided to leave the new phone and the old phone was marked  
 and tagged, Ross forwarded the phone to PM&D.   
 I was speaking to Mr Smith the next day ( 28/04/94 ) and he  
 said he has witnesses to prove that his phone used to hold  
 up for over 10 seconds. He wants a letter to say nothing  
 else has been fixed prior to the visit by Ross that could

R37911  
 606

To: Mr H Parker  
Group Managing Director  
Commercial & Consumer

From: E. J. BENJAMIN

Commercial & Consumer  
Customer Affairs

Subject: Telecom-Austel COT Research

YJh

Locked Bag 490  
Melbourne Vic 3000

Date: 6 December, 1993

Telephone (03) 634 2977  
Facsimile (03) 632 320

Initial results of the joint Telecom-Austel market research survey managed by TELCATS Branch were discussed with Austel last Friday (3 December, 1993). Austel were given a draft copy of the results and after discussion some minor amendments are to be made this week. A copy of the report given to Austel is attached for your information.

Austel has said they would respect the confidentiality of the document and would check back with us if they intended to publicly release any information. However, this information may appear in their COT CASES Report whenever that is released. Therefore at some future stage we may have to deal with any public fall-out from the survey results. This matter is being addressed.

The survey found that 4% of the 2644 small business (ie. Commercial) customers surveyed perceive that they have experienced incoming call problems over the past month which they regard as Significantly or Very significantly affecting their business.

Of these 4% (106) of small business customers who perceive an adverse effect on their business, 84% (88) agreed to have follow up of their problems by Telecom and they will form the basis of a second, diagnostic stage of this study to determine the underlying cause(s) of the problems they believe to exist with incoming calls.

All survey respondents were asked if their business had experienced difficulties with incoming calls in the last month and 16% indicated that they had. All survey respondents (even those who had not experienced difficulties) were then asked a second question, if they had received comments from callers regarding experiencing difficulties in getting through to the business in the last month, and 13% of the respondents indicated that they had received comments. Combining the results of these two questions showed that 21% of all respondents had experienced some level of difficulties with incoming calls.

The results showed no significant difference in the selected exchanges and the control areas included in the survey. The nature of the business of those customers who perceive an adverse affect on their business and the general business population showed no apparent differences. However they did have more lines, more handsets directly connected if they did not have a small business system, and a higher incidence of other equipment attached to the lines.

Seventeen percent of customers said they had experienced some other problem (other than related to incoming calls) over the last few months. These will also be followed up by Telecom but not for the purpose of this study and do not form part of the discussions with Austel.

Ted Benjamin  
GROUP MANAGER - CUSTOMER AFFAIRS

101201

607



26 February 2003

Mr Alan Smith  
Seal Cove Guest House  
RMB 4409 Cape Bridgewater  
PORTLAND 3305



Telecommunications  
Industry  
Ombudsman

John Pinnock  
Ombudsman

Dear Mr Smith

I refer to your letters of 27 January and 3 February 2003.

Each letter raises yet again issues relating to your Arbitration which was concluded almost eight years ago. As I have said on numerous previous occasions, I do not propose to take any further action on a matter that was the subject of a final decision by the Arbitrator.

In your letter of 3 February you state that the TIO has a duty to speak to the new owners of Cape Bridgewater Holiday Camp who, you say, are blaming you for not disclosing to them ongoing problems with the telephone service. That is a matter between you and the new owners. The TIO will consider any complaint made by the current owners of the camp, provided it does not seek to canvass the same matters which you have raised relating to the Arbitration.

Yours sincerely



JOHN PINNOCK  
OMBUDSMAN

608

plainant/1918

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

Telecommunications Industry Ombudsman Ltd ABN 46 057 634 787

Website [www.tio.com.au](http://www.tio.com.au)  
Email [tio@tio.com.au](mailto:tio@tio.com.au)  
National Headquarters  
Level 15/114 William Street Melbourne Victoria 3000

PO Box 276  
Collins Street West  
Melbourne  
Victoria 8007

Telephone (03) 8600 8700  
Facsimile (03) 8600 8797  
Tel Freecall 1800 062 058  
Fax Freecall 1800 630 614



26 August 2004

Mr Darren Lewis  
Cape Bridgewater Coastal Camp  
RMB 4408  
PORTLAND VIC 3305

Dear Darren

I refer to your correspondence dated 23 July 2004 regarding the Cape Bridgewater telephone exchange.

I had the opportunity to discuss your concerns yesterday when I met with Telstra Countrywide's new Area General Manager South West Victoria, Mr Grant Wiltshire.

I understand the product you are inquiring about is known as Telstra's Duet - Phone and Fax Multiple Number.

As you are aware, this feature is not yet supported at your telephone exchange. To date Telstra hasn't set a date for upgrading the Cape Bridgewater exchange, however, upgrades are in continual planning.

I have stressed to Mr Wiltshire my strong support for the upgrading of the Cape Bridgewater exchange to occur as soon as possible.

In the meantime, Telstra can advise of possible alternatives for your business by phoning 1800 787 829.

Thank you again for writing.

Kind regards

  
**DAVID HAWKER**  
Federal Member for Wannon

Ref: cdb/dh.mc

609



WANNON

Darren Lewis  
Cape Bridgewater Coastal Camp  
Bridgewater Road  
Portland 3305

21<sup>st</sup> September 2009

To whom it may concern

Due to my ill health and what has happened to me since I purchased the Holiday Camp in 2001 (re my telephone complaints) I feel it is important to note what I told Alan Smith (who lives next door) about what James, a Telstra's local technician told me concerning my ongoing telephone problems. I remember (Blank) being very concerned that there were telephone problems still being experienced at the Holiday Camp in 2005 / 2006 and that after Telstra was unable to get their testing equipment to work correctly he advised me he is keeping a record book of what happened during this period in case he was ever held accountable. I believe he was meaning that if there was ever an official enquiry into my telephone / facsimile problems he would willingly provided his diary record. I have not disclosed this person's name here so as to protect his identity.

I am willing to sign a statutory declaration attesting to what I have stated above including providing the name of this Telstra technician under confidentiality if this information is needed in the near future. I have asked Alan Smith to type this information up so that I can sign this document in the interim.

Thank you.

Darren Lewis



610



AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

93/0507

20 January 1994

Mr A Humrich  
General Manager, Central Region  
Network Operations  
Telecom Australia

Facsimile 657 3529

Dear Mr Humrich,

**VERIFICATION TESTS FOR DIFFICULT NETWORK FAULT CASES**

As discussed late last year with Mr J. Gilsham, the following comments are offered on your draft set of verification tests for public switched telephone services with recurring service difficulties:

**General Comment:**

The tests would be applicable to a very small percentage of customers, and the emphasis should be on going to great lengths to ensure the absence of any type of fault condition rather than on minimising the amount of effort involved for the carrier.

The purpose of such tests would be to ensure that a particular service has every possible likelihood of working correctly. Prior to a service complaint being escalated to this level, Telecom's normal testing and maintenance activities would have failed to remedy the situation from the customer viewpoint. With this in mind, the verification testing should eliminate all potential sources of service difficulties. Therefore, the draft set of tests proposed are not seen to be sufficiently rigorous or extensive enough for application to these types of services.

In keeping with this approach, the use of the term "Desirable Outcome" for test results is inappropriate and should be changed to "Essential Outcome"

**Specific Matters for Consideration**

- The customer specific line tests nominate outcomes for insulation resistance and foreign battery which are considered to be at the margins of acceptable performance for any customer, much less a customer with a demonstrated history of service difficulties. The essential outcome of these tests must be to eliminate poor insulation resistance or foreign battery as potential sources of service difficulties. Performance less than that expected of new plant should be thoroughly investigated and the causes removed.

R04321

5 QUEENS ROAD, MELBOURNE, VICTORIA  
POSTAL: P.O. BOX 7443, ST KILDA RD, MELBOURNE, VICTORIA, 3004  
TELEPHONE: (03) 828 7300 FACSIMILE: (03) 820 3021

611

20.1.1994

AGREE

could agree

20.1.1994

Tests of outgoing call functions should also be performed, as well as checks of transmission quality. Tests involving the customer's equipment should be conducted to ensure that there is no fault in that equipment.

The customer specific exchange tests should also examine aspects of the local exchange which have the potential to affect the customer. For example,

- processor performance and loading in computer controlled exchanges should be checked, and marker, register and other common equipment operation in crossbar exchanges should be checked
- alarm and exchange performance records should be examined for any possible service-affecting conditions
- customer originating and terminating classifications should be checked
- customer specific transmission systems, such as those involved in RCMs, should be checked thoroughly

The public network call delivery tests are seen to be adequate in scope, but the number of call attempts from each location would need to be considerably greater to produce results with any statistical significance (hundreds rather than tens). Calling periods must include significant periods of time when the customer would expect high traffic volumes. The essential outcomes must be much tighter than the 99% levels suggested in the draft. Sample results would need to be equal or better than Telecom's target performance for the traffic type involved.

Where test results do not meet the essential outcome, remedial action should be taken and the relevant tests repeated to confirm correct network operation.

I trust the above comments provide you with AUSTRALIA's view of what would represent a firm basis for further development of the verification test program.

Yours sincerely

Cliff Mathieson  
Specialist Advisor  
Networks

Michael Elsegood  
Manager  
International Standards Section

R04322

611

Handwritten notes on the left margin: "A CASE IN POINT!!", "IS A CASE QUARANTINE!!", "CASE", "A CASE IN POINT!!", "IS A CASE QUARANTINE!!", "CASE", "A CASE IN POINT!!", "IS A CASE QUARANTINE!!", "CASE".

Handwritten notes on the right margin: "CALL LOG", "DIAGNOSTIC", "A CASE IN POINT!!", "PG. 02. 11/11/11".

Handwritten numbers on the right margin: "7)", "8)", "9)", "10)".



AUSTRALIAN SENATE

**LEGAL AND CONSTITUTIONAL**REFERENCES COMMITTEE  
LEGISLATION COMMITTEE

17 March 1995

PARLIAMENT HOUSE  
CANBERRA ACT 2600  
Tel: (06) 277 3560  
Fax: (06) 277 3794Mr Graham Schorir  
The Casualties of Telecom  
PO Box 313  
North Melbourne 3051

FAX: (03) 287 7001

Dear Mr Schorir

***Telecommunications (Interception) Amendment Bill 1994***

Thank you for agreeing to participate in the Committee's hearing on 21 March in Canberra.

I attach a draft copy of the program for the evening which sets out the time and venue for the hearing and a rough schedule for when you are to appear and with whom.

The Committee members who will be attending on the day will be Senators Cooney (Chair), Spindler (Deputy Chair), Ellison, Evans, Vanstone, McKiernan and O'Chee.

The hearings are conducted with *minimum formality*. Witnesses are usually grouped in blocs although we suggest that you be available at the commencement of the hearing. You may wish to give some consideration to making a brief statement, 10 - 15 minutes, otherwise we hope to conduct the hearing as a 'round table' and you will be given an opportunity to comment on the other witnesses and answer questions from the Committee.

We further enclose some information on giving evidence before Senate Committees

If any of these arrangements pose any difficulties please contact the writer on (06) 277 3563.

Yours faithfully

  
Stephen Stuart Bull  
Senior Research Officer

612

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?

Seal Cove Guest House  
1703 Bridgewater Road  
Cape Bridgewater  
Portland 3305  
Phone/Fax: 03 55 267 170

10<sup>th</sup> March 2006

Ms Liz Forman  
Acting General Manager  
Department of Communications, IT and the Arts,  
GPO Box 2154  
Canberra 2061

Dear Ms Forman,

Thank you for your letter of 8<sup>th</sup> March 2006 regarding the DCITA Assessment process. I have now been informed by phone, by Mr David Lever of DCITA, that I have until next Friday, 17<sup>th</sup> March, to submit any further documents. I have also been advised this assessment process is not the Independent Assessment process agreed to by Senator Barnaby Joyce, in his discussion with the Hon Senator Helen Coonan in September 2005.

Although you have stated in your letter that "*... the assessment process will not extend to an examination of whether the law was broken by Telstra ...*" I have been advised that it is mandatory, under Commonwealth law, for DCITA and/or the Minister to notify the Attorney General of any unlawful activities they may uncover during official departmental investigations.

Since DCITA uncovered unlawful acts as a result of material I supplied in response to a DCITA request, and these unlawful acts relate directly to Telstra which, at the time of offences, was fully Government owned, and the Commonwealth Ombudsman's records confirm that my arbitration was endorsed by the Government of the day, DCITA now has a duty, under Commonwealth Law, to notify the Federal Attorney General of these offences. As you would be aware, there is no Statute of Limitations in relation to this type of crime against an Australian citizen and these particular crimes were first brought to the attention of the TIO nine years ago.

Please notify me as soon as possible regarding whether the Minister will now provide the Attorney General with the evidence of the crimes that were committed by Telstra, during my arbitration – crimes that have now been uncovered by DCITA during the assessment of the documents I submitted with my initial response to DCITA's request.

Sincerely,



Alan Smith

*Copy to Senator Barnaby Joyce, Senator for the Nationals Queensland  
The Hon David Hawker, Speaker in the House of Representatives*

614





Seal Cove Guest House, 1703 Bridgewater Road  
Cape Bridgewater, Portland 3305  
Phone/Fax: 03 55 267 170  
17<sup>th</sup> July 2006

Senator Helen Coonan  
Minister for Communications, IT and the Arts  
Parliament House  
Canberra 2600

Dear Senator Coonan,

In my most recent correspondence to you I attached a letter dated 13<sup>th</sup> July 2006, to the Hon David Hawker, Speaker in the House of Representatives, includes a Telstra document confirming that Telstra voice monitored the original four COT claimants, Garms, Gillan, Schorer and me, between June and December 1994, during our respective arbitrations. The attached letter here to the Hon David Hawker - dated 17<sup>th</sup> July 2006 - includes an FOI document, no. A101148, which confirms that Telstra produced nine separate tape recordings of the COT claimants' telephone conversations.

I will not attempt to include all of the numerous other alarming incidents that have occurred in relation to my battle with Telstra, but you may be interested to know that when the Victoria Police Major Fraud Group were investigating my complaints between 1999 and 2001, I sent a number of faxes to the Police Barrister, Neil Jepson where on at least two occasions they did not reach his office even though Telstra included them on my subsequent bill, and my fax journal print-out shows that they were sent successfully.

During a Senate hearing in March 1995, I was called to provide evidence of the way my private and business information had been recorded by Telstra on their documents, without my knowledge or consent. I was easily able to supply proof of numerous occasions between 1992 and during my arbitration of 1994/95, when Telstra had acquired information they could only have known by listening to my phone calls or intercepting my faxes. Documented evidence now included in my current submission to the DCITA independent assessment confirms that other faxes sent from my office between 1994 and 2002 were still being intercepted by unknown parties, before they arrived at their intended destination.

In my letter dated 17<sup>th</sup> July, to the Hon David Hawker (attached), I asked him to officially request that you personally seek, from Telstra, all the voice monitoring information relating to COT claimants Garms, Schorer and me, that Telstra holds in their archives, so you can then pass that information on to me as part of the DCITA investigation into my unresolved Telstra issues that are currently before your office. I believe you will find it most disturbing to learn that not only did Telstra admit to the Australian Federal Police that they had intercepted COT claimants' phone calls over an extended period, they also mischievously informed the AFP that they had ceased this unlawful conduct when they were still voice monitoring our telephone calls both during the AFP official inquiry into this illegal conduct and also during our respective legal arbitrations, all of which were officially endorsed by the then-Federal Labor Government.

Sincerely,



Alan Smith

Copies to: *The Hon David Hawker, Speaker in the House of Representatives*  
*Senator Barnaby Joyce, Nationals Senator for Queensland*

615B

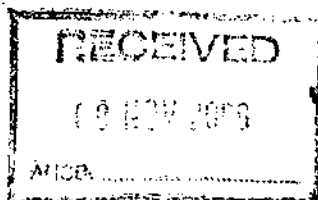


# SENATOR THE HON HELEN COONAN

Minister for Communications, Information Technology and the Arts  
Deputy Leader of the Government in the Senate

The Hon David Hawker MP  
Speaker of the House of Representatives  
Member for Wannan  
190 Gray Street  
HAMILTON VIC 3300

03 NOV 2006



*David*  
Dear Mr Speaker

### Voice monitoring allegations

Thank you for your representation of 17 August 2006 on behalf of Mr Alan Smith regarding Mr Smith's allegations that Telstra monitored his phone calls and emails during an arbitration process with Telstra.

The interception of emails and monitoring of phone calls is an offence under the *Telecommunications (Interception and Access) Act 1979*. This Act, which falls within the portfolio responsibility of the Attorney-General, has two key purposes. Its primary object is to protect the privacy of individuals who use the Australian telecommunications system by making it an offence to intercept communications passing over that system other than in accordance with the provisions of the *Interception Act*. The second object is to specify the circumstances in which it is lawful for interception to take place. A telecommunications service may be intercepted under the authority of a warrant – by law enforcement agencies for the investigation of serious offences, or by ASIO for national security purposes.

If Mr Smith has evidence that Telstra has unlawfully intercepted his electronic transmissions, then he should report this to the Australian Federal Police (AFP). The police have the power to investigate alleged crimes such as the unlawful interception of telephone calls.

With respect to the Independent Assessment of Claims against Telstra conducted by the Department of Communications, Information Technology and the Arts, the purpose of this assessment was to review the available information relating to Mr Smith's and others claims against Telstra, and to identify what avenues could be explored to bring about resolution of these disputes. The assessment did not consider the merits of the claims made by Mr Smith and the other claimants, nor did it evaluate the strength and weaknesses of the parties' positions.

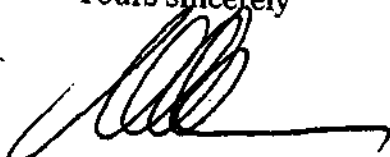
*Mr Smith's dispute is a commercial matter between him and Telstra. The Government is not a party to the dispute and it would be inappropriate for it to intervene or to seek to influence any party involved. Nor is it the Government's role to adjudicate individual disputes. The Government has no power or authority*

616A

to make judgements about the merits of individual cases. Mr Smith should consider pursuing his dispute through the dispute resolution bodies, including his State Office of Fair Trading, the Australian Competition and Consumer Commission, the Australian Communications and Media Authority and the courts.

I trust this information is of assistance in responding to Mr Smith's concerns. Thank you for bringing this matter to my attention.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Helen Coonan', written in a cursive style with a long horizontal stroke at the end.

HELEN COONAN

616A



**SENATOR THE HON HELEN COONAN**

**Minister for Communications, Information Technology and the Arts  
Deputy Leader of the Government in the Senate**

Mr Alan Smith  
Seal Cove Guest House  
1703 Bridgewater Road  
CAPE BRIDGEWATER VIC 3305

17 MAY 2007

Dear Mr Smith

**Outcome of representations to Telstra**

On 6 September 2006 I met with Senator Barnaby Joyce and a group of current and former Telstra customers (the Casualties of Telstra (COTs)) and former contractors of Telstra regarding ongoing disputes with the company. At that meeting I made a commitment that I would make a final representation to Telstra regarding your unresolved complaints

I have now made both formal and informal representations to Telstra on behalf of the CoTs. However, Telstra's position remains that this is a matter that is most appropriately dealt with through a Court process. Telstra is not prepared to undertake an alternate means of pursuing this matter.

I also appreciate the depth of feeling regarding the matter and suggest you consider whether any court proceedings may be your ultimate option.

Yours sincerely

HELEN COONAN

6163

Australian Government  
Department of Broadband,  
Communications and the Digital Economy

Mr Alan Smith  
Seal Cove Guest House  
1703 Bridgewater Road  
Cape Bridgewater  
PORTLAND VIC 3305

Dear Mr Smith

I refer to your letter of 1 May 2009 in which you suggest that departmental officers (within the former Department of Communications, Information Technology and the Arts) did not comply with the *Commonwealth Fraud Control Guidelines - May 2002* (the Guidelines) by failing to refer material you supplied to that Department as part of your participation in the independent assessment process to relevant authorities. In your letter you make reference to a letter from the Department of Communications, Information Technology and the Arts dated 17 March 2006.

The Guidelines provide that agencies are responsible for investigating routine or minor instances of fraud as set out in Guidelines. Further, agencies are to refer all instances of serious or complex fraud involving Commonwealth interests to the Australian Federal Police (AFP). The determination of whether an alleged fraud against the Commonwealth is serious and/or complex, so as to warrant referral to the AFP, the relevant decision-maker is to have regard to the criterion set out in the guidelines. In circumstances where the Guidelines provide that agencies can investigate cases of serious or complex fraud without referral to the AFP, agencies are to advise the AFP of the details of the matters under investigation. It is noted that the Guidelines apply in respect of alleged fraud against the interests of the Commonwealth, not individual citizens.

I understand Mr Lever (Manager, Consumer Section) advised you in his letter of 17 March 2006 that:

*"If the material you have provided to the Department as part of the independent assessment process indicates that Telstra or its employees have committed criminal offences in connection with your arbitration, we will refer the matter to the relevant authority."*

Mr Lever's statement appears consistent with the requirements of departmental officers as set out in the Guidelines. Based on the file records I have sighted, it appears that no referral of your allegation was made to the AFP. I was not involved in the matter and in the absence of any documentation to the contrary, I can only reasonably conclude that the relevant officers involved in the consideration of the matter formed the view that a referral was not required. It remains open for you to seek your own independent legal advice or refer the matter to the AFP or other relevant authority.

2

On a separate matter, we await upon your formal response to the Department regarding my decision to impose processing charges. My records indicate that a formal response is required by 20 July 2009.

Yours sincerely

*Sue McIntosh*

Sue McIntosh  
Acting Assistant Secretary  
Consumer Policy and Post

*8 July 2009*

617

30/11/93



Commercial & Consumer  
Customer Affairs

Locked Bag 4963  
Melbourne Vic 3100

Telephone (03) 634 2977  
Facsimile (03) 632 3241

Internal Memo

To Mr I Campbell  
Customer Projects  
Executive Office - C&C

From E. J. BENJAMIN

Subject TIO AND COT

File

Date .. 30 November, 1993

At today's Council Meeting the TIO reported on his involvement with the COT settlement processes - it was agreed that any financial contributions made by Telecom to the COT arbitration process was not a matter for Council but was a private matter between Telecom, AUSTEL and the TIO.

I hope you agree with this.



Ted Benjamin

GROUP MANAGER - CUSTOMER AFFAIRS

Don Pinner

FAXED  
2/12/93

Don

seems OK to me.  
when I spoke to Darwin I  
suggested that at least for the  
first group he develop a  
separate budget, seems with  
us, approve bills for payment  
and we pay direct. 6/8  
when we have had experience with  
this can decide to continue for  
Group 2 and future

001248

Telecom Corporation Limited  
ACN 051 775 906



Friday, 26 September 1997

SENATE—*Legislation*

ERC&A 109

Mr Armstrong—Yes. The basis upon which it was put that the report was fabricated was an apparent clash of dates, as I recall, with two sets of testing. This goes back a couple of years. I believe that claimants raised the matter with the TIO. Telstra went to Bell Canada and raised the clash of dates with it. As I recall, Bell Canada provided a letter saying that there was an error in the report. ✓

Senator SCHACHT—Can you please provide us with a copy of that letter from Bell Canada?

Mr Armstrong—I do not have it with me. ✓

Senator SCHACHT—Can you get it for us?

Mr Armstrong—Yes. ✓

Senator SCHACHT—I will put that question on notice. As to the complaints to Telstra from the CoT cases—Mr Benjamin, you may think that you have drawn the short straw in Telstra, because you have been designated to handle the CoT cases and so on. Are you also a member of the TIO board?

Mr Benjamin—I am a member of the TIO council.

Senator SCHACHT—Were any CoT complaints or issues discussed at the council while you were present?

Mr Benjamin—There are regular reports from the TIO on the progress of the CoT claims.

Senator SCHACHT—Did the council make any decisions about CoT cases or express any opinion?

Mr Benjamin—I might be assisted by Mr Pinnock.

Mr Pinnock—Yes.

Senator SCHACHT—Did it? Mr Benjamin, did you declare your potential conflict of interest at the council meeting, given that as a Telstra employee you were dealing with CoT cases?

Mr Benjamin—My involvement in CoT cases, I believe, was known to the TIO council.

Senator SCHACHT—No, did you declare your interest?

Mr Benjamin—There was no formal declaration, but my involvement was known to the other members of the council. ✓

Senator SCHACHT—You did not put it on the record at the council meeting that you were dealing specifically with CoT cases and trying to beat them down in their complaints, or reduce their position; is that correct?

Mr Benjamin—I did not make a formal declaration to the TIO. ✓

Senator SCHACHT—I have to say that I think that is poor, Mr Pinnock, in the future you ought to get the process right. People should make declarations on the record in the minutes—and then withdraw from the discussion. ✓

Mr Pinnock—You are making certain assumptions, Senator.

Senator SCHACHT—Mr Benjamin—

Mr Pinnock—Senator, you directed your comment to me. I would like to answer it. Firstly, no discussions were held within the TIO council at any meeting that I went to since I have been ombudsman. My recollection is that I have been to every meeting of council bar one. As to any issue relating to any individual CoT—the issues that were discussed in my status reports to council were simply where each claim was at a particular point in time and how much time I spent personally in relation to those matters. The only discussions that were ever held in council with the TIO when I was present—and as I say, I was present on all but one occasion—were discussions as to the amount of time that I was spending as the administrator of the process as opposed to my other work as ombudsman. Mr Benjamin is correct. In my presence—and I do not know what happened before I became ombudsman—there was no formal declaration. Every member of the council knows, and knew, that Mr Benjamin was involved in the CoT process. For that very reason there was never any discussion as to any of the details of any of the claims, Telstra's attitudes to them, the claimant's attitudes, or any matters that were discussed with me in my role as administrator.

Senator SCHACHT—Mr Pinnock, you said that you gave the status report to the council on the various cases being dealt with. Without belabouring the point, it seems to me that Mr Benjamin's involvement—and he was dealing specifically on behalf of Telstra with those cases—should have been declared in the minutes. You should take that on board. There has been so much heat about these issues. These are the sorts of things that lead to a perception that there might well be an advantage to Telstra. It has someone on the council who is dealing with these complaints on behalf of Telstra and who might inadvertently have inside information into what the process is. That is why I think it is more important. The council ought to have a look at that and obtain legal advice about what is appropriate in relation to the declaration of a conflict of interest or association. This is something that you have to get cleared up and absolutely right. ✓

95/0595-0



11

220

Commercial & Consumer  
Customer Affairs

Locked Bag 4960  
Melbourne Vic 3100

Telephone (03) 632 7700  
Facsimile (03) 632 3241

12 January, 1994

Mr John MacMahon  
General Manager, Consumer Affairs  
AUSTEL  
PO Box 7443 St Kilda Road  
MELBOURNE VIC 3004

Dear Mr MacMahon,

I refer to your letter of 31 December 1993 regarding COT cases. I have already responded to paragraphs two to five of that letter. This letter deals solely with the status of Telecom's response to the C&L and Bell Canada reports.

In accordance with our agreement reached in the meeting with yourself and your Chairman, these documents will be released through the TIO at the appropriate stage of the arbitration process.

It is my view that the appropriate time for release is after the assessor is appointed and the procedural rules for the arbitration process have been agreed by all parties.

However, as indicated in our agreement, this decision will be taken in consultation with the TIO.

Yours sincerely,

Steve Black  
GROUP GENERAL MANAGER - CUSTOMER AFFAIRS

ACTION COPY

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24 October 1997

Telecommunications  
Industry  
OmbudsmanJohn Finnack  
Ombudsman

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 Duaker, 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. These 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 Gurnz, 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 Lane Telecommunications compromised the independence of the Technical Resource Unit;
- stated that there were inaccuracies and biases evident in the Lane Telecommunications/DNR Technical Evaluation Report;
- requested the Telecommunications Industry Ombudsman to dismiss the Resource Unit.

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

Telecommunications Industry Ombudsman Ltd ACN 057 034 787

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 19098  
Colling Street East  
Melbourne  
Victoria 3000

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

CONFIDENTIAL

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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

621

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 FINNOCK  
OMBUDSMAN

03-92877001

621

# MINTER ELLISON MORRIS FLETCHER

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MELBOURNE VIC 3001  
AUSTRALIA

### OUR REFERENCE

PLB 928549 FJS

### YOUR REFERENCE

### DIRECT LINE

(03) 617 4651

24 January 1994

Dr G Hughes  
Hunt & Hunt  
Solicitors  
21st floor  
459 Collins Street  
MELBOURNE 3000

BY COURIER

Dear Gordon

COT matters

Following our meeting on Thursday last, I now enclose revised Procedure for your consideration.

I make the following comments upon it:-

1. The underlying aim of the Procedure is for it to be workable and fair to both parties as well as being generally in accordance with the "Fast Track" agreements previously entered into.
2. We discussed whether or not the Procedure should come within the ambit of the Victorian Commercial Arbitration Act 1984. We decided that it should. Relevant considerations were that under the Commercial Arbitration Act:
  - . you are entitled to administer oaths and affirmations (S19 (2));
  - . subpoenas can be issued to compel the production of documents (S17);
  - . if a party or witness fails to comply with your directions, application can be made to the Supreme Court (S18).

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1775482401

SYDNEY  
92 210 4444

BRISBANE  
07 533 9666

CANBERRA  
06 24 71 11

GOLD COAST  
07 53 96 444

HONG KONG  
252 826 9100

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MEMBER ASSOCIATED OFFICES  
A. J. GIBSON & CO. (LONDON) LTD. 233 5555

Further considerations are:

- . some of the procedures adopted are somewhat novel in the arbitration context e.g. the use to be made of the Resource Unit. However, arbitration procedures are meant to be flexible and, provided the parties agree, as they will have by signing the Request for Arbitration, this does not concern me;
- . under Section 38 of the Commercial Arbitration Act, with the leave of the Court, there is the right to appeal on a question of law arising out of an award. This right of appeal can be excluded under Section 40 by having the parties enter into an "exclusion agreement". Such an exclusion agreement can only be entered into after the arbitration proceedings have "commenced" (Section 40 (6)). Pursuant to Section 3 (5) the arbitration is deemed to have "commenced" once the Request for Arbitration has been signed by both parties. The possibility of having an exclusion agreement could be discussed at your initial meeting with the parties;
- . it is provided in Clause 6 that legal representation is to be at your discretion. This is in line with Clause 2 (e) of the "Fast Track" agreement. Section 20 however states the circumstances in which an arbitrator is required to grant legal representation. This regime cannot be amended by the agreement of the parties. In practice, the issue of legal representation will only arise if you require oral submissions and even then there is to be no cross-examination. I would not anticipate the issue of legal representation being of great moment.

On balance, it was decided that it would be preferable to have the Procedure operating under the Commercial Arbitration Act.

3. You will note that I have amended the Procedure so that it is clear that you are conducting four separate arbitrations and will hand down four separate awards although you may combine some aspects of the four hearings. I have also provided that all four claimants must agree to the Procedure before there is a binding arbitration agreement with respect to any of them. I would be interested in your thoughts upon this.
4. As you would be aware, Section 14 of the Commercial Arbitration Act allows you, subject to the Act and to the Procedure, to conduct the proceedings in such manner as you see fit. This gives you a high degree of flexibility. However otherwise, the Procedure must be conducted in accordance with the rules of natural justice.
5. I will be interested in your thoughts on Clause 8 which relates to the Resource Unit. I thought it best to define the Resource Unit in fairly general terms.
6. In paragraph 1 on page 8, you will note that I have provided for any loss suffered by Telecom as a result of breach of the confidentiality provisions to be determined by arbitration in

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accordance with Section 22 (2) i.e. not according to law but by reference to considerations of general justice and fairness. Following our discussion, I thought this might be a workable manner of dealing with this difficult situation.

7. Once you are happy with the suggested Procedure, I suggest you convene a preliminary conference with the parties to discuss the Procedure and also to discuss the possibility of exclusion agreements. At this conference you could also inform the parties that you will be informing AUSTEL in accordance with Clause 2 (h) of the "Fast Track" Agreement.

I look forward to discussing the suggested Procedure with you after you have considered it.

Yours sincerely,



F. J. SHELTON

enclosure

622

# MINIER ELLISON MORRIS FLETCHER

## HARRIERS & SOLICITORS

117 COLLINS STREET  
MELBOURNE VIC 3000  
TELEPHONE (03) 617 4617  
FACSIMILE (03) 617 4651  
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40 MARKET STREET  
MELBOURNE VICTORIA

TELEPHONE (03) 617 4617  
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TELEPHONE (03) 617 4651

(03) 617 4651

25 February 1994

THIS MESSAGE IS

YOUR REFERENCE

PLB 926549 FJS

Mr G Hughes  
Hunt & Hunt  
Solicitors  
21st floor  
469 Collins Street  
MELBOURNE 3000

BY FACSIMILE - 614 8730

Dear Gordon


COT Matters

I am enclosing two copies of the "Fast Track" Arbitration Procedure, one providing for a right of appeal and one providing for no appeal.

With respect to a confidentiality undertaking to be executed by all persons privy to the proceedings, I think it best to arrange this separately outside the agreement with the parties concerned. The Procedure only binds the parties to the agreement so there is little point in referring in the agreement to confidentiality requirements to be imposed upon those not a party to the agreement.

I would like to discuss with you some of the amendments I have made and suggest we meet on Monday some time for this purpose.

With kind regards,



F. J. SHELTON

enclosure

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SYDNEY  
02 955 4444

MELBOURNE  
03 617 4644

CANTONMENT  
03 924 1111

BRISBANE  
07 532 4444

PERTH  
08 944 4444

WELLINGTON  
04 488 4444

**Campbell, Ian**

**From:** Campbell, Iain  
**To:** Campbell, Ian  
**Subject:** FW: Gordon Hughes  
**Date:** Thursday, 3 March 1994 9:16AM

**DELIVERED TO IAIN CAMPBELL INSTEAD OF IAN CAMPBELL**

**From:** Blount, Frank  
**To:** Black, Stephen  
**Cc:** 'Mason, Deirdre'; Zol, Charlie; Vonwiler, Chris; Burdon, Steve; Campbell, Ian new; Paris  
**Carmel;** Campbell, Doug; Krasnostein, David; Parker, Harvey; Rizzo, Paul; Scott, Sue  
**Subject:** RE: Gordon Hughes  
**Date:** Thursday, 3 March 1994 7:21AM

**Stephen:**

I am more and more of the view that some form of summit meeting be held between Warwick Smith, AUSTEL (Robin Davey), Gordon Hughes, David Krasnostein, me, and perhaps others to put this "foolishness" behind us.

Please advise.

**Frank**

**From:** Black, Stephen  
**To:** Blount, Frank  
**Subject:** FW: Gordon Hughes  
**Date:** Wednesday, March 02, 1994 10:50PM  
**Priority:** High

**Frank**

Copy for your information

**Steve Black**

**From:** Black, Stephen  
**To:** Krasnostein, David  
**Cc:** Parker, Harvey; Rizzo, Paul  
**Subject:** Gordon Hughes  
**Date:** Wednesday, 2 March 1994 10:48PM  
**Priority:** High

**David**

As discussed it appears that Gordon Hughes and Peter Bartlett are ignoring our joint and consistent message to them to rule that our preferred rules of arbitration are fair and to stop trying to devise a set of rules which meet all the COTS requirements and with which we might agree if we were prepared to waive further rights.

Whilst at a personal level I am of the view that we should walk away I do not believe that this option suits Telecoms wider strategy in that it would appear to lead directly to a senate enquiry.

My course therefore is to force Gordon Hughes to rule on our preferred rules of arbitration.

I am having our preferred rules prepared now based on Bartlett's latest rules plus our amendments. I have also initiated an independent and authoritative view on these rules, which I expect will advise that these rules are fair. I will then send these directly to Gordon Hughes with a direct and blunt request to rule on whether they are fair.

I expect this action to be finalised by tomorrow midday.

Steve Black

001166

Facsimile

*File  
COT Cases  
Fast Track*

**Telecon**  
AUSTRALIA *4*

To David Krasnostein  
Facsimile 42358

From Simon Chalmers

Commercial & Consumer

Company Telecom

8th Floor  
242 Exhibition Street  
MELBOURNE VIC 3000  
Australia

Location

File

Date 22 March 1994

Telephone 034 9484  
Message Box  
Facsimile 034 6481

Distn. Steve Black

Total Pages 3

**Fast Track Arbitration Procedure**

Dear David

I enclose minutes of our meeting with the TIO and the arbitrator earlier today.

*Simon Chalmers*

**Simon Chalmers**

000136

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# MEETING TO DISCUSS FAST TRACK RULES OF ARBITRATION

Date: 22 March 1994

Attendees: Steve Black, David Krasnostein, Simon Chalmers,  
Peter Bartlett, Gordon Hughes, Warwick Smith, Jenny Henright??

Mr Bartlett stated that he agreed with the majority of the changes in Telecom's amended rules, however he did not agree with the provisions set out below.

## 1. Confidentiality

Mr Bartlett stated that he thought the confidentiality clauses in Telecom's amended rules were not consistent with the Fast Track Settlement Proposal. He stated that Mr Archibald QC's advice was that the clause proposed by Telecom was "not inconsistent with the Fast Track Settlement Proposal", which is different to the clause being consistent with the Fast Track Settlement Proposal.

Dr Hughes only commented to the effect that the differences between the confidentiality clauses in Telecom's amended rules and Mr Bartlett's earlier proposed rules were material.

Mr Krasnostein stated that in the circumstances of conversations which Telecom had had with some of the claimants, and given their conduct leading up to entering into the arbitration process, the confidentiality provisions set out in Telecom's amended rules were justified.

Mr Smith stated that he thought it was fair to include wider confidentiality clauses in the rules than those expressly set out in the Fast Track Settlement Proposal. He stated that the confidentiality clauses in Mr Bartlett's earlier proposed rules appeared fair.

## 2. Establishing a Causal Link

Mr Bartlett stated that he thought the removal of the words "on reasonable grounds" from the phrase "will make a finding as to the causal link" appearing in clause 10.2.2 of Telecom's amended rules was not fair because it did not reflect the wording of the Fast Track Settlement Proposal. He said that Mr Archibald's advice did not cover this key clause of Telecom's amended rules. He acknowledged that neither he nor Mr Smith had been given access to correspondence leading up to the formation of the Fast Track Settlement Proposal.

Dr Hughes stated his view that the inclusion of these words would not make 'a jot of difference' to the outcome of the arbitration. He said that in giving effect to the words "on reasonable grounds" in this context, he would apply normal rules of law as that was the proper basis for his decision being on reasonable grounds.

Mr Smith stated that he would not endorse the rules as fair unless clause 10.2.2 repeated clause 2(f) of the Fast Track Settlement Proposal, and in particular that the words "on reasonable grounds" were inserted in the phrase "will make a finding as to the causal link". He asked Telecom to have regard to the assurances given by

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Dr Hughes as to how he would make a determination in relation to causal link based on "reasonable grounds".

3. **Punitive Damages**

Mr Bartlett stated that in his view punitive damages would not be recoverable under his earlier proposed rules.

Dr Hughes did not expressly state a position on this matter when it was raised, however he did subsequently say that none of the changes set out in Telecom's amended rules other than the amended confidentiality provisions, would make 'a jot of difference' to the outcome of the arbitration.

Mr Smith stated that in his view Telecom would not be disadvantaged by agreeing to arbitration without Telecom's new clause 10.3. He also subsequently commented generally that Telecom should have regard to the assurances given by Dr Hughes as to how he viewed the effect of the amendments.

6. **Exclusion of Liability for Arbitrator's Advisers**

Mr Bartlett stated that he was unhappy that Telecom did not appear prepared to allow his firm an exclusion from liability.

Dr Hughes stated that the resource unit was also not satisfied with a capped liability, but that he did not have a position in relation to this matter as it did not affect him or the performance of his functions.

Mr Smith stated that he thought it was reasonable for the advisers to incur some liability, and that the only matter left to be negotiated on this issue was the quantum of the liability caps.

Mr Black said that he thought the liability caps proposed by Telecom in the amended rules were already reasonable.

It was agreed that Mr Bartlett would produce a re-drafted set of rules which Mr Smith and Mr Bartlett would agree was fair. It was further agreed that the likelihood of negotiating an agreement as to the form of the rules which was acceptable to all parties, was small. Mr Smith indicated that he proposed to have the re-drafted rules simply put to both Telecom and the four COT Claimants for signature.

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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 ("Telcom Australia").
2. The Claimants and Telcom 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 Telcom 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 defence 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(a), 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 (a), 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 Austel pursuant to section 123 of the Telecommunications Act 1991 which limitations may apply in 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 at 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 Claimant 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(c)(aa)(D)(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.

FINANCIALC061348013A - 10 January 1994 (15:07)

626

24/10 '97 12:52 01:27 16. 01/92

**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.

001-000000012 6 - 10 January 1996 (15:27)

626

AMIR LAKO S TOE2

01:27 28. 01/96

Schedule 8  
("the Claimants")

- (a) Graham Scherer (+ other claimants - companies etc.)
- (b) Ann Garms (+ other claimants - companies etc.)
- (c) Maxwell Gillan (+ other claimants - companies etc.)
- (d) Alan Smith (+ other claimants - companies etc.)

SLC0034001EA - 10 January 1984 (1.547)

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07:27 10. 07/97



## 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;

Alan Smith  
1703 Bridgewater Road  
Portland 3305  
Phone: 03 55 267 170

24<sup>th</sup> April 2008

Administrative Appeals Tribunal  
P.O. Box 9955  
Melbourne  
3001

Dear Madam/Sir

I have just discovered that, unfortunately, the submission I forwarded to you on 23<sup>rd</sup> April was still in draft format and had not been fully proof read. I am now attaching the final version, which includes the same information but has been corrected where necessary.

I also hope that you understand why I used a friend's name and address on the envelope when I first sent my submission, and my apparent paranoia won't affect your assessment of my claim. As further support for my concern, please also read the last paragraph on page ten of my submission, which discusses Telstra's Tony Watson and how he was reluctant to talk to the new owner of my business, Darren Lewis, because Darren was in contact with me. My submission's Exhibit 4 is a letter from the TIO to Telstra, which also relates to this same issue.

Telstra's own CCAS data dated 23<sup>rd</sup> May 1994 (when Tony Watson was Telstra's fault case manager during my arbitration), confirms that, as part of Telstra's defence of my claim, Mr Watson swore that the documents I faxed to the arbitrator on that particular day did not go through Telstra's network because the arbitrator's fax line was busy at the time I allegedly sent the faxes. My fax journal, Telstra's CCAS data and my Telstra fax account confirm however that five transactions did travel from my office to the arbitrator's correct fax number. The arbitrator's secretary has confirmed, to Tony Watson, that the faxes did not arrive at her end, even though I was charged for them being sent. To date, no one has ever investigated where these five sets of claim documents vanished to or where a further 41 similar Telstra related faxes disappeared to on route to the same arbitrator. My Melbourne based secretary, Ronda Fienberg, will attest that during 2006, when the Federal Government was investigating my unresolved Telstra issues, emails between our two offices often got lost in cyber space for days, and in some incidences weeks, before arriving at their designated destination, all were Telstra related documents.

Two separate Communications experts have since signed sworn statements attesting to their belief that a third person has interfered with fax transmission sent by COT claimants over the years. These two statements can be supplied on request.

I understand that your organisation has many issues to deal with, and I apologise for the extent of the information I am forwarding, but it is important that you have a full background regarding these matters to help with your assessment of my case.

I hope the earlier draft version of my submission has not caused too many problems and I apologise again for accidentally sending the draft version.

Sincerely

Alan Smith

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Darren Lewis  
Cape Bridgewater Coastal Camp  
1721 Blowholes Road  
Portland 3305

13<sup>th</sup> December 2008

Registrar Caporale  
The Federal Magistrates Court of Australia  
305 William Street  
Melbourne Vic 3000  
AUSDOC: DX435

Dear Registrar Caporale

**Re: File No: (P) MLG1229/2008**

The following chronology of events, including points 1 to 7, have been provided here at the suggestion yesterday (Friday 12<sup>th</sup> December), by Ms Lauren McCormic, Manager, Client Services, Federal Court of Australia.

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

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

1. Two 29 page transparent s/comb bound reports titled SVT & BCI – Federal Magistrates Court File No (P) MLG1229/2008 prepared by Alan Smith in support of my claims that I had inherited the ongoing telephone problems and faults when I purchased the Cape Bridgewater Holiday Camp;
2. Two s/comb transparent bound documents titled *Exhibits 1 to 34*
3. Two s/comb transparent bound documents titled *Exhibits 35 to 71* (the attached 71 *Exhibits* was enclosed in support of Alan Smith's 29 page report);
4. Three CD Disks which incorporated all of the submitted material.

On learning from Ms McCormick that the information discussed above in points 1 to 4 had not been received by the Federal Magistrates Court I again had a stress attack seizure, a problem I have been suffering with for quite some time due to the predicament I now find myself in and the disbelief that once again my mail as been intercepted. I have attached herewith dated 3<sup>rd</sup> December 2008, a copy of the Australia Post overnight mail receipt docket numbers: **SV0750627** and **SV0750626** confirming the total cost to send the above aforementioned information was \$21.80. I am sure Australia Post would confirm that a large amount of documents would have been enclosed in these two envelopes when they left Portland.

As you are probably aware, our business is telephone-dependent and trying to keep it afloat without an adequate phone service has been extremely stressful. The events that have transpired

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since my Taxation matters have been before the Federal Magistrates Court have only added to that stress.

Originally we had intended our submission of 18<sup>th</sup> November 2008 to include our belief that we had become victims of fairly brazen and decidedly underhanded tactics related to our on-going problems with Telstra but we left these issues out of our submission for fear of being branded as paranoid, particularly since we are aware that Mr Smith has, in the past, been accused of being a 'vexatious litigant'. On the attached copy of page 33 of the transcript of Mr Smith's AAT hearing on 3<sup>rd</sup> October 2008 however, the Senior AAT Member, Mr G D Friedman (who was hearing Mr Smith's case) noted: "*Let me just say, I don't consider you, personally, to be frivolous or vexatious --far from it.*" This comment has reassured us that there is now less chance of anyone seeing our concerns as paranoid and provided us with the confidence to raise invasion of privacy matters in relation to our Federal Magistrates Court matters: the various mail problems that have come to light in the last week or so have produced fresh evidence that clearly supports our fears of continuing illegal interference in our Telstra and Court matters.

The two CDs enclosed, and the attached copies of pages 50 to 52, 65 and 122 to 123, relate to Alan Smith's AAT Statement of Facts and Contentions of 26<sup>th</sup> July 2006 and show that Mr Smith raised similar invasion of privacy issues in his AAT claim, including examples of unauthorised interference in some of his Telstra-related documents and in other people's documents during their various litigation processes, all within the State of Victoria.

No-one can now say that the latest mail/privacy issues are not related, in some way, to our Taxation issues and my wife and I therefore believe we have solid grounds on which to base this formal request for an adjournment of our Tax Office matters to give us enough time to request the Legal Aid assistance we need before submitting further information pertaining to these invasion of privacy issues and so that these latest invasion of privacy events can be properly investigated because they are directly linked to the stresses that my wife and I have suffered ever since we purchased the Cape Bridgewater Holiday Camp.

When considering this request I would ask that you please taken into consideration two letters dated 3<sup>rd</sup> December 2008; one from me and the other from Alan Smith, and that you are aware that these invasion of privacy events have been documented as occurring in Victoria at various times between 1994/98, 1999 and the present time (in my case).

Sincerely

  
Darren William Lewis

  
Jennifer Eve Lewis

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markings on these two documents are same markings on the documentation assessed by Scandrett & Associates and Peter Hancock (see above) which they labelled as having been intercepted.

I believe most Australians would want to know, if the ACMA has nothing to hide on behalf of Telstra, then why would they not investigate these on-going interception issues in the public interest? I have two arch lever files that confirm that numerous COT claimants' commercial in-confidence documents were still being intercepted years after these COT cases went into arbitration. Surely, if a Government Communications Regulator refuses to address fax interception evidence I have offered to provide them, that confirm someone with access to Telstra's network was intercepting faxes during and after the end of their arbitrations, then this is a matter of public interest?

## **Bureaucrats and Concealment**

### **DICTA Independent Assessment**

On 15<sup>th</sup> September, 2005 Senator Barnaby Joyce wrote to me noting: *"I am pleased to inform you that the Minister has agreed there needs to be finality of outstanding CoT cases and related disputes. The Minister has advised she will appoint an independent assessor to review the status of outstanding claims and provide a basis for these to be resolved.*

*I would like you to understand that I could only have achieved this positive outcome on your behalf if I voted for the Telstra privatisation legislation".*

On 12<sup>th</sup> March 2006, before I agreed to be a part of Senator Barnaby Joyce's assessment process, I wrote to Liz Forman of the Department of Communications, Information Technology and the Arts DCITA noting: *"In your last letter to me you advised that the proposed independent assessment will not include "...an investigation of whether the law was broken by Telstra" and yet you are asking me to supply any information I can in support of my unresolved claims against Telstra. The issue of Telstra's illegal activities and my unresolved claims cannot be separated. Quite aside from the Minister's legal obligation to have Telstra's conduct investigated by the Federal Attorney General, the reason my claims are still unresolved, after ten years, is directly because of Telstra's unlawful behaviour plus the lack of assistance provided by either the TIO or the arbitrator, either during my arbitration or since, in relation to these acts.*

*How can we separate these issues when they were entwined even before my arbitration began, when I was forced to sign the original arbitration agreement without being told that the terms had been secretly changed to favour the defendants (Telstra)?*

*How can DCITA expect some issues to be separated from others when they are so inextricable intertwined?*

In response to my letter to Liz Forman, I received a letter dated 17<sup>th</sup> March 2006, from David Lever of DCITA, stating that: *"If Telstra or its employees have committed criminal offence in connection with your arbitration, we will refer the matter to the relevant authority."* Mr Lever however did NOT contact the relevant authorities, either in relation to the SVT or BCI reports that were provided to the DCITA even though both reports confirm Telstra DID commit crimes against me when they submitted these reports to the arbitrator, aware they were fundamentally flawed.

It is alarming to note that fellow government bureaucrat Nikki Vajrabukka sent a DCITA internal email to David Lever on 3<sup>rd</sup> March 2006, informing him that she had emailed David Quilty (then Telstra's Government Liaison Officer) at [david.quilty@team.telstra.com](mailto:david.quilty@team.telstra.com), asking for Telstra's assistance in addressing my March 2006 submission which described how, during my arbitration, Telstra had knowingly submitted **THREE** fundamentally flawed reports as official defence documents. Sending this email is much like asking a criminal if they should be charged in relation to crimes they have committed. It is also

and stop it immediately.' But that would be an injustice to the 16 or whatever you have settled." Injustice or not, as a result of the Senate's involvement, the first five of the twenty-one COT claimants did eventually get some of the FOI documents they had asked for and receive compensation as a result of the Senate investigation. The remaining sixteen COT claimants however (see opposite page), who were on the Senate Estimates Committee's 'B' list, were not provided anywhere near the FOI documents they were entitled to, nor did they receive compensation from Telstra through this Senate Estimates investigation, even though they had been informed that, whatever the outcome of the first five 'litmus test' COT cases, the following sixteen would be treated the same.

I believe it is a matter of public interest that three Senators I know of (there could be more) have tried desperately to organise for these claimants to have access to the type of documents that the other five claimants had access to as well as some sort of compensation for those remaining sixteen COT claimants, but this has not eventuated. In fact, there was one occasion when a Senator phoned my home at 7.45 one morning to inform my partner and I that he had achieved a breakthrough my claims would be assessed, only to be stopped by those with a vested interest in concealing my evidence that is included in my 26<sup>th</sup> July 2008 AAT Statement of Facts and Contentions and in this current Statement of Facts and Contentions.

All this evidence proves that the COT / Government-endorsed arbitrations were not conducted according to the promises pledged (see documents 271 to 273 in the Respondents Section 37 Documents) to then-Shadow Minister for Communications, Senator Richard Alston; Senator Ron Boswell of the National Party; and the Australian Democrats.

## Invasion of Privacy

### **Document 43 in the Respondents Section 37 Document**

On page 9 in my 7<sup>th</sup> February, 2010 FOI request to the ACMA, I provided advice that, on 7<sup>th</sup> January 1999, Scandrett & Associates Pty Ltd, Telecommunications Consultants (Queensland) wrote: "In our opinion these additional "facts" would make it almost certain that COT persons did not perform any alteration to the headers of the faxes involved. The second possibility is that a party or parties with access to the Telstra network on a national basis and the ability to selectively intercept and resend facsimiles have interfered with or used the national network of Telstra to intercept and resend these faxes. In summary then it appears to be almost certain that faxes are being intercepted and resent, with an attempt to hide the same, to the receiving party"; and on 11<sup>th</sup> January 1999, Peter Hancock of Total Communications Solutions (Victoria) wrote in his statutory declaration that: "It is my opinion from the evidence provided that a third party has been intercepting all of the faxes referred to above. In my experience there is no other explanation for the discrepancies in the facsimile footprints in question. I have read the report of Scandrett & Associates Pty Ltd and concur with its contents".

My 2010 FOI request of 7<sup>th</sup> February asks the ACMA to provide all the documents referred to in the Australian Federal Police transcripts as being provided to the AFP by AUSTEL. I believe it is important for the AAT to know that no-one has ever addressed these telephone / facsimile interception issues, even though AUSTEL, Dr Hughes (arbitrator) and Warwick Smith (TIO) assured all the COT Cases that these privacy issues would be addressed during their arbitrations. I now have conclusive proof that Telstra knew when my secretary left my office at various times when I was away in Melbourne including, on one occasion, noting the dates I would be away from my office weeks before those trips occurred and on one occasion Telstra was able to document that one of my regular callers happened to telephone me from a different location than usual.

On 23<sup>rd</sup> December 2002 and 7<sup>th</sup> January, 2003 I wrote to Tony Shaw, Chairman of the ACA. Copies of both these letters have since been returned to me from the ACA (now the ACMA) and it is clear that these two letters were also intercepted (seven years after my arbitration) before being redirected on to the ACA. The

<b>FAX FROM:</b> ALAN SMITH Cape Bridgewater Holiday Camp Portland 3305	<b>FAX TO:</b> MR WALLY ROTHWELL DEPUTY OMBUDSMAN TIO'S OFFICE MELBOURNE
<b>FAX NO:</b> 03 55 267 230	<b>DATE:</b> 14/7/98
<b>PHONE NO:</b> 03 55 267 267	<b>NUMBER OF PAGES</b> (including this page)

*If you have received this document in error, please phone us on 03 55 267 267.*

Dear Wally,

So far I have been able to show that at least 43 documents and attachments which were faxed to Dr Hughes during my Arbitration did not reach his office. I have also sent you copies of faxes that I have received which consisted of pages which were blank except for a single symbol at the top as well as copies of faxes that have arrived through my fax but which were supposed to go to elsewhere from a variety of different sources in Melbourne. I believe that, under these serious circumstances, I am now entitled to ask for a detailed list of all my claim documents which were received by the TIO's legal counsel (Peter Bartlett of Mister Ellison), during the Arbitration (FTAP), as per the rules of the Arbitration. This list would need to show the title of the document, the date it was received and the number of pages in each document together with a brief summary of the contents of each document.

I am sure you understand the gravity of the evidence relating to this matter.

There should be no conflict regarding this request because, as the TIO's office were the impartial administrators to my Arbitration, their legal counsel would already have these documents on record.

I await your response.

Sincerely,



Alan Smith

- copies to:
- The President of the Law Institute of Australia, Melbourne
- The President of the Australian Institute of Arbitrators, Melbourne

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WALLY 13/7/98

THESE TWO DOCUMENTS CAME THROUGH  
OUR FAX IN PORTLAND

YESTER DAY

ATTENTION WALLY  
ROTHWELL  
DEPUTY OMBUDSMAN  
T-10

NAME: UB65 - GUNN

REPAIR No. 76128 CURT. No. 140894

DATE: \_\_\_\_\_ PRICE: \$ \_\_\_\_\_

DATE REQUIRED: \_\_\_\_\_

ADDRESS: TRZ TINY

PH: \_\_\_\_\_

WORK REQUIRED: WREN O

WATCH STRIKE. DEPTD OR HND A

HEAVY KNIFE. DIAL VEST. ROVER.

FIT DIBL VEST. ADJUST HANDS.

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Seiver's

5th Floor, 200 Collins Street  
Melbourne Vic 3000  
Tel: (03) 9654 5100  
Fax: (03) 9654 1871



I SHOWED LYN CHISHOLM SIMILAR  
FAXES LIKE THIS, THAT COME  
THROUGH MY FAX WHEN SHE  
WAS HERE EARLY IN THE YEAR  
MAINLY FROM MELBOURNE AREA

ALAN

NAME: W885 CROWN  
REPAIR No. 76727 COST No. 140895  
DATE: 7.7. PAGE: 1  
DATE REQUIRED: \_\_\_\_\_  
ADDRESS: TRZ  
TEL: \_\_\_\_\_  
WORK REQUIRED: REP BRAND  
Q  
Fit Band ENDPIECE + 2 ST  
BERS \$10-

Seiver's  
Australia

5th Floor, 200 Collins Street  
Melbourne Vic 3000  
Tel: (03) 9654 5100  
Fax: (03) 9654 1871

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Stream Calls - Itemised *continued*

**calls** *continued*

Date	Time	Place	Number	Rate	Min:Sec	\$
<b>MaxStream Service 03 5526 7230</b> <i>continued</i>						
5 Jul	12:55 pm	Brisbane	0732571583	Economy	1:01	0.33*
5 Jul	01:16 pm	Brisbane	0732571583	Economy	3:19	0.73*
5 Jul	06:12 pm	Brisbane	0732571288	Economy	0:26	0.22*
7 Jul	02:33 pm	Melbourne	0396706598	Afternoon	2:09	0.78*
7 Jul	02:36 pm	Melbourne	0396705694	Afternoon	1:37	0.63*
1 Jul	11:40 am	Melbourne	0398761853	Economy	5:25	1.03*
2 Jul	12:17 pm	Melbourne	0398761853	Economy	3:38	0.74*
2 Jul	12:22 pm	Melbourne	0398761853	Economy	1:12	0.35*
2 Jul	02:09 pm	Melbourne	0398761254	Economy	1:14	0.35*
2 Jul	04:17 pm	Melbourne	0398761853	Economy	0:41	0.26*
3 Jul	08:37 am	Melbourne	0398761853	Day	1:26	0.62*
3 Jul	08:46 am	Melbourne	0398761853	Day	0:42	0.38*
3 Jul	10:25 am	Brisbane	0732571583	Day	0:59	0.49*
3 Jul	10:38 am	Melbourne	0392877001	Day	0:41	0.31*
3 Jul	10:39 am	Apsley	0355861231	Day	0:34	0.31*
3 Jul	10:40 am	Apsley	0355861302	Day	0:46	0.37*
3 Jul	10:48 am	Melbourne	0398761254	Day	1:12	0.54*
13 Jul	10:50 am	Melbourne	0398761254	Day	2:10	0.86*
13 Jul	10:53 am	Ballarat	0353313524	Day	0:41	0.37*
13 Jul	11:45 am	Melbourne	0392877001	Day	4:01	1.46*
13 Jul	03:29 pm	Melbourne	0398761853	Afternoon	1:06	0.47*
14 Jul	07:11 am	Melbourne	0392877001	Day	0:46	0.40*
14 Jul	07:22 am	Canberra	0262497829	Day	4:59	1.90*
14 Jul	09:01 am	Melbourne	0392877099	Day	3:15	1.21*
14 Jul	09:05 am	Melbourne	0396545100	Day	3:16	1.21*
14 Jul	09:12 am	Melbourne	0396541871	Day	1:56	0.78*
14 Jul	09:29 am	Melbourne	0394292259	Day	4:54	1.75*
14 Jul	12:32 pm	Melbourne	0392877001	Day	1:03	0.49*
14 Jul	03:21 pm	Melbourne	0398761254	Afternoon	5:09	1.65*
14 Jul	03:48 pm	Melbourne	0392877001	Afternoon	1:05	0.41*
15 Jul	09:39 am	Melbourne	0398761853	Day	2:36	1.00*
15 Jul	09:44 am	Melbourne	0398761853	Day	1:03	0.49*
15 Jul	12:27 pm	Melbourne	0398761254	Day	2:36	0.99*
15 Jul	12:59 pm	Melbourne	0398761853	Multi Rate	0:41	0.35*
15 Jul	01:37 pm	Melbourne	0398761254	Afternoon	4:03	1.34*
15 Jul	02:05 pm	Melbourne	0392877001	Afternoon	0:36	0.32*
15 Jul	03:32 pm	Melbourne	0398761254	Afternoon	3:01	1.04*
15 Jul	04:24 pm	Melbourne	0398761254	Afternoon	8:15	2.56*
15 Jul	05:37 pm	Melbourne	0398761254	Afternoon	5:55	1.88*
15 Jul	05:46 pm	Melbourne	0398761853	Afternoon	0:39	0.34*
15 Jul	06:00 pm	Melbourne	0398761254	Afternoon	0:50	0.39*
15 Jul	06:07 pm	Melbourne	0392877001	Afternoon	2:20	0.84*
16 Jul	09:58 am	Melbourne	0392877001	Day	0:40	0.37*
16 Jul	10:25 am	Melbourne	0398761254	Day	4:42	1.68*
16 Jul	10:41 am	Melbourne	0392877099	Day	6:35	2.29*

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**Alan Smith**  
**Cape Bridgewater Holiday Camp**  
**Blowholes Road**  
**RMB 4408**  
**Portland 3305**  
**Victoria, Australia.**

30/7/98

Phone: 03 55 267 267

Fax: 03 55 267 239

**Mr Wally Rothwell**  
**Deputy Ombudsman**  
**TIO's Office**  
**Melbourne**

Dear Wally,

It is already clear from the information I have previously provided to your office that not all my claim documents reached Telstra's defence unit. If Democracy is still alive in Australia under the present Liberal Coalition Government, and in the interests of Natural Justice, then a full enquiry must be launched into how my faxed claim documents were received at Dr Hughes's office and if they all arrived as intended.

Your office has already been provided with supporting documents from the Occasional Office, Chrissy Hawker's Secretarial Service and Robert Palmer, Author. All three of these people have received blank pages, documents with extended pages or badly disfigured pages from my fax over the period they have worked for me. The statement from the Occasional Office has been provided in the form of a Statutory Declaration:

A copy is now attached of a four page letter dated 25/5/95 to Sue Hodgkinson of Ferrier Hodgson Corporate advisory (FHCA). Please note that the pages are clearly numbered 1 to 4. The second attachment is a copy of three pages marked "*extended page 1.1, extended page 1.2 and extended page 3.1*". These first two of these pages are copies of part of the original letter which I sent to Sue Hodgkinson via Dr Hughes office by fax on 25/5/95 at 02.10pm. The alarming thing about this letter is that it seems that only 1% of the original pages reached the Arbitrator's office. Further, and even more alarming, the page marked "*extended page 3.1*" was not part of my claim at all. This raises the question of who this document belongs to or who it came from and this leads to the inevitable conclusion that someone else's claim is probably incomplete.

I have left these three pages stapled in the original condition - as they were returned to me from Dr Hughes's office after the completion of my Arbitration, as part of my own documents.

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page 1

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Not only is the identification information from my fax missing from these documents, including the date and time sent, but there is no identification for the third page either.

I have continually alerted your office to my belief that not all my claim documents were being seen by the parties they were intended to be seen by, including DMR and Lanea, and Telstra's defence unit. Although this letter to Sue Hodgkinson was sent after my Arbitration was completed (11/5/95) and therefore could not have been used as evidence to support my claim, the way in which they were received (or only partly received) at the Arbitrator's office supports my allegations that not all the claim documents that I faxed to the Arbitrator during my Arbitration actually reached his office.

As a matter of national justice, the TIO's office should demand an answer from both Telstra and the Arbitrator: they should be required to explain where the remaining 2% pages of the fax to Sue Hodgkinson went and, even more importantly, who the page marked "extended page 3.1" actually belongs to.

I now demand an explanation from your office as to why not all my claim documents arrived at the Arbitrator's office, thereby leaving Telstra in the lucky position of not having to address the missing documents.

Under the circumstances I also demand that I be supplied with a full and comprehensive list of all my claim documents that the TIO's Legal Counsel, Peter Bartlett of Minter Ellison, received from the Arbitrator during my Arbitration so that I can compare this with my own list of what Dr Hughes received and uncover how many ended up the same way as the Sue Hodgkinson fax noted above.

Mr Pinnock continues to state that I can only have these matters addressed in the Supreme Court of Victoria but what he has forgotten is that, before the COT four signed for this Arbitration, Senator Richard Alston, Senator Ren Boswell and the four of us were assured by the then TIO, Warrick Smith, that these four COT Arbitrations would be non-legalistic and fast-tracked. This can be confirmed by referring to Hansard reports during 1994 and 1995. Because of this I stand firm in my belief that these matters fall under the jurisdiction of the Administrator of my Arbitration - Mr Pinnock. The TIO's office has a duty of care to ensure that the "extended page 3.1" is returned to its rightful owner so that person can re-submit the claim document as a 'complete document' for both DMR / Lanea and Telstra to address.

The example of this fax to Sue Hodgkinson is further evidence showing that the Telstra Network was faulty, the very reason we COT members were in Arbitration in the first place. The whole situation was made worse by the fact that we were forced to use this faulty network to lodge our claims.

Because of this evidence the TIO's office must intervene and instigate an enquiry into how many of my claim documents were lost when they were sent by fax and how many documents were lost by other member's of COT when they lodged them by fax. This enquiry must now proceed as a matter of urgency.

I await your immediate response.

Sincerely,



Alan Smith

copies to:

Antanda Vanstone, Minister for Justice, Canberra

Daryl Williams, Attorney General, Canberra

The President of the Institute of Arbitrators Australia

The President of the Law Institute, Melbourne.



Commercial and Consumer

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**Technical Report**

**TF200 Customer Complaint**

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Telesira Corporation Limited  
ACN 051 775 556

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## 1. Initial Report

### 1.1 Background

A suspect TF200 reported as being involved in a customer complaint, was received from Mr Peter Gamble, 8/242 Exhibition Street Melbourne, Friday 6 May 1994.

The suspect TF200 was an Exicom telephone with manufacturing date of week 13 year 1993.

The customers name is Mr A. Smith, Tel 055-267230, from Cape Bridgewater, Portland Victoria.

The investigating technician was Mr Ross Anderson.

The suspect TF200 was replaced by Mr Ross Anderson on 27 April 1994.

### 1.2 Reported Fault Symptoms

Mr Ross Anderson reported on a Customer Equipment Fault Label the following comments:

The customer said the phone stays off-hook when hung up.

Mr Anderson then advised that it stays connected for 2 seconds after hang-up.

Mr Anderson then reported that on 28 April 1994, he tested the phone at his depot, and when first plugged in it would not disconnect when hanging up. After several minutes of being plugged in it would then hang up with the 2 second delay. He reported that it took up to 15 seconds if the phone was left unplugged for a period of time.

### 1.3 Initial Inspection

The suspect TF200 telephone when received was found to be very dirty around the keypad with what appeared to be a sticky substance, possibly coffee.

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The length of the delay for the phone to return to its on-hook condition is variable. If the handset is lifted the pressure on the hookswitch bubble comes from the spring inside the phone. The time for the sticky residue to release part of the flexible circuit layer appears to be related to how long the pressure has been applied; ie. it will hang up with a shorter delay following a short call. Longer delays could be achieved by applying considerably more pressure with a finger. This is only possible with the rear of the case removed. This too was time dependent with a long, hard push causing a longer delay. The stickiness of residue would also depend on the temperature and humidity at the time and the delay experienced by the customer could have been longer than the 10-20 seconds witnessed in the laboratory. The stickiness is also expected to decrease with time as the residue dries and collects a surface film of dust so again the customer may have experienced a greater problem than seen in the laboratory.

The flexible circuit layer from the phone under investigation was found to be far more sensitive to distortion than other samples of similar circuit layers. New flexible circuit layers from both Exicom and Alcatel could be flexed through more than 90 degrees before the switch function went to a low-resistance state. With the circuit layer from the phone under investigation only a small amount of flexing (<30 degrees) would activate the switch.

At this stage the flexible circuit layer from this phone has not been physically altered. To examine the hookswitch bubble in more detail it would need to be peeled open but once this is done the faulty operation can no longer be demonstrated. Once opened the bubble could be examined for ingress of the sticky residue and dimensional tolerances checked against other samples. This particular circuit layer may have a thinner spacer than normal.

Douglas Kuhn  
Telecom Research Laboratories  
03 253 6673  
June 1st 1994

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### 3. Conclusion

The TF200 replaced on 27 April 1994, was suspected of a fault condition which caused the telephone to hold the line after the handset was placed on-hook.

↘ The fault condition as documented by the fault technician Mr Anderson was confirmed on 12 May 1994.

The nature of the fault may have been reported as No Dial Tone, not receiving calls, or always busy.

The cause of the fault condition has been confirmed by Telecom Research to be due to the presence of a foreign substance possibly beer inside the telephone case which directly caused the incorrect operation of the telephone membrane hookswitch. When the hookswitch was removed from the foreign substance, the telephone operated correctly.

Accordingly, the fault was not caused by a defective TF200 telephone as was originally reported, but was the direct result of failure by the customer or other person, to report an accidental liquid spillage which entered the telephone case, resulting in failure of the hookswitch. The state of the telephone when received suggested that the telephone was not well cared for by the customer.

If the customer had reported the liquid spillage when it occurred the telephone would have been replaced under standard maintenance procedures with no resultant loss of business.

It is important that suitable guidelines be issued to field staff attending fault reports on rented telephones to note the conditions under which the Telecom property has been installed. It is the customer responsibility to look after the telephone and ensure that it is kept in a safe environment. It is Telecom's responsibility to ensure the telephone is installed in a safe location.

*R. Bell*

R. Bell  
Manager Technical Liaison  
Customer Equipment Division  
20 June 1994.

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APR 16 '95 12:04

P.1

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THE SCIENTIFIC EXAMINATION OF QUESTIONED  
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Your ref:

DATE:

*16-4-95*

TO:

*Alan Smith*

TIME:

*1200*

FACSIMILE NUMBER:

*0552672*

ATTENTION:

FROM:

*Paul Westwood*

RE:

PLEASE ADDRESS ALL CORRESPONDENCE TO:

Principal Laboratory

Total number of pages including this page:

The information in this facsimile transmission is confidential and may be the subject of legal professional privileges. The confidentiality attaching to this facsimile transmission is not negated by reason of the fact that this document has been transmitted to the incorrect number.

*Confidentiality Undertaking follows*

*[Signature]*

*635*

Schedule E

Confidentiality Undertaking

TO: The Administrator - Fast Track Arbitration Procedure  
Telecommunications Industry Ombudsman  
Ground Floor, 321 Exhibition Street  
Melbourne, VIC 3000

I, Paul Davison Westwood (print full name)  
of 7 Bingley Way Wembley NSW (print address)  
2626

acknowledge that I may receive or become aware of confidential information relating to the "Fast Track" arbitration procedure (defined in clause 16 of the Fast Track Arbitration Procedure as the "Confidential Information") and therefore I hereby undertake and acknowledge to each of the Administrator, the Arbitrator, the Claimant and Telecom Australia (as defined in clauses 1 and 3 of the Fast Track Arbitration Procedure) at all times that:

1. I shall not divulge any Confidential Information to, or permit it (whether by act or omission) to come into the hands of or be or become available to, any person or persons other than in accordance with clause 2 hereof.
2. I shall not use any Confidential Information for any purpose other than as I am directed to use it by the Arbitrator, the Claimant, or Telecom Australia as the case may be, in the course of providing services to that party.
3. I shall take all reasonable steps as I may be advised to take by the Administrator and/or the Arbitrator, to cause and ensure that any Confidential Information is kept in the strictest confidence.
4. I shall return all documents containing Confidential Information which I receive, and all copies thereof, to the party who provided me with such documents, within 6 weeks of publication of the Arbitrator's award.
5. These undertakings shall have full force and effect and shall operate at all times hereafter notwithstanding that I may subsequently cease to provide services to the Arbitrator, the Claimant, or Telecom Australia as the case may be.

Dated Sixteenth day of April 1995

Signed by the person whose )  
name and address are inserted )  
above, in the presence of: )

  
Signature

  
Signature of Witness

Allen John HART  
Full name of Witness

A63365

Photo 5. Close-up of label stuck to case above keypad

At point 1.3 in Telstra's 12<sup>th</sup> December, 1994 (TF200 arbitration defence report), they state: "...The suspect TF200 telephone when received was found to be very dirty around the keypad with what appeared to be a sticky substance, possibly coffee."

The two photos on this page are allegedly of the same thing – they are both labelled "Photo 5. Close-up of label stuck to case above keypad". (I had put the label there to alert my staff that this was the phone to ring out of the holiday camp).

However, there is clearly a vast difference between these two photos. The very dark photo, above, labelled "A63365" is a Telstra Folio document of the same photo as shown below. The pale photo below was provided to me directly by Telstra's laboratory, and indentified as being the condition in which the TF200 EXICOM phone was presented in.

The overwhelming disparity between the two is highly suggestive of tampering, and the possible application of a sticky substance after the phone had been collected from my office.

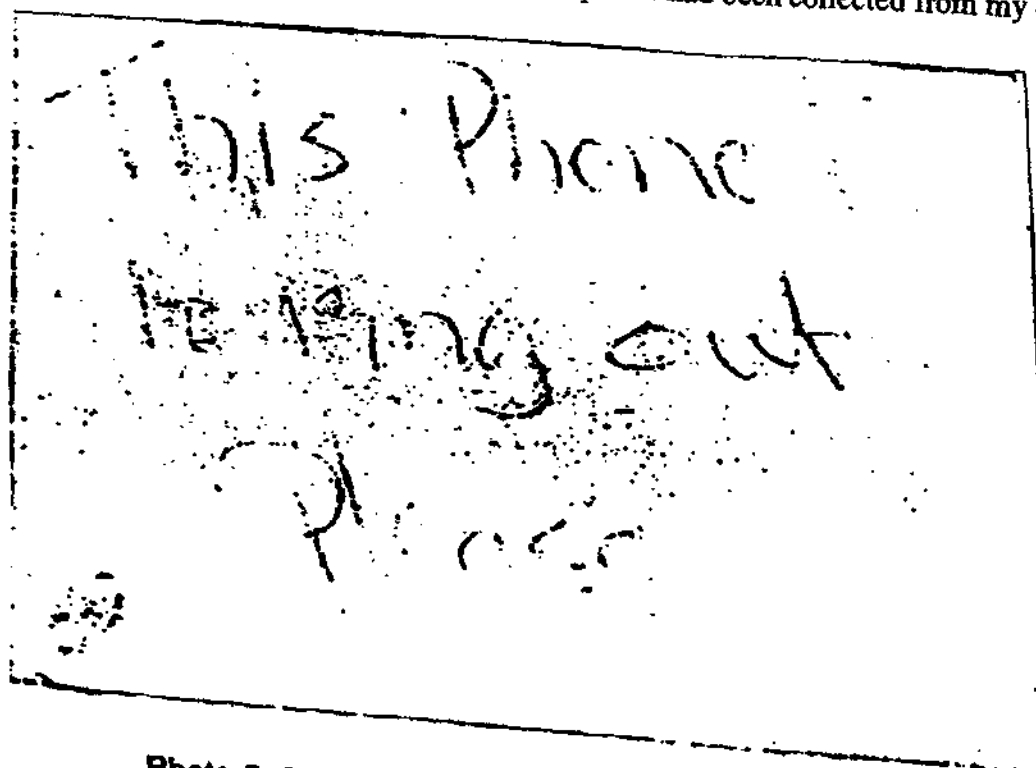


Photo 5. Close-up of label stuck to case above keypad

**A**



Photo 4. Close-up of engraved information on case

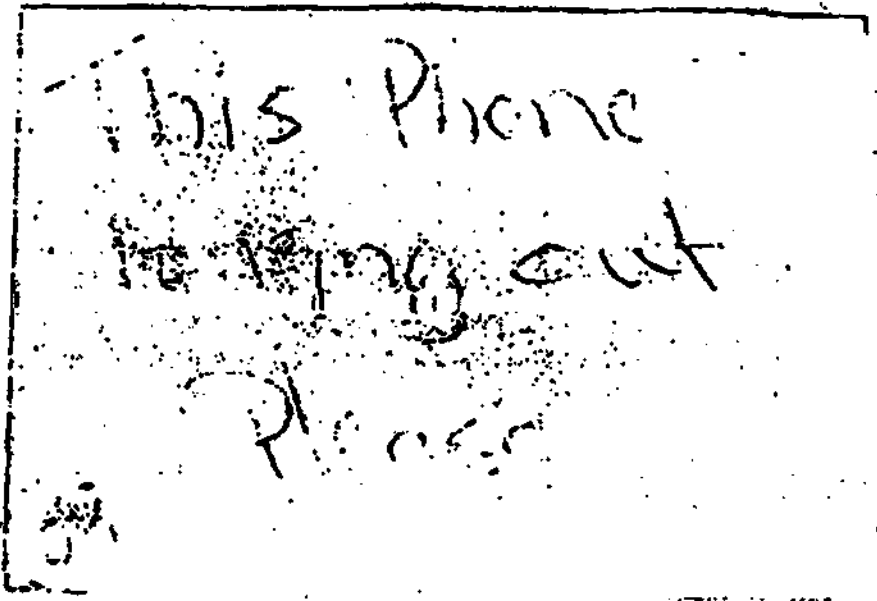


Photo 5. Close-up of label stuck to case above keypad

**A**

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Photo 4. Close-up of engraved information on case



Photo 5. Close-up of label stuck to case above keypad

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**Department of  
Communications  
Information Technology  
and the Arts**

**CASUALTIES OF TELSTRA (COT)**

**BACKGROUND AND INFORMATION FOR  
MINISTER'S OFFICE**

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## Casualties of Telstra (COT)

### Background and Information for Minister's Office

#### 1. First Appearance

Ann Garms first approached AUSTEL in July 1992. Other complaints then followed. Most of the complaints had a history. History included: court action, COT members contacting Telecommunications Industry Ombudsman (TIO) and police.

The original 5 COT cases were brought to AUSTEL's attention in August 1992.

#### Telstra (Telecom) Action

Telstra accepted the recommendations of the Telecommunications Industry Regulator, AUSTEL, to participate in an independent arbitration process administered by the TIO for claims to be assessed.

- ◆ Eight claims cost Telstra \$1.74 million.
- ◆ Telstra agreed to pay an ex gratia reimbursement of claimants' costs in December 1996, at the completion of claim process. This was not a requirement of Telstra.
- ◆ \$1.2 million was provided to the TIO to be distributed among claimants who received compensation.
- ◆ Telstra was investigated by the Commonwealth Ombudsman Office for lack of responsiveness in providing information to COT claimants under the Freedom of Information Act (FOI).

#### AUSTEL Action

- ◆ The objective of AUSTEL was to determine whether there was any substance to the COT complaints in relation to the service and treatment received from Telstra.
- ◆ In relation to their complaints, AUSTEL was to determine the causes of their problems, nature of problems and to recommend measures to rectify the problems, such as advising ways to gain compensation.
- ◆ See attachment B for "Terms of Reference for an Independent Assessment".

#### TIO Action

- ◆ ~~The TIO was set up as the administrator for the COT cases.~~
- ◆ ~~The procedures were developed by the TIO in consultation with consumer groups, AUSTEL, Telstra and the COT members.~~
- ◆ The TIO appointed an independent Arbitrator, Dr Gordon Hughes to arbitrate the cases.

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## 2. Senate Parliamentary Committees

The Senate Committee on Environment, Recreation, Communication and Arts Legislation Committee established a Working Party (WP).

### Background of Working Party

Senator Tierney, Chair of the Senate Committee on Environment, Recreation, Communication and Arts Legislation Committee wrote to Telstra on 29 September 1997 concerning evidence provided in two Senate Committee hearings on the issue of matters arising from the Committee's consideration of Telstra's Annual Report (1995-1996), COT cases and related cases.

Senator Tierney advised Telstra of claimants' dissatisfaction with Telstra's provision of information to complainants, both through the arbitration processes and through requests made under Freedom of Information (FOI). Areas of concern identified included:

- ◆ The large amounts of relevant documentation that existed and the difficulty experienced by individuals in identifying specific areas or subjects that would facilitate a search under FOI;
- ◆ The difficulty experienced by laymen in understanding the documents provided and the absence of any summary documents which would facilitate comprehension of documents received; and
- ◆ The difficulties in obtaining required documentation within a reasonable time and without incurring unnecessary expense.

The Committee requested Telstra to develop a list of all documents reviewed in the course of its preparation of its defence in relation to outstanding arbitration cases, responses to requests under FOI, and appeals in respect of cases already decided. The requested documentation was to include Excel files and any other relevant documents that at the time had not been made available to the above parties.

The Committee also asked Telstra to establish a working party, comprising a representative from Telstra, two representatives from COT and a representative from the Commonwealth Ombudsman's office.

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### Members of Working Party

The WP comprised of two COT representatives, representative, Mr Armstrong, and the Chair, a person nominated by the Commonwealth Ombudsman. The Ombudsman nominated Mr Wynack.

r, a Telstra 5 41

### Objective

The WP was established to report to the Committee on specified matters concerning Telstra and COT/related COT cases. The main objectives were to:

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1. Develop a list of documents to be sorted into specific categories, and to provide specified information;
  2. Investigate whether there were avenues not explored by Telstra to locate documents;
  3. Report to the Committee;
    - ◆ To follow 1 and 2 above;
    - ◆ To provide an assessment of the processes used by Telstra in the provision of information to the Parties and to make recommendations as to additional or improved processes which Telstra would adopt;
    - ◆ To make recommendations whether any list should be provided to the Parties;
    - ◆ To decide whether any documents Telstra had claimed privileged or confidential should be provided to the Parties; and
    - ◆ If any of the Telstra documents should be provided and on what terms.

### 3. Original COT Members Complaint

*No ring received* – when a caller dialled the number, heard the phone ringing, but at the other end, no ring tone was heard.

*Busy when not* – when a caller dialled a number, heard a busy tone, but the phone at the premises was not in use.

*Call drop out* – when a call was successful, but during the call or when the call was first picked up, call was disconnected.

*Recorded voice announcement* – when the caller received a recorded voice message stating that the number had been disconnected, when the number was still connected.

*Rotary problems* – businesses that had 2 or 3 phone numbers but only advertised one. If a call was received and the main line was busy the system would search for a free line. With these businesses, the calls were only able to get through if the main line was made busy.

#### Original Members

Mr Alan Smith, Cape Bridgewater Holiday Camp - Cape Bridgewater, Victoria  
Mrs Ann Ganns, Tivoli Restaurant - Fortitude Valley, Queensland

#### History

##### Alan Smith:

- ◆ Operated the Cape Bridgewater Holiday Camp, in Cape Bridgewater, Victoria.
- ◆ Reported problems with his telephone system from 1992

- ◆ Started the Fast Track Settlement Procedure in 1993, abandoned 6 months later.
- ◆ Entered the Fast Track Arbitration Procedure (FTAP) in November 1994, which was completed and was awarded a settlement in May 1995. Alleged that processes were hampered by delays in FOI compliance by Telstra.
- ◆ Tried to sell his business in mid 1995, but was unable to sell, due to ongoing telephone problems.

Ann Garms:

- ◆ Owned the Tivoli Theatre Restaurant in Fortitude Valley, QLD.
- ◆ Reported telephone problems from 1984. Complaint: no ring received, call drop out, "busy" tone when not busy.
- ◆ Telstra offered 2 ex gratia payments, one in January 1993 and the other June 1993, both were refused.
- ◆ Began Fast Track Settlement Procedure in November 1993 which ceased 6 months later.
- ◆ Entered the FTAP in November 1994.
- ◆ The Commonwealth Ombudsman released a report in May 1996 supporting Ms Garms claims against Telstra's handling of her FOI applications, which included lengthy delays.
- ◆ The Ombudsman made a recommendation that Telstra pay Ms Garms compensation for these delays. Telstra advised the Ombudsman that it would liaise with the Ombudsman regarding the compensation.
- ◆ Ms Garms made a claim for compensation in November 1996.
- ◆ Award determined August 1996.
- ◆ Was awarded \$600,000 (which she appealed to the Supreme Court of Victoria and lost).
- ◆ Was awarded \$237,420.49 from the TIO for 'reasonable costs' - see Attachment A.

- ◆ Owned a courier service called
- ◆ Complained of service difficulties for over six years.
- ◆ Purchased a Flexitel in 1987. He then complained of network and other problems associated with the Flexitel.
- ◆ An extensive network investigation was conducted at the time of complaints (1987-1989). Telstra identified some congestion which was immediately fixed. S 41
- ◆ A claim was made under *Trade Practices Act* for compensation totalling . It was settled by payment into court without admission of liability by Telstra on 30 March 1993. The amount was settled on the advice from
- ◆ The amount was less than the .  
chose to accept the offer without further negotiation.

- ◆ Owned the business
- ◆ Had problems of connection of calls. S 41

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1. To have an independent assessment conducted. The disadvantage is that the process could take a long time.
2. For Telstra to provide a direct compensation settlement. The advantage is a quick settlement, but no consideration by a third party, nor any guarantee of a mutually satisfactory outcome.

Telstra believed that it had done everything possible for a fair outcome and that Telstra had exhausted all efforts to resolve the situation.

**Telstra's Term of Reference for An Independent Assessment**

In order to seek resolution in the matter of complaints by two individual members of Casualties of Telstra (COT), being Mrs Garms and Telstra and the Claimants have agreed to refer the complaints to an Independent Assessor for consideration. The Claimant's allegations shall be treated on an individual basis.

S 41

The Independent Assessor to be appointed shall be a person who is acceptable to both AOTC and the Claimants. In this respect, the parties agree to approach the President of the Law Society of Queensland.

The Terms of Reference for the independent assessment are as follows:

- The Independent Assessor shall initially establish whether faults existed in the telephone services provided to the Claimants and whether such faults resulted in losses to their individual businesses, the financial damage (if any) to the businesses caused by those faults and a reasonable amount of compensation for such damage.
- In establishing whether faults existed, the Independent Assessor must also establish the relevant dates at which certain faults are alleged to have occurred.
- The Independent Assessor shall determine the business losses of the Claimants since first reporting telephone faults in their respective businesses in their present locations.
- ~~The Independent Assessor shall then establish what proportion of that business loss is attributable to problems with the telephone service, as distinct from other possible causes of business loss, not otherwise attributable to any act or omission on the part of AOTC.~~
- In assessing loss and damage, the Independent Assessor must have regard to all relevant circumstances, including factual and legal circumstances. On such circumstance which must be considered is the applicability (if any) of AOTC's statutory immunity and the extent of Telstra's obligations in relation to the operation of the public switched network. Bearing in mind any AOTC statutory immunity, the Independent Assessor shall determine AOTC's legal liability for

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any part of the compensation which he or she determines as being attributable to network faults prior to 1 July 1991.

- The assessment should be completed as soon as reasonably practicable as determined by the Independent Assessor. In order to assist in the timely conduct of the assessment, the Independent Assessor may engage, at the cost of AOTC, whatever consultants or other experts are reasonably necessary. However, any consultants or experts shall only be appointed with the approval of the claimants and AOTC.
- The Independent Assessor shall have access to all relevant records upon request, and for this purpose, the Claimants authorise AOTC to make available all information held by AOTC relating to the Claimants. Each party shall comply with all requests by the Independent Assessor with regard to all records and each party shall have the right to put before the Independent Assessor any relevant records. Further, each party shall have the right to call for relevant records from any other party or third parties.
- The costs in relation to the assessment shall be borne by AOTC, however, in the event that the Independent Assessor finds that AOTC is liable to pay an amount of money to the Claimants, not greater than or equal to any sum previously offered by AOTC to the Claimants before 31 January 1993, those amounts shall be applied to the cost of the assessment and paid to the Claimants. In no circumstances shall the Claimants be required to contribute to the costs of the assessment.
- The Independent Assessor must provide full reasons for his/her findings in writing. Such reasons and any subsequent settlement between the parties shall remain confidential between the Independent Assessor and parties.
- The findings of the Independent Assessor shall be recommendatory only so far as they relate to matters of law, or so far as they involve a mixture of fact and law, and shall be binding on the parties as to issues of fact.
- In the event that the parties adopt the findings of the Independent Assessor for the purpose of resolving their dispute, such adoption shall be without any admission of liability whatsoever, any payment of monies to the Claimants shall be on an ex gratia basis and shall be in full discharge of all claims which the Claimants may have against AOTC.
- In the event that the parties cannot reach an agreement based on the findings of the Independent Assessor, there shall be no further negotiations between the parties. However, in relation to the findings of fact, and in so far as they may be admissible in evidence, there shall be no impediment to the Claimants using those findings of fact in any subsequent legal proceedings.



**5. Compensation**

Amounts claimed and received:

Claimant	Claim	Settlement/Award
Smith	\$3.4 million	\$320,000

S.41

Garms (Appeal Lodged)	\$8.1 million	\$600,000
Hynninen	\$300,000 plus personal injuries	\$33,000

As at 12 August 1997 pending claims were:

Plowman	\$1.9 million loss of profits
---------	-------------------------------

S.41

**Date of Payment**

<u>Name:</u>	<u>Date Received:</u>
Smith	May 1995

S.41

**6. Action of the Department**

The Department wrote a letter to Alan Smith on 26 May 1997, which said:

"The TIO has advised that he has completed his tasks as the administrator in your claim for compensation as a Casualties of Telstra (COT) case and has fully investigated the concerns you have raised with his office. I understand that the TIO

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has also informed you of appeal rights available to you, should you wish to take further action. The TIO is an independent body, established by the industry to investigate consumer and billing complaints and other matters that fall within its jurisdiction. As such the Minister is unable to direct the TIO in those matters. Thank you for bringing this matter to the Government's attention however, we are unable to provide any further advice on this matter." (Copy of letter page 102, file P970431.)

**7. Correspondence From Allan Smith**

Alan Smith has written to the Minister on 6 January, 5, 10, 14, 16, 17, 18, 22 and 28 April, 6 and 23 May and 5 and 6 June, 8, 10, 11, 17 and 30 July 2002, 10 and 14 August 2002 regarding his arbitration process.

**Main Issues**

- That the TIO received documented evidence that the technical resource unit was unlawfully ordered not to investigate the billing faults raised in his claim and that his phone was disconnected after the arbitration process.
- Claims that 85% of his documents prove that the TIO allowed Telstra to disconnect his business phone lines.
- Alleges that Telstra introduced a "sticky" substance to his TF 200 phone as a way to disallow Telstra's involvement in the breakdown of his telephone service and not network problems.
- Believes that there was a problem with his billing in 1995 and also in January 1998 after his arbitration.
- Claims that the Telecommunications Industry Ombudsman, John Pinnock is a liar and claims that he will not receive a fair response with his request for a reassessment.
- Is wishing to put forward \$30,000 for an independent investigation into his evidence to be and the person to be appointed by the Minister's office.
- Believes that Telstra did not provide all documents under the FOI request and that it until the end of the arbitration process held 40% of documents.
- That Telstra fraudulently manufactured the TF200 report, which was used in its defence in the arbitration process.
- Is dissatisfied with the arbitrator Dr Gordon Hughes and believes he was involved in a conspiracy with Telstra and the TIO.

The TIO wrote to the Department on 18 July 2002 advising that it has not been presented with new evidence to support a reassessment for Mr Alan Smith. The matter is now closed.

**Correspondence to Treasury**

Mr Alan Smith has sent facsimiles to the Treasury Department on 8, 10, 14, 15, 21, 23 and 30 July regarding his concerns with the TIO and Telstra. All his correspondence has been immediately forwarded to our Department. Mr Smith has raised the same issues that he presented to the Minister.

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## 8. Attachment A: Background of COT Cases

The COT cases were a group of small business owners who claimed that inadequacies in their telephone service over a prolonged period led to a decline in their business, resulting in significant financial detriment. While some of the COT cases had experienced faults to their telephone services for longer periods than others, they all fell into the category of customers experiencing long term faults, ranging from three to ten years. The most frequent complaint was that of a calling party receiving a ring tone whilst the complainant who was being called received no indication of the call. Other complaints were that a person who rang the complainant's number would get a busy signal, or a "number disconnected" message, even though the complainant was not on the phone and the phone was still connected.

In response, AUSTEL conducted a thorough investigation and issued a detailed report on 13 April 1994 with 41 recommendations. Telstra implemented most of the significant investigations. Recommendations were: change from analogue to digital; provide a new system of arbitration and compensation; better fault recording; improved monitoring and testing procedures; better complaint handling procedures, and stricter privacy safeguards in relation to voice monitoring and recording.

An FTAP was developed for handling the claims of the original four COTS. As other cases emerged in the course of AUSTEL's investigations, a further procedure was developed to cover those claims. This procedure, termed the 'Special Arbitration Rules', applied to the handling of the later COT cases. A third industry-based procedure was later developed, called the Standard Arbitration Rules.

Telstra agreed to enter the arbitration process with 16 claimants. The TIO administered the arbitration procedures. With agreement from the claimants, the TIO appointed an independent Arbitrator to adjudicate the cases.

The procedures relied on Victorian law in relation to the arbitration of disputes. The procedures allow decisions of the Arbitrator to be registered as an order of the Victorian courts, therefore attaining the standing of a court judgement and enabling enforcement of the arbitration.

The arbitration procedures also provided for appeal to the Supreme Court of Victoria on the grounds that the Arbitrator misdirected him/herself or that evidence presented during arbitration was misleading. Such an appeal had to be lodged within 21 days of decision.

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**9. Attachment B: Procedure for Assessment of Claimants**

1. The TIO acted as the Administrator for the Fast Track and Special Arbitration Procedures. The TIO recognised that claimants incurred costs in excess than originally anticipated.
2. Telstra gave \$1.2 million to the TIO to distribute to the claimants as a contribution to reasonable costs incurred during the arbitration process.
3. The eligible claimants were:
  - ◆ Claimants who obtained an award in their favour
  - ◆ Claimants whose arbitrations were still in process at the time the rules were released.
4. Each claimant had to submit a claim for 'reasonable costs' to the TIO. Claimants whose arbitration hadn't been finalised at the time the rules were released were to submit a claim for costs already incurred and then after the award was received to submit a claim for the total cost.
5. Reasonable costs included:
  - ◆ Legal costs, accounting costs and costs associated with obtaining technical advice
  - ◆ Telephone and fax costs for the preparation of submitting and prosecuting their claim
6. Reasonable costs did not include:
  - ◆ Allowance for claimants own time
  - ◆ Allowance for costs incurred for FOI requests.
7. The claim had to be provided with receipts for the above reasonable costs.
8. The TIO assessed the reasonable costs by:
  - ◆ Regarding the principles relating to party/party costs with no allowance for solicitor/client or solicitor and own client costs.
  - ◆ Ensuring that a total of \$1.2 million was available for distribution to all claimants and the TIO was required to ensure that all claimants received an equitable portion of this sum in relation to their reasonable costs.
  - ◆ Having assistance by a consultant.
9. Payment of reasonable costs was released to the claimant within 14 days of the TIO making the assessment. Payment was only given to claimants who were given an award.

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10. The TIO's assessment of reasonable costs was to be the final resolution of the issue of the claimant's request for reasonable costs. No review or appeal from the TIO would be available.

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**10. Attachment C: Terms of Reference for an Independent Assessment of Claims Against Telstra by COT**

- The group known as the Casualties of Telstra (COT) claim that the individual members of the group ("the Claimants") have suffered loss and damage to their respective businesses as a result of acts or omission by Telstra in relation to the member's telecommunications services. Long running negotiations between Telstra and the members have failed to resolve these issues to the satisfaction of the members.
- In an attempt to avoid litigation, the Claimants and Telstra have agreed, at the request of Austel, to refer each claim to an Inquiry Officer who will act as an independent assessor and will be nominated by Austel in the event that Telstra and each Claimant are unable to agree upon such a person. The inquiry shall produce findings in relation to the legal liability of Telstra in relation to each claim, and the quantum of such liability, if any. The conduct of the inquiry by the Inquiry Officer shall be subject to these Terms of Reference.
- In order to assist in the conduct of the Inquiry, the Inquiry Officer may have reference to such legal, accounting, financial or other advice as he or she deems necessary.
- Each party shall be free to make a written submission to the Inquiry Officer in relation to issues believed to be of relevance to the Inquiry.
- Each finding as to fact of the Inquiry Officer made pursuant to these Terms of Reference shall be binding upon Telstra and the Claimant and all decisions shall remain confidential to Telstra, the relevant Claimant, and Austel. For the avoidance of doubt, neither party shall be bound by any finding or assumption by the Inquiry Officer as to matters of law.
- An acceptance by a Claimant of the Inquiry Officer's decision as to an appropriate sum of compensation shall be subject to the execution of an appropriate Release and shall be without any admission of liability whatsoever on the part of Telstra.
- The costs in relation to the Inquiry shall be borne by Telstra. In the event that the Inquiry Officer finds that Telstra is liable to pay an amount of money to one or more of the Claimants, not greater than any sum previously offered by Telstra in an attempt to settle any claim, the costs of the Inquiry shall be borne by the Claimant up to the value of the claim as determined by the Inquiry.
- The findings of the Inquiry Officer shall be effective to revoke all previous offers not already withdrawn or lapsed.

Documentation of Complaints

- Each Claimant must fully document the particulars of the claim to allow the Inquiry Officer to make full inquiries.

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- All financial data related to the alleged losses suffered by the Claimant must be supplied.
- All relevant customer information held by Telstra relating to the claim must be supplied. By agreeing to these Terms of Reference the Claimant hereby authorises Telstra to release such personal information relating to it as is necessary to allow the Inquiry Officer to conduct a full inquiry.

Establishing Grounds for a Claim

The Inquiry Officer must establish whether or not the matters put by the Claimant give rise to a question of legal liability on behalf of Telstra. In establishing this threshold question of liability, the Inquiry Officer must have regard to well established concepts relating to liability, such as the following:

- Is there contractual liability: Is there a contractual relationship between Telstra and the Claimant? Has Telstra breached the terms and conditions upon which the product or service was supplied?
- Is there tortious liability: for example in negligence?

The basic components of any action in negligence are:

- the existence of a duty of care;
- breach of that duty, and
- damage as a result of the breach.

In considering the question of liability for negligence, the following issues must be considered:

- There must be a relationship of "proximity" between Telstra and the Claimant before a duty of care can arise.
- Was the alleged damage to the Claimant reasonably foreseeable by Telstra, that is, could the Claimant's situation have been in the contemplation of Telstra at the time of the act or omission which is alleged to have caused damage?
- Was the damage suffered too remote?

Legislative Background: Telstra's Immunity From Suit

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If the Inquiry Officer finds that a question of Telstra's liability does arise, a decision as to the extent of that liability must be made within the context of the legislative immunities which have been in place at the various stages of Telstra's development. Regardless of the findings of fact made, Telstra's liability in relation to current events may be affected by the conditions of the Tariff, and requirements of relevant State and Commonwealth legislation. Close attention shall be paid to the dates to which the particular claims relate, so that the liability of Telstra for any damage is assessed within the context of its legal obligations at the time, and more particularly, any legislative immunity afforded to Telstra.

- Until the introduction of the *Australian Telecommunications Corporation Act 1989*, Telstra as both the Commission and in the early days of the Corporation, was given a blanket immunity from liability regarding acts or omissions in relation to its products or services by Section 101 of the *Telecommunications Act 1975*. This immunity applied to both monopoly and competitive products, and was fortified by the various By-Laws which outlined the way in which the immunity applied to specific products or services.
- These immunities were replaced on 1 July 1989, with the commencement of the *Australian Telecommunications Corporation Act 1989*, and the introduction of Section 30 which maintained such immunities but only in relation to monopoly products and services. The By-Laws were replaced by the Standard Terms and Conditions which again specified how the immunity applied to particular products and services.
- The 1989 Act, and accordingly Section 30 ceased to exist on 1 July 1992 with the introduction of the *Telecommunications Act 1991*, which did not contain any such immunities, but provided that all carriers must file a Tariff with Austel. However, while the old Act was repealed, the SCACs were amended to include the Section 30 immunity, and they continued in force until the filing of the Tariff on 16 December 1991.

Quantum of Damages

In assessing the quantum of damages, the Inquiry Officer shall have regard to:

- The duty of each Claimant to mitigate any loss; and
- The impact of supervening factors such as:
  - (i) the general economic environment upon businesses similar to that of each Claimant;
  - (ii) local circumstances such as increased or new competition to the Claimant's business by similar businesses;
  - (iii) any efforts of Telstra directed at minimising the alleged loss of the Claimant; and
  - (iv) any other factors considered by the Inquiry Officer to be relevant to an accurate and fair assessment of the circumstances.

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- The need to apportion damages between causes, which result in loss or damage and between different periods where one period might be subject to an immunity in favour of Telstra;

And shall report on these matters.

Report of Inquiry Officer

- The Inquiry Officer shall present his or her findings to both parties and Austel by way of a report.
- The Report shall detail the following:
  - The Inquiry Officer's findings as to the facts of the matter;
  - The Inquiry Officer's findings as to the liability of Telstra, if any in relation to the factual situation;
  - If Telstra has been found to have a liability to the Complainant, the quantum of compensation for which Telstra shall be liable to the Complainant;
  - The breakdown of the categories of compensation for which Telstra is liable.

Any documents or information produced to or by the Inquiry or findings of the Inquiry shall be without prejudice to either party for any subsequent purpose or transaction.

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**Murdoch, Wally**

From: Lever, David  
Sent: Wednesday, 19 October 2005 5:07 PM  
To: Bryant, Simon; Madsen, Andrew  
Cc: Murdoch, Wally  
Subject: RE: outstanding claims against telstra

Yes. but I sent her the minute with letters attached, so she shouldn't be confused.

DL

From: Bryant, Simon  
Sent: Wednesday, 19 October 2005 5:06 PM  
To: Lever, David; Madsen, Andrew  
Cc: Murdoch, Wally  
Subject: RE: outstanding claims against telstra

I think Jodi may be getting confused about what the assessment is meant to do (or at least what we are recommending) is an assessment of process and what further resolution channels may be available to people. We are arguing strongly that the assessment should not be about the merits of each case.

SB

From: Lever, David  
Sent: Wednesday, 19 October 2005 4:58 PM  
To: Madsen, Andrew; Bryant, Simon  
Cc: Murdoch, Wally  
Subject: RE: outstanding claims against telstra

As discussed with Andrew yesterday, the minister has signed and sent a letter to Barnaby Joyce that deals with the above and local presence plan issues. We have not yet seen it but I made comments on the draft sent yesterday afternoon by matt, seeking to retain the tight constraints on the scope of the assessment, which he had relaxed.

She did not sign the letter to ACMA and said that she hadn't decided on identity of assessor yet.



DL

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Lilley, Rachel

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**From:** Vajrabukka, Nikki  
**Sent:** Wednesday, 18 January 2006 2:59 PM  
**To:** Lilley, Rachel  
**Subject:** FW: independent assessment of claims against Telstra  
**Attachments:** letter to claimants re COT cases\_form letter.doc

for file pls.

---

**From:** Vajrabukka, Nikki  
**Sent:** Wednesday, 18 January 2006 8:25 AM  
**To:** 'John Pinnock'  
**Cc:** Lever, David  
**Subject:** FW: independent assessment of claims against Telstra

Dear Mr Pinnock

As per your discussion with David Lever, please find attached a copy of the form letter to claimants referred to in Mr Lever's email below.

Kind regards,  
- Nikki

*Nikki Vajrabukka*

*A/g Manager, Consumer Policy  
Competition and Consumer Branch, Telecommunications  
Department of Communications, IT and the Arts  
Ph: (02) 62711625*

*Fax (02) 62711850*

*[nikki.vajrabukka@dcita.gov.au](mailto:nikki.vajrabukka@dcita.gov.au)*

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**From:** Lever, David  
**Sent:** Wednesday, 21 December 2005 10:29 PM  
**To:** 'John Pinnock'  
**Subject:** independent assessment of claims against Telstra

John

You may not be aware that the Department has been asked by the Minister to conduct an assessment of various disputes with Telstra, involving around 22 current or former customers or contractors of Telstra.

Some of the former 'COTs' are among the 22 who will be asked if they wish to participate in the process.

It is anticipated that the assessments will be concluded by the end of March or asap afterwards.

The assessment will focus on process rather than the merits of claims, including whether all available dispute resolution mechanisms have been used.

As part of the process, we may need to seek your advice on various cases.

I will forward you a copy of the form letter to claimants when the letters have been sent. We expect this to be before Christmas.

19/01/2006

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Date: Wednesday, 27 October 1993 9:47AM  
Priority: High

Gayle,

Your urgent advice, within Archives Act and any other relevant context would be appreciated please.

Jim

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From: Pinel, Don  
To: Holmes, Jim  
Cc: Blake, Ed; Row, Ian; Hill, Trevor; Campbell, Ian  
Subject: Leopard History  
Date: Monday, 25 October, 1993 2:25PM

Jim,

A lot of attention is being given to Telecom's alleged failure to maintain fault records over time.

I have spoken today to Ian Woolfe, Leopard Manager, who tells me that Leopard is stripped on a weekly basis on a rotational basis so that only 12-13 months history is kept on the data base at any time. The tape of the strip is forwarded to an outside agency where microfiche of the stripped data are produced. These fiche are then dispatched to the operational fault bureaus where they may or may not be kept. The tapes of the stripped data are reused, hence losing the data, and no central store of fiche is maintained.

Ian advises that he has previously sought legal advice from the corporate centre (assume the Corporate Solicitor's office) re the need to keep historic data but the answers have been unclear, probably due to our historic protections from suite and hence no requirement to defend actions.

Given the current climate we need to clarify the requirement to maintain records (centrally would be preferable) and an opinion on this would be appreciated. It may be that we require Austel to stipulate the period.

In the meantime I will advise all Regions to ensure that they maintain Fiche records on an on-going basis pending clarification.

It is important to ensure that Austel and other players such as C&L are aware that because of our regulatory/legal position there has been no need to maintain historic records. If this absence of records is to be a plank of the CoT argument then we should re-state our legal position - they cant have it both ways!

I would welcome your comment. I would also welcome copies of any legal opinions provided on this subject previously

Don

**Holmes, Jim**

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**From:** Pinel, Don  
**To:** Sayer, Janet; Brabazon, Paul; Fuery, Patrick; Beattie, Ken; Scholz, Des; Pittard, Rosanne; Halliday, Trevor  
**Cc:** Holmes, Jim; Hill, Trevor; Campbell, Ian  
**Subject:** Leopard History  
**Date:** Monday, 25 October, 1993 2:36PM

Our CoT customers are currently critical of our failure to keep historic fault records, claiming that this jeopardises their ability to prosecute their claims.

I am advised by the Leopard people that on a weekly basis Leopard data greater than 12 months old is striped from the data base and sent to an outside agency for the preparation of microfiche. These fiche are distributed to the user businesses (Fault Bureaux) and the tapes are then reused, wiping the data. No central store of data is maintained.

Would you please review your Regions arrangements for maintaining historic fault data and ensure that this information is kept for (say) seven years or until further advice on this is provided. I would like to know how much data is available in each Region, particularly for the major cases subject to the Asutel investigation.

I have asked our legal people to advise on the appropriate data retention policy and when that is clear I will look at the desirability of establishing a central store rather than a distributed store.

I would welcome your comments.

Don

**Holmes, Jim**

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**From:** Pinel, Don  
**To:** Row, Ian  
**Cc:** Blake, Ed; Holmes, Jim; Hill, Trevor; Campbell, Ian  
**Subject:** Information Retention  
**Date:** Monday, 25 October, 1993 2:57PM

Ian,

I have just issued a note to Regions re the need to retain Fault history material. I stipulated a notional period of seven years as a starting point but this may or may not be appropriate.

In the more general sense Freehills have advised a need to maintain all records in accordance with the statute of limitations and the archives act. I think we need some clear words to all Telecom staff on this subject if we are to avoid future problems. Is there anything in hand on this? What do we need to do?

I am thinking of a huge amount of information including network performance data, construction data, service order data, sales data, etc etc. Do we have any exemptions? How do we manage this?

Don

**PERRY & ASSOCIATES PTY LTD**

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PO BOX 258, NARRABEEN NSW 2101  
NSW AUSTRALIA  
FAX/PHONE 02 99757738  
MOBILE: 0407 955508  
email: ozijim@surfthe.net.au

March 21, 1999

Ref: L990321

Casualties of Telstra  
C/- The Small Business Show  
24 Artarmon Road  
Willoughby NSW 2068

Dear Sirs/Madam

**RE: CASUALTIES OF TELSTRA**

I watched your show on Sunday morning carrying the piece on Telstra. I was interested to hear of Telstra's lies under oath, destruction of evidence, etc,etc.

I started a law suit 21/2 years ago against Telstra for breach of contract during their cable TV rollout. They have placed every obstacle in our way and dragged the case out to try to bleed us dry. They sent dozens of contracting companies such as mine to the wall by manipulating markets and breaching contracts. Only 3 companies have had the resources to fight them. Unfortunately two company owners have allegedly committed suicide due to the loss of their homes and families as a consequence of Telstra's actions, although this would be difficult to prove.

As a direct consequence I have lost my home, separated from my wife, lost hundreds of thousands of dollars and a twenty year old business and fought a very dirty legal battle. My other partners have had to sell or re mortgage homes and one has retired without any of the security he should have had from owning a business for over twenty years.

We also have found the following:

- Destruction of evidence from the first day of the suit.
- False affidavits from Telstra management
- Withholding discovery documents
- I was informed by a Telstra manager to change my analog phone to digital for obvious reasons. I thought he was joking but he was very serious.

And the list goes on.

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TRENCHLESS TECHNOLOGY CONSULTANTS

Could you please forward my letter to the Casualties of Telstra. We may be of some assistance by comparing legal notes. We have already expended \$250,000 with more to go.

Yours faithfully



J R PERRY

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TRENCHLESS TECHNOLOGY CONSULTANTS



18/11/02

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**Mr Alan Smith**  
**Cape Bridgewater Convention Centre and Holiday Camp**  
**Blowholes Road**  
**Cape Bridgewater. Vic 3305**

**Re. Casualties of Telstra.**

**Dear Alan**

I am writing to you following viewing the Channel 9 Sunday Program on 3/11/02. After viewing the Sunday program, I realised the similarities your business and others had with Telstra some ten years ago with the similarities our building business had, when we lived at Bridgewater.

During a period of time between the late 1980s and early 1990s we had a considerable amount of difficulty with our phone. The problem with our phone line was although we could ring out to people, people couldn't ring through to us. They appeared to receive an engaged signal. We weren't aware of the problem until business friends and relations in Portland stated that they had tried on several occasions to ring us but couldn't get through. We were aware of the times when they rang as we were home at the time. The calls never rang through to our house.

During this period of time I was on a call talking to a councilor. She believed that the conversation we were having was being bugged, or listen into, and so we immediately ceased the call. At the time I was having difficulty with Kalari Transports and I believed they were involved. They were stopping us from building our house on the farm.

Our phone problem had such a negative effect on our building business over a period of time that our work dried up and our business shut down. Our business had been running successfully for several years prior to the phone problem. I ended up having to find alternative employment on wages and now live and work in Adelaide with my family. It has taken us several years to financially recover from the business closing and we are just starting to break even today.

During that period of time I may have complained to the Telecom Ombudsman but as it was some time ago I cannot fully recall. About three to four years ago (just before I left Portland) I received a call from the Victorian Police Fraud Squad inquiring about Telstra, the difficulties we had with Telstra and a Portland Telecom Technician by the name of Anderson. The police officer did not go into detail as to what he was investigating.

It now appears that after watching the Sunday program, we were possibly one of the 'Casualties of Telstra'.

If you have any information that would bring us up to speed on this issue or a contact list for assistance or advice could you please forward the information to the address noted below.

Yours faithfully



**Barry Sullivan**  
**27 Shelley Avenue**  
**NETLEY SA 5037**

**Mobile 0407 352 527**  
**AH (08) 8371 1313**

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Lever, David

From: Astra Taurins [astra.taurins@tio.com.au]  
Sent: Wednesday, 10 May 2008 5:34 PM  
To: Lever, David  
Subject: Letter from Ross Plowman

Sending on behalf of John Pinnock

David

The circumstances in which the COT Arbitration Procedures, ie the Fast Track Arbitration Procedure, the Special Arbitration Procedure, and the Standard Arbitration Procedure predate my appointment as TIO. I was not privy to any discussions concerning them and to this day am unaware of the details - the documentation that exists simply doesn't explain the process.

The procedure adopted by Dr Hughes involved the parties submitting material in support of their claim, eg witness statements under statutory declaration.

Both Mr Plowman and Mrs Garms now assert that the process was 'flawed', a 'cover-up' etc because they maintain that an arbitration conducted under the Commercial Arbitration Act (Vic) does not provide for the taking of evidence by way of statutory declaration.

As I understand the Arbitrator's position - and it was a matter for him - the Act does not prohibit such a course and it was a convenient way to proceed. Statutory declarations can be used in all manner of (legal) proceedings.

At no stage did I or, as far as I am aware, the Arbitrator, conceal anything from the COTS. Both Mr Plowman and Mrs Garms were legally represented during the Arbitrations.

Regards  
John Pinnock

Astra Taurins  
Assistant to the Ombudsman  
Telecommunications Industry Ombudsman

Phone: 03 8600 8784  
Fax: 03 8600 8792  
mail: astra.taurins@tio.com.au

.....  
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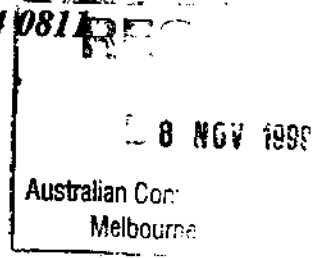
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8<sup>th</sup> November 1999

By fax: 9963 6907

Dr. Roslyn Kelicher,  
Australian Communications Authority,  
Level 13,200 Queen Street  
MELBOURNE. 3000.

Dear Ms. Relicher,

Further to our telephone conversation Friday November 5<sup>th</sup> 1999, the attached faxed letter addressed to Mr. Pinnock T.I.O. dated 8<sup>th</sup> November 1999 and transcript from an AFP investigation at Cape Bridgewater 26/9/94.

The rules of the Fast Track Arbitration Procedure (FTAP) were explicit in their wording which was that the Arbitrator had to make a written finding on each of the claimants claims submitted into Arbitration.

My claim was broken up into three categories:

- (1) Faults experienced by my business.
- (2) Incorrect charging to my business on all service lines by Telstra
- (3) Breaches under the Privacy Act 1988.

Neither points two or three were addressed by the Arbitrator in his written findings.

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During this FTAP on the 11/10/94 the arbitrator convened an oral hearing between Telstra and myself with the T.I.O.'s office in attendance.

The transcript from this oral hearing clearly supports in his own words, the arbitrator makes it quite clear he believed I had supplied an enormous amount of claim documents to support point (2) incorrect charging by Telstra.

Further in this oral hearing the Arbitrator was made aware that the AFP was still investigating my claims under the Privacy Act 1988. Further transcript shows the Arbitrator was going to address these issues in his written findings, if I left my allegations in regards to these privacy issues in my claim – that I was sure if I did, Telstra could demand further evidence to support those claims.

It is clear from my reply to his direction that I welcomed Telstra's defence stating I would leave these issues in my claim.

Why weren't points 2 and 3 addressed in the Arbitrators written findings?

In the attached AFP transcript dated 21/9/94 it can be seen that Constable Timothy Dahlstrom was aware of the previous material supplied by me to the AFP supported a number of separate issues, where Telstra had breached the Privacy Act 1988.

i.e. Questions 16 to 20 contained in this transcript show the AFP had in their possession Telstra internal archive documents K01410 and K01411 which I had previously supplied to both the T.I.O. Warrick Smith, the Arbitrator Dr. Gordon Hughes and the AFP.

These documents show quite clearly that someone within Telstra had made notes of who I called on a daily basis at the side of their internal CCAS Data – phone calls made from my office.

Further evidence of this type of monitoring was provided to the AFP for periods in 1993 as well as on this occasion. In January 1994, this information was also supplied to the Arbitrator as my claim documents show.

Question 25 from this transcript shows the concern the AFP had, that I may have been discussing COT matters with my ex-wife as her phone number was one of those that had been documented by Telstra as to whom I had called.

This concern shown by Constable Dahlstrom also matches the concern shown by Senator Alston in his address to the Senate in regards to the breaches of Telstra under the Privacy Act 1988.

Questions 27 to 31 from this same transcript shows yet another hand written name of an organisation I rang – on this occasion a bus company I was tendering for a contract "O'Meara Bus Lines". However, this occasion the document shows this incident was around 10/9/92. It is therefore clear that for at least 16 months, some one within Telstra was monitoring to whom I called on a regular basis.

The alarming issue here is that only O'Meara and I knew about my tender or so we thought.

If Telstra were correct in their statement to the AFP that they only bugged my phone from around May 1993 to August 1993 I guess this further supports the allegations made by John Menadue in his book titled "Things you learn along the way" - that monitoring calls of who rang who, the number called etc, did happen within the Telstra Corporation.

The concern about the O'Meara incident is the ramifications involved. For how many commercial business transactions done through the telephone, enquiries regarding contracts, tenders, business arrangements become public knowledge in this way. Did some other fellow competitor get the O'Meara contract? I certainly did not.

Again I make it very clear to the A.C.A. all these documents were provided to the T.I.O.'s office - Telstra and the Arbitrator during my arbitration. Neither did Telstra address these issues in their defence or the Arbitrator in his written findings.

I now leave this information in your hands to further support your own investigations.

Yours sincerely,

*J T per*

A. Smith  
Cyberjustice member  
Cape Bridgewater Holiday Camp  
c.c. Mr. John Menadue

THIS IS A TAPED RECORD OF CONVERSATION BETWEEN CONSTABLE  
TIMOTHY WAYNE DAHLSTROM AND MR ALAN SMITH CONDUCTED AT CAPE  
BRIDGEWATER HOLIDAY CAMP, VICTORIA, ON MONDAY 26TH OF  
SEPTEMBER 1994

PERSONS PRESENT: Timothy Wayne DAHLSTROM  
Detective Superintendent Jeffrey PENROSE  
Mr Alan SMITH

TIME COMMENCED: IS APPROXIMATELY 6.30PM

- Q1. Alan just, we're conducting a further interview or record of conversation with you. You were previously interviewed by Superintendent PENROSE in February of this year?
- A. I was yes.
- Q2. And since then you've received quite a number of documents from Telecom?
- A. I have yes.
- Q3. Which have been released under Freedom of Information after you applied for them. Subsequent to your conversation earlier in February, you have now been made aware that your service here at Cape Bridgewater was live monitored at some stage by Telecom?
- A. Yes I have. Actually, first of all I was made aware of that by Austel, John McMAHON and with, actually a letter from John McMAHON and with my FOI I gained a notification that, that, that you know they had monitored my lines and listened in on my lines for a period of about three months.
- Q4. And in that previous record of conversation you weren't aware of that, you, you were only surmising that your service might have been monitored at some stage?
- A. That's right, I had, I had good thoughts that, for different reasons we all thought we were being live monitored and I guess a lot of it, we, we might have thought was paranoia. And, but I had the, the thoughts that I was being monitored yes.
- Q5. Okay. I'll just show you a few documents that you've actually sent on to us and we've had given to us from other sources. But one of the documents is an internal email message, it's dated Friday the 14th January 1994. And as you can see it details some of the problems with Cape Bridgewater Holiday Camp and clearly states that monitoring?



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- A. Did, did take place.
- Q6. Took place and the dates there are June 1993 to August 1993?
- A. August.
- Q7. Since then have you also had other information about monitoring on your service?
- A. Yes I, I come up with a document I guess, maybe a month ago or six weeks ago, five weeks, it clearly states that the malicious call trace was on my other line which was my 26723, 230 line. And they would come out of the actual diary notes of the Portland Exchange, which is a different, a different number to what, the, the prior one you were talking about, was 267267.
- Q8. Okay. I'll just show you a, just show you a photocopy of a document, which you sent to me on the 14th of September, and that's a photocopy of a diary note, page dated the 7th October 1993?
- A. That's right.
- Q9. And is that the one you're referring to where?
- A. That's the one I'm referring to.
- Q10. And that states down here, at 9.00am a malicious call trace was removed from 267230?
- A. 7230 that's right..
- Q11. Okay. Just for the purpose of the tape, and for our own information prior to these dates, had you ever made any request, request with Telecom for a malicious call trace to be placed on your lines?
- A. No I have never, never once have I asked for malicious call trace and I make it very clear that never at any stage has Telecom said they were going to do any monitoring on my lines or any, any taping or any listening of calls, at all at any time.
- Q12. Okay. So the only testing that you were fully aware of that was conducted by Telecom on your lines, which involved recording of details etc, were the Elmi testing arranged by Austel?
- A. Elmi the, this is this year Elmi by Austel but I was

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aware that there was Elmi in 92. But only because of the briefcase being left here at my premises in 93, in June, the 3rd or 4th of 93, that I found that there was Elmi being monitoring the call, like the, as the tapes in at the RCM. But I didn't, I wasn't aware of them being done.

Q13. That, that, but that pre, previous Elmi testing wasn't done with your knowledge at the time. Is that correct?

A. That wasn't done, yes. The 92 was done at my time I knew about that, but certainly not the one in the Elmi, in, in May of 93, I wasn't aware of that at all.

DAHLSTROM Okay.

A. And they've refused to give me any tapes from, from, from that. I've only got the five day tape that I managed to get a copy of out of the briefcase. Now they, they have stated in their FOI that they've had, it ran from May to July and I've received no documentation and I've applied for it twice under FOI and I've received none.

Q14. And the live monitoring as Telecom term it, that ran from approximately June 93 till August 93. Were you consulted in relation to that?

A. No.

Q15. And no approach was made from Telecom to gain your consent to live monitor your telephone calls?

A. No. Definitely not.

Q16. Another document that you've sent me, is the detail of telephone calls made, call details dated the 31st of, the calls were made on the 31st of January 1994 and along with a number of printed information on the document, it's a two page document, ah numbered K01410 and K01411, for the purpose of the tape. That's the document you sent me is that correct?

A. That's right yes.

Q17. Now along with the printed data on that, on those two pages there is also a number of handwritten entries on that?

A. Mahuh.

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Q18. And those entries actually identify the callers or the numbers called from this, from your premises?

A. It does yes.

Q19. Now those handwritten entries were not made by yourself?

A. No.

Q20. Can you tell me who might've made those entries?

A. No I, I don't recognise the handwriting. But I certainly didn't, it certainly wasn't, wasn't mine and you'll see that who actually rung these, Fay SMITH, my ex-wife, which you know I find rather, rather poor.

Q21. The other numbers called can you just run through those for me as to the sort of general people they were writing down of who you called?

A. GM, which, which if you go across the page you'll see that it was Graham SCHORER from, from Golden Messenger. If you go across the page you'll see the phone number of Austel which was then the, the General Manager, you go across the page you'll see GM again which was the Graham SCHORER, go across the page to Telecommunications Ombudsman's office, a domestic number. You go across the line again you see Austel, you see Golden Messenger, you see Austel, you see Austel, you see Fay SMITH was my ex-wife, you see the Ombudsman again, you see Golden Messenger, Golden Messenger that's twice. You turn the page you come up to the top of the page you see GM which, check the number it's the Golden Messenger and then the bottom page you see where I rang my son, Golden Messenger and if you go to the bottom of the page you will find, which is very relevant although it's not relevant to perhaps the, the monitoring is that it registered the next call which was the, in the evening registered 3,599 seconds. We've never been able to prove that the phone was completely, they, they were locked up. My, my communication ex, has shown the calls were being locked up into this business and that's, that's just a clear example of calls locking up.

Q22. There are also a number of other numbers that are listed in the printed details?

A. That's right.

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Q23. Which haven't, haven't had anything written next to them?

A. But they are, they are, they are non, non company calls in other words they're calls that didn't terminate, so of them calls didn't terminate. And that, they haven't see that they didn't terminate. Some did, some didn't.

Q24. So generally the thrust of the people written into this, into this document are people associated with the COT issue?

A. With, well everyone of them on there is to do with a COT issue except my ex-wife.

Q25. Right. And do you have any recollection as to at that time back in January 94, whether you may have been speaking with your ex-wife about the COT issue?

A. I was talking to my son yeah. My son resides with my ex-wife and by gee I was yeah. Well I mean the, the whole, the whole issue has been probably last 18 months. My, my son and I have discussed, because I've been pretty sick with worry and, and like through the son and thing what's happening, he'll say, well look every time we talk it's always on, you know how far is the process going and what's happening and this, see yeah it would've been, I never, in actual fact until just now I hadn't realised. I mean I've taken and looked at all the others right and I've put them, hang on this is all to do with, with COT. But it wasn't until yeah, yeah.

Q26. And you also raised with me several weeks ago on the phone the fact that you'd be tendering for a bus service and you made mention that Telecom had written down the name of the bus service etc?

A. Mmm.

Q27. That, that's also on another document, just take a bit of time and find it. This documents, and it's dated the 10/9/92?

A. That's right.

Q28. Written by yourself to Mark ROSS the Customer Service Manager, Commercial Country, Victoria where you actually told him, in the letter itself, that you would be possibly tendering for a bus service,

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in which you don't mention the name of the bus service, and you're asking for a guarantee of your phone service?

A. That's right.

Q29. And again you've shown on this document that handwritten onto the document is the actual name of the bus service?

A. I think this is the worst out of the lot of them, because at no stage, I mean it was only a small charter but I, I kept this one very, very clear and there's no way in the world that I disclosed who it was. Because let's face it, I'm not saying anyone else would've got this contract, it was only a small charter but the point is I mentioned it in the letter form that I wanted a, a guarantee so that I could tell this gentleman, because the same person experienced problems with my phone, and I thought well at least I can do the right thing if I can give him a guarantee then, you know, then he could guarantee to his people that yeah okay, we can, we can do the service. A handwritten note is the name of the bus company on the right hand side which, it's just.

Q30. And had you been making calls to the bus company around that time, or to the owner?

A. Oh yes, yes, yeah, yeah.

Q31. And that handwritten note just for the purpose of the tape is O'Meara is the name?

A. O'Meara and actually that same fellow did send a letter prior, prior to that, that he'd experienced problems with my phones, prior. So there is a letter in Telecom archives and I have a copy, where he actually sent a letter complaining about getting through to Cape Bridgewater.

Q32. Right. All right so we'll just, you've also said that there are other documents there, although they're not directly relating to the live monitoring issue they show that the malicious call trace had been set up on your line without your knowledge?

A. That's right.

Q33. And those documents you say clearly show that the malicious call trace has affected the phone service

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RECORD OF CONVERSATION BETWEEN CONSTABLE TIMOTHY DAHLSTROM AND  
MR ALAN SMITH (CONTINUED)

PAGE 7

here?

↓  
A.

Well there are notes say in August of, of 93 that because of lines jamming and because of their own net, like network investigations it clearly said that it malfunctioned, lock ups so they, supposedly to take it off the, off the line and yet when you see the other document we talked about a moment ago, the 267230 line, well that was still on three months later or two and a half months later then when they originally found that the, was interfered with the incoming line, so why do they have it on my fax line. Which is my direct line that I ring out on. And, and you know I, I find that, that's ludicrous. They, they either was listening to my calls which I believe they were on my, in, outgoing lines, but even so they still know at that time that it was interfering with my line at that time. It was proven they'd proven it themselves that it was malfunctioning in my, my service. So they, they didn't give a, a razoo about the, the service they were providing as long as they could listen in to my calls, and that's how I see it.

↓  
Q34.

Prior to you receiving the documents under FOI were you, had you been informed earlier that the malicious call trace had been placed on?

A.

No, no.

Q35.

And that would lead to say that Telecom had never told you prior to you getting these documents under FOI that the malicious call trace was affecting your line?

A.

No, no.

Q36.

So each time that you made a complaint about your telephone service and the faults that you were experiencing, no explanation was given to you that it was possibly testing equipment on the line that was causing the problems?

A.

No, no.

Q37.

Okay. Now the other issue that you raised with me several weeks ago was in relation to a technician, from here at Portland exchange, Mr Gordon STOKES?

A.

Mmhuh.

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Q38.

And I believe you approached Mr STOKES and he's

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14 April 1994

COMMERCIAL AND CONSUMER  
CUSTOMER AFFAIRS

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Australia

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**F A X E D**  
...14.4.94...

Mr A. Smith  
Cape Bridgewater Holiday Camp

Facsimile No. 055 267 230

Dear Mr Smith

I refer to your letter to Mr Blount received in this office by facsimile on 11 April 1994.  
Mr Blount has asked me to respond on his behalf.

I note in your letter that you question how Telecom is aware of a discussion you had with  
Mr Malcolm Fraser. Please note that Telecom has records of you discussing this matter with  
three officers of Telecom over the past 12 months. Accordingly, it is most likely that the file  
note originated from your discussions with a Telecom officer.

Given that your assertion that you had not discussed the matter with Telecom is incorrect,  
Telecom does not propose to take this matter any further at this time. However, please note  
that I have referred your letter and this response to the Australian Federal Police for their  
information.

Yours faithfully

Steve Black  
GROUP GENERAL MANAGER  
CUSTOMER AFFAIRS

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**FREEDOM OF INFORMATION ACT 1982  
(COMMONWEALTH)  
DOCUMENT HAS BEEN RELEASED  
UNDER THE FOI ACT BY  
THE AUSTRALIAN FEDERAL POLICE**

Telstra Company  
ACN 051 76 649

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14 April 1994

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Detective Superintendent Jeff Penrose  
Australian Federal Police

Facsimile No. (06) 275 7437

Dear Mr Penrose

I have attached for your information a copy of correspondence received from Mr Alan Smith of Cape Bridgewater Holiday Camp and a response from Telecom. Mr Smith's letter to Telecom appears to be inferring that Telecom has obtained this information by monitoring his service. Mr Clinton Porteous, a journalist from the Herald Sun has rung Telecom indicating that Mr Smith has made allegations to him that Telecom has obtained this information through monitoring of his service. Telecom has not responded to Mr Porteous.

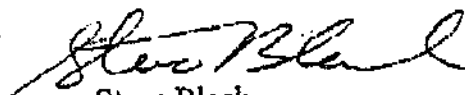
As you will note from the correspondence, Telecom has records indicating that Mr Smith has disclosed this information to three Telecom officers over the last 12 months. Accordingly, Mr Smith's allegation that he has not disclosed this information to Telecom is untrue.

By advice dated 14 January 1994, Mr Trevor Hindson of the Vic/Tas Region has advised me that voice monitoring of Mr Smith's Cape Bridgewater telephone service has been carried out as follows:

"To check that incoming calls to the Portland Exchange were successfully connected through to Mr Smith, the investigating technical officer at Portland Telephone Exchange set up equipment which trapped data on these calls, then sounded an alarm. This process was established from approximately June 1993 to August 1993, however, the equipment was only set up to trap data while this particular officer was available."

The documents provided to Mr Smith appear to have been prepared in April 1993. Comparison of this with the technical information on voice monitoring outlined above indicates that the information was disclosed to Telecom, and the documents were prepared, prior to the voice monitoring taking place.

Yours faithfully



Steve Black  
GROUP GENERAL MANAGER  
CUSTOMER AFFAIRS

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FREEDOM OF INFORMATION ACT 1982  
(COMMONWEALTH)  
DOCUMENT HAS BEEN REVISITED  
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