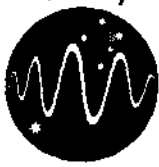


**CAV  
CHRONOLOGY  
LGE**

**Exhibit 410-a to 447**

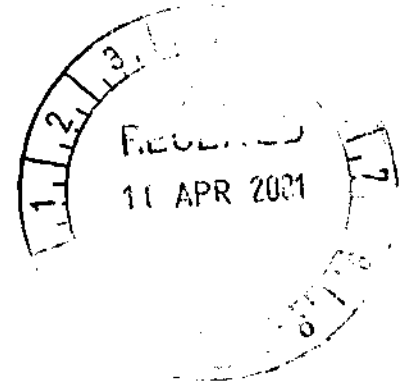


**Australian  
Communications  
Authority**

**File Reference:** X2001/215

Mr Graham Schorer  
PO Box 313

NORTH MELBOURNE VIC 3051



Dear Mr Schorer

**RE: REQUEST FOR INFORMATION UNDER THE FREEDOM OF  
INFORMATION ACT 1982**

I refer to your recent requests for access to documents under the *Freedom of Information Act 1982* (the FOI Act) and our telephone conversations on the matter. The purpose of this letter is to update you on the progress of your request and to outline the way the Australian Communications Authority (the ACA) intends to finalise your request.

Although you made eight individual requests, the ACA intends to treat this as one request. The individual requests that constitute this request are as follows:

1. Dated 15 May 2000; your reference Number: 4478;
2. Dated 18 May 2000; your reference Number: 4479;
3. Dated 22 May 2000; your reference Number: 4482;
4. Dated 22 May 2000; your reference Number: 4483;
5. Dated 22 May 2000; your reference Number: 4484;
6. Dated 22 May 2000; your reference Number: 4485;
7. Dated 22 May 2000; your reference Number: 4486; and
8. Dated 22 May 2000; your reference Number: 4487.

There are also a number of cheques that you sent that have as yet not been banked. As this is now being dealt with as one request and one application fee of \$30.00 has been paid, I am returning the unbanked cheques to you with this letter. The cheques are ANZ cheques and the numbers are:

1. 014940;
2. 014945;
3. 014946;
4. 014947;
5. 014948;
6. 014949; and
7. 014950.

There have been a number of documents released to you on 10 October 2000 by Ms Taylor of this office. These are detailed in the attached schedule. If this is in correct would you please let me know.

Due to the size of the request and the misunderstanding on what documents have and have not been considered as falling within the scope of this request, I have proposed and the decision maker has agreed that we reassess each file and identify any documents which may fall within the scope of your request. Documents that are identified as falling within the scope of your request would be considered by the decision maker and if a decision is made to release them this would be done as a staged release as that decision is made. A schedule of each document identified and the decision on that document given at the time of release. A summary schedule that will act as a final decision will be sent when all documents had been identified. This will mean that your statutory time to appeal any decisions will start from then and not during the staged release.

If any of the above information is incorrect or you have any further queries on your request please contact me on (02) 6219 5178.

Yours sincerely



Kirsten Musgrove  
Freedom of Information Coordinator

3 April 2001

410

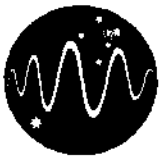


CANT  
FIND

95/0603-01	80 - 81	Fax from Bruce Matthews to Steven Black dated 31/1/94 re Attachment to 27 January letter	Released in full
95/0603-01	83 - 84	Letter from John MacMahon to Steven Black dated 27 January 1994 re issues raised by Mr Alan Smith - Cape Bridgewater Holiday Camp	Released in full
95/0603-01	103	Letter from John MacMahon to Mr S Black dated 6 January 1994 re CoT Cases - Mr Smith	Released in full
95/0603-01	7 (74) - 79	Fax from John MacMahon to Mr S Black dated 2 February 1994 re request for file documentation concerning Cape Bridgewater Holiday Camp, plus: <ul style="list-style-type: none"> <li>• Attachment A - fax from Mike Robins to Graeme Davies</li> <li>• Attachment B - minute from Mark Ross to John McCreery</li> <li>• Attachment C - minute from Len Banks to P Taylor</li> <li>• Attachment D - letter to Alan Smith</li> </ul>	Released in full
95/0598-02	212 - 213	Letter from Steve Black to Mr Robin Davey dated 6 April 1994 re release of Telecom documents to CoT claimants	Released in full
95/0598-02	214	Fax from Steve Black to Ms Phillipa Smith dated 31 March 1994	Released in full
95/0599-02	14 - 25	Fax from Steve Black to John MacMahon dated 24 May 1994 re recommendations for Austel Report	Released in full
95/0599-02	28	Report recommendation 40	Released in full
95/0599-02	44 - 53	Letter from Steve Black to Mr R Davey dated 3 May 1994 re Telecom's response to the recommendations contained in the Austel Report.	Released in full
95/0599-02	95	Letter from Robin Davey to Mr Bill Henderson dated 23 May 1994 re Senate Estimates	Released in full
95/0599-02	98	Letter from Robin Davey to Mr Hon Michael Lee MP dated 23 May 1994 re Senate Estimates	Released in full
95/0599-02	117	Letter from Warwick Smith to Robin Davey dated 18 May 1994 re CoT Claimants and Secondary Arbitration	Released in full
95/0599-02	121	Letter from Rick Campbell to Mr S Black re Implementation of CoT Case Recommendations	Released in full
95/0599-02	139	Letter from Robin Davey to Tom Dale dated 16 May 1994 re FOI request by Gary Dawson	Released in full
95/0599-02	149	Letter from John MacMahon to The Secretary, Department of Communications and Arts dated 11 May 1994 re B Love - Ministerial 94041038	Released in full
95/0599-02	151	Letter from John MacMahon to Mr W Smith dated 10 May 1994 re CoT Cases Referral to TIO	Released in full
95/0599-02	152	Letter from John MacMahon to Mr S Black dated 10 May 1994 re Arbitration Process	Released in full
95/0599-02	156	Letter from John MacMahon to Mr W Smith dated 10 May 1994 re CoT Cases Referral to TIO	Released in full
95/0599-02	157	Letter from John MacMahon to Mr W Smith dated 19 May 1994 re CoT Cases Referral to TIO	Released in full

PGs  
 177-189  
 MISSING

✓	95/0599-02	164 - 165	Letter from Fay Holthuyzen to Robin Davey dated 9 May 1994 re FOI request	Released in full
✓	95/0599-02	169	Fax from Julie Martinsen to Chris Pattas/John MacMahon dated 5/5/94 re Ministerial no.94041038	Released in full
✓	95/0599-02	174	Letter from Warwick Smith to Rick Campbell dated 4 May 1994 re Arbitration Process	Released in full
✓	95/0599-02	175 - 189	Letter from Steve Black to Warwick Smith dated 15 April 1994 re Proposed Telecom Arbitration Procedures, plus: <ul style="list-style-type: none"> <li>• Differences between rules,</li> <li>• Schedule of Customers whose complaints have been Reviewed,</li> <li>• Telecom Australia Arbitration Procedure</li> <li>• Confidentiality Undertaking</li> <li>• Rules for special arbitration by mutual consent</li> <li>• Confidentiality undertaking</li> </ul>	Released in full
✓	95/0599-02	211 - 220	Letter from Steve Black to Mr R Davey dated 3 May 1994 to confirm Telecom's response to recommendations in the Austel Report	Released in full
✓	95/0599-02	221 - 222	Letter from Cliff Mthieson to Mr S Black dated 2 May 1994 re Standard verification tests for use in telecom's public switched telephone network	Released in full
✓	95/0599-02	225	Fax from Steve Balck to Mr R Davey dated 2 May 1994 re Letter to Mr G Schorer	Released in full
✓	95/0599-02	231	Letter from Mr Michael Lee to Mr R Davey dated 26 April 1994 re Austel Report	Released in full
✓	95/0599-02	232	Letter from Mr Michael Lee to Mr D Hoare dated 26 April 1994 re Austel Report	Released in full

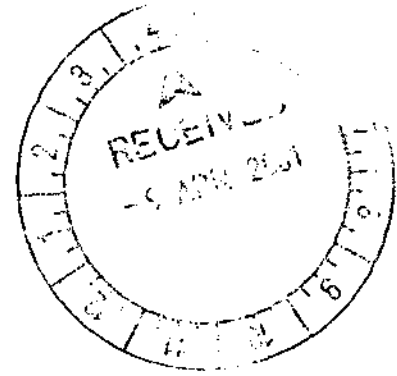


**Australian  
Communications  
Authority**

**File Reference:** X2001/215

Mr Graham Schorer  
PO Box 313

NORTH MELBOURNE VIC 3051



Dear Mr Schorer

**RE: REQUEST FOR INFORMATION UNDER THE FREEDOM OF  
INFORMATION ACT 1982**

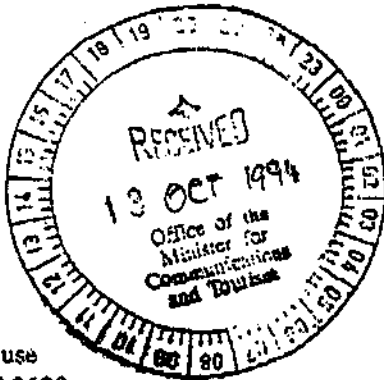
I refer to your recent requests for access to an anonymous letter headed "Received 13 October 1994".

In recent discussions with Mr Wynack of the Commonwealth Ombudsman's Office it was brought to my attention that you have still not been provided with a legible copy of the above letter. I attach a legible copy of the above letter as completion of your request.

If you have any further queries on your request please feel free to contact me on (02) 6219 5178.

Yours sincerely

Kirsten Musgrove  
Freedom of Information Coordinator  
Legal Group  
5 April 2001



OFFICE OF HON MICHAEL LEE MP. Rep by Min, Rep by Part, Rep by SA, Rep by Dept. Information, Advice, Copy held for min to see, Final with.

94/0269-05

228

KL

Bonnie fig. Can we discuss.

19/10

Parliament House Canberra ACT 2600

Circumstances and past actions of senior staff within Telecom have made it necessary to bring to your attention some very concerning activity...

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...

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...

1. Implementation of a complaint handling procedure throughout Telecom though outwardly giving the appearance of acceptance and uniformity of work practices...

- 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, an incomplete database unable to capture and store required criteria for most purposes specifically reporting, continued failed deadlines...

To meet certain commitments to AUSTEL made by Mr Black and Mr Fickling a incomplete complaints handling process...

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...

Junior staff or temporary agency staff have been requested not to place pertinent information on customer files so as not to weaken Telecom's case further. COT customers that may prove to be a threat to Telecom have been expertly manipulated and paid settlements.

copy to staff

action(s) for review office

maybe not clear by intern

disagree - need not complete

Warrick Smith has been critical of Pollock on some issues

Union's copy with procedure according to Fickling + Brisbane office?

Fickling reported that they initially provided too much documentation - training - deliberately downsized.

Evidence

Evidence?

411



94/0269-05

229

issue of type 3 seal of court?

3. Unfortunately the Legal advice 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. Telecom's legal solicitors 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. There have been instances where the legal group have directed or advised staff to limit the disclosure of information to external authorities, in so doing, slowing down or redirecting the wheels of natural justice.

Not sure of context of this could be true if talking about A's COT investigations of 12 months ago

serious allegation

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

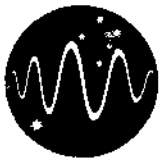
1. Remove or change clear information on the position of liability. ?
2. Diminish the level of compensation payable to COT customers.
3. Dismissive of breaches in relation to matters regarding customer Privacy.

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.

Gerrit Smith has been closely associated with this issue

As you can see from what I have mentioned to you something needs to be done. As you can appreciate we are not in a position to go any deeper than 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.

411



**Australian  
Communications  
Authority**

**File Ref: LA01/134**

Mr Graham Schorer  
CoT Cases Australia  
PO Box 313  
NORTH MELBOURNE VIC 3051

Dear Mr Schorer

**RELEASE OF DOCUMENTS IN BOX 1 UNDER THE FREEDOM OF  
INFORMATION ACT**

Thank you for your application made up of 8 letters dated 15, 18 and 22 May 2000 requesting copies of documents under the *Freedom of Information Act* 1982 ('FOI Act') in relation to an anonymous letter sent to the Minister, correspondence relating to the CoT cases difficulty obtaining documents prior to their arbitration and the arbitration process itself.

Due to the magnitude of the request it was decided to process each box as the documents are discovered. The documents discovered in the first lot of boxes are listed in the attached schedule. John Neil, Executive Manager, Consumer Affairs Group has made a decision as outlined in the attached schedule and a copy of each document released in full is attached.

Other documents will be processed in the same way and when a decision has been made you will be notified and documents to be released in full will be sent then. If a decision is made to exempt a particular document the reasons will be listed in the attached schedule. There are no exempt documents in this group of documents. A summary of all of the documents will be sent with the last lot of documents processed and this will act as a final decision for the purposes of time limits to appeal a decision.

If you have any queries about this decision or the release of the documents please contact me on (02) 6219 5178.

Yours sincerely

A handwritten signature in black ink that reads "K Musgrove".

**Kirsten Musgrove  
Legal Officer  
Australian Communications Authority**

**7 June 2001**

# C.o.T. Cases Australia

493-495 Queensberry Street  
P.O. Box 313  
NORTH MELBOURNE VIC 3051

Telephone: (03) 9 287 7095  
Facsimile: (03) 9 287 7001

REFERENCE NO.: 5246

19<sup>th</sup> June 2001

Kirsten Musgrove  
Legal Officer  
Australian Communications Authority  
PO BOX 78  
**Belconnen ACT 2616**

Dear Ms Musgrove,

## **Re: CoT Cases Australia – April & May 2000 FOI Requests**

We are in receipt of your 7<sup>th</sup> June 2001 correspondence and two parcels of documents.

On examining the documents and the enclosed Schedule, it appears that the ACA are using a processing method, of these individual and precise FOI requests, in a manner that makes it impossible for a third party to identify which FOI request including which part of that request, the document has been supplied in response to.

Enclosed is a printed sample of a Schedule created using excel file table listing the headings of required information that will assist both ACA and CoT case Australia verify that each part of each individual FOI request has been responded to (enclosed is a floppy disk containing the excel table).

CoT cases Australia will appreciate the ACA providing a Schedule, which lists documents using the enclosed format supplied.

For comparison purposes enclosed is a copy of the Telstra Schedules provided in response to Schorer's FOI request.

The Australian Government Solicitors performing Telstra's voluntary review of CoT FOI requests as Telstra's response to the findings and recommendations of the Commonwealth Ombudsman Investigation in to Telstra's handling of COT FOI requests create the format of this schedule.

Please advise as to whether the ACA will adopt the suggested Scheduled format.

Yours sincerely,

Graham Schorer  
Spokesperson

MyDocuments/ManagingDirector/Cots/5246

413-A

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.

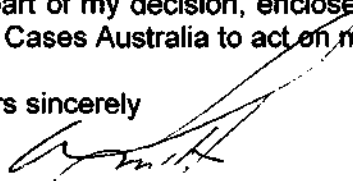
The ACA's decision is ignoring the following facts:-

- 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

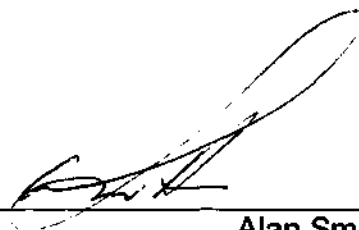
4133

9 August 2001

**TO WHOM IT MAY CONCERN**

I, Alan Smith of Cape Bridgewater, hereby authorise the spokesperson of Casualties of Telstra, C.o.T Cases Australia, Mr Graham Schorer to act on my agent, and make representations on my behalf when dealing with the ACA, other Government Regulatory Agencies and the office of the Commonwealth Ombudsman.

Signed:

  
\_\_\_\_\_  
Alan Smith

Signed:

  
\_\_\_\_\_  
Witness

Date:

13 August 2001

413B

## 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."

414

# Senator Len Harris

A practical man looking for practical solutions to the nation's problems

## MEDIA RELEASE



### ALSTON PRAYING FOR CONTINUED DROUGHT 14<sup>th</sup> Nov 2002

#### STATEMENT BY SENATOR LEN HARRIS

The widespread drought being experienced by much of regional Australia has been a Godsend for the Federal Coalition and its plan to flog off Telstra to overseas interests.

Telephone industry authorities and the Telstra unions have predicted, with supporting documentation, that the network at large, will fail in the event of a substantial wet season.

Prime Minister John Howard and Telstra Managing Director Dr Ziggy Switkowski, have, according to union sources, just returned from an overseas trip marketing Telstra's shares.

The Government now claims the findings of the Estens Inquiry into Telstra has given it the green light to proceed with the sale of its 51 per cent shareholding, which remains the property of the people of Australia.

The urgency of the Government to unload Telstra is the realisation that it needs a huge injection of capital expenditure just to remain operational.

In other words, sell the whole shooting bag before it rains and let someone else worry about fixing it. Who cares about quality of service for regional Australia, or thousands of jobs soon to be lost?

Never mind the loss of significant and guaranteed government income for years to come.

If the public opposition and ongoing media exposes of Telstra's serious shortcomings continue, institutional investors and perhaps mum and dad speculators might not fancy throwing their hard-earned cash at a communications 'time bomb', as one industry analyst put it.

In light of evidence presented by the Communication Electrical Plumbing Union to a senate inquiry, then to the Estens Inquiry, other court submissions and a large dose of anecdotal evidence from Telstra employees, there seems no doubt the copper and lead network could implode with the onset of rain.

Numerous reports from regional areas that have recently received rainfall, reveal the subscriber fault rate has doubled and tripled due to lack of proper maintenance, faulty materials and understaffing.

I wrote to Dr Switkowski on September 11, 2002 seeking clarification and a solution to a number of problematic issues such as:

415A

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1. Loss of trained field personnel with local knowledge

→ 2. Faulty materials such as Hi Gel 3M 442 that has corroded copper joints

→ 3. Contractors cutting corners with cable installation

4. Loss of capital works budgets

→ 5. Failure by senior personnel to recognize the magnitude of the impending networks implosion

6. The cessation and outsourcing at the end of this month of all in-house technical training

7. The sale of valuable property such as former line depots and other asset infrastructure

8. Management giving capital works an economic priority order for replacing faulty cables and equipment, i.e. those exchange areas that produce the most profit given priority for repair or replacement. This process could preclude most country areas

9. The loss of considerable ongoing government/public revenue from Telstra

10. Continuing and growing public opposition to the proposed sell-off.

It is interesting that Dr Switkowski has not replied to my query, suffice a phone call thanking me for my interest. One could be forgiven for assuming he is unable to refute the allegations resulting from my line of inquiry.

Now the spectre of a failing lead-sheathed cable network has raised its head and could well be the Achilles heel of Mr Howard's sale plans.

### LEAD CABLE FAILURES WILL HIT CITIES

→ In city and country telephone exchange areas, low gas alarms, sometimes 200 or more a day, are sending technicians in a scurry from exchanges to manholes across the city or country roads and back.

→ Low gas (inert) pressure below 15kpa in an underground lead cable section sets off an alarm in the exchange. Technicians have to find a fault from where the gas is leaking thus allowing any surrounding moisture to seep in and short out the internal copper cable. The lead cables were introduced some 100 years ago and have long passed their use-by date.

→ Electrolysis, corrosion and rough handling over this period of time have caused many networks to fail, yet lead cabling remains a significant portion of some city and country networks.

According to the union the CAN or Customer Access Network (customer land lines) accounts for 50 to 60 per cent of Telstra's fixed costs, ie maintenance bill, but generates the lowest rate of return.

→ At its present rate of faults the lead cable system could represent the lion's share of maintenance.

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→ For example, Queensland country reported 400 gas alarms in a week compared to the metropolitan area recording 386. The dry-air gas bottles are placed at either end of a lead cable to maintain a continual pressure to prevent moisture entering.

The lack of capital spending by Telstra to replace lead is further compounded by weekly bottle replacements of an average 142 in metropolitan areas against 300 bottles in country areas at a cost of \$100 each for large sizes. The bottles are hired from BOC Gases.

In New South Wales the figures are proportionately worse. Sources say NSW is averaging about 3200 bottle replacements a month.

Compound this maintenance cost with the cable occupancy rate of between 85 and 105 per cent and it is not hard to see why Telstra management and the government waste out.

Some industry analysts have placed the capital expenditure to replace the ageing lead and faulty copper network in the hundreds of millions to perhaps the billion-dollar range.

Furthermore union technical sources claim there would be very few "if any" qualified technicians or joiners remaining in Telstra ranks with the capability of cutting over large lead cables to fibre optic.

Present technology has not provided any alternative to the copper local loop which is essential for the delivery of most revenue-raising services except mobile-to-mobile calls.

→ In a recent interview, Telstra's managing director of wireless and wireline, Ken Benson dismissed wireless transmission as a "niche player" saying that fibre may not be an economic solution for a number of years yet.

Telstra must start replacing the faulty gel coated copper and corroded lead networks immediately.

→ Estens, in recommendations 2.7 and 4.2, has clearly identified problems with the pair gain system, that allows multiple calls on a single pair of wires. It provides a good financial return for Telstra but is unfair on customers and repairmen.

→ The pair gain system forms much of Telstra's existing network masking thousands of dead cable pairs to subscribers' phones that ordinarily ought to be replaced.

In 4.2 Estens refers to Internet "dial-up data speed issues" caused by poorly performing pair gain systems.

Telstra's much publicised ADSL (Asymmetrical Digital Subscriber Line) which delivers greater internet speed and functionality is not available in those rural or regional exchange areas where a pair gain system is in operation.

→ The government's virtual 'no strings attached' sale of Telstra does not reassure those living outside of the metropolitan area that ADSL will ever be available unless a new private owner is prepared to inject several hundred million dollars in upgrading.

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ADSL is also not available in some metropolitan areas (Townsville) where the new fibre optic cables have been installed as ADSL is only configured to operate on copper hard wire, unless a RIM network is installed as part of the above mentioned upgrade to convert the signal for fibre optic, ADSL is not available.

Australia Post, could be a viable alternative for the interim, however the government plans to sell it off next year.

Pigeon breeders might soon make a comeback.

ENDS

<p><b>FURTHER DETAILS:</b> Senator Len Harris PH: 07 4092 3194</p> <p>PO Box 2204 Mareeba Qld 4870 Tel: (07) 4092 3194 Fax: (07) 4092 3755</p>	<p>Email: <a href="mailto:senator.harris@aph.gov.au">senator.harris@aph.gov.au</a></p> <p>51/47 Parliament House Canberra ACT 2600 Tel: (02) 6277 3410 Fax: (02) 6277 3700</p>
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4-15A



FINANCIAL REVIEW  
7-8 DEC '02

"C"

## Safety Scare Over 112,000 Telstra Faults

Report Toni O'Loughlin

Telstra admitted on Friday that its' network was riddled with more than 112,000 service faults, some of which had the potential to imperil callers' safety if not fixed.

And the problems were not confined to rural areas according to a document obtained by Labour Senator Sue Mackay, who presented the findings during the Senates' Inquiry into Telstras' Network.

While Telstra could not confirm the accuracy of Senator Mackays' document - which showed there were 111,755 service problems in the network - the telco admitted its' most recent records showed the number of faults was higher at 112,159.

→ The document showed there were 357 "priority one" faults involving customers who had medical problems faced high safety issues or were attached to hospitals or schools.

Telstras' NSW country area network had the biggest number -152 - of such faults the document showed.

→ Senator Mackay also alleged that some of the faults had been lingering for years without being fixed. She said one "priority one" fault had been on Telstras' books since August 1, 1997.

The other slightly less serious faults had been on the books even longer, one since August 1996 and the other since July 1997.

Telstra Country Wide manager Lawrence Paratz said he would check the information and respond later to the claim.

Senator Mackay then produced another internal Telstra document addressed to team leaders within its' service operation division which said faults should be repaired to a "minimum standard".

Asked what the minimum standard was, Mr. Paratz said: " a standard which restores the service in an expeditious and efficient way.... a standard that restores the service."

→ Senator Kate Lundy referred to a third document showing that in September this year, Telstra used 3,122 gas bottles in 404 locations, some of which had to be replaced daily to help maintain the pressure in its' network.

416

**Graham Schorer**

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**From:** "Harris, Len (Senator)" <Senator.Harris@aph.gov.au>  
**To:** "Graham Schorer" <grahams@goldenmessenger.com.au>  
**Sent:** Tuesday, 7 October 2003 2:39 PM  
**Subject:** RE: Operation Transparent

Hi Graham,  
just picked this up trawling through over 1300 e-mails,  
had a quick look at the index (Can't go through the lot) and you seem to have covered all aspects,  
I will start the whole process again with Daryl Williams new staff re the commercial assessment of all the  
CoT's,  
I will continue to push Kenneth and Max's issue with Ziggy as I feel th s the way to open the door for  
everyone,  
CU.

-----Original Message-----

**From:** Graham Schorer [mailto:grahams@goldenmessenger.com.au]  
**Sent:** Friday, 5 September 2003 11:13 AM  
**To:** Harris, Len (Senator)  
**Cc:** sales@solar-mesh.com  
**Subject:** Operation Transparent

Dear Senator Len

In response to Ken Ivory's request I have emailed you the latest draft version of  
Operation Transparent for your information, perusal and input.

<<...>>

Regards,

Graham Schorer

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23 September 2003

Mr David Bailey  
Room 207,  
Level 2, 550 Lonsdale Street,  
MELBOURNE VIC 3000

**By Facsimile: 9225 6106**

C/- [oldbailey@vicbar.com.au](mailto:oldbailey@vicbar.com.au)

**Re: Independent Commercial Assessment and Resolution**

I have empathy with the other members, having personally been subjected to some of the referred to conduct and have endured the ramifications and resultant affects of the misconduct of Telstra and Others' (T.I.O. and AUSTEL/Australian Communication Authority {ACA}).

However upon reading the other member's amendments, additions and deletions made to your draft of the Deed of Agreement and factoring in notes that I have made during various telephone conversations with them, the following is my considered response upon which, I request you take into consideration in conjunctions with the other member's draft of the Agreement.

1. One member stated he had received an opinion from a Solicitor that stated without a document being headed "*Deed of Agreement*", the content of the document is unenforceable as an executed Agreement and at best the documents is merely an executed understanding of intent.

Questions

- a) Is there validity in the above-mentioned opinion?
  - b) By heading the documents "*Deed of Agreement*" does this strengthen the Claimants position in the event that the Commonwealth/Telstra breach the covenants, undertakings and authorities contained in the Agreement?
2. The issues of conduct is not only the conduct of Telstra, it also extends to the conduct of T.I.O, AUSTEL/ACA, Bell Canada International and members of the respective resource units involved in the *Fast Track Arbitration Procedures ("FTAP")*, legal proceedings in Victoria and Queensland and an appeal in the Supreme Court of Victoria against the Arbitrators findings made

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under the FTAP. All members are concerned that the ramification and resultant affects inflicted upon each of the claimants will not be covered by the Independent Commercial Lose Assessors Terms of Reference.

Given that it was not just Telstra's conduct, it was also the conduct of Others acting in concert with Telstra, that in many cases created the ramifications and resultant affects.

The brief summary of the most blatant conduct includes:

- Telstra's illegal interception of telephone calls by listening to and taping telephone conversations without the knowledge or consent of A party (call instigator) and/or B party (call recipient).
- Illegal interception and capture of content of facsimiles that on occasions included:
  - delay in the facsimile being received;
  - the intercepted and captured content of the facsimile not be retransmitted to the intended B party recipient;
  - the intercepted and captured content of the facsimile being retransmitted to the intended B party recipient without the captured content (i.e. receipt of blank pages headed by a computer generated symbol); and
  - the intercepted and captured content of the facsimile being retransmitted with only part of the captured content to the intended B party recipient
- Telstra's verbal and written denial of illegal interception of telephone calls and facsimile transmissions.
- Telstra's verbal and written denial of telephone faults and systematic problems residing within Telstra's net work and billing system software.
- Manufacturing and falsifying test call reports and findings.
- Removals of fail test call information from written reports and electronically restored test data.
- Substituting simulated test calls and results for actual test calls and results.

- Falsely simulating field test calls and results, when no field test calls were conducted.
- Falsely asserting legal professional privilege to conceal the identity and withhold documents.
- Conspiring to falsely create legal professional privilege to conceal the identity and supply of documents and raw data containing information of monitoring, testing and end results performed to detect fault, cause and call lose.
- Wrongfully applying the Peace and Good Behavior Act to have a claimant arrested and charged.
- Wrongfully applying the Mental Health Act to have a claimant arrested and charged.
- Telstra and their legal representatives induced existing and former staff members to make sworn statements, when all parties involved knew that some of the content in each statement was incorrect or false.
- Telstra and the T.I.O.'s joint concealment of actual conflict of interest of the technical resource unit providing technical assessment to the Arbitrator in the FTAP.
- After the FTAP Arbitrator completed his first arbitration, he in writing advised the T.I.O. the FTAP process was not credible and:
  - The T.I.O. did not advise the other claimants involved in the FTAP process;
  - The T.I.O. did not suspend the FTAP process subject to completion on an investigation and arriving at considered findings;
  - The T.I.O. in conjunction with Telstra demanded the other complainants continue to participate and pursue their claim through the FTAP process.
- In October 1994 the then Minister for Communications, Michael Lee forwarded a letter of concern and complaint he had received from a group of Telstra employees involved in the collection and analyzing of Telstra documents about Telstra's conduct of concealment and withholding documents from CoT members and fabricating reports to be used as evidence to AUSTEL for investigation. AUSTEL did not conduct a formal investigation, nor did AUSTEL recommend to the



T.I.O. suspend the FTAP process subject to the out come of an investigation.

- From July 1994 onwards AUSTEL, now ACA, have been providing misleading and deceptive reports to the Minister on Telstra's network performance and conduct.
- Despite AUSTEL brokering an agreement and the T.I.O. administering the agreement, part of the FTAP process was that all existing faults including systemic problems residing within the Telstra network had to be permanently rectified, before being assessed and the FTAP process would not be at an end until both were completed. AUSTEL acknowledge in writing to a complainant that a systemic problem remained in the network that was affecting other subscribers, however, AUSTEL did not intervene, nor did it request the T.I.O. reopen the complainants arbitration on the grounds that part of his claim had not been assessed, nor had the complainant telephone service been restored.

#### Questions

- a) Does the Terms of Reference contained in the existing draft provide the Independent Commercial Lose Assessor with the jurisdiction, authority, duty and discretion to assess and arrive at a quantum on all categories of conduct when the other parties involved are either other Commonwealth Government Agencies or State Government Agencies (i.e. State Police, Federal Police, Australia Post, the Telecommunication Industry Regulator and the T.I.O which is a limited liability organization, which was originally set up by both Telstra and Optus as part of their telecommunications licensing conditions).
  - b) If the Terms of Reference is deficient in the area of extending to applying quantum on resultant affect of conduct, where Telstra was not the sole party involved, what is your opinion/assessment on changing the existing Terms of Reference ("TOR") to "guarantee" the Assessor will include all categories of conduct in his individual assessments?
3. All members are concerned about the appointment of legal advisors to both the Administrator and Commercial Assessor. Given the past and current history of a number of members, based upon their experiences (and their enormous legal bills), their concerns are valid and the automatic inclusion of legal advisors increases the risk of the process being high-jacked and legalized.

Question

- a) What is your opinion on how to safely remove from the Independent Administrator and the Independent Commercial Loss Assessor, Terms of Reference the appointment and/or access to legal advisors?
4. The number of claimants have been placed in the position of having to instigate litigation to protect and preserve their business and another claimant during their Supreme Court appeal against the Arbitrators decision encountered Telstra' blatant use of perjury to deny the very facts the appeal turned on.

Question

- a) Does the Terms of Reference in the existing draft provide the Assessor with the jurisdiction, authority, duty and discretion to authorize reimbursement of solicitor client costs and all expenses incurred and to provide a recommendation/directive all existing cases on foot be squashed and all past cases be overturned?
5. The Minister has undertaken on behalf of the Commonwealth to resolve all of the claimant's claims against and involving Telstra.

Question

- a) Does Telstra have to be signatory to the Agreement?
6. Enclosed is a copy of correspondence from one of Australia's largest Chartered Loss Adjustors organization. In this correspondence you will note the non negotiable requirement that Telstra and the claimant accept the assessment without any challenge. Before this organization would consider accepting a commercial assessor assignment, given Telstra's CoT history, I consider any personal organization of repute would out of self interest have the same non negotiable requirement.

Question

- a) Can you safety word this requirement into the existing Terms of Reference?

Yours Sincerely

Graham Schorer  
Golden Messenger

# Independent Commercial Assessment and Resolution of Claimants Claims Against Telstra

## INTRODUCTION:

On behalf of the Commonwealth, the Minister for Communications, Senator Richard Alston, undertook to Senator Len Harris to have the long outstanding Claimants' claims in respect of alleged service difficulties, interruptions and faults against Telstra Corporation Limited (including its subsidiaries) ("**Telstra**") independently commercially assessed and correctly resolved ("**claims process**"). Telstra has agreed to cooperate in the claims process.

A. The claims process will be conducted by an Independent Administrator ("**IA**") who has the authority to appoint Independent Commercial Loss Assessors ("**Assessors**") to assist in the assessment of claims.

B. Depending on the individual claimants claims against Telstra, part of the independent assessment process include each Assessor conducting a review of conduct and previous "settlements" including those obtained under legal proceedings.

C. Claimants' allegations against Telstra (inter alia) are that Telstra in conjunction with others' have withheld, mislaid, lost or destroyed requested documents that contain the evidence that demonstrating a reasonable causal link between the experienced service difficulty, problems and faults to call losses.

D. The claims process is not intended to be a quasi-legal process or a legal process that solely relies upon the strict rules of evidencel.

## OPERATIVE PROVISIONS:

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1. An IA nominated by the claimants and recommended by Senator Harris shall be appointed by the Commonwealth to oversee the claims process

2. The IA has the authority to appoint an independent legal advisor to be available on request to assist the IA.

3. Each claimant is entitled to nominate to the IA a person/organisation of high repute who is independent and considered to have the appropriate loss assessing skills and knowledge of the claimants industry to enable the IA to conduct a commercial assessment of the relevant claim.

4. Since there has been considerable delay in the institution of the claims process all statutory limitations and immunities that would otherwise prevent the claims being maintained are waived.

5. The IA in each instance will appoint the approved Assessor to assess the individual claimant's claim against Telstra. Each Assessor has the authority to appoint an independent legal advisor and a Resource Unit comprising of nominated independent individuals who are specialist technical in telecommunications, forensic accounting, and a specialist in the industry of the claimant.

6. In acknowledgement of the claimants' precarious financial position arising out of the Telstra created delays and refusal to correctly address the claimants' disputes with Telstra, the claims process will be positively funded by Telstra.

7. The IA, on receipt of a claimants request for funding assistance (suitably verified), will provide the claimant with appropriate funding/financial assistance to facilitate the claimant in preparing/finalising the claim and participating in the claims process. The financial assistance provided to the individual claimant shall include funding of specialist technical assistance, forensic accounting and the documentation and presentation of their claim to

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the Assessor plus expenses the claimant incurred during and as the result of the claims process.

8. The assessment and determination of claims will be final and binding upon Telstra and the Commonwealth.

9. The objective of the claims process is to achieve a "Fast Track" full and final resolution of the claimants' outstanding claims against Telstra by providing the claimants access to a positively funded independent commercial assessment process purposely designed to deliver natural justice.

### **IDENTITY OF THE CLAIMANTS:**

10. The Claimants for the purposes of the assessment are:

- Ralph Bova and/or associated/related entities.
- Ann Garms and/or associated/related entities.
- Francis Holmes for John Holmes estate and/or associated/related entities.
- Kenneth Ivory, T. M. Platt and associates and or all independent associated or related Solar-Mesh® entities and all related registered Trade Marks and related intellectual property.
- Ross Plowman and/or associated/related entities.
- Brian Purton-Smith and/or associated/related entities.
- Graham Schorer and/or associated/related entities including Golden Messenger and/or associated/related entities.
- Alan Smith and/or associated/related entities.
- Ms. Sandra Wolfe and/or associated/related entities

Each of whom is a "*claimant*" collectively "*claimants*".

### **INDEPENDENT ADMINISTRATOR**

### **APPOINTMENT**

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11. From a panel of qualified and experienced persons/organisations nominated by the claimants, after consultation with the claimants, Senator Harris will select the person or organisation that will be appointed by the Commonwealth as the IA of the claims process.

12. Remuneration of the IA and the assistant will be as per their normal charge out fees.

### **OBJECTIVE**

13. The objective of the claims process is to administer and deliver, in a transparent manner, a "Fast Track" final resolution and outcome that contains natural justice by the use of a commercial assessment process that does not rely upon previously requested documents by the claimants.

### **CONFLICT OF INTEREST**

14. All participating parties in this process are entitled to raise matters or issue a challenge to a potential appointment of the IA, an Assessor or independent legal advisor or any person engaged to assist in the claims process when in the possession of information or in a position that suggests the appointee or potential appointee may be subject to a conflict of interest.

15. If at any stage during the process a conflict of interest emerges or a challenge is made against either the IA or Assessor; their legal advisors; or a member/organisation of the Resource Unit, the claimants are entitled to request the process be suspended pending an investigation. In the event there remains a real concern of a potential of conflict of interest, the challenged person or organisation will be replaced.

### **ROLE AND FUNCTION**

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16. The IA will, in a transparent manner, perform an assessment upon the independence and impartiality of every Assessor prior to appointing the Assessor to assess an individual claimant's claim.

17. The IA will consult with each of the Assessors after the Assessor has had an opportunity to consult with the claimant and evaluate what is involved in each part of the claimant's claim in order to establish reasonable and commercially achievable guidelines and timelines. Each Assessor will provide regular written progress reports to the IA.

18. It is the IA's task, duty and responsibility to maintain total transparency throughout the claims process.

19. The IA will provide controlled access to the funds contained in the positively funded trust account purposely created for the funding of the total process. The IA will require a documented request, explanation and where appropriate, support recommendations prior to conditionally releasing funds from the trust to a claimant and/or their respective support team and no reasonable request will be refused. The mandatory condition placed upon the released funds from the trust account is the released funds can only be used for the specific purpose identified in the documented request made of the IA.

20. The IA will have access to his own independent legal advisor and after consultation with the respective claimant and/or the claimant's advisors; the IA may act upon the legal advisor's advice subject to the advice being in accordance with the law.

21. In the event the IA receives a conflict of interest challenge the IA will suspend the process, conduct an Inquiry, obtain his own legal advice, and the legal opinion of the challenger before a decision is made to either uphold or dismiss the challenge.

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22. On the completion of the commercial assessment of each claimants claim the IA will provide a written report to the Minister of Communications that may contain recommendations for the Minister to consider.

23. In the event of an unresolved disagreement or dispute between the parties, the IA will act as a mediator. If resolution cannot be achieved through mediation the matter will be resolved by a decision made by a mutually agreed to third party.

### **FUNDING AND THE POSITIVELY FUNDED TRUST ACCOUNT**

24. The IA has the jurisdiction, authority, duty and discretion to:

- Determine the dollar quantum of the positively funded trust account
- Make payments from the trust account to pay for the services of the individual claimants' respective specialist technical telecommunications consultants, forensic accountants and for the cost of the documentation and presentation of their claim.
- Promptly approve accounts and pay the accounts within 7 days of the date the account was received from the individual Commercial Assessors and their respective Resource Teams.
- At his discretion:
  - Make payments to mitigate further losses being incurred by a claimant.
  - Advance funds to individuals whose financial circumstances prevent them from performing tasks unless positively funded.
  - Provide a claimant with special relief.

### **JURISDICTION, AUTHORITY AND DUTY**

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25. The IA has the jurisdiction, authority and duty to compel Telstra and/or the Commonwealth to:

- (a) replenish and maintain the quantum of the IA's positively funded trust account throughout the entire process;
- (b) pay the claimant the total amount of the Assessors recommendation within 7 days from the date the Commercial Assessor delivered his recommendations to the IA.

26. The IA's jurisdiction includes all matters pertaining to concerns and challenges regarding conflict of interest.

27. It is the IA's duty and responsibility to

- (a) ensure/maintain adherence to a core set of values that emphasis honesty, trust, transparency and integrity throughout the whole process;
- (b) ensure that terms of settlement of claims are duly recorded in writing on the day of settlement.

## **INDEPENDENT COMMERCIAL LOSS ASSESSOR**

### **APPOINTMENT**

28. An Assessor will only be appointed after the IA has independently verified the stated independence of the person/organisation nominated by the claimant to be the appointed Assessor to assess the claimants' claims.

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29. Remuneration of the appointed Assessor, assistant and the respective parties that consist of the Assessor's Resource Unit, will be as per their normal charge out fees.

### **OBJECTIVE**

30. Commercially assess and deliver, in a transparent manner, a "Fast Track" final resolution and outcome that contains natural justice by the use of a commercial assessment process that does not rely upon previously requested documents by the claimants which Telstra and others did not make available as Telstra and others withheld, mislaid, lost or destroyed the documents.

### **CONFLICT OF INTEREST**

31. All participating parties in this process are entitled to raise matters or issue a challenge to a potential appointment or an appointed party, when in the possession of information or having a position that suggests a position of conflict of interest.

32. If at any stage during the process a conflict of interest challenge is made against either the IA or Assessor, their Legal Advisors or a member/organisation of the Resource Unit, the claimants are entitled to request the process be suspended pending investigation and in the event there remains a real concern of a potential conflict of interest, the challenged person or organisation will be replaced.

### **ROLE, FUNCTIONS AND DISCRETION**

33. In a transparent manner commercially assess all categories of the claimants claim for loss, injury and damages and in relation thereto:

- (a) establish guidelines and achievable timetables in consultation with claimants taking into account their

respective technical, forensic, accounting and industry specialists;

- (b) provide guidelines as to the presentation of oral evidence and submissions;
- (c) enable claimants to rely upon facts established by other claimants if they are of probative value to relevant claims.

34. The Assessor has the discretion to form an opinion on the content that may have been contained within documents the claimant requested from Telstra and Others which were withheld, mislaid, lost or destroyed, and make findings in favour of the claimant.

35. The Assessor's discretion to form and act upon an opinion extends to all categories of Telstra and Others' conduct including corporate misbehaviour during the course of the claimants' dispute. The Assessor will make awards for special damages and a punitive award of damages to ensure that such behaviour is unlikely to occur again, and, without limiting the generality of the foregoing may;

(a) Establish written guidelines and achievable timetables in consultation with the individual claimant and their respective specialist technical telecommunications consultant, forensic accountant, and industry specialist.

(b) Provide guidance and documented examples to the claimant of what information is required to successfully participate in a commercial assessment and written explanations on how best the required information can be presented.

(c) Provide the claimant with written guides on the preferred presentation of oral submissions. Oral submissions may include reference to existing evidence material including Telstra documentation.

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Upon completion of the assessment, provide the Administrator with a written report that identifies each category of the claimants complaint and the quantum (if any) of the assessed amount.

36. The Assessors final report to the Administrator shall contain recommendations the Administrator can use in the Administrators report delivered to the Commonwealth.

### **JURISDICTION, AUTHORITY, DUTY AND DISCRETION**

37. The Assessor has the jurisdiction, authority and discretion to

(a) interview existing and former employees of Telstra and those involved in previous internal and external investigations into Telstra's performance and conduct;

(b) examine documents (including those previously withheld from enquiry); and,

(c) obtain access to documents in the possession of Telstra (whether or not access has previously been refused or withheld).

38. The Assessors' jurisdiction and discretion extends to making a recommendation to the Administrator for a complainant to receive special relief and/or the Administrator make a payment on behalf of the claimant to mitigate the further loses being incurred by the complainant.

39. The Assessor has the jurisdiction and authority to compel Telstra and other involved government agencies as well as the T.I.O. to provide and deliver answers to written questions within seven (7) days upon receipt of the questionnaire.

40. The jurisdiction, authority, duty and the discretion of the Assessor shall not be limited by what is contained within or omitted from the Assessors'

terms of reference if the content or omission limits the Assessors ability to make an assessment that delivers to the claimant an award that equates to the receipt of natural justice.

### **SPECIAL RELIEF**

41. In those cases where a claimant is in financial hardship, such as have no savings, assets, access to credit or in receipt of a substantial income, the Assessor will on receipt of a copy of the claimants written request made of the IA, meet with the claimant and evaluate the quantum of the special relief a claimant must receive to enable the claimant to participate with dignity in the proceedings.

42. After establishing the quantum (if any) of special relief the Assessor will immediately forward the recommendation to the IA to facilitate the IA' prompt processing of the claimants' request.

### **TRAVEL AND ACCOMMODATION**

43. All of the Assessors/Resource Units travel, accommodation arrangements, bookings and payments will be made by the office of the IA.

44. All of the claimants and their telecommunications consultants, forensic account and advisors travel, accommodation arrangements, bookings and payments will be made by the office of the IA.

### **FUNDING**

45. The Assessors written progress reports and recommendations provided to the IA will contain updated assessments of the funding requirement of the claimant.

Dated

**For and on behalf of :**

**Commonwealth of Australia**

**Telstra Corporation Limited**

**The Claimants**



## BARNABY JOYCE

The Nationals Senator for Queensland

15 September 2005

Mr Alan Smith  
Seal Cove Guest House,  
Cape Bridgewater  
Portland RMB 4409 VIC 3305

Dear Mr Smith,

### **Casualties of Telstra – Independent Assessment**

As you are aware, I met with a delegation of CoT representatives in Brisbane in July 2005. At this meeting I made an undertaking to assist the group in seeking Independent Commercial Loss Assessments relating to claims against Telstra.

As a result of my thorough review of the relevant Telstra sale legislation, I proposed a number of amendments which were delivered to Minister Coonan. In addition to my requests, I sought from the Minister closure of any compensatory commitments given by the Minister or Telstra and outstanding legal issues.

In response, 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 provided 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.

Please be assured that I will continue to represent your concerns in the course of this resolution. I look forward to your continued support.

Kind regards,

**Senator Barnaby Joyce**  
The Nationals Senator for Queensland

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**Davies, Joshua**

**From:** Vajrabukka, Nikki  
**Sent:** Thursday, 22 September 2005 2:26 PM  
**To:** Davies, Joshua  
**Subject:** FW: COTS issue - 'brainstorm' notes  
**Attachments:** Notes for discussion with Andrew.doc

for info.

**From:** Vajrabukka, Nikki  
**Sent:** Thursday, 22 September 2005 12:52 PM  
**To:** Madsen, Andrew  
**Subject:** COTS issue - 'brainstorm' notes

Hi Andrew

As discussed yesterday, I've done up some notes in preparation for our discussion with the Minister's Office tomorrow (see attached) - they're still in very draft form, but I hope they're ok for our purposes for now. I've also sought advice from Legal about some of the issues, and am awaiting their views.

Key issues for consideration include:

- Analysis of Senator Joyce's request, and Minister's response
- What the Minister can and can't do
- Whether there is any basis to re-open the investigations/appoint an independent assessor
- If so, who will that be?
- What powers does the Minister have to direct a person to do so (for example, direct the TIO to revisit the cases?)
- Whether there were any compensatory commitments or warrants of compensation given by the Minister, the Department or Telstra

Emily says that your diary is pretty full for today, so if you want to discuss, please let me know and I'll fit in with whatever suits you. Matt Stafford has confirmed that the 10:00am meeting tomorrow is still a go-er.

cheers,  
- Nikki

23/09/2005

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## Davies, Joshua

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**From:** Lever, David  
**Sent:** Thursday, 29 September 2005 4:59 PM  
**To:** Madsen, Andrew; Bryant, Simon; Holthuyzen, Fay  
**Cc:** Vajrabukka, Nikki; Davies, Joshua  
**Subject:** cots - independent assessor

Matt Stafford rang to say that the Minister wants a draft letter to Senator Joyce by Friday next week that:

- re-states what she said she would do in her last letter to him ;
- demonstrates that processes are in place to meet her commitment;
- indicates the cases/persons whom the independent assessment would cover, and
- asks Senator Joyce whether this should meet his needs.

Matt said that he would be calling Senator Joyce 's office tomorrow to ask which cases/persons the Senator would like to be covered. He said that the Minister would not want to focus on cases/persons. Senator Joyce has no interest in nor overtook cases/persons of interest to the Senator.

I suggested that we do all we can to restrict coverage to the 16 COTs that were considered by AUSTEL in its 1994 report as inclusion of any others without some justification, eg that they were mentioned in the Senate's 1998 report on COTs, would risk irresistible pressure to extend to numerous others who have had disputes with Telstra over the past 10 years. All 16 of the COTs have reached settlements or had arbitrations completed, though one has gone to court to have the settlement set aside and to seek damages. Telstra (Athol) thinks that Senator Joyce is interested in the latter case and two others not covered by the AUSTEL report, both before the courts. I noted that an independent assessor would not be able to intervene in any matter before the courts.

I also suggested that there may be advantages in appointing ACMA as the independent assessor rather than a consultant to the Department. He was not opposed to this idea.

DL



**Australian Government**  
 Department of Communications,  
 Information Technology and the Arts

Minute No: M2005/1395

**MINISTER FOR COMMUNICATIONS,  
 INFORMATION TECHNOLOGY AND THE ARTS**

cc: Minister's Office, Secretary, Dep Sec Comms, Dep Sec Info Econ; CGM Tel, GM EIB

**SUBJECT: Outstanding claims against Telstra**

**TIMING: 1 November 2005. Senator Joyce has sought 'earliest' response to his letter.**

**RECOMMENDATION/ISSUE:**

- That you sign the enclosed letters to Senator Joyce and the Acting Chair of the Australian Communications and Media Authority

Signed / Not Signed

*Noted.  
 Letter Signed*

HELEN COONAN

...../...../2005

**KEY POINTS:**

- Senator Joyce has written to you seeking urgent advice on your proposed approach to the conduct of independent assessments of various claims against Telstra by customers or former customers or contractors of Telstra.
- We propose you ask the Australian Communications and Media Authority (ACMA) to conduct the assessments. It is proposed you tightly constrain the form of assessment made by the ACMA to one of determining the status of disputes and whether all dispute resolution options have been explored.
- There is significant risk for the Government if expectations in relation to compensation are created among claimants that cannot be met by the Government.

**SIGNATURE:**

**NAME:**

Andrew Madsen, A/g GM

**BRANCH/DIVISION:**

Competition and Consumer / Telecommunications

**DATE:**

18 October 2005

**CONTACT OFFICER:**

David Lever

**TEL:**

6271 1502

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**ADDITIONAL INFORMATION:**

**Background**

We are advised by your office that Senator Barnaby Joyce wrote to you on 13 September 2005 to seek, among other things, 'closure on any compensatory commitments given by the Minister or Telstra regarding prior legal issues currently outstanding. We have had a number of representations from people claiming that they have been given warrants of compensation by people in the Department and people in the previous Telstra Executive, although I have no ability to judge the veracity of these claims, I have given these people my commitment that I will follow them up.'

Your office has also advised that you responded to Senator Joyce, also on 13 September, that 'these claims are against Telstra. I agree there should be finality for all outstanding COT cases and related disputes. I believe that the most effective way to deal with these is for me to appoint an independent assessor to review the status of all outstanding claims and to provide a basis for any sustainable claims that have not been resolved through earlier processes to negotiate a possible settlement with Telstra.'

Your office has not provided the Department with a copy of this correspondence.

On 6 October 2005, Senator Joyce's office attempted to email to your office a list of 'constituents' who had approached the Senator seeking his assistance. The email was eventually received, on re-sending, on 11 October. The constituents include 6 of the Casualties of Telstra (COTs), 11 small business customers of Telstra who were not COTs but have subsequently had disputes with Telstra, and 5 ex-Telstra contractors from Queensland. A list of the cases is included in Attachment 1.

Senator Joyce wrote to you on 6 October (Attachment 2), asking you to provide him with an outline of any criteria you are considering in determining whether an independent assessment is warranted and what process you will put in place for conducting the assessments.

Senator Joyce also suggested that if you or Telstra is aware of any small business customers not included on the list of persons who have outstanding claims against Telstra, these customers' cases should additionally be covered by the independent assessment.

**Discussion**

We understand from your office that you would like all of the cases listed in Attachment 1, including the former contractors to Telstra, to be considered in this exercise, if not included in the independent assessment.

There is a risk that an independent assessment process could prove difficult to contain to the persons specified in Attachment 1 and create expectations in

relation to compensation that may not be capable of fulfilment and so lead to criticism of the Government.

We are aware of persons not on the list who are currently lobbying, or have previously lobbied, the Government for assistance in relation to claims against Telstra. These persons may also seek to be included. However, adding them to the list supplied by Senator Joyce risks further expanding the group as others may come forward.

The Minister has no power to direct Telstra to take specific actions to resolve disputes. To raise expectations that an independent assessment will result in compensation or increased compensation from Telstra, without an ability to influence the outcome, may lead to criticism of the Government.

The four 'original' COTs and two COT-type cases in Group A in Attachment 1 all had their cases considered as part of a comprehensive Government response to a 1994 report by the then telecommunications regulator, AUSTEL, entitled 'The COT Cases'. Each of the six received considerable compensation, either as the outcome of a commercial settlement or an arbitration conducted by a special arbitrator appointed by the Telecommunications Industry Ombudsman (TIO) and under arbitration rules established and administered by the TIO. Each COT has, however, continued to lobby the Government, and in some cases, commenced court action, alleging that Telstra withheld evidence or provided misleading information during their arbitration.

The extensive publicity given to the COT cases report and speculation about large awards appears to have encouraged a number of other small business owners to claim compensation from Telstra for various alleged service deficiencies. They comprise Group B in Attachment 1. Certainly, a number of other cases emerged in the second half of the 1990s, the most notable of which were [REDACTED]. Other cases, such as [REDACTED] have emerged over the last two or three years.

Group C comprises contractors or former contractors of Telstra, all based in Queensland, who have alleged breach of contract or unfair practice by Telstra. We understand that these claims arose from a decision taken by Telstra to rationalise its cable layer contracting practices in the late 1990s, when Telstra reduced the number of contractors used. Some contracts were not renewed or were reduced in scope, and the affected persons have claimed that losses were incurred due to investments made on the expectation of a continuation of existing contracts. [REDACTED]

Business has represented the contractors and former [REDACTED] has also made representations on their behalf.

We have sought further information from Telstra on the nature and status of claims made by each of the persons listed in Attachment 1, but it has not yet been received.

### Proposed strategy

We propose that the Australian Communications and Media Authority be requested to conduct the independent assessment. Both AUSTEL and, more recently, the Australian Communications Authority, have had an important role in the past in relation to the CoT cases.

We consider that risk may be minimised by conducting an independent assessment of all cases referred by Senator Joyce, but tightly constraining the scope of the assessment. We suggest that the independent assessment be restricted to a consideration of:

- whether Telstra has responded adequately to the outstanding claims; and
- whether the claimants have availed themselves or are aware of alternative dispute resolution mechanisms.

We consider it would be inappropriate for the assessment to include an evaluation of the strengths and weaknesses of the parties' positions. The ACMA does not have the requisite information, resources or expertise to engage in such an assessment. However, the ACMA could seek to identify ways by which the claimants themselves could progress their claims within the existing complaint and dispute resolution framework.

Some of the persons who have made representations to Senator Joyce may not wish to participate in an independent assessment by the ACMA. The Department could write to each person on the list at Attachment 1, suggesting they contact the ACMA should they wish to have their case independently assessed.

You could request the ACMA to provide you with a report on the outcome of its assessment of each case by 31 January 2006. You could also ask the ACMA an important question in the lead up to the full privatisation of Telstra—whether the cases that the ACMA examines constitute evidence of a systemic problem with Telstra's complaint handling or dispute resolution procedures. If there is such evidence, this would appropriately be transparent to the public and addressed sooner, rather than later.

Proposed letters to the Acting Chair of the ACMA and Senator Joyce are attached for your consideration (Attachments 4 and 5).

- CONFIDENTIAL -

- 'I believe that the most effective way to deal with these is for me to appoint an independent assessor to review the status of all outstanding claims and to provide a basis for any sustainable claims that have not been resolved through earlier processes to negotiate a possible settlement with Telstra.' - see below

Independent assessor

- ✓ 'Who? TIO? Need to be careful - and Ivory' each engaged their own 'independent assessor' to provide support for their respective cases.

According to Minister's undertaking, assessor to:

- review the status of all outstanding claims and
- provide a basis for any sustainable claims that have not been resolved through earlier processes to negotiate a possible settlement with Telstra

Possible loopholes

- ✓ 'sustainable claims not resolved through earlier processes' - on the basis that information provided by the claimants raises no new issues, particularly regulatory issues that require addressing by the Minister or the ACA/ACMA.
- If concerns relate to conduct of Telstra, then these should be raised with the Commonwealth Ombudsman?
- ✓ If the CoTS have evidence of unlawful activities, these should be brought to the attention of the police or relevant law enforcement authorities.
- If CoTS believe that they are entitled to receive compensation or damages under statute law or common law, they have the option of taking legal action through the courts.

**What the Minister can and can't do**  
*a/w advice from Legal*

*NI's notes, pending Legal advice.*

Can Minister direct TIO to re-open investigation? Don't think so - "The TIO is an independent body, established by the industry to investigate consumer and billing complaint and other matters that fall within its jurisdiction. As such the Minister is unable to direct the TIO in those matters."

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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) ie 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 Bamaby 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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Hilliard, Iain

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**From:** Lever, David  
**Sent:** Wednesday, 21 December 2005 10:30 PM  
**To:** Hilliard, Iain  
**Subject:** FW: independent assessment of claims against Telstra

For file plse Iain

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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.

I hope you have a very enjoyable and restful Christmas break.

Regards,

David Lever  
02 6271 1502

22/12/2005

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**Senator Barnaby Joyce**  
**The Nationals' Senator for Queensland**

**Sen The Hon. Helen Coonan**  
**Minister for Communication, Information Technology and the Arts**  
**Parliament House**  
**Canberra ACT 2600**

16 November 2008

Dear Senator Coonan *Helen,*

**CoTs cases and related disputes**

I must remain with my commitment to the people involved with the CoTs cases. The commitment is representing their frustrations and finding a resolution to the issue.

The resolution to the issue, is referenced in your letter of 13<sup>th</sup> September 2005, where you state "I agree that there should be finality for all outstanding "COT" cases and related disputes. I believe that the most effective way to deal with these is for me to appoint an independent assessor to review the status of all outstanding claims".

This agreement I believe is the only way a satisfactory resolution can be achieved.

I realise that my only influence is that of persuading you and I must endeavour to keep the door open on this issue.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Barnaby Joyce'.

**Senator Barnaby Joyce**  
**The Nationals Senator for Queensland**

Seal Cove Guest House  
1703 Bridgewater Road  
Cape Bridgewater  
Portland 3305

3<sup>rd</sup> March 2006

Mr John Pinnock  
Telecommunications Industry Ombudsman  
P O Box 276, Collins Street West  
Melbourne 8007

Dear Mr Pinnock,

You would be aware by now that the Hon Senator Helen Coonan, Minister for Communications, Information Technology and the Arts, has agreed to appoint an independent assessor to review all the outstanding Telstra arbitration cases, including my claims. There are a number of documents that you hold which would help me prepare my submission to this assessment process.

Your letter dated 26<sup>th</sup> May 1999 (attached) referred to my previous correspondence with the Hon Tony Staley, Chairman of the TIO Council, and advised me that numerous issues raised in my letters to Mr Staley were to be discussed at the next scheduled TIO Council meeting, to be held on 21<sup>st</sup> June 1999.

1. Under the TIO Privacy Policy Act, I would be grateful if you would forward to me, from the minutes of the TIO Council meeting on 21<sup>st</sup> June 1999, and any subsequent TIO Council meetings, all references to the issues raised by Mr Staley, regarding the aforementioned letters.

In a subsequent letter dated 12<sup>th</sup> May 2004 (also attached), Philip Carruthers, TIO Business Manger, advised me that my letter of 26<sup>th</sup> April 2004 to all the members of the TIO Board and Council "... will be passed on to them by hand at the Council meeting scheduled for 19 May 2004." Mr Carruthers indicates that at least five members of the Board and Council would be personally handed copies of my letter at that meeting.

2. Under the Privacy Policy Act, I would be grateful if you would forward to me from the minutes of the Board and Council meeting of 19<sup>th</sup> May 2004, all references to the issues I raised with the members of the Board and Council in my letter of 26th April 2004.
3. Under the Privacy Policy Act, in relation to my particular Telstra and arbitration matters, I would be grateful if you would forward to me copies of all internal TIO correspondence, including faxes and emails, which were exchanged between the TIO Board and TIO Council between September 1995 and December 2005 (inclusive), in relation to my complaints to the TIO's office concerning my Fast Track Arbitration Procedure and the way the billing, phone and fax problems continued to damage my business after my arbitration.
4. Under the Privacy Policy Act, in relation to my particular Telstra and arbitration matters, I would be grateful if you would forward to me copies of all TIO correspondence, including faxes and emails, which were sent to the Department of Communications, Information Technology and the Arts, between January 1996 and December 2005 (inclusive), in relation

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to my complaints regarding Telstra's involvement in my arbitration, the way the billing, phone and fax problems continued to damage my business after my arbitration

Please note that I am not asking for a full copy of any TIO Council minutes but just those parts of the minutes that cover discussions of my matters.

I am also asking for the following documents from both the TIO's office, and their legal arbitration council, Peter Bartlett:

- A. All correspondence sent to the TIO and Peter Bartlett, regarding the acceptance by DMR (Australia) of their appointment as technical advisors to my arbitration.
- B. All correspondence received by the TIO from DMR (Australia), regarding their reasons for not fulfilling their original agreement to act as independent assessors for my claim.
- C. All correspondence sent by the TIO to DMR (Australia), regarding their reasons for not fulfilling their original agreement to act as independent assessors for my claim.
- D. All documents sent between December 1994 and December 1996 from the TIO and Peter Bartlett to Lanes Telecommunications, pertaining to my arbitration, including details of their appointment as assessors for my claim.
- E. All documents sent between December 1994 and December 1996 from Lanes Telecommunications to the TIO and Peter Bartlett, regarding their acceptance of their appointment to assess my claim material.
- F. All documents sent between December 1994 and December 1996 from the TIO and Peter Bartlett to DMR Group Canada, pertaining to my arbitration, including details of their appointment as assessors for my claim.
- G. All documents sent between December 1994 and December 1996 from DMR Group Canada to the TIO and Peter Bartlett regarding DMR Group Canada's acceptance of their appointment to assess my claim material.

Since the regulator, AUSTEL, appointed the TIO's office to administer my arbitration, AUSTEL acted on behalf of the Federal Government and the TIO's office administered the process under the Victorian Arbitration Act, my arbitration should have been conducted transparently. This did not happen. Now that the Communication Minister's office has finally agreed to have my claims independently (and therefore transparently) assessed, I should be provided with all the material I need so that I am afforded every opportunity to present the best case I can. I therefore request that you provide all the documents listed above under the Privacy Policy Act, as most of them should have been provided to me when D M R & Lanes took over from DMR Group (Australia).

I await your response.

Thank you for your assistance in this matter.

Sincerely,

Alan Smith

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COMMONWEALTH OF AUSTRALIA

# Proof Committee Hansard

## SENATE

ENVIRONMENT, COMMUNICATIONS,  
INFORMATION TECHNOLOGY AND THE ARTS  
LEGISLATION COMMITTEE

Consideration of Additional Estimates

THURSDAY, 11 FEBRUARY 1999

CANBERRA

### CORRECTIONS TO PROOF ISSUE

This is a **PROOF ISSUE**. Suggested corrections for the Bound Volumes should be lodged in writing with the Committee Secretary (Facsimile (02) 6277 5818), as soon as possible but not later than:

**Thursday, 25 February 1999**

BY AUTHORITY OF THE SENATE

[PROOF COPY]

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**Mr Armstrong**—Several hundred sites and about the same number of staff. There were face-to-face interviews of those people with people from Mr Levy's group who were familiar with the submissions, familiar with the whole process, familiar with their claims—the aim being to sit down and see them face to face. In some cases Mr Levy's people physically searched the places. In some places they reviewed documents offered up.

**Mr Benjamin**—We believe that every question that was asked in a specific way has been covered.

**Senator BOSWELL**—Why did you say, 'There were no such lists'?

**Mr Levy**—There are documents called the search methodology and, I think, the search locations tables, which laid out all of the areas we were going to visit, who we were going to visit, why we were going to visit them and the type of data we may recover. These were provided to Mr Wynack and to the claimants. A complete set of this documentation was generated for each of the CoTs.

**Senator BOSWELL**—You say there are no such lists available and I then asked you, 'Can you now reply to this specific request?' I mean, here they are. Can you go through these and reply to them specifically?

**Mr Levy**—I would like to have a look at that.

**Senator BOSWELL**—You have the documentation. You have the documentation of all the CoT cases asking for specific lists, asking for specific requests. If you do not have them, if you have not proceeded to provide those, I ask the question: will you now provide them?

**Mr Levy**—I know you are tabling that. We will certainly take that on board and provide comment as you ask.

**Mr Armstrong**—With respect, my understanding is—and again Mr Levy will correct me if I am wrong—that all of the documents collected in response to these searches were made available for viewing by the different CoT members. They have come in, viewed the documents and indicated those that they want copies of and we provided those copies.

**Senator BOSWELL**—But then Mr Armstrong said—I presume this is what he said—'We are not going to sweep search. I want you to be specific. I want you to go down and tell us what documents you want.' That was done in—Mr Armstrong was there.

**Mr Armstrong**—You have quoted a couple of times about 'Mr Armstrong's insistence'. I have not attended a working party meeting for well over a year. I do not recall anything being done at my insistence. I suppose I might have put some proposition or suggestions, but my recollection of the decision to scale down the request is that it was discussed, it was canvassed and it was a working party agreement. It may be a moot and pedantic point, but it was certainly canvassed at the working party meetings.

**Senator MARK BISHOP**—Mr Chairman, I want to draw your attention to the time. We are now one hour delayed in the agenda. We have been on this point for 30 minutes. It is in the process of discussion elsewhere. How does it relate to additional estimates?

**CHAIR**—That is a relevant point, Senator Bishop. We are an hour behind Senator Boswell.

**Senator BOSWELL**—I will take another 10 minutes if that is all right.

**CHAIR**—You did say your questions would be short. The issue of relevance to the estimates has to be borne in mind. This issue does not have an actual relevance to these estimates.

**Senator BOSWELL**—Just quickly, Mr Levy, because time is running out, you have already said you would agree to look at these to provide these specific requests.

**Mr Levy**—We will take that on board and reply accordingly.

**Senator BOSWELL**—You had a meeting in August with the working party and requests were not changed. The specific requests had to be answered. You have already said you will pick that up. I have a list here of Mr Plowman's documents, Mr Bovis's and Mrs Garms's documents in relation to Mrs Garms's requests. I believe only about 12 per cent of the documents she has requested have been given. The working party was to be for four months. It has now been going for 16 months. We really need to get to this position fairly quickly.

The CoT members still require the network and Ericsson documents. They have not received one Ericsson document. You have written to Mr Wynack and said, 'If you want the Ericsson documents, you go to Ericssons and get them.' Why can you not provide the Ericsson documents and why have you written a letter to Mr Wynack and said for him to go and approach Ericssons?

**Mr Armstrong**—We have spelt out in correspondence the search methodologies, the efforts we have made to locate the Ericsson documents, what our understanding would be of the sort of documents Ericssons create and the documents we would hold. We have provided all that information to the chair and to the CoT members. In the past, we were asked to contact the Australian Federal Police and the ACA to request documents from them. We did that late last year and were roundly criticised by the CoT members for the way the request was scoped. It seems to us that, if we approach an outside body, we will be criticised for somehow nobbling or

restricting the search. We are perfectly happy for the chair, as an independent third party, to go and make those approaches, so that process is beyond reproach and cannot be criticised. That is why we have suggested Mr Wynack should do that.

**Senator BOSWELL**—Do you have the Ericsson documents?

**Mr Levy**—The issue becomes clouded because of the definition of Ericsson documents. It started off that the Ericsson documents pertained to the question of Mrs Garms wanting correspondence to and from Ericsson and Telstra pertaining to the Fortitude Valley AXE and Tandem exchange relevant to the provision of her service.

**Senator BOSWELL**—That is right.

**Mr Levy**—Yes, we have searched for those and we have found nothing that fits that definition, apart from other documents pertaining to service which have already been provided for viewing and supplied as copies when requested. The point is that the term 'Ericsson documents' has been widened to the point where it means any communications between Telstra and Ericsson. Obviously there are millions of documents that fit that criteria.

**Senator BOSWELL**—If we get down to Mrs Garms's request, she has been very specific on what Ericsson documents she wants—very specific. You have said, 'Go to Ericsson.' Ericsson could quite easily say that it is between her and Telstra. Her requests on Ericsson documents have been very specific, and I believe she wants the Ericsson documents that relate to the upgrading of the Fortitude Valley exchange. They should not be hard to find. When you go out and upgrade an exchange you must have some form of plan, and that would be the Ericsson documents if Ericsson are doing the job for you.

**Mr Levy**—Where such documents exist, we would have found them and provided them. Also, on the subject of Ericsson's documents per se, we have responded to the chair, and copies have been given to Mrs Garms. I do not know the date of the letter—I can certainly find it out for you—but we have given a full explanation of the results of the search pertaining to the Ericsson documents.

**Senator BOSWELL**—Are there Ericsson documents on the upgrading of the Fortitude Valley exchange?

**Mr Levy**—There are documents pertaining to the upgrading of the Fortitude Valley exchange.

**Senator BOSWELL**—And has Mrs Garms been given those documents?

**Mr Levy**—Yes.

**Mr Benjamin**—We are not withholding any documents. The only reason we suggested you might like to go to Ericsson is that it was suggested at some time that Ericsson might have some documents. If Ericsson have some documents, we do not know. We have suggested, for reasons that Mr Armstrong put forward before, that we have no objection at all to the chairman's asking Ericsson if they have any documents. But we are not knowingly withholding any documents.

**CHAIR**—Senator Boswell, we have had our extra time. Senator Bishop has said that this matter is being looked into in another forum, and we cannot resolve it here, so I think we should wind up at this point.

**Senator BOSWELL**—In deference to your ruling, Mr Chairman, and because I have such high regard for you I will finish.

**CHAIR**—I will tell you why Senator Boswell has high regard for me: because my office is next to his and for his Christmas party he had to use my fridge! That is what this is all about. We will have a five-minute break while the committee has a private meeting, and we will resume at half past four.

Proceedings suspended from 4.23 p.m. to 4.32 p.m.

**CHAIR**—I call the committee to order. We will move on to subprogram 4.2—Australian Postal Corporation.

**Senator MARK BISHOP**—I have one further question of Telstra.

**CHAIR**—I am sorry. You were the one who called our attention to the fact that we were an hour late and I just assumed you would want us to get on as quickly as possible.

**Senator MARK BISHOP**—I have a question arising out of the Katherine floods business. The footage provided by the ABC, we all know now, was incorrect. Have you taken steps internally to make sure that that issue does not come up again and mistakes do not occur again?

**Mr Frueh**—Yes, we certainly have.

**Senator MARK BISHOP**—Could you tell us what you have done?

**Mr Frueh**—Yes. Obviously this is a matter of major concern for the company. A lot of it has been subject to fairly close press scrutiny of the actions we have taken. Without going right back to the actual events, I guess you are after the remedial actions to prevent it occurring again, as distinct from the actions we took in the actual case to mitigate the impact.

**SERVICE MONITORING AND TESTING - REPORT FOR AUSTEL  
SEPT-OCT 1993**

**Cape Bridgewater Holiday Camp**

**1. Introduction**

An investigation has been carried out into the service supplied to customer Mr Alan Smith of Cape Bridgewater Holiday Camp. In accordance with the AUSTEL Directive dated 12th August 93, paragraph 16, calls to and from the customer's service were monitored at the exchange and at the customer premises over a period of five weeks, and a test call program was carried out from the network to the customer's exchange, seeking to establish the service performance levels, and correct any faults detected.

This document provides a comprehensive report on the results of the monitoring and testing programs.

**2. Service Details**

The following details apply to this service.

Customer's Number	055 267267 008 816522
Exchange	Cape Bridgewater
Exchange Type	RCM
Minor Switching Centre	Portland AXE.
Customer Premises Monitoring Equip.	Single Channel ELMi Call Analyser
Exchange Monitoring Equip.	Call Charge Analysis System
Length of Dual Monitoring	Five (5) Weeks total from 2 Sept to 12 October 1993
Monitoring Investigation Dates	September 3 to October 12th 1993.

**3. Test Call Program**

A program of test calls was carried out between 28/10/93 and 8/11/93 using the Ericsson Network Evaluation and Test System. To perform the test a NEAT Network Test Unit was connected to test number 055 267211 in the same line group as the customer.

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The test calls were made over several days from a variety of origins to the destination test line. The spread of origins and times over which calls were made are indicated in Attachment 1. The calls were made over the full 24 hour period in order to achieve an adequate sample size in the time available. However an analysis of those calls made in the business traffic periods for this exchange has also been carried out to ensure that the overall results are also representative of the business hours results. In Cape Bridgewater the main busy traffic period occurs in the evening hours at levels usually greater than in the day .

The NEAT system tests for the following network conditions:

- Congestion
- RVA/Wrong number
- Communication error which includes transmission failure, drop out or other failure after connection
- No answer.

The sum of these failures is the network loss.

Calls may also be lost due to:

- Can't break dial tone:- this is due to a condition at the originating line which prevents the call from proceeding.
- System error - an internal problem within the NEAT system

These causes are not attributable to the network.

Attachment 1 shows the results of the test call program and the distribution of origins and times over which the calls were made. The overall results indicated as follows:

- Call success rate - 99.3%
- Network loss 0.29%.

The busy period analysis indicated a network loss of 0.51% on a sample size of 390. These results show the grade of service provided on incoming calls to Cape Bridgewater is better than the network average.

#### 4. Call Event Monitoring Program

##### 4.1 Call Monitoring Arrangements

The customers services were monitored via the Call Charge Analysis System in the exchange and by single channel ELMi Call Event recorder at the customer's premises for a period of over 5 weeks from 3/9/93 to 12/10/93.

The data from the customer's premises ELMi was recorded on paper tape and collected from the premises by a local Telecom Area Technician and then forwarded to Network Investigation's office in Melbourne for manual transcription into electronic format. The data from the CCAS at the exchange was down loaded for centralised analysis.

Attachment 3 is a summary of the data files associated with the call monitoring program.

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## 4.2 Monitoring Results

Attachment 2 summarises the results of six consecutive weeks of monitoring on the service line 055 267267.

The comparison of exchange and customer end records revealed two classes of discrepancy as follows

1. A number of short duration seizures of the line with duration between 1 and 5 seconds by the customer were recorded by the customer end equipment but not by the exchange based equipment. The Call Charge Analysis System does not record short seizures in this mode unless at least three digits are dialled and therefore this is an expected difference between the two records. The seizures or some of them may have been genuine but could also have been a result of electrical interference or changes in ground potential or reference voltage because of the remoteness of the customer end monitor from the exchange reference voltage. The total number of short duration seizures over the 5 week period was 33.
2. A total of five calls at different times were recorded by the exchange end equipment but not by the customer end equipment. All of these were incoming answered calls with significant conversation times. No sure explanation can be given for these omissions although there are a number of possibilities.

None of these discrepancies are indicative of a customer service problem but appear to be associated with the recording facilities.

## 4.3 Call Statistics and Usage Patterns

The overall usage statistics for the period of observation based on exchange end monitoring results are as follows:

Total Incoming Calls	384
Total Incoming Unanswered	8
Total Incoming Unanswered with RTime < 10Sec	1
Total Incoming Answered	376
Total Incoming Answered with CTime < 5Sec	0
Total Calls with CTime > 10min	62
Total Calls with CTime > 30min	12
Total Outgoing Seizures	3
Total Outgoing Calls with CTime < 10Sec	3

The number of outgoing calls is very low because the customer uses another line for outgoing calls. The results for incoming calls show a generally consistent pattern of usage and a high answered call rate. Only one call was of short duration was observed and this was unanswered. No service problems were evident from the results.

The customer usage patterns on incoming calls appeared normal

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## 5. Conclusion

The monitoring program did not reveal any service problems. The test call program showed the network access to Cape Bridgewater was providing a very good grade of service. Overall the study indicated a good standard of service is being provided.

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**Facsimile**

**To** Bruce Matthews

**ESD Management  
Service Operations**

**Company** AUSTEL  
5 Queens Road  
Melbourne

475

Level 19 222 Exhibition Street  
Melbourne  
Australia

Telephone (03) 9204 5557  
Facsimile (03) 9204 5571

**Facsimile** (03) 9820 3021

**From** Jim Mitchell

**Subject** G001

**Date** 11 November 1996

**File** **Total Pages** 1

Dear Bruce,

Further to our discussion this morning, I have been in contact with the Section in Adelaide that runs the NEAT testing. They have advised that very occasionally, the NEAT system does not recognise service tones reliably causing some calls that were successfully switched to be recorded as unsuccessful. The error rate is less than 0.5%. The effect of these calls means that NEAT presents a 'Worst Case' Scenario when measuring call setup failure rates.

Where NEAT fails to recognise dial tone, the call is aborted at that point. Therefore a call attempt is not made into the network, so these calls are not included in the call count for Service Verification Test purposes. It is also possible that the time synchronisation between NEAT units can get out of step and this can result in calls failing because a NEAT unit is trying to send a call at the same time as it is trying to receive a call. This situation is also extremely rare.

I have prepared the following words to go into Section 6.1, and 7.1 to explain why calls which fail due to system errors may be excluded from the count of test calls.

Telstra's NEAT system is used to generate the test calls for the SVT. This system is capable of distinguishing between calls which have failed in the Network, and calls which, occasionally, are not recognised by other NEAT units because of the failure to detect dial tone or other service tones, and incorrect synchronisation between NEAT units. For the purposes of the SVT, calls due to NEAT system errors and dial tone detection failures are excluded from the count of total test calls made.

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I have also sought advice about how to more clearly specify the call connection performance of the network in Section 6.1. I propose the following words:

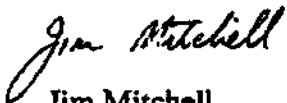
To guarantee that Telstra's performance standard is met, Telstra must ensure that each local exchange will allow 95% of all calls made, to be connected to the number which was dialled, at the first attempt.

I feel that this explains the performance target in words which are more likely to be readily understood by a customer.

Would you please advise if these words are acceptable.

I have made the other changes we spoke about and included the examples you used, based on 500 calls, in Step 1 of the Call Delivery and Originating call tests to indicate the number of calls required to pass, retest or fail the test.

Yours sincerely



Jim Mitchell  
ESD Management  
Service Operations

4-28-13

*Cape Bridgewater Holiday Camp and Convention Centre  
Portland, Victoria., 3305*

Dr. Gordon Hughes  
Hunt & Hunt  
Lawyers  
Melbourne

30th January, 1995

Dear Dr. Hughes,

A ruling regarding information associated with the Defence Documents being presented in this manner must be addressed. I had no intention of drip feeding information to the Arbitration Dr Hughes, once my final Submission had been presented.

It is now thirteen months since the first of four FOI applications was presented to Telstra and yet, even after all this time, Telecom have not supplied the material I have sought: NNI documentation, technician's diary notes, ELMI raw data, CCS7, CCAS and EOS data and voice monitoring fault records. Very little of this information has been supplied under the Arbitration Procedure.

When reading Telecom's Defence and FOI documents it is apparent that they have referred to this documentation when compiling much of their defence. Mr. Arbitrator, you are wrong if you think that I am just holding the stage on these issues alone, without merit to their value.

I have set out in this letter to show the significance of viewing the material and documentation that is currently missing. Cross-checking only the information which *has* been supplied still shows discrepancies and flaws in Telecom's test results and in their monitoring of customer's lines. If this can be shown using only limited material I'm sure the Resource Team can understand my frustration at not receiving the rest of the FOI material as sought under the FOI Act. This other material would have enabled me to substantiate even further, the inadequacies of Telecom's testing; the fabrication of files and test calls to establish an incorrect reading when Telecom technicians knew different.

In my reply to Telecom's Defence Documents, which is titled "*Brief Summary of Telecom's Witness Statements, Conflicting Evidence*", under the heading of "*Bell Canada and Neat Testing*", I show incorrect monitoring of calls into my business on 055 267 267. Telecom Documents 101312 and 101313 show that, from 3/9/93 to 12/10/93 Austel was supplied raw ELMI tape data of these calls into my business. I have not received this data, however, my own calculations can be viewed by checking what is written in the graph/table as shown on document 101313. A total of 376 answered calls registered into this business during those five weeks mentioned. The C/B/H/C first Submission, 7/6/94 (ref 0433 to 0444) shows these calls were incorrect.

My calculations show 425 answered calls, not 376 as shown in the graph. The graph also shows no incoming answered calls of less than five seconds, yet my calculations show 158 answered calls within this five second period. My total unanswered calls are 7 instead of 8 as shown in the graph. With this letter I present a further example, marked 'A' - test calls 10/6/94 (8 test calls). If we look at 15.30.07 to 15.30.57, four test calls took place in 44 seconds, allowing for the answered calls. This did not allow for the setting up of the answered calls and the eight seconds these four calls took to be answered. We now have four test calls within a 35 second duration and this does not allow for the dialling pattern to be completed. These test calls were not conducted in an efficient manner by Telecom's own testing programmers.

A further example, marked 'B', is a copy of my 008 account. Please note the following:

(Continued on page 2)

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(Continued from page 1)

8/9/93 at 01.00 pm call time 1.36  
9/9/93 at 02.41 pm call time 2.59  
14/9/93 at 03.36 pm call time 0.46  
14/9/93 at 03.46 pm call time 3.37

The C/B/H/C first Submission, 7/6/94, ref 0435 will show that these calls were not registered into the CCAS, yet I was charged for them.

The Resource Team will also note that these four calls were also part of the registered calls which were shown in the graph as 376 and my calculations were seen at 425. So here are a further four calls (that we know of). These examples here show clearly that the monitoring and testing at C/B/H/C RCM at Cape Bridgewater was not as we are lead to believe.

As further evidence of misleading conduct associated with Telecom's testing I refer the Resource Team to Telecom's Defence Document, Appendix 3 at 7. We have Bruce Pendlebury stating that he called me to ask if I was still using my cordless telephone on 30/8/93. He further states that I told him that I hadn't used it for some time. His written notes have confused him and, certainly, others who would view this document, as it appears as though I still had my cordless phone, even though it was returned in early April, 1993. He further states that several test calls by Gordon Stokes were made to Smith. The C/B/H/C first Submission, 7/6/94, ref 0389 shows no test calls to my business, even though Gordon Stokes claims these calls took place.

Telecom document marked K02643, hand written by Criss Doody, is further evidence of misleading and deceptive conduct by Telecom. If the Resource Team view page 13 of my second submission, titled "*Cape Bridgewater Part 2*" they will see a letter from Mark Ross. This letter states that the MELU fault, which we now know was a non-programmed line route to Cape Bridgewater, meant that 50% of all metropolitan Melbourne callers (clients of this business) were switched via this exchange. This route did not acknowledge 055 267 ... numbers and so the callers would only hear a continued RVA message "*The number you are ringing is not connected*".

Mr Mark Ross states in his letter that this fault was only for "*two*" days. On the following page in my second submission (page 14) we see another hand written letter addressed to Rossanne, MELU, RVA, somewhere between 9/2/- and 19/3/-. Following this page there is a Telecom Minute and I quote from paragraph three, the last two lines: "*One would think that if the code was not in data at MELU prior to that date, then complaints would have been likely to have been received before March, 1992.*"

Mr Arbitrator, the document K02543 referred to above (author Criss Doody), states that it is likely that this fault began on cutover day to the new RCM. This cutover date was 19th August, 1991 and the fault continued to 19th March, 1992, a period of seven months. A letter written to me on 23rd November, 1992 (author Don Lucas), states that this MELU fault lasted for only three weeks. This letter was only written because I continued to refute that two day period claimed by Mark Ross. The letter from Don Lucas also states that 50% of metropolitan callers would use this route.

My reply to Telecom Defence Documents, appendix titled "*Brief Summary, Telecom's Witness Statements, Conflicting Evidence*" under the heading "*Appendix C1 Melu*" shows a Telecom document stating that callers to Cape Bridgewater, via MELU, would be 50%. Not 'may be', but fact.

Telecom Defence Document "*Holiday Camp Service History*" page 19, paragraph 4, states that 33% of callers, on average, would use MELU. Telecom, in a written Statutory Document, has even tried to play this down 17%. That statement in this Statutory Declaration is misleading and commercial deception, the conduct is unconscionable behaviour.

My own letters from 1988, 89, 90 and 91, state that callers to this business had complained during that time of receiving continued voice announcements stating that the number they were ringing was not connected.

(Continued on page 3)

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*(Continued from page 2)*

Dr. Hughes, and I address this also to all those who have read all my submissions and my reply to Telecom's Defence Documents. I firmly believe that Telecom has deliberately down-played this fault.

During my settlement period, and on the day of December 11, 1992, Telecom's Corporate General Manager, Commercial, Vic/Tas, mislead me on this MELU incident as well as other issues. It has been shown, in my correspondence to Dr Hughes, that this same Australian lady chose to also deceive Telecom's own outside solicitors, Freehill Hollingdale & Page, by stating that I had only complained of nine faults from 6th January 1992 to 9th August 1992. Nine times. Yet, in a Statutory Declaration regarding documents read by Ian Joblin, we see at least 34 complaints and also a number of "known" Telecom faults.

As a further indication of this misleading and deceptive behaviour by Telecom Corporate I present five Telecom documents, including my written FOI request to Telecom. The Telecom numbers are: K47562 to K47565 and R01623.

Regarding Document K47563, my initial request to Telecom on 21st December, 1992, we read that this request was not accompanied by the required \$30.00 application fee. I ask Dr. Hughes and the Resource Team to view Document R01623 (my FOI application), particularly the P.S. at the end.

I believe the author of the letter to Ms Fay Hothuzen, Department of Communications and the Arts was Paul Rumble, as this FOI document was obtained from his file. If this is so, then Mr Rumble has mislead and deceived Ms Hothuzen. If this is not seen by the Commonwealth Ombudsman's Office as misleading and deceptive commercial conduct then it will at least show that Telecom will conjure words to defraud the general public.

The examples I have presented in this letter today must be viewed in the context in which they have been tabled. I am not of legal mind, however what I see is that Telecom would go, and has already gone, out of their way to down-play telecommunication faults, to confuse issues associated with those faults and, in an over-view of Telecom's witness statements and the History of the Cape Bridgewater Service, this Statutory Declaration is flawed.

If all this information can be obtained from the FOI documents that I have received, then the technical documents, files, diary notes of various technicians, including CCAS, CCS7, EOS, ELMI Raw Data Tapes would have shown so much more: faults, lies, cover-ups. Just to stop four individuals, members of COT from uncovering the truth.

Sincerely,

Alan Smith  
Cape Bridgewater Holiday Camp and Convention Centre  
Portland, 3305

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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. ↙ ↘

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

19<sup>th</sup> January 2008

Ms Jodi Ross  
Principal Lawyer  
Australian Communications & Media Authority  
Level 15, Tower 1, Darling Park  
201 Sussex Street  
Sydney NSW

Dear Ms Ross,

I refer you to the attached letter dated 15<sup>th</sup> September 2005, from Senator Barnaby Joyce, to me noting: *"As you are aware, I met a delegation of CoT representatives in Brisbane in July 2005. At this meeting I made an undertaking to assist the group in seeking Independent Commercial Loss Assessment relating to claims against Telstra. As a result of my thorough review of the relevant Telstra sale legislation, I proposed a number of amendments which were delivered to Minister Coonan. In addition to my request, I sought from the Minister closure of any compensatory commitments given by the Minister or Telstra and outstanding legal issues. In response, 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.*

My involvement in this DCITA assessment process in 2006 cost me quite a few thousand dollars and it turned out to be a sham anyway, as can be seen by the attached copy of an email sent by Senator Coonan's advisor (David Lever) to the TIO (John Pinnock) on 21<sup>st</sup> December 2005, noting that: *"The assessment will focus on process rather than the merits of claims, including whether all available dispute resolution mechanisms have been used."*

The Federal Liberal Government clearly misled Senator Joyce in a deliberate move to secure his vote so they could pass the legislation required for the privatisation of Telstra but, once this aim had been achieved, Senator Coonan executed a 'back-flip' on the Government's commitment to Senator Joyce. Mr Lever's email is quite clear – neither he nor the Minister ever had any intention of honouring the commitment given to Senator Joyce. Not only did Senator Coonan and Mr Lever go back on their promise to Senator Joyce, but Mr Lever wrote to me on 17<sup>th</sup> March 2006 (attached), before I signed the DCITA assessment agreement, guaranteeing 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*

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*arbitration, we will refer the matter to the relevant authority." The ACMA, the TIO and DCITA all know that Telstra relied on fundamentally flawed and manufactured reports to support their defence of my arbitration claim, but this evidence was not referred to "...the relevant authority" as Mr Lever promised. Mr Lever's promise to involve "...the relevant authority" was what brought me to the decision to join the DCITA process but again the department back-flipped on their written commitment.*

The fourth email attached here, dated 19<sup>th</sup> October 2005, from David Lever, indicates that I was not the only person misled by a promise of individual assessment and a back-flip to an 'assessment of process' only. Mr Lever notes that 'Jodi' "... may be getting confused about what the assessment is meant to do (or at least what we are recommending) i.e. 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." Whoever 'Jodi' is (perhaps you?) it seems, from Mr Lever's comments, that she expected the DCITA process to assess each claim, not just the process and how it worked. How much more proof does the ACMA really need? It is obvious that the DCITA assessment process did not, and was never intended to, assess the claims submitted by the COTS on their individual merits.

The negation of these Government guarantees is an enormous indictment against Australian democracy.

Because of the expense of the allegedly independent and, as it turned out, quite useless, DCITA assessment process, I can now not afford the \$300.00 price tag that the ACMA has put on my latest FOI request, as quoted in your letter of 18<sup>th</sup> January 2008, and I am therefore asking that the ACMA please take into account how the Department misled me into spending thousands of dollars in 2006 when there never was any intention of independently assessing my claim material on its merit, and so waive the current FOI charges as a gesture of goodwill.

Thank you,



Alan Smith

*Copies to  
Senator Barnaby Joyce, Senator for the Nationals, Queensland*

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## **BARNABY JOYCE**

**The Nationals Senator for Queensland**

15 September 2005

Mr Alan Smith  
Seal Cove Guest House,  
Cape Bridgewater  
Portland RMB 4409 VIC 3305

Dear Mr Smith,

### **Casualties of Telstra – Independent Assessment**

As you are aware, I met with a delegation of CoT representatives in Brisbane in July 2005. At this meeting I made an undertaking to assist the group in seeking Independent Commercial Loss Assessments relating to claims against Telstra.

As a result of my thorough review of the relevant Telstra sale legislation, I proposed a number of amendments which were delivered to Minister Coonan. In addition to my requests, I sought from the Minister closure of any compensatory commitments given by the Minister or Telstra and outstanding legal issues.

In response, 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 provided 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.

Please be assured that I will continue to represent your concerns in the course of this resolution. I look forward to your continued support.

Kind regards,

**Senator Barnaby Joyce**  
**The Nationals Senator for Queensland**

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Hilliard, Iain

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From: Lever, David  
Sent: Wednesday, 21 December 2005 10:30 PM  
To: Hilliard, Iain  
Subject: FW: independent assessment of claims against Telstra

For file pls Iain

---

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.

I hope you have a very enjoyable and restful Christmas break.

Regards,

David Lever  
02 6271 1502

22/12/2005

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**Australian Government**  
**Department of Communications,  
Information Technology and the Arts**

our reference

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

Dear Mr Smith

Thank you for your letter of 10 March 2006 to Ms Forman concerning the independent assessment process.

There is an implication in your letter that I advised you that the independent assessment process is not the process agreed to by Senator Joyce. I did not advise accordingly.

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.

Yours sincerely

David Lever  
Manager, Consumer Section  
Telecommunications Division

17 March 2006

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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) ie 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

435

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

28<sup>th</sup> January 2008

Ms Clare O'Reilly  
Australian Communications & Media Authority  
Level 15, Tower 1, Darling Park  
201 Sussex Street  
Sydney NSW

Dear Ms O'Reilly

**Letter one**

The information following this paragraph is an almost identical replica of the content of my letter dated 19<sup>th</sup> January 2008, to Ms Jodi Ross, Principal Lawyer ACMA. Ms Ross informed me today, via email that you are now my contact within the ACMA, until her return 31 March. So there is no confusion as to my concerns regarding the charges being applied by the ACMA, for my latest FOI requests, I have forwarded this correspondence entitle Letter one.

I refer you to the attached letter dated 15<sup>th</sup> September 2005, from Senator Barnaby Joyce, to me noting: *"As you are aware, I met a delegation of CoT representatives in Brisbane in July 2005. At this meeting I made an undertaking to assist the group in seeking Independent Commercial Loss Assessment relating to claims against Telstra. As a result of my thorough review of the relevant Telstra sale legislation, I proposed a number of amendments which were delivered to Minister Coonan. In addition to my request, I sought from the Minister closure of any compensatory commitments given by the Minister or Telstra and outstanding legal issues. In response, 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.*

My involvement in this DCITA assessment process in 2006 cost me quite a few thousand dollars and it turned out to be a sham anyway, as can be seen by the attached copy of an email sent by Senator Coonan's advisor (David Lever) to the TIO (John Pinnock) on 21<sup>st</sup> December 2005, noting that: *"The assessment will focus on process rather than the merits of claims, including whether all available dispute resolution mechanisms have been used."*

The Federal Liberal Government clearly misled Senator Joyce in a deliberate move to secure his vote so they could pass the legislation required for the privatisation of Telstra but, once this aim

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had been achieved, Senator Coonan executed a 'back-flip' on the Government's commitment to Senator Joyce. Mr Lever's email is quite clear – neither he nor the Minister ever had any intention of honouring the commitment given to Senator Joyce. Not only did Senator Coonan and Mr Lever go back on their promise to Senator Joyce, but Mr Lever wrote to me on 17<sup>th</sup> March 2006 (attached), before I signed the DCITA assessment agreement, guaranteeing 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."* The ACMA, the TIO and DCITA all know that Telstra relied on fundamentally flawed and manufactured reports to support their defence of my arbitration claim, but this evidence was not referred to *"...the relevant authority"* as Mr Lever promised. Mr Lever's promise to involve *"...the relevant authority"* was what brought me to the decision to join the DCITA process but again the department back-flipped on their written commitment.

The fourth email attached here, dated 19<sup>th</sup> October 2005, from David Lever, indicates that I was not the only person misled by a promise of individual assessment and a back-flip to an 'assessment of process' only. Mr Lever notes that 'Jodi' *"... may be getting confused about what the assessment is meant to do (or at least what we are recommending) i.e. 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."* Whoever 'Jodi' is it seems, from Mr Lever's comments, that she expected the DCITA process to assess each claim, not just the process and how it worked. How much more proof does the ACMA really need? It is obvious that the DCITA assessment process did not, and was never intended to, assess the claims submitted by the COTS on their individual merits.

The negation of these Government guarantees is an enormous indictment against Australian democracy.

Because of the expense of the allegedly independent and, as it turned out, quite useless, DCITA assessment process, I can now not afford the \$300.00 price tag that the ACMA has put on my latest FOI request, as quoted in your letter of 18<sup>th</sup> January 2008, and I am therefore asking that the ACMA please take into account how the Department misled me into spending thousands of dollars in 2006 when there never was any intention of independently assessing my claim material on its merit, and so waive the current FOI charges as a gesture of goodwill.

Thank you,

Alan Smith

436A

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

28<sup>th</sup> January 2008

Ms Clare O'Reilly  
Principal Lawyer  
Australian Communications & Media Authority  
Level 15, Tower 1, Darling Park  
201 Sussex Street  
Sydney NSW

Dear Ms O'Reilly,

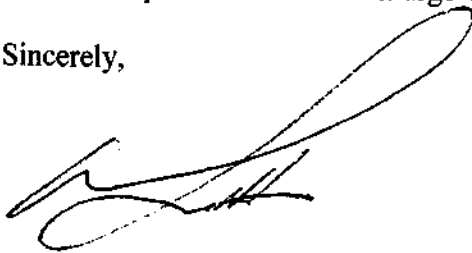
**Letter two – FOI request dated 6 December 2007.**

In my earlier letter of today's date (letter number one) I have described the grave miscarriage of justice I have suffered, from 1988 onwards, and explained how this should have been (but was not) settled by an AUSTEL-facilitated arbitration in 1994.

My first letter also asked ACMA to waive all the charges associated with my December FOI request, because of the aforementioned miscarriage of justice. Although I am still hopeful that ACMA will eventually agree to waive the FOI charges, I have now been advised that, while I wait for ACMA's final decision, I should forward the enclosed deposit of \$72.92, to 'get the ball rolling'.

I remain hopeful that the FOI charge will be waived in full.

Sincerely,



Alan Smith

*(Cheque for \$75.00 enclosed)*

436B

**capesealcove**

---

**From:** "Jodi Ross" <Jodi.Ross@acma.gov.au>  
**To:** "capesealcove" <capecove12@bigpond.com>  
**Sent:** Monday, 28 January 2008 12:01 AM  
**Subject:** Out of Office AutoReply:

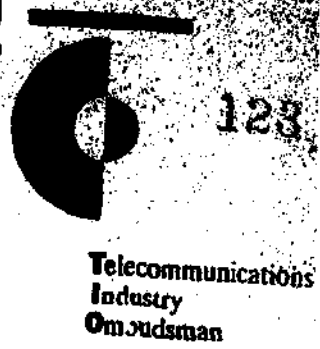
Thank you for your email. I am currently working with the Department of Broadband, Communications and the Digital Economy until 31 March. Please contact Clare O'Reilly (02) 9334 7703 regarding any requests for advice.

If you have received this email in error, please notify the sender immediately and erase all copies of the email and any attachments to it. The information contained in this email and any attachments may be private, confidential and legally privileged or the subject of copyright. If you are not the addressee it may be illegal to review, disclose, use, forward, or distribute this email and/or its contents. Unless otherwise specified, the information in the email and any attachments is intended as a guide only and should not be relied upon as legal or technical advice or regarded as a substitute for legal or technical advice in individual cases. Opinions contained in this email or any of its attachments do not necessarily reflect the opinions of ACMA.

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2<sup>nd</sup> attempt at sending!  
270.

**URGENT**



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

**URGENT**

**Facsimile Cover Sheet**

**PRIVATE &  
CONFIDENTIAL**

TO: Norm O'Doherty  
Company: AUSTEL  
Fax: 820 3021

FROM: Pai Di Mattina  
Company: TIO

Fax: \_\_\_\_\_  
Date: 22.6.94  
Pages: 12 (including cover sheet)

Comments:  
Norm,  
Copy of fax received from Telecom,  
as discussed, and for your information  
(and comment, ASAP!)

Regards,  
Pai

**438**

95/0600-02

**Telecom**  
 AUSTRALIA

124

 Commercial & Consumer  
 37th Floor  
 262 Exhibition Street  
 Melbourne Vic 3000  
 Australia

 Telephone (03) 632 7770  
 Facsimile (03) 632 3241

22 June 1994

 Mr Peter Bartlett  
 Minter Ellison Morris Fletcher  
 By Facsimile: 617 4666

Dear Peter

**Special Rules for Arbitration of 12 Claims Referred to Telecom by Austel**

I refer to our meeting at the TIO's office last Friday, 17 June 1994.

**1. Rule 9.3**

Telecom has reviewed rule 9.3 and agrees to delete this provision from the rules, provided that rules 4.8, 5.2, 5.4 and 9.2 are amended as marked up in the enclosed set of rules.

It is Telecom's view that these amendments simply expressly state what the arbitrator's powers to make directions pursuant to rules 4.8 and 5.4, already cover. Since these provisions only apply after a claimant is given an opportunity to remedy its default under the procedure, they would not affect bona fide claimants who lodge genuine claims. Telecom considers that expressing the amended rules in this way will act as a useful deterrent and safeguard against claimants lodging and pursuing claims which are not genuine.

**2. Letter to the claimants which is to accompany the rules of arbitration**

A draft letter to be sent to the relevant claimants with the rules of arbitration, is enclosed for your consideration and comment.

**3. Timetable**

A timetable for the commencement of the arbitrations is also enclosed. The proposed operation of the timetable is as explained in the draft letter to the claimants.

**4. Pool of Arbitrators**

I note that the pool of arbitrators to be used to conduct the arbitrations, is still to be finalised.

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Please contact me once you have had an opportunity to consider the above, in order to discuss finalisation of the rules.

Yours sincerely

*Steve Black*

Steve Black  
GROUP GENERAL MANAGER  
CUSTOMER AFFAIRS

cc: Warwick Smith, TIO

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[Letter to Relevant Claimants re Special Rules of Arbitration]

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Dear X,

**Special Arbitration Procedure**

The TIO and Austel have established with Telecom a special arbitration procedure to assist the resolution of a small number of Telecom customer disputes. Your dispute is one of these.

The procedure has been designed to meet the following objectives:

- to operate in accordance with the principles of natural justice; ✓
- to allow the arbitrator to relax certain rules of law if necessary; ✓
- to resolve the disputes as quickly as justice to all the parties reasonably permits; and ✓
- to operate cost-effectively. ✓

A copy of the relevant rules of arbitration are enclosed. You should read these rules very carefully. Briefly, from the date of commencement of your arbitration, you will have six weeks in which to submit a complete claim. Telecom will then have six weeks in which to submit a defence to your claim. You will then have up to three weeks in which to submit a reply if you wish. The arbitrator will then make a determination on the dispute. The arbitrator has certain discretions to vary the procedure in the interests of fairness, where appropriate. The arbitrator's award will be binding on you.

Arbitration is not compulsory or automatic. You have up to XX days in which to consider whether you wish to submit your dispute with Telecom to arbitration under this procedure. To submit your dispute to arbitration, you must send a completed application (see Schedule A of the Rules) to the TIO.

In order to ensure that the procedure operates effectively, the TIO and Austel have reached the following agreements with Telecom.

**1. Timetable for arbitration**

The commencement of arbitrations under this procedure will be determined according to a fixed timetable. Your dispute is currently scheduled for commencement starting XX.

You must send a completed application to the TIO by XX if you wish to preserve your priority in the timetable. If your application for arbitration is not received by then, your place in the schedule may be made available to another claimant and you may lose it. You will still be able to apply for arbitration under this procedure after XX, provided you apply before XX. In that case, you will be advised of the scheduled commencement date of your arbitration after your completed application is received.

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10. Notices

- 10.1 All documents letters and notices sent to a party, the Administrator or the Arbitrator in relation to these Rules shall be delivered by hand or sent by certified mail, courier or facsimile.
- 10.2 All documents letters or notices sent to Telecom in relation to these Rules shall be addressed to:

National Manager - Customer Response Unit  
 Telecom Australia  
 Level 8  
 242 Exhibition Street  
 Melbourne Victoria 3000.  
 Facsimile: (03) 634 8441

11. Liability of Administrator, Arbitrator and any Independent Expert Resource Unit

- 11.1 Neither the Administrator nor the Arbitrator shall be liable to either party for any act or omission in connection with the Arbitration save that the Arbitrator and the Administrator shall be liable for his or her own fraud or deliberate wrongdoing.
- 11.2 The liability of any independent expert resource unit used by the Arbitrator, for any act or omission on their part in connection with the Arbitration, shall be limited to \$250,000.00.

12. Return of documents

- 12.1 If either party has sent documents in support of its case to the Administrator or Arbitrator, that party may within six weeks of publication of the Award request the return of those documents, provided that nothing in this rule shall prevent the Administrator retaining a copy of documents for the purposes of maintaining a precedent library for future arbitrators, in accordance with rule 8.3.2. Subject to that, all documents relating to the Arbitration held by the Arbitrator will be delivered to the Administrator, and the Administrator may retain any documents relating to the Arbitration and may in due course dispose those documents in accordance with the Administrator's policies from time to time.



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**Telecom**  
AUSTRALIA

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**FAXED**  
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Commercial & Consumer  
37th Floor  
242 Exhibition Street  
Melbourne Vic 3000  
Australia

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

24 June 1994

Mr Neil Tuckwell  
Acting Chairman  
Austel  
By Facsimile: 820 3021

Dear Mr Tuckwell

**Special Arbitration Procedure for Twelve Cases**

I understand that the Telecommunications Industry Ombudsman spoke to you yesterday concerning the above procedure, and that the applicable rules of arbitration are now agreed. Enclosed is a copy of those rules which incorporates the final change requested by the Telecommunications Industry Ombudsman.

I would appreciate receiving confirmation of your agreement to those rules as soon as practicable to facilitate the introduction of the procedure. The commencement date of individual arbitrations under the procedure will then be finalised between Telecom and the TIO as the claimants indicate their intentions.

Yours sincerely



Steve Black  
GROUP GENERAL MANAGER  
CUSTOMER AFFAIRS

cc: Warwick Smith, TIO

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**SPECIAL RULES FOR ARBITRATION OF 12 CLAIMS  
REFERRED TO TELECOM BY AUSTEL**

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**1. Nature of the Procedure**

- 1.1 These Rules ("the Rules") provide an arbitration process (the "Arbitration") to resolve individual disputes ("the Dispute") between Telstra Corporation Limited ("Telecom") and the customers listed in Schedule C, which is designed to:
- 1.1.1. operate in accordance with the principles of natural justice;
  - 1.1.2. allow the arbitrator to relax certain rules of law if necessary;
  - 1.1.3. resolve the dispute as quickly as justice to all the parties reasonably permits; and
  - 1.1.4. operate cost-effectively.
- 1.2 The Arbitration will be subject to the Commercial Arbitration Act 1984 (Victoria), as amended ("the governing Statute"), except to the extent of any inconsistency with these Rules. The Arbitration will be administered independently by the Telecommunications Industry Ombudsman or his nominee ("the Administrator").

**2. Application for Arbitration**

- 2.1 A customer listed in Schedule C who wishes to refer a Dispute to arbitration under these Rules ("the Claimant") must send to the Administrator a completed application form as set out in Schedule A ("Application").
- 2.2 Upon receipt of an Application from the Claimant, the Administrator will forward the Application to Telecom. Upon receipt of the Application from the Administrator, Telecom shall sign and return the Application to the Administrator within seven days.
- 2.3 Upon receipt by the Administrator of an Application signed by both parties, the Administrator will without delay:
- 2.3.1 dispatch notice to both parties that the Arbitration will proceed;
  - 2.3.2 nominate a single arbitrator ("the Arbitrator") to hear and determine the Dispute from the pool of arbitrators established by Telecom and the Telecommunications Industry Ombudsman for the purpose of these Rules; and
  - 2.3.3 distribute notices to both parties confirming the nomination of Arbitrator.
- 2.4 An application for arbitration under these Rules does not relieve a Claimant from any obligation the Claimant may have to pay Telecom any amounts which are due and which are not part of the Dispute, and Telecom does not waive any rights which it has to pursue payment of such amounts.

**3. Commencement of Arbitration**

- 3.1 The Arbitration commences for the purpose of these Rules when the Administrator so notifies the parties in accordance with rule 2.3
- 3.2 Upon commencement of the Arbitration the parties will be deemed to have waived their respective rights to commence proceedings in any court or in any other forum in respect of the facts and matters the subject of the Dispute. Subject to the parties' appeal rights under the governing Statute, any decision made by the Arbitrator in respect of the Dispute pursuant to these Rules, including any decision to dismiss the Claimant's Claim, shall be full, final and binding on the parties.

**4. Arbitration Process**

- 4.1 Subject to rule 6, the evidence tendered in the Arbitration will be by way of documents and written submissions only. All written evidence shall be in the form of a statutory declaration. ←
- 4.2 The Claimant shall send to the Administrator, in triplicate, within six (6) weeks of receiving notice from the Administrator pursuant to rule 2.3.1 that the Arbitration is to proceed, the Claimant's Points of Claim and any written evidence and submissions in support of that claim together with all further documents that relate to any issue in that claim ("the Claim Documents"). The Points of Claim shall, with sufficient particularity, include:
- 4.2.1 the identity of the Claimant or Claimants;

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- 4.2.2 the problems and faults in the telecommunications service which are alleged to have occurred, including the dates and periods over which such faults allegedly occurred;
- 4.2.3 particulars of any efforts which have been undertaken by the Claimant to draw Telecom's attention to the problems and faults the subject of the Dispute, together with particulars of any subsequent response from Telecom;
- 4.2.4 particulars of how loss has been caused by Telecom; and
- 4.2.5 the loss suffered and particulars of how that loss is calculated.
- 4.3 Upon receipt by the Administrator of the Claim Documents, the Administrator will immediately send a copy of those documents to the Arbitrator and Telecom.
- 4.4 Telecom shall send to the Administrator, in triplicate, within six (6) weeks of receipt of the Claim Documents, Telecom's Points of Defence and Counterclaim (if any) and any written evidence and submissions in support of that Defence and Counterclaim, together with all further documents that relate to any issue in the in the Points of Claim, Defence or Counterclaim ("the Defence Documents"). The Points of Defence shall, with sufficient particularity, state the following:
- 4.4.1 Telecom's answers to the allegations referred to in the Points of Claim; and
- 4.4.2 any affirmative defence which Telecom will seek to rely upon.
- 4.5 Upon receipt by the Administrator of the Defence Documents, the Administrator will immediately send a copy of those documents to the Arbitrator and the Claimant.
- 4.6 The Claimant may send to the Administrator, in triplicate, within three (3) weeks of receipt by the Claimant of the Defence Documents, a Defence to any Counterclaim made by Telecom and/or Reply to the Points of Defence (if any) together with any written evidence and submissions in support of that Defence or Reply and all further documents that relate to any issue in that Defence, Counterclaim, Defence to Counterclaim or Reply (the "Reply Documents"). Any such reply will be restricted to points arising in the Points of Defence, and may not introduce any new matters, points or claims.
- 4.7 Upon receipt by the Administrator of the Reply Documents, the Administrator will immediately send a copy of those documents to the Arbitrator and Telecom.
- 4.8 If the Claimant does not send to the Administrator 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 Arbitrator may make directions in relation to the further conduct of the Arbitration as the Arbitrator considers appropriate having regard to all the circumstances, including dismissing the Claimant's claim and/or determining that the Claimant shall pay all or part of the administrative costs of the Arbitration to the Administrator.
- 4.9 If Telecom does not send to the Administrator the Defence Documents within the time allowed and does not remedy its default within two weeks after dispatch to Telecom by the Administrator of written notice of that default, then the Arbitrator may make directions in relation to the further conduct of the Arbitration as the Arbitrator considers appropriate having regard to all the circumstances, including a direction that the Arbitration will proceed and be decided by the Arbitrator by reference to the Claim Documents only.
- 4.10 Either party may, prior to the expiry of any of the deadlines specified in these Rules, request the Arbitrator (by writing to the Administrator) for an extension of time to meet a deadline. Subject to rule 4.12.1, no request for an extension made after the expiration of a deadline will be allowed. The other party will be notified of such request forthwith in writing by the Administrator 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.
- 4.11 The Arbitrator and Administrator shall conduct and progress the Arbitration as quickly as justice to all the parties reasonably permits.
- 4.12 The Arbitrator may in the Arbitrator's discretion (having regard to the objectives of the Arbitration set out in Rule 1.1):
- 4.12.1 vary rules 4, 5 and 6; and/or
- 4.12.2 seek a direction from the Administrator that, in order to assist the Arbitrator to make the Arbitrator's decision, the Arbitrator may use an independent expert resource unit to examine documents, inspect premises or systems, or carry out other enquiries or research.

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**Production of Further Documentation or Information, and Directions**

5.1 Without limiting any rights the parties may have to obtain documents or evidence under the governing Statute, at any time after the commencement of the Arbitration, either party may send a request in writing to the Arbitrator to:

- 5.1.1 require the other party to produce further documents or information;
- 5.1.2 require the other party to provide further particulars of claim or defence; or
- 5.1.3 make directions generally in relation to the conduct of the Arbitration.

A request under this rule 5.1 must be supported by written reasons. A copy of the request and the written reasons shall be sent by the party making the request, to the Administrator and the other party at the same time that it is sent to the Arbitrator. The other party will be afforded an opportunity to make written submissions in relation to the request within such time as the Arbitrator reasonably prescribes.

5.2 If the Arbitrator reasonably believes that the further documents, information and/or particulars requested by a party under rule 5.1 is or are relevant to the Arbitration, or that the directions requested are appropriate (having regard to the objectives of the Arbitration set out in Rule 1.1), or if the Arbitrator requires any further documents, information and/or particulars to assist the Arbitrator to make the Arbitrator's decision, the Arbitrator will:

- 5.2.1 require the other party by a specified date, by notice in writing, to provide the further documents, information and/or particulars; and/or
- 5.2.2 require the parties to attend for directions,

provided that the Arbitrator may not require the production of documents protected by legal professional privilege or which are required to be kept confidential pursuant to any statute or any subordinate legislation.

5.3 A party receiving a notice from the Arbitrator pursuant to rule 5.2.1 will within such time as the Arbitrator has prescribed in the notice send to the Administrator in triplicate either:

- 5.3.1 the further documents or information and/or particulars, as the case may be, in which case the Administrator will immediately send a copy of those documents to the Arbitrator and the other party, and the other party will be afforded an opportunity to make written submissions in relation to them within such time as the Arbitrator reasonably prescribes; or
- 5.3.2 a reasonable explanation for non-compliance with the notice.

5.4 If either party does not comply with a notice from the Arbitrator pursuant to rule 5.2, the Arbitrator shall immediately 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. In the event that the notice is not complied with and no reasonable explanation is given for a period of four (4) weeks after the date specified in the notice for compliance, then the Arbitrator may make directions in relation to the further conduct of the Arbitration as the Arbitrator considers appropriate having regard to all the circumstances, including, if the Claimant is the party in default, dismissing the Claimant's claim and/or determining that the Claimant shall pay all or part of the administrative costs of the Arbitration to the Administrator..

**6. Oral Hearings**

6.1 Either party may send a request in writing to the Arbitrator for oral hearings to take place. A request under this rule 6.1 must be supported by written reasons. A copy of the request and the written reasons shall be sent by the party making the request, to the Administrator and the other party at the same time that it is sent to the Arbitrator. The other party will be afforded an opportunity to make written submissions in relation to the request within such time as the Arbitrator reasonably prescribes.

6.2 If the Arbitrator reasonably believes that a hearing requested by a party under rule 6.1 would enable new evidence or submissions relevant to the Dispute to be presented by a party to the Arbitrator in a manner that fulfills the objectives of the Arbitration as set out in rule 1.1 more effectively than would written submissions, or if the Arbitrator requires hearings to assist the Arbitrator to make the Arbitrator's determinations pursuant to rule 7, the Arbitrator will direct that an oral hearing take place.

6.3 If the Arbitrator directs an oral hearing to take place, the Arbitrator will, after consulting with the parties, advise the parties of a date, time and venue for the hearing.

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- 6.4 Any oral hearing will not be open to the public nor any other non-parties to the Arbitration save that the Administrator or his or her delegate shall be permitted to attend oral hearings in order to observe the conduct of the hearing, and any legal or financial advisers to the parties shall also be permitted to attend oral hearings, conduct hearings, and make submissions on behalf of the relevant party, provided that each individual adviser signs a confidentiality undertaking in the form set out in Schedule B and sends that confidentiality undertaking to the Administrator prior to receiving any Confidential Information.
- 6.5 Any oral hearing shall be limited to legal submissions and clarification of technical engineering issues already raised, cross examination of any deponents of sworn evidence filed in the Arbitration, and any reply to such cross examination.
- 6.6 All oral evidence given at a hearing shall be on oath or affirmation. A transcript of the oral evidence and submissions given at a hearing shall be made. The cost of the transcript shall be an expense of the Administrator incurred in relation to the Arbitration for the purposes of rule 9.
7. **The Award**
- 7.1 The Arbitrator will determine loss and Telecom's liability.
- 7.1.1 In relation to loss the Arbitrator will make a determination:
- 7.1.1.1 taking into account the documents, evidence and submissions submitted by the parties and, if applicable, any oral evidence presented to the Arbitrator by the parties, and the findings of enquiries or research carried out by an independent expert resource unit engaged with the approval of the Administrator pursuant to rule 4.12.2;
- 7.1.1.2 taking into account what proportion of the Claimant's demonstrated loss is attributable to faults or problems in the Claimant's telephone service and what proportion is not so attributable, and Telecom shall only be held responsible for loss attributed to faults or problems in the Claimant's telephone service; and
- 7.1.1.3 giving due regard to the normal rules of evidence and legal principles relating to causation, subject to any relaxation which is required to enable the Arbitrator to make a determination on reasonable grounds as to the link between the Claimant's demonstrated loss and alleged faults or problems in the Claimant's telephone service, and to make reasonable inferences based upon such evidence as is presented by the Claimant and by Telecom.
- 7.1.2 In relation to Telecom's liability if any, to compensate for any demonstrated loss on the part of the Claimant the Arbitrator will:
- 7.1.2.1 take into account Telecom's legal liability (if any) to the Claimant including any contractual or statutory limitations on Telecom's liability, and any limitations on Telecom's liability to the Claimant as determined by Austel from time to time pursuant to section 121 of the Telecommunications Act 1991;
- 7.1.2.2 give due regard to the normal rules of evidence and legal principles relating to causation, subject to any relaxation which is required to enable the Arbitrator to make a determination on reasonable grounds as to the link between the Claimant's demonstrated loss and alleged faults or problems in the Claimant's telephone service, and to make reasonable inferences based upon such evidence as is presented by the Claimant and by Telecom; and
- 7.1.2.3 take into account any amounts paid or rebates granted to the Claimant by Telecom to date.
- 7.2 The Arbitrator will make an award ("the Award") according to the Arbitrator's determinations made pursuant to rule 7.1. The Award shall be compensatory and not punitive, and shall not include any heads of damage not recoverable at law. The Arbitrator's reasons will be set out in full in writing and referred to in the Award.
- 7.3 The Arbitrator will send copies of the Award to the Administrator and to each of the parties to the Arbitration.
- 7.4 Unless directed otherwise in the Award or the parties otherwise agree, within three weeks of dispatch to the parties of the 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. The Administrator shall be advised in writing by the party liable that such payment has been made.
- 7.5 The Award shall be final and binding on the parties, subject to the appeal provisions of the governing Statute.

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**8. Confidentiality**

- 8.1 For the purposes of these Rules, "Confidential Information" means information relevant to the Arbitration (including the subject matter and conduct of the Arbitration, the Claim Documents, Defence Documents, Reply Documents any other documents provided or oral evidence given in the Arbitration by either party, and any Award) other than:
- 8.1.1 information which at the time of disclosure to a party to arbitration is in the public domain.
  - 8.1.2 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.
  - 8.1.3 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, or
  - 8.1.4 information properly obtained under the Freedom of Information Act 1982.
- 8.2 The Confidential Information shall at all times during the Arbitration be kept strictly confidential by the Administrator, the Arbitrator, and the parties to the Arbitration. A party may disclose Confidential Information to the party's legal or other advisers notwithstanding this rule 8.2 provided that the party has first ensured that every such individual adviser has signed a confidentiality undertaking in the form set out in Schedule B and has sent that confidentiality undertaking to the Administrator. If there is any disclosure of the Confidential Information by a party, then the Arbitrator may take such steps as the Arbitrator thinks appropriate including the dismissal of the Claimants' claim in the event of a disclosure by the Claimant.
- 8.3 The Confidential Information shall at all times be kept strictly confidential by the Administrator, the Arbitrator, and the parties to the Arbitration, provided that:
- 8.3.1 the Administrator or Arbitrator may provide copies of documents relevant to the Arbitration which are sent by the parties to the Administrator or Arbitrator respectively, to an independent expert resource unit, on the basis that the independent expert resource unit signs a confidentiality undertaking in the form set out in Schedule B and sends that confidentiality undertaking to the Administrator prior to receiving any Confidential Information;
  - 8.3.2 the Administrator may retain copies of the Award and the documents relevant to the Arbitration which are sent by the parties to the Administrator, for the purpose of maintaining a precedent library for the sole and confidential reference of arbitrators in future arbitration cases; and
  - 8.3.3 the Administrator may, after the Arbitrator has made an Award, publicly release general information to the effect that disputes have been fully and finally resolved applying the Rules, but the Administrator may not publicly release any information which is reasonably capable of identifying the parties to the Arbitration or the quantum of the Award, or of undermining in any way the determination of the Arbitrator.
- 8.4 Any party may seek injunctive relief or make a claim for any damages suffered as a result of any disclosure contrary to this rule 8.

**9. Costs**

- 9.1 Each party bears its own costs of preparing and submitting its case.
- 9.2 Subject to rules 4.8 and 5.4, the Arbitrator's fees and expenses and the Administrator's expenses in relation to the Arbitration ("the administrative costs of the Arbitration") shall be paid by Telecom in accordance with a separate agreement between the Administrator and Telecom.

**10. Notices**

- 10.1 All documents letters and notices sent to a party, the Administrator or the Arbitrator in relation to these Rules shall be delivered by hand or sent by certified mail, courier or facsimile.

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- 10.2 All documents letters or notices sent to Telecom in relation to these Rules shall be addressed to:

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National Manager - Customer Response Unit  
Telecom Australia  
Level 8  
242 Exhibition Street  
Melbourne Victoria 3000.  
Facsimile: (03) 634 8441

11. **Liability of Administrator, Arbitrator and any Independent Expert Resource Unit**

- 11.1 Neither the Administrator nor the Arbitrator shall be liable to either party for any act or omission in connection with the Arbitration save that the Arbitrator and the Administrator shall be liable for his or her own fraud or deliberate wrongdoing.
- 11.2 The liability of any independent expert resource unit used by the Arbitrator, for any act or omission on their part in connection with the Arbitration, shall be limited to \$250,000.00.

12. **Return of documents**

- 12.1 If either party has sent documents in support of its case to the Administrator or Arbitrator, that party may within six weeks of publication of the Award request the return of those documents, provided that nothing in this rule shall prevent the Administrator retaining a copy of documents for the purposes of maintaining a precedent library for future arbitrators, in accordance with rule 8.3.2. Subject to that, all documents relating to the Arbitration held by the Arbitrator will be delivered to the Administrator, and the Administrator may retain any documents relating to the Arbitration and may in due course dispose those documents in accordance with the Administrator's policies from time to time.

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Schedule A

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APPLICATION FORM FOR ARBITRATION

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Part I: Application For Arbitration (to be completed by the Claimant)

1. I/We ..... (insert full name, address and  
 ..... facsimile number of each Claimant)  
 .....  
 .....  
 .....  
 .....  
 .....

hercby apply to the Telecommunications Industry Ombudsman for my/our dispute with Telecom to be referred to arbitration under the Special Rules for Arbitration of 12 Claims Referred to Telecom by Austel ("the Rules").

2. I/We agree to be bound by the Rules (a copy of which I/we have received, read and understood).

3. The dispute relates to the following: (Give a brief description of your complaints against Telecom, specifying all the telephone number/s affected and the acts or omissions by Telecom which give rise to your complaints. You will be given an opportunity to submit a full statement of your complaints later.)

.....  
 .....  
 .....  
 .....  
 .....  
 .....  
 .....  
 ..... ("the Dispute")

5. The total sum claimed in respect of the Dispute is: \$.....

Signed/Executed by each of the Claimants on: ..... (insert date)  
 (Each individual Claimant must sign and print his or her full name below.  
 Each company Claimant must affix its company seal and execute this form below, in accordance with the company's memorandum and articles of association.)

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APPLICATION FORM FOR ARBITRATION

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Part II: Agreement By Telecom Australia (to be completed by Telecom Australia)

Telecom hereby joins in the above application and agrees to be bound by the Rules.

Signed for Telecom on: .....(insert date)

.....(signature)

.....(print full name)

.....(position within Telecom)

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CONFIDENTIALITY UNDERTAKING

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To: The Administrator - Telecom Australia Arbitration Procedure  
Telecommunications Industry Ombudsman  
Ground Floor, 321 Exhibition Street  
Melbourne Vic 3000

I, \_\_\_\_\_ (print full name)

of \_\_\_\_\_ (print address)

acknowledge that I may receive or become aware of information (as defined to be "Confidential Information" in rule 8.1 of the Special Rules for Arbitration of 12 Claims Referred to Telecom by Austel) and therefore I hereby undertake and acknowledge to each of the Administrator, the Arbitrator, the Claimant and Telecom (defined in rules 1.1, 1.2, 2.1, and 2.3.2 of the Rules) 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 as the case may be, for the purpose of providing advice or service relevant to the conduct of an arbitration between Telecom and the Claimant (and for no other purpose), to that party.
3. I shall take all reasonable steps to cause and ensure that any Confidential Information is kept in the strictest confidence, including but not limited to any steps which I may be advised to take by the Arbitrator.
4. I shall immediately return all documents containing Confidential Information which I receive, and all copies thereof, to the party who provided me with such documents, if requested by that party to do so, within 6 weeks of that request.
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 Administrator, the Claimant, or Telecom as the case may be.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 1994.

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Full name of Witness

**439**  
Version 1.0

## Schedule C

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**CLAIMANTS WHO MAY SUBMIT DISPUTES WITH TELECOM TO ARBITRATION**

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1. All the individuals, companies or other entities which assert a claim against Telecom in relation to the products or services supplied by Telecom to the business known as "Dawson's Pest and Weed Control", of 151 Rosamond Road, Maribyrnong Victoria 3032, together (including all those who owned, or had a right to a share in the profits of, or obtained the relevant telecommunications products or services from Telecom during the relevant period).
2. All the individuals, companies or other entities which assert a claim against Telecom in relation to the products or services supplied by Telecom to the business known as "Glenwaters Fish Farm", of Break-O-Day Road, Glenburn Victoria 3717, together (including all those who owned, or had a right to a share in the profits of, or obtained the relevant telecommunications products or services from Telecom during the relevant period).
3. All the individuals, companies or other entities which assert a claim against Telecom in relation to the products or services supplied by Telecom to the business known as "The Gourmet Group", of 251 Bay Road, Cheltenham Victoria 3192, together (including all those who owned, or had a right to a share in the profits of, or obtained the relevant telecommunications products or services from Telecom during the relevant period).
4. All the individuals, companies or other entities which assert a claim against Telecom in relation to the products or services supplied by Telecom to the business known as "Lovey's Estate & Restaurant", of Melba Highway, Dixon's Creek Victoria 3775, together (including all those who owned, or had a right to a share in the profits of, or obtained the relevant telecommunications products or services from Telecom during the relevant period).
5. All the individuals, companies or other entities which assert a claim against Telecom in relation to the products or services supplied by Telecom to the business known as "Nelson Bay Cranes", of 22 Tarragundi Road, Epping N.S.W. 2121, together (including all those who owned, or had a right to a share in the profits of, or obtained the relevant telecommunications products or services from Telecom during the relevant period).
6. All the individuals, companies or other entities which assert a claim against Telecom in relation to the products or services supplied by Telecom to the business known as "Ralphies BYO Restaurant" and "Ralphies Pizza N Pasta", of 3 Tuck Street Moorabbin Victoria 3189, and 475 Main Street Mordialloc Victoria 3195, together (including all those who owned, or had a right to a share in the profits of, or obtained the relevant telecommunications products or services from Telecom during the relevant period).
7. All the individuals, companies or other entities which assert a claim against Telecom in relation to the products or services supplied by Telecom to the business known as "J & A Pine Products", of 308-314 Backwater Road, Greenbank, Queensland 4118, together (including all those who owned, or had a right to a share in the profits of, or obtained the relevant telecommunications products or services from Telecom during the relevant period).
8. All the individuals, companies or other entities which assert a claim against Telecom in relation to the products or services supplied by Telecom to the business known as "Michael Weigmann Drafting Service", of Green Gables, Jindabyne N.S.W. 2627, together (including all those who owned, or had a right to a share in the profits of, or obtained the relevant telecommunications products or services from Telecom during the relevant period).
9. All the individuals, companies or other entities which assert a claim against Telecom in relation to the products or services supplied by Telecom to the business known as "Barham Bridge Motel", of 18 Castleton Court, Gladstone Park Victoria 3043, together (including all those who owned, or had a right to a share in the profits of, or obtained the relevant telecommunications products or services from Telecom during the relevant period).
10. All the individuals, companies or other entities which assert a claim against Telecom in relation to the products or services supplied by Telecom to the business known as "Therese Trzcionka's Hairdressing Salon", of 63 The Broadway, Glenelg South, South Australia 5045, together (including all those who owned, or had a right to a share in the profits of, or obtained the relevant telecommunications products or services from Telecom during the relevant period).
11. All the individuals, companies or other entities which assert a claim against Telecom in relation to the products or services supplied by Telecom to the business known as "Bentinck Country House", of 23 Lancefield Road, Woodend Victoria 3442, together (including all those who owned, or had a right to a share in the profits of, or obtained the relevant telecommunications products or services from Telecom during the relevant period).

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

30<sup>th</sup> January 2008

The Hon David Hawker  
Federal Member for Wannon  
Parliament House  
Canberra 2600

Dear Mr Hawker,

By now you would have received my letter dated 21<sup>st</sup> January 2008, which was sent both by email, and in the post to your Electorate Office at 190 Gray Street, Hamilton.

Another letter, dated 19<sup>th</sup> January 2008, to Ms Jodi Ross, Principal Lawyer at the ACMA, was attached to my letter to you – the letter and attachments to Ms Ross explained how and I was misled into believing that the then-Minister for Communications would honour the commitment she gave to Senator Joyce in return for his crucial vote regarding the Telstra privatisation bill. The new evidence I have just received, and which was attached to my letter to Ms Ross, clearly shows that none of the claim material I provided to the Minister's allegedly independent assessment process, or even any of the material you submitted to her office on my behalf, was ever assessed on its merits. I wonder how you feel now, knowing that even the claim material you provided to the Minister on my behalf wasn't assessed on its merits? This does, however, demonstrate just how powerful Telstra is since they obviously have enough inside Government influence to be able to change one Minister's commitment to another (i.e. Senator Coonan's commitment to Senator Joyce).

The attached brief summary includes some of the issues I raised in my two letters to Ms Ross, on 19<sup>th</sup> and 28<sup>th</sup> January; my letter dated 28<sup>th</sup> January to Ms O'Reilly of the ACMA; and my letter to you on 21<sup>st</sup> January.

Since I first started corresponding with you in 1992, regarding my unresolved Telstra issues, I have always been open and honest in my efforts to have my Telstra matters correctly and transparently assessed but, even after two separate assessment processes and a legal arbitration, this has never happened.

I would be grateful if you would let me know, as soon as possible, if there is anything you disagree with in the attached "Chronology" document.

Once again, I must thank you and the staff in your office in Hamilton for your patience over the years.

Sincerely,

Alan Smith

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

2<sup>nd</sup> February 2008

The Hon David Hawker  
Speaker in the House of Representatives  
Parliament House  
Canberra 2600

Dear Mr Hawker,

As you will now know, from my letters of 21<sup>st</sup> and 30<sup>th</sup> January 2008 and the attached copies of letters, dated 19<sup>th</sup> and 28<sup>th</sup> January, to Jodi Ross and Claire O'Reilly at ACMA, even documents you forwarded to the Minister on my behalf were never assessed on their merits by assessors appointed by the Minister because, as my letters to ACMA show, Senator Coonan's agents actually admitted, in internal emails, that they never had any intention of assessing my claim material on the merit of the information provided, or that of any other COT claimants either, and yet they let us waste our money preparing and forwarding our claim documents in the belief that they would be properly independently assessed.

I have always endeavoured to be totally open and honest in my dealings with your office regarding Telstra and, as you know, I have always sought your approval in the past before sending any correspondence that referred to you. I followed this process again in my letter to you on 30<sup>th</sup> January when I asked if you would "... let me know, as soon as possible, if there is anything you disagree with in the attached "Chronology"..." (a one-page document). I do not expect a response to that question at the present, but I believe it is important that you have the attached document as soon as possible. This attached document is copy of an email from Ronda Fienberg, my Melbourne-based secretary and it is startling information, directly related to my allegations regarding Senator Coonan's allegedly 'independent' assessment process.

As you can see, yesterday (1<sup>st</sup> February 2008) Ronda received confirmation from Senator Coonan's office that they had deleted (without opening or reading) two emails Ronda had sent directly to Senator Coonan on my behalf in 2006. Both these emails related to Senator Coonan's so-called 'independent' assessment process – the process in which these documents should have been assessed. One of the documents is dated 23 April 2006 and the other 25 July 2006, but they were deleted yesterday, 1<sup>st</sup> February 2008 at 15:56:23 and 16:56:35 respectively.

Perhaps the correspondence I have recently sent to ACMA, Senator Joyce and your office, in relation to DCITA's misleading and deceptive conduct, has been forwarded to the Minister's office for investigation and this may have prompted Senator Coonan's advisors to shred documents and delete emails regarding my unresolved Telstra matters. Whatever the reason for deleting unread claim related emails, it seems that Senator Coonan's people were not aware that deleting the emails without opening them could automatically send a message back to the sender (in this case, my Melbourne-based secretary) to notify the sender that the message had been deleted without being opened (see attached document). As you know, many of my 'independent'

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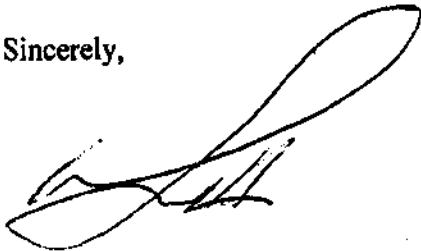
claim assessment documents were emailed to Senator Coonan and many of them included multiple pages.

As you are not only the Speaker in the House of Representatives but also my Federal Member of Parliament, you have a duty of care to instigate an investigation into why the Minister's office misled us both into believing that my unresolved Telstra related matters would be assessed on their merits when this new evidence proves that my claim related emails were not even opened in Senator Coonan's office, at the time of this alleged independent government facilitated assessment process.

Clearly the one crucial vote that the Government needed to pass the Telstra privatisation (Senator Barnaby Joyce's vote) was given on the base of a commitment that Senator Coonan never had any intention of honouring – that an independent assessor would be appointed to value the COT claimants' evidence – and then some of the evidence I forwarded was never even read, let alone assessed. This is a sad indictment of the Australian justice system and I am owed an explanation.

Please inform me as soon as possible, that you have instigated an inquiry into this misleading and deceptive conduct as soon as possible. How can a Senator, elected by the Australian public, be allowed to get away with executing such a complete back-flip on a commitment given to another Senator?

Sincerely,



Alan Smith

cc Senator Barnaby Joyce, Senator for the Nationals Queensland (Parliament House Canberra)

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**capesealcove**

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**From:** "Ronda Fienberg" <rondagf@optusnet.com.au>  
**To:** "Smith, Alan" <capecove12@bigpond.com>  
**Sent:** Saturday, 2 February 2008 10:52 AM

Well, here's a couple of interesting emails that landed in my email inbox this afternoon! As you can see, Senator Coonan's office must be having a big clean up of their emails and these two emails I've sent on your behalf back in 2006 have just been deleted -- today! Can a Senator legally delete correspondence from a citizen without reading it?

Ronda

MESSAGES RECEIVED THIS AFTERNOON ARE:

*Your message*

*To: Coonan, Helen (Senator)*  
*Cc: Lever, David; Smith, Alan*  
*Subject: ATTENTION MR JEREMY FIELDS, ASSISTANT ADVISOR*  
*Sent: Sun, 23 Apr 2006 17:31:41 +1100*

*was deleted without being read on Fri, 1 Feb 2008 16:56:36 +1100*

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*Your message*

*To: Coonan, Helen (Senator)*  
*Cc: Smith, Alan*  
*Subject: Alan Smith, unresolved Telstra matters*  
*Sent: Tue, 25 Jul 2006 00:00:42 +1100*

*was deleted without being read on Fri, 1 Feb 2008 16:56:23 +1100*

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**THE HON DAVID HAWKER MP**

SPEAKER OF THE HOUSE OF REPRESENTATIVES

FEDERAL MEMBER FOR WANNON



10 March 2006

Mr Alan Smith  
1703 Bridgewater Rd  
CAPE BRIDGEWATER VIC 3305

Dear Alan

I wish to acknowledge receipt of your correspondence dated 23 February and 27 February along with you facsimile transmissions of 6 and 9 March. I will ensure this material, including the corrected version, is forwarded to Minister Coonan.

In the meantime enclosed for your records is a copy of an interim reply relating to earlier representations I made on your behalf.

Yours sincerely

**THE HON DAVID HAWKER, MP**  
Speaker of the House of Representatives  
Member for Wannon

Enc

Ref: fb/dh:mc

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**THE HON DAVID HAWKER MP**

SPEAKER OF THE HOUSE OF REPRESENTATIVES  
FEDERAL MEMBER FOR WANNON



27 March 2006

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

Dear Alan

A note to acknowledge receipt of your letters dated 24, 25 & 26 March pertaining to your request for an independent assessment. Thank you also for forwarding Darren Lewis' letter of 25 March consenting to being interviewed under oath to support your claim that the phone and fax faults continued long after your arbitration.

Please be assured representations have been made today to the Minister for Communications and I have supplied Senator Coonan with copies of all above-mentioned letters.

I have requested the Minister's expeditious consideration of your proposal and I will write again as soon as I have received the Minister's reply.

Yours sincerely

**THE HON DAVID HAWKER, MP**  
Speaker of the House of Representatives  
Member for Wannon

cc: Mr Darren Lewis

Ref: cbr-cdb/dh.mc

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**THE HON DAVID HAWKER MP**

SPEAKER OF THE HOUSE OF REPRESENTATIVES  
FEDERAL MEMBER FOR WANNON



Tuesday, 11 April 2006



Mr Alan Smith  
1703 Bridgewater Rd  
CAPE BRIDGEWATER VIC 3305

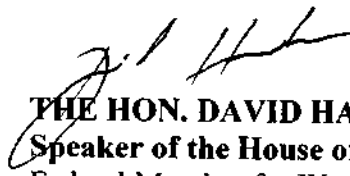
Dear Alan

I wish to acknowledge receipt of your correspondence dated 9 April 2006.

Please be assured, copy of this correspondence has been forwarded to Senator the Hon. Helen Coonan, Minister for Minister for Communications, Information Technology and the Arts.

Thank you for keeping me informed.

Yours sincerely

  
**THE HON. DAVID HAWKER, MP**  
Speaker of the House of Representatives  
Federal Member for Wannon

Ref: cdb/dh:lh

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**THE HON DAVID HAWKER MP**

SPEAKER OF THE HOUSE OF REPRESENTATIVES  
FEDERAL MEMBER FOR WANNON



6 June 2006

Mr Alan Smith & Ms Cathy Ezard  
1703 Bridgewater Rd  
CAPE BRIDGEWATER VIC 3305

Dear Alan and Cathy

Further to recent representations I have made on your behalf, please find enclosed copies of replies from the Minister for Communications, Information Technology and the Arts, Senator the Hon Helen Coonan.

I also wish to acknowledge receipt of your letter dated 28 May 2006. As requested, I will ensure this material is forwarded to Minister Coonan for her consideration.

Kind regards

**THE HON DAVID HAWKER, MP**  
Speaker of the House of Representatives  
Member for Wannon

Enc

Ref: cdb/dh:mc

445A



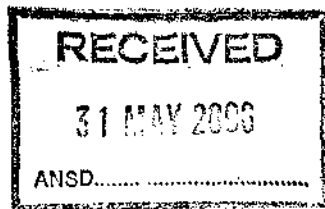
MINISTER FOR COMMUNICATIONS,  
INFORMATION TECHNOLOGY  
AND THE ARTS

Senator the Hon Helen Coonan

PARLIAMENT HOUSE  
CANBERRA ACT 2600

Telephone: (02) 6277 7480  
Facsimile: (02) 6273 4154

www.minister.dcita.gov.au



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

24 MAY 2006

Dear Mr Speaker

Thank you for your representations of 13 February, 9, 10 and 27 March 2006, on behalf of Mr Alan Smith, concerning the independent assessment of Mr Smith's claims against Telstra. I apologise for the delay in responding.

On 22 December 2005, the attached form letter was sent to the claimants, including Mr Smith. The letter sets out the terms of reference for the independent assessment. As the letter indicates, I asked the Department to report to me on the assessment by 31 March or as soon as practicable thereafter.

Mr Smith finally accepted the Department's offer to participate in the assessment on 2 March 2006, a month after the date by which the claimants were asked to respond. Mr Smith initially wrote to me, together with a number of other claimants, rejecting the Department's offer.

I understand that Mr Smith has provided the Department with substantial material, which has been examined by the Department. I am advised that the closing date for Mr Smith's submission was twice extended, to 17 March.

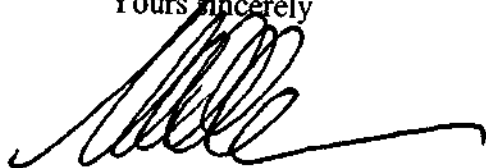
Mr Smith has indicated that he would like the terms of reference for the assessment to be wider, requiring the Department to make judgments about the fairness of the arbitration process undertaken by Dr Gordon Hughes, under the administration of the Telecommunications Industry Ombudsman, in 1994. While this is understandable, it is not reasonable to expect the Department or indeed any other person at this point in time to make judgments about the circumstances surrounding Mr Smith's arbitration. The terms of reference for the assessment are therefore more forward looking, aimed at identifying whether any further dispute resolution processes may be available to be pursued by claimants and Telstra in order to resolve their disputes.

445B

I note that Mr Darren Lewis offered to assist the assessment process by providing the Department with information on the phone service at the Cape Bridgewater Coastal Camp, Mr Smith's previous premises. While his offer is appreciated, I regret that Mr Lewis' assessment of the phone service at these premises is not relevant to the terms of reference for the independent assessment.

Thank you for bringing this matter to my attention, particularly given your representations on behalf of Mr Smith over a long period.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Helen Coonan', written in a cursive style with a long horizontal flourish extending to the right.

HELEN COONAN

445B

capesealcove

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**From:** "Hallam, Lizzie (D. Hawker, MP)" <Lizzie.Hallam@aph.gov.au>  
**To:** <capecove12@bigpond.com>  
**Sent:** Monday, 4 February 2008 10:17 AM

Dear Alan

I acknowledge receipt of your latest email on behalf of Mr Hawker whom is presently out of the office.

Thankyou for raising these concerns.

I shall bring same to Mr Hawker's attention at the earliest convenience.

Regards

Lizzie Hallam  
Electorate Officer  
Office of The Hon David Hawker MP

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4/02/2008

**FILE NOTE**

**22 March 2006**

Telecommunications Ombudsman, Mr John Pinnock contacted David Lever on 22 March 2006 regarding Mr Pinnock requested confirmation that was involved in the Independent Assessment process and was advised by Mr Lever that he was. Mr Pinnock advised David Lever that had contacted him requesting documents that he wished to forward to the Department for consideration in the Independent Assessment process.

Mr Lever advised Mr Pinnock that the Department had already requested that forward any documents for the Independent Assessment process to the Department by 17 March 2006. Mr Lever also advised Mr Pinnock that the Department had advised that it could not accept receipt of any further documentation for the Independent Assessment process unless it was forwarded on, or before, 17 March 2006, or if it has been specifically requested by the Department.

**Rachel Lilley**

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