CAV
CHRONOLOGY
LGE

Exhibit 470 to 486

Hunt & Hunt
LAWYERS

Partners
David M. Scarlett
Edward S Bovce
James G.F. Harroswell
Gordon L. Hughes
David P. Cooper
Ian S. Craig
Peter J. Ewin
Neville G.H. Debney
Grant D. Sefton
William P. O'Shea
Ashley M. Pelman

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

Associates
Francis V. Gallichio
John D.F. Morris

18 August 1997

Our Ref: GLH
Matter No: 5126900

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

COPY

Dear Sue

ARBITRATION - SCHORER

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

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

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

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

Yours sincerely

GORDON HUGHES

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

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

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Sources of Information

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

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

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

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

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Sources of Information

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

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

M34219

Telstra FOI Number

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

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

Senator SCHACHT—Do you disagree with her findings?

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

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

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

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

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

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

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

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

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

Senator SCHACHT—Would they be the rules or notification?

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

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

Senator BOSWELL—Could Mrs Garms make a request?

Mr Pinnock—Could she?

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

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

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

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

Senator BOSWELL—In what way?

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

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

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

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

Mr Wynack—Precisely.

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

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

FACSIMILE MESSAGE

TO: Senator Ron Boswell

FAX: 3246

FROM: Jenny Fox

DATE: 23 October 1997

PAGES (incl. cover sheet): 5

MESSAGE:

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

Jenny Fox

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TELSTRA AND COT/COT RELATED CASES

Working Party Terms of Reference
(Draft prepared for Senators Schacht and Tierney - 22 October 1997 8.50 pm)

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

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

- *were reviewed by Telstra in the course of preparation of its defence:*

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

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

Example:

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

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

Extract from pages - The Commonwealth Ombudsman Report-May 1996, Attachment 1.

TELSTRA AND COT/COT RELATED CASES

Working Party Terms of Reference

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

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

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

Part 2: List of Documents

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

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

including documents in relation to

(a) the:

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

described in Schedule A to these terms of reference.

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

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

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

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

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

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

2. The List must be sorted into separate sections, so that all documents in relation to a particular party to the Proceedings ("Party") are contained in one section of the List.

3. Telstra must provide written advice, in respect of each Party, identifying the network or networks which were used by Telstra to service the business telephone service of that Party.

4. The List must clearly distinguish between
   - documents which refer to service difficulties, problems and faults of Telstra's network, or of a Party's business telephone services; and
   - documents which do not so refer.

5. The List must clearly distinguish between
   - documents which were provided by Telstra to a Party before 26 September 1997
   - documents which were provided by Telstra to a Party on or after 26 September 1997; and
   - documents which have not been provided by Telstra to a Party.

6. The List must clearly distinguish between
   - documents which Telstra claims are privileged;
   - documents which Telstra claims are confidential; and
   - documents which Telstra does not claim are privileged or confidential.

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

7. Where Telstra claims that a document is privileged or confidential, the description of that document in the List must include a statement of the basis on which Telstra claims that status for the document.

8. Telstra must provide a statutory declaration, *made* by a senior *solicitor employed by Telstra, whose responsibilities include management of the CoT cases*, declaring

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

9. Where a document was lost or destroyed before Telstra prepared its defence, the description of that document in the List must describe the manner in which the document was lost or destroyed.

10. Where the List is required to distinguish between documents in particular categories, the distinctions may be indicated in any manner which the Working Party considers appropriate.

Part 3: Other Sources of Information

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

Part 4: Report to the Senate Committee

1. The Working Party must report to the Senate Committee regarding the matters with which it is charged under Parts 1 and 2 of these terms of reference. The Working Party is to report to the Senate Committee no later than Thursday, 27 November 1997.

2. The Working Party must include in its report to the Senate Committee an assessment of the processes used by Telstra in providing information to the Parties and, if the Working Party considers it appropriate, make recommendations as to additional or improved processes which should be adopted by Telstra.

3. The Working Party must include in its report to the Senate Committee recommendations as to whether:
   - any documents described in the List should be provided to the Parties
   - documents which Telstra claims are privileged or confidential should be provided to the Parties;
   - if the Working Party considers that documents described in the List should be provided to the Parties, the terms on which those documents should be so provided.

4. **Any disagreement which cannot be resolved is to be advised to the Senate Committee in writing by the Chair of the Working Party.**

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SCHEDULE A

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

FREEDOM OF INFORMATION

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

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

SCHEDULE B

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

[Further details to be circulated when available]

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24 October 1997

Telecommunications Industry Ombudsman

John Pinnock
Ombudsman

Ms Pauline Moore
Secretary
Senate Environment, Recreation, Communications and the Arts Legislation Committee
Parliament House
CANBERRA 2600

CONFIDENTIAL

Dear Ms Moore

'Questions on Notice' by Senator Boswell

I refer to previous correspondence and discussions with the Committee's Research Officer, Ms Dunker, concerning a series of questions put on notice by Senator Boswell and arising out of the Committee's proceedings of 26 September 1997.

I understand that the questions are treated as tabled questions and hence questions of the Committee.

The COT Arbitration Procedures contain provisions relating to the confidentiality of the proceedings, which bind the parties. Those provisions also bind the Arbitrators, the Resource Unit, the Special Counsel and the TIO in my role as Administrator.

I have also advised the Committee on a previous occasion that one of the COT claimants, Mrs Gurnis, has notified me in writing that she intends to join me as a party to Appeal proceedings she has commenced concerning the Arbitrator's Award.

Accordingly, I ask that the answers given below to the questions on notice be treated as confidential by the Committee and not be published.

1. In November 1995 I received correspondence from a COT member expressing concern about the Technical Resource Unit. The COT member:

   - expressed concern that the purchase by Pacific Star of Lane Telecommunications compromised the independence of the Technical Resource Unit;
   - stated that there were inaccuracies and biases evident in the Lane Telecommunications/DMR Technical Evaluation Report;
   - requested the Telecommunications Industry Ombudsman to dismiss the Resource Unit.

CONFIDENTIAL

2. On 6 November 1995 I was advised by Mr Steve Black of Telstra that Lane Telecommunications and Pacific Star had already worked together on several Pacific Star contracts in Queensland and Western Australia and for the Federal Government.

3. I did investigate the commercial relationship between Telstra and Pacific Star. Based on the material provided to me by Telstra and Lane Telecommunications, it was established that:

- There were three Pacific Star separate operating entities. Pacific Star Mobile, Pacific Star Communications and Pacific Star Data Services.
- Pacific Star Mobile was a significant reseller of Telstra MobileNet products, but did not provide products or services to Telstra.
- Pacific Star Communications was in competition with Telstra.
- Pacific Star Data Services ('Pacific Star') was the entity which acquired Lane Telecommunications. Pacific Star was independent of Telstra. It facilitated services provided by carriers and vendors on behalf of clients. I was advised that the core requirement of this business was to be independent so that selection was based on the optimum provision of the required facilities, performance and cost.

Further than this, I do not have details of different commercial arrangements between Telstra and Pacific Star.

4. When providing a response to a COT member on 6 December 1995 I had requested information from Lane Telecommunications and Telstra as to whether any conflict of interest arose out of the purchase by Pacific Star of Lane Telecommunications. To the best of my knowledge and based on the information I had received at the time, I concluded there was no conflict of interest.

5. I do not have and have never had available any details concerning the Arbitrator and/or associated companies off-shore work for Telstra and/or associates and I am unaware of any such information.

6. Apart from the evidence I gave to the Committee on 26 September 1997 concerning the purchase of Lane Telecommunications by Ericsson Australia, I have recently been advised by one of the Arbitrators that he will be transferring his legal practice to Blake, Dawson, Waldron, Solicitors. I am aware that that firm is currently acting for Telstra in relation to a number of matters. Arrangements are being made to discuss with Blake, Dawson, Waldron any possible conflicts of interest.

7. I refer to my letter to the Secretary of the Committee dated 29 September 1997. I referred this question to the TIO Council for consideration at its meeting on 16 October 1997 and I advise that the Chairman of the Council will be writing to the Chairman of the Committee on this matter.

8. It is my recollection that I have never stated in person or by telephone to individual COT members and/or their representatives that the arbitration has failed. My views on the arbitration procedure are contained in my written submission made to the Committee on 26 September 1997.

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9. Yes, from time to time I received complaints from foundation COT members, concerning a range of matters, including alleged non-compliance with the rules of the Fast Track Arbitration Procedures by Telstra and/or the Arbitrator and/or the Technical and Accounting Resource Unit. Identifying individual instances of complaints and detailing the response taken will require a huge amount of administrative resources in searching TIO files. Please advise me whether the Committee requires the undertaking of this work and its relevance to the Committee's inquiry.

10. Yes, I have refused to provide COT members with a copy of Telstra's Preferred Rules of Arbitration. A copy of this document was not provided because it was of historical interest only, and the COT members did not advance any arguments as to why it was relevant to their arbitration. A copy is provided for the information of the committee.

Yours sincerely

JOHN PINNOCK
OMBUDSMAN

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

15th June 2009

The Hon Alan Henry Goldberg AO
Federal Court of Australia
Owen Dixon Commonwealth Law Courts Building
305 William Street
Melbourne 3000

Dear Sir,

The attached information is forwarded because we believe you should be aware that, in the very near future, your name will be associated with advice we are about to seek from various legal experts regarding whether or not secret changes to the Fast Track Arbitration Procedure (Agreement) should lead to our arbitrations being declared null and void and because we believe you should know that the agreement we signed was secretly altered after you had provided your legal opinion to Mr William Hunt on 19th April 1994.

You will also note that, on the first page of the attached copy of my letter to Ms Hookway, FOI Officer from the Legal Office of the Department of Broadband, Communications and the Digital Economy in Canberra, I have referred to you by name, in reference when I note: *" It is clear from pages 148 to 157 of my AAT Statement, that William Hunt advised Graham Schorer and me to sign the agreement after he received legal advice from Mr Alan Goldberg, who is now a Federal Court judge"*. Although we did not actually receive written advice to sign the arbitration agreement, we had been in meetings with Mr Hunt over the 19th and 20th of April 1994 and he had explained why we should sign the agreement, in the form that had been faxed both to you and to Mr Hunt.

Although my arbitration ended on 11th May 1995, the telephone problems that sent me to arbitration in the first place continued to haunt me until December 2001 when I finally gave up and sold the business. However, the new owner Darren Lewis, continued to complain about the same problems right through until 2004, when Telstra finally made some changes and improved the system somewhat.

Because the faults were not fixed by the 1994/95 arbitration process, I am currently involved, with advice and assistance from a well-known and highly respected legal investigator, in compiling a report regarding the Telstra arbitration process that Graham Schorer and I were involved in, because, from the end of my arbitration, through the sale of the business and ever since then, even though I have tried every possible way I know to have the continuing telephone problems investigated, this has never happened.

As I have applied for assistance through various Government departments, the Telecommunications Industry Ombudsman and others over the years, I have frequently been labelled vexatious and my claims have been branded as frivolous. Last year, in this ongoing search for justice, I approached the Administrative Appeals Tribunal in Melbourne regarding

unsuccessful FOI applications I had lodged with the Australian Communication & Media Authority (ACMA). Mr G. D. Friedman (Senior AAT member) handled my case and, as part of his final deliberation on 3rd October, he noted that he didn't consider me: *"... personally, to be frivolous or vexatious – far from it"*, and then continued: *"I suppose all that remains for me to say, Mr Smith, is that you obviously are a very tenacious and persistent In pursuing the – not the matter before me, but the whole – the whole question of what you see as a grave injustice, and I can only applaud people who have persistence and the determination to see things through when they believe it's important enough."*

After the death of William Hunt (Graham Schorer's solicitor), Mr Hunt's son, Julian, gave Graham, as the Spokesperson for the Casualties of Telstra (COT), twenty-four lever arch files of COT Fast Track Arbitration information from between 1994 and 1999, including William Hunt's file notes; tape recordings of conversations between Senators and Telstra officials; and various transcripts. We have assured Julian that we will treat these document and tapes with the utmost integrity.

Exhibit 1 (attached) was among these files. It shows that, at 1.21pm on 19th April 1994, the arbitrator's secretary, Caroline Friend, faxed a copy of the arbitration agreement from Hunt and Hunt to your office, on behalf of Graham Schorer, although I have only attached the fax coversheet and page 12 of the agreement, it is clear that clauses 24, 25 and 26 of the agreement were intact and included in the agreement when it was faxed to your office. ***Exhibit 2*** (attached) includes the same documents as they were faxed to William Hunt just minutes later.

At meetings on 19th and 20th April, Mr Hunt explained to us that, because the Commercial Arbitration Act 1984, had a limited right of appeal against the arbitration process, clauses 24, 25 and 26 were most valuable as they ensured that the resource unit and the TIO's Special Counsel would therefore be diligent in their duties in order to avoid the $250,000 liability they could incur if they didn't carry out their duties correctly. As a result of the advice you had given to Mr Hunt and which Mr Hunt had passed on to us, Graham and I signed the agreement on 21st April.

Mr Hunt's records show that, before Graham and I signed the agreement on the 21st April, Mr Hunt had met with the arbitrator (Dr Gordon Hughes) and the TIO's Special Counsel (Mr Peter Bartlett) between 10am and 3pm on 20th April, and there had not been any mention of alterations to the agreement. Mr Hunt's hand-written notes show that the agreement discussed at that meeting is the same as the agreement we had discussed with Mr Hunt on 19th and 20th April.

Exhibit 3 (attached) includes two copies of page 12 of the agreement, one signed by Graham and one signed by me. This proves that, sometime between 3 pm on the 20th (after Mr Hunt's meeting with the arbitrator and the Special Counsel) the afternoon of 21st (when we signed the document) clauses 25 and 26 have been removed from the agreement and, in clause 24 the TIO's Special Counsel has been exonerated from any liability for negligence. Neither Graham nor I were ever told about these changes prior or during our arbitrations.

Exhibit 4 (attached) is a copy of minutes taken by Telstra during an arbitration meeting attended by Steve Black (Telstra), David Krasnostein (Telstra's General Counsel), Simon Chalmers (Telstra's solicitor), Peter Bartlett (the TIO's Special Counsel), Dr Gordon Hughes (the arbitrator), Warwick Smith (TIO) and Jenny Henright, the TIO's secretary, on 22nd March 1994. This meeting discussed the Fast Track Arbitration Procedure (FTAP) without any COT claimant

or any COT representatives being present and Graham and I only learnt of the meeting three years after the arbitration process had been deemed to be complete. The minutes record, at point 6, under the heading Exclusion of Liability for Arbitrator's Advisor, that: *"Mr Bartlett stated that he was unhappy that Telecom did not appear prepared to allow his first an exclusion from liability. Dr Hughes stated that the resource unit was also not satisfied with a capped liability, but that he did not have a position in relation to this matter, as it did not affect him or the performance of his functions. Mr Black said he thought the liability caps proposed by Telecom in the amended rules were already reasonable."*

Exhibit 5 (attached) is a draft letter dated 2nd May 1994, from William Hunt to you, recording a payment of $1,500.00 to you for legal advice provided to Golden Messengers and other COT claimants. Other documents confirm that this payment was for the legal advice you provided on 19th April 1994.

As a further indication of the underhanded behaviour behind the COT arbitrations, I am including, in the report I am currently putting together proof that Ferrier Hodgson Corporate Advisory (FHCA) acted as a second arbitrator (without the agreement of any of the claimants) in that they vetted inter procedural arbitration documents that were submitted and decided which ones would be passed on to the arbitrator and which would be withheld from him. On 2nd August 1996, eighteen months after my arbitration, FHCA admitted to the arbitrator and the TIO that they had withheld, from the arbitrator and me, billing correspondence addressed to the arbitrator from Telstra. These vetted documents, and other similar vetted material confirm that Telstra had a nation-wide billing problem and that this was what had been affecting my business for years. Thirty-three months after my arbitration was deemed complete, Telstra provided John Pinnock (TIO) their own file notes secretly admitting that the billing faults which I had raised in my arbitration appeared to have continued after my arbitration. On 15th November 1995, FHCA advised John Pinnock that NONE of my billing claim documents were addressed by the TIO-appointed technical consultants. Evidence can be provided to interested parties, which confirms that 13 spiral bound volumes of my claim material (approx 1,200 documents) were never investigated during my arbitration. One can only assume that because the TIO Resource Unit, had been protected from liability by the secret changes to the arbitration agreement, they were allowed to ignore this evidenc.

On 26th September 1997, John Pinnock (TIO) advised the Senate Estimates Committee that: *"For present purposes, though, it is enough to say that the process was always going to be problematic, chiefly for three reasons. Firstly, and perhaps most significantly, the arbitrator had no control over the process, because it was a process conducted entirely outside the ambit of the arbitration procedure".*

Exhibit 6 Attached is a copy of the Portland Observer newspaper article dated 8th November 2002 noting: *"The telecommunications problems which plagued former Cape Bridgewater Holiday Camp operator Alan Smith have continued to beset current owner Darren Lewis".*

Exhibit 7 The (attached) letter from John Pinnock to me dated 26th February 2003 notes: *"In your letter of 3 February you state that the TIO has a duty to speak to the new owners of Cape Bridgewater Holiday Camp who, you say, are blaming you for not disclosing to them ongoing problems with the telephone service. That is a matter between you and the new owners".*

Exhibit 8 Is a statutory declaration by Darren Lewis, dated 4th September 2006 noting on page 2 at point 19: *"Telstra informed us we had what is commonly known in technical words as (a line in lock-up rendering our business phone useless until the fault is fixed.*

The technicians then in hook up consultation with outside office guru's did a fault graph reading on our 55 267267 line with the outcome that their office technical staff stated words to the affect that the reading was impossible (couldn't be correct). It was then that the local technician informed me that as strange as it might seem he believed that because our business was on optical fibre and was so close to the Beach Kiosk (junction box) this could very well be part of the problem. Apparently either under powering over powering was also an issue. He realised that after testing all the other optical fibre outlets with his testing equipment and still reached this impossible reading (according to the technical guru) he would move us off of the fibre."

In September 2005, as part of the process to privatise Telstra, the Coalition's Department of Communication, Information Technology and the Arts (DCITA) promised Senator Barnaby Joyce (in return for his crucial vote) that they would appoint an independent assessor to resolve the fourteen COT claims against Telstra (including mine). Once Senator Joyce had agreed to support the privatisation though, the Government endorsed their own assessment process, rather than an independent procedure. I was one of the claimants in the DCITA process and my claim showed, as the arbitration process in 1994/95 also showed, that Telstra had redeployed back into the network equipment they knew was faulty. As my present FOI application (as discussed in the attached letter to Ms Hookway) shows, I am still disputing the DCITA process, which is why I have asked for copies of all the correspondence exchanged between DCITA and Telstra regarding my 2006 DCITA claim and, as I have explained to Ms Hookway, I believe these documents should be provided to me in the public interest since Telstra's use of faulty equipment around the country clearly affects many other Telstra subscribers, as well as me.

Please be assured that neither Graham Schorer nor I are blaming you, in any way, in relation to the advice you provided on the unchanged agreement.

I will send you an embargoed copy of a report (manuscript) currently being prepared on these Public Interest Issues, as soon as it is completed, hopefully by the end of the year.

Sincerely,

Alan Smith

Copies to

Ms Andrea Hookway, FOI Officer Legal Group, Department of Broadband Communications and the Digital Economy, GPO Box 2154 Canberra ACT 2601

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

30th June 2009

The Hon Michael Kirby AC CMG
Institute of Arbitrators and Mediators Australia
PO Box 13064
Law Courts
Melbourne 8010

Dear Sir,

Fifteen years is indeed a very long time and I understand why you would therefore ask me to explain why I am contacting you after so long. In fact, I first raised this issue with the Institute in January 1996, when I received evidence showing that the arbitrator, Dr Hughes, had deliberately conspired with the TIO to provide the Institute with false information. I raised this matter again in 2002 when I was told that the Victorian Police Major Fraud Group was investigating Telstra, but the Institute declined to get involved on this occasion because those investigations were linked to Dr Hughes and my arbitration.

The attached letter dated 21st June 2009 confirms that Dr Hughes conspired with others to remove important clauses from the Casualties of Telstra arbitration agreement after our legal advisors (William Hunt, Solicitor; and Mr Alan Goldberg QC, now a Federal Court Judge) had assessed the original version on our behalf. The removal of these clauses meant that the arbitration resource unit and the Special Counsel appointed by the TIO to assist with my arbitration would both be exonerated from any legal suit that might arise as a result of the arbitration process.

On 3rd October 2008 I appeared before Mr G D Friedman, Senior Member of the Administrative Appeals Tribunal (AAT) regarding an FOI matter directly related to the ongoing telephone facsimile problems which were not investigated during my arbitration. I raised the secret alterations that Dr Hughes had allowed to the arbitration agreement in the Statement of Facts and Contentions I submitted to the AAT and Mr Friedman noted, in his closing statement: *"Let me just say, I don't consider you, personally, to be frivolous or vexatious – far from it. I suppose all that remains for me to say, Mr Smith, is that you obviously are very tenacious and persistent in pursuing the – not this matter before me, but the whole question of what you see as a grave injustice, and I can only applaud people who have persistence and determination to see things through when they believe it's important enough"*. This statement is important because, over the years, there have been many people with a vested interest in suppressing my evidence, who have branded my allegations as frivolous and me as a vexatious litigant.

I am writing to you now because the letter dated 21st June 2009, which I posted to Dr Hughes last week (attached), has just been returned to me by Australia Post, unopened, and I hope that, once you have the information including it and looked at the exhibits on the included CD, you will make sure that Dr Hughes receives a copy. As you will see, my letter suggests that, when Dr Hughes became involved in the secret alterations to my arbitration agreement, he also directly disadvantaged me as the claimant.

Since 2004, a well-respected and high-ranking ex-Victoria Police Officer, who is well-known within the Melbourne legal fraternity as a professional legal witness and legal investigator, has been helping me to compile evidence in support of the information in both the attached letter to Dr Hughes and evidence that Telstra knew the telephone problems that had brought me to arbitration in the first place were still affecting my service, even as Dr Hughes was deliberating on my arbitration. Dr Hughes and Telstra seem

to have failed to understand that the arbitration process failed me in a number of ways, not the least being the continuation of the phone problems long after the end of my arbitration. This was not only caused by Telstra concealing their knowledge that the problems had not been fixed, it was exacerbated by Dr Hughes when he refused to provide extra time for the arbitration technical resource unit to finish their investigations into my matters (see page 3, Dr Hughes' 21st June letter. What was the point to the arbitration process if it wasn't going to investigate ***all*** of my submitted claims documents or fix the ongoing telephone facsimile problems?

Exhibit 9-b in the attached CD disks shows on page 37 of the official DMR & Lane technical arbitration report at point 3 notes: *About 200 fault reports were made over December 1992 to October 1994. Specific assessment of these reports other than where covered above, has not been attempted.* It is confirmed from point 2.23 at page 37, that DMR & Lane assessed only 23 of fault report claim documents submitted by me for from the aforementioned dates. In other words, (23) into (200) equates that only 11% of my official registered complain claim material was ever assessed. My claim period as mentioned in Dr Hughes' Award went from April 1988 to 1994, so no official fault material submitted by me before December 1992 (four years) was assessed. I have compiled evidence showing that I alerted Telstra 35 times during my arbitration that my prone and facsimile problems still affecting my business. However, DMR & Lane only investigated just one of these ongoing problems.

Dr Hughes and the Resource Unit are probably not aware that, between June 1995 and December 2001, my partner and I wrote more than six hundred letters in our continuing attempt to get the telephone problems fixed and the arbitration process officially declared to be the failure it was, and still no-one would investigate the matter. In the end, worn down and worn out, we sold our business. Within eight months of taking over, the new owner (Darren Lewis) was diagnosed with stress, hospitalised, and on the same merry-go-round of letter-writing to Telstra and our local Member of Parliament (the Hon David Hawker). Telstra finally rewired the business when they discovered that the wiring installed by Telstra in 1991 was installed incorrectly. In January 2003 the TIO wrote to Telstra, noting that Mr Lewis's incoming calls had more than doubled, but Mr Lewis was still experiencing intermittent problems with is phone line.

In 2004, Mr & Mrs Lewis sought legal advice to see if they could sue me for deliberately misleading them into believing the phone problems had been fixed before they took over the business. I then provided the Lewis's legal advisors with copies of letters I had previously written to the Australian Federal Police (in 2003) reminding the AFP that, while I had misled Mr & Mrs Lewis, I had also previously told the AFP that I believed Telstra were deliberately ignoring the problems with my phone because I had forced them to arbitration, and that I was sure that Telstra would fix the problems once the new owners moved. That convinced the Lewis's legal advisors that this would not be the right road to go down.

The work carried out on the phone lines by Telstra after the Lewises took over did improve the situation somewhat, but not enough to bring the system up to even an average level of service, resulting in the Lewises suffering years of heartache and, finally, they have given up. They are now bankrupt and the business is about to be registered as a mortgagee sale. A copy of Darren Lewis's Statutory Declaration of 4th September 2006 is attached. It details the telephone faults he inherited when he purchased my business.

On page 3 of the attached letter to Dr Hughes I have referred to a Mr John Rundell, who was part of the resource unit that assisted Dr Hughes during my arbitration. The comments relating to Mr Rundell, which is attached to my letter to Dr Hughes, see ***Exhibit 7*** explains that, in a letter dated 15th November 1995 to the TIO, Mr John Pinnock, Mr Rundell incorrectly claimed that I did not raise my claims regarding billing issues until late in April 1995, which he said was too late for them to be assessed. Pages 91 to 94 from the transcripts of an oral arbitration hearing held on 11th October 1994 show however that I had actually raised these important billing issues in my letter of claim on 15th June 1994, 10 months before Mr Rundell

claimed I had raised them. At that meeting Dr Hughes is recorded as commenting, in relation to my billing faults evidence: *"I don't think we need any further examples. I accept that"* and, since Mr Rundell also attended that meeting, he was therefore well aware that I had raised the billing matters in plenty of time for them to be assessed.

Mr Rundell's letter to Mr Pinnock on 15th November 1995 also claimed that the technical resource unit did NOT leave the billing issues 'open', but ***Exhibit 9-d*** in the attached CD proves that they were left 'open'. If Mr Rundell had actually told Mr Pinnock the full truth in his November 1995 letter, then Mr Pinnock could have arranged a proper investigation into why the billing faults had been left 'open', un addressed.

Exhibit 9-b in the attached CD confirms at point 2.23 of the formal DMR & Lane Resource Technical Report it is noted: *"Continued reports of 008 faults up to the present. As the level of disruption to overall CBHC* (Cape Bridgewater Holiday Camp) *is not clear, and fault causes have not been diagnosed, a reasonable expectation is that these faults would remain "open".*

Is this John Rundell the same John Rundell who is currently the treasurer of the Victorian chapter of the IAMA I wonder? If they are one and the same, then page 3 and Exhibit 7 of my letter to Dr Hughes should be of some interest to you: it seems that Mr Rundell may have deliberately misled Mr Pinnock after my arbitration and, if he did, he contributed to the phone problems at my business continuing for so long after my arbitration. On page 3, in the attached Dr Hughes document, it is noted that John Rundell wrote to Warwick Smith (TIO) on 18th April 1995 noting: *"Any technical report prepared in draft by Lanes will be signed off and appear on the letterhead of DMR Inc"*. This statement shows Mr Rundell was quite comfortable in hiding from the claimants who really drafted the technical findings. Did this act of deception have anything to do with Ferrier Hodgson Corporate Advisory being exonerated from legal liability?

I am not asking for your help or support regarding the fiasco of my arbitration because that matter will be addressed in a different forum, hopefully late this year or early next year – but I am asking if you would please make sure that Dr Hughes reads the attached information that he previously refused to open and, if it is the same Mr Rundell who is now with the IAMA, that you instigate enquiries into his contribution to the failure of my arbitration.

Thank you,

Alan Smith

Copies to:

The Hon Alan Henry Goldberg AO, Federal Court of Australia, Owen Dixon Commonwealth Law Courts Building, 3005 William Street Melbourne 3000, and other interested parties.

GOLDEN
Messenger

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Telephone (03) 9287 7099 Facsimile (03) 9286 0066
Website www.goldenmessenger.com.au

1st July 2009

The Hon Alan Henry Goldberg AO
Federal Court of Australia
Owen Dixon Commonwealth Law Courts Building
305 William Street
Melbourne 3000

Dear Sir,

Alan Smith from the Seal Cove Guest House has informed me he has provided you with information regarding his Fast Track Arbitration Procedure (FTAP) that occurred in the period of April 1994 to May 1995 and of Golden Messenger's arbitration process for the period of April 1994 to July 1999.

After the end of Alan Smith's arbitration in 1995, Alan has continually registered his concerns with the appropriate regulators that his arbitration was not conducted in accordance with the official arbitration agreement, the agreement you assessed on behalf of Alan Smith and Golden Messenger in April 1994.

As Alan has already explained in previous correspondence sent to you, the arbitration agreement presented to Alan Smith & Golden Messenger for signature by the TIO special council Mr Peter Bartlett, was materially altered without our knowledge or consent, or your knowledge or consent, after both you and William Hunt (now deceased) had evaluated the arbitration document forwarded to William Hunt and yourself by Dr Hughes' (the arbitrator) secretary.

These covert alterations clearly favoured the TIO's Special Counsel and the Arbitration Resource Unit over the claimants and placed us, the claimants, in a position where we were defenceless, as the TIO Special Council and the personnel within Arbitration Resource Unit are no longer liable for their respective negligence and or wrong doing.

I am aware that, in some circles, it is believed that I was correctly compensated in July 1999 for my business losses as a result of a Senate investigation conducted during the period of September 1997 to March 1999.

While it is true that Golden Messenger did receive some compensation in July 1999, William Hunt's files and transcripts of conversations with other parties associated with Telstra identify how I was forced to accept less than 30% of the losses that I could substantiate. The limited quantum of Golden Messenger's substantiated losses was a direct result of Telstra's refusal to supply documents that identified the call losses Golden had incurred during the period of May 1985 to April 1994. None of these limited claimed losses included cost of preparation of claim, legal and technical expenses which amounted to numerous hundreds of thousand of dollars over the period of April 1985 to July 1999 nor any of the financial losses incurred due to lost calls during the period April 1994 to July 1999.

Golden Messenger's telephone service difficulties problems and faults (incoming call losses) extended well beyond April 1994 which was the claim period ending under the FTAP process, as we were still experiencing these problems up to 1998 and beyond.

In October 2008, in response to a Golden Messenger FOI request placed upon ACMA, the Regulator supplied to Golden Messenger the Telstra and Regulator documents that identified the Telecommunications Industry Regulator and Telstra's management and auditors knowledge the Golden Messenger claim was understated as a direct consequence of Telstra's failure to correctly supply documents sought under FOI and under the discovery process of the FTAP process.

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GOLDEN Messenger

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These recently obtained Telstra and ACMA documents indentify Telstra's recording and knowledge of Golden's incoming call losses exceeding 5,000 lost calls per week during the 1980's and the 1990's.

This information is being directly forwarded to you because Alan Smith and Golden Messenger have both experienced the involvement of vested interests of the respective parties and organisations in maintaining the concealment of conduct and events that occurred during the respective arbitrations conducted under the FTAP process, who consistently assert our claims of misconduct and the failure of the arbitration process are without foundation.

I am confident the information Alan Smith has forwarded to you, demonstrates that our joint claims of misconduct that occurred during the Alan Smith and Golden Messenger arbitrations, including the people who engaged in the conduct to pervert the course of justice, is a factual complaint and cannot be considered by a fair minded person with a knowledge of law, to be a frivolous or vexatious complaint.

Since I was the claimant who asked William Hunt to contact you on 19th April 1994, to obtain your legal opinion in relation to whether or not we should sign the FTAP agreement, I feel I am obligated to inform you, that the FTAP agreement you assessed for William Hunt on behalf of Alan Smith and Golden Messenger was covertly altered, without Alan Smiths's and Golden Messenger's consent, after you had assessed the said document, and conveyed your recommendations to William Hunt (solicitor) who was acting for Golden Messenger and Alan Smith.

To date, none of the parties directly and or indirectly associated with Telstra, the office of the TIO, Telecommunications Industry Regulator (both current and past) are prepared to address any of these substantiated issues of wrong doing during the respective the Alan Smith and Golden Messenger's FTAP processes.

Sir, given that the Hon William Hunt and yourself are the only two people who can give direct evidence as to the reason you advised Golden Messenger and Alan Smith to enter into the FTAP process as per the document supplied to William Hunt and yourself by Dr Hughes' secretary, and only you can verify the content of the supplied FTAP document your legal opinion was given upon.

As the Hon William Hunt is now deceased, I believe Golden Messenger is dependant upon obtaining direct evidence from yourself as to what was contained within or what constituted the alleged final draft of the FTAP document forwarded to you.

I will appreciate receiving your response.

Yours Sincerely,

Graham Schorer.
Managing Director
GOLDEN MESSENGER

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6th July 2009

The Hon Michael Kirby AC CMG
Institute of Arbitrators and Mediators Australia
PO Box 13064
Law Courts
Melbourne Vic 8010

Dear Sir,

Alan Smith from the Seal Cove Guest House has informed me he had provided you with information regarding conduct that occurred in his Fast Track Arbitration Procedure (FTAP) that occurred in during the period of April 1994 to May 1995 and beyond.

As the spokesperson for the Telstra user group know as Casualties of Telstra, and as the proprietor of Golden Messenger who Telecom/Telstra had supplied with a defective telephone service for an extended period of time commencing prior to May 1985 and extended beyond January 1998, I have maintained a continuous working relationship with Alan Smith and have assisted him with shared legal advice plus funded Mr Smith to obtain a telecommunications consultant engineers technical analysis reports on the Telstra data supplied on Mr Smith's telephone service.

As a matter of professional courtesy I am forwarding you a copy of my correspondence to Hon Alan Henry Goldberg AO, Federal court of Australia, Owen Dixon Commonwealth Law Courts Building, 305 William Street, Melbourne Vic 3000.

Today, Justice Goldberg's associate rang my office and scheduled an appointment with me to meet with Justice Goldberg at 9:30 am Wednesday 8th July 2009, at his chambers at the Federal Court building, William Street, Melbourne 3000.

Yours sincerely

Graham Schorer
Managing Director
Golden Messenger

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The Hon. Michael D. Kirby AC CMG

9 July 2009.

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

Dear Mr Smith,

On 2 July 2009, you wrote to me raising a complaint concerning the conduct of an arbitrator who is a member of the Institute of Arbitrators & Mediators Australia. You wrote to me in my capacity as President of the Institute.

In accordance with established procedure, I have referred the complaint to the Ethics and Professional Affairs Committee of the Institute.

In due course, you will be informed following this reference.

Please direct future correspondence to the Chief Executive Officer of the Institute, Mr. Paul Crowley, PO Box 1364, Law Courts, Melbourne, Vic. 8010.

Yours sincerely,

Cc Mr. Paul Crowley

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Seal Cove Guest House
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15th July 2009

Mr Paul Crowley
CEO
Institute of Arbitrators and Mediators Australia
PO Box 13064, Law Courts
Melbourne 8010

Dear Sir,

The President of the IAMA, The Hon Michael Kirby, has notified me that he has passed on to you complaints I have lodged with the IAMA regarding my arbitration with Telstra. Mr Kirby has also advised that I should correspond with you in future, in relation to these matters.

I understand if, at first, you would think my complaints fall outside the statute of limitations but, although the problems related to the arbitrator's conduct of my arbitration were first raised with the Institute in 1996, I have continued in my attempts to have them investigated ever since, and the arbitrator (Dr Gordon Hughes, a member of the IAMA) was one of the people who deliberately misled and deceived the Institute when they first contemplated investigating my claims.

The document I forwarded to Dr Hughes on 21st June this year and the letters I have written recently to Mr Kirby (which included a copy of that document), show that I can now prove that Dr Hughes knowingly altered, or allowed alterations to, a legally binding arbitration agreement, after his office had sent the original, unchanged version to the claimants' lawyers for assessment, and after one claimant (Maureen Gillan) had signed the unchanged version but before Graham Schorer and I signed (we were all members of the Casualties of Telstra group of claimants). As I am sure you must know, altering a document like an arbitration agreement without the written approval of both parties is classed as perverting the course of justice, particularly when those changes directly disadvantages one of the parties to the process.

The legal advice that Graham Schorer and I received, based on the original, unchanged version of the agreement, was that we should accept that version because the Commercial Arbitration Act under which our arbitrations were to be administered had limited rights of appeal, and clauses 24, 25 and 26 of the submitted version of the agreement provided both a safety net for us and assurance that the Arbitration Resource Unit and the TIO's Special Counsel would be diligent in their duties in relation to the administration of the arbitration process. These clauses were, however, secretly removed before we signed the contract (but after we had been given legal advice on the unchanged version). This is clearly a deliberate act of deception by those who knew the agreement had been secretly altered.

It is also important that you understand the process that led the Casualties of Telstra (COT) group into arbitration in the first place. Originally, the then regulator AUSTEL facilitated a commercial assessment process called the Fast Track Settlement Proposal (FTSP), and four of the members of COT (Gillan, Garms, Schorer and I) were given until close of business on 23rd November 1993 to add our signatures to the agreement which had been signed by Telstra on the 18th November 1993. At point (4) in the FTSP agreement it notes: *"This proposal constitutes an offer open to all or any of the COT Cases referred to in Clause (1)(a), which will lapse at 5pm on Tuesday 23 November 1993. This offer may be accepted by signature below and sending advice of such signatures to AUSTELL or the Telstra Corporate Secretary before that time"*. Telstra advised AUSTEL, that if we did not sign by the required time we would have to enter into the TIO-administered legal arbitration process using Telstra's 'Preferred Rules of Arbitration'.

This threat led to all of us signing the FTSP on 23rd November 1993. When it then gradually became clear that Telstra would not provide the FOI documents we needed to prepare our cases, the assessor, Dr Hughes (who later became the arbitrator), convinced us to abandon the commercial assessment and sign the arbitration agreement that had been prepared by Minter Ellison, based on Telstra's 'Preferred Rules of Arbitration'. Dr Hughes assured us that this would provide him with the power to force Telstra to provide us with the documents we had, until then, been denied and, according to Telstra minutes of a meeting on 17th February 1994, Dr Hughes was adamant that he *"...would not bring down a determination on incomplete information"*. In my case, as the information now before the IAMA clearly shows, Dr Hughes DID hand down my award based on incomplete information.

On 26th September 1997, during the Senate Estimates Committee investigations into the COT Case FOI matters, John Pinnock (TIO) advised the Committee (without naming Dr Hughes) that: *"For present purposes, though, it is enough to say the process was always going to be problematic, chiefly for three reasons. Firstly, and perhaps most significantly, the arbitrator had no control over the process, because it was a process conducted entirely outside the ambit of the arbitration procedures"*.

We, the claimants, were never told that our arbitrations would be conducted 'entirely outside the ambit of the arbitration procedure', either before we signed the arbitration agreement or after. Neither were we ever warned that Dr Hughes would have 'no control over the process because it would be a process conducted entirely outside the ambit of the arbitration procedures. Graham Schorer and I agree that, if we had been given this information, or if we had been told that the Resource Unit and/or the Special Counsel would not be held accountable for their part in the arbitration process i.e. not liable for legal suit for their part in the arbitration procedure, we would NEVER have abandoned the FTSP and we would NEVER have agreed to take part in the proposed arbitration, in any way or at any level.

I have attached herewith, dated 15th July 2009, my 26 page report title Arbitration – Discrimination 1994/95 and accompanying 72 exhibits supporting the report.

Advice provided to me suggests that the IAMA should now focus on investigating the secret alterations described in the information already provided to you via Mr Kirby and further detailed in the attached document headed Arbitration – Discrimination 1994/95.

Thank you,

Alan Smith

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

20th July 2009

Mr Paul Crowley
Chief Executive Officer
C/o the Ethics and Professional Affairs Committee
Institute of Arbitrators and Mediators Australia
PO Box 13064, Law Courts
Melbourne 8010

Dear Sir,

My letter to you on 16th July advised that the following documents would be hand-delivered to you. These reports are now attached for your information:

1. Service Verification Tests (SVT) – Telstra's Misleading and Deceptive Conduct – Part 1, pages 1 to 38 (August 2008);
2. Bell Canada International (BCI) – Telstra's Misleading and Deceptive Conduct – Part 2, pages 39 to 50 (September 2008);
3. 008/1800 & Fax Billing Issues – Telstra's Misleading and Deceptive Conduct – Part 3, pages 1 to 23 (3rd October 2008);
4. Statement of Facts and Contentions as submitted to the Administrative Appeals Tribunal (26th July 2008);
5. Nine bound spiral bound volumes of exhibits 339 in total have been provided in support of my AAT submission, numbered as 1 to 47; 48 to 91; 92 to 127; 128 to 180; 181 to 233; 234 to 281; 282 to 318; 319a to 323; and 324 to 339;
6. A document titled Questions to the (IAMA) and accompanying 58 ***Exhibits;***
7. A draft manuscript titled the *"COT CASE" One of the stories from the "Casualties of Telstra' saga'*. This document has been provided to give a human interest side of the saga.
8. Draft & Final Arbitrators Award,
9. Lane Technical report dated 6th April 1995;
10. Draft DMR & Lane Report dated 30th April 1995;
11. Formal DMR & Lane Report dated 30th April 1995;
12. Letter of Claim submitted to arbitration 15th June 1994;
13. The Arbitration Agreement faxed on 19th April 1994, from Dr Hughes' office to Mr Alan Goldberg AO (Now a Federal Court Judge), please note page 12 of this agreement shows clauses 24, 25 and 26 was firmly in place when this document was received.
14. The Arbitration Agreement I signed on 21st April 1994, showing clause 24 exonerated Peter Bartlett and the Resource Unit – both clause 25 and 26 regarding the liability clause have been deleted (i.e. do not match the agreement faxed to Mr Goldberg).
15. Report to the Senate Environment, Recreation, Communications and the Arts Legislation Committee (Ministers Office) from John Pinnock (TIO) dated 26th September 1997, noting on page 4: *"Firstly, the Arbitrator had no control over the process because it was conducted outside the ambit of the Arbitration Procedures"*. Senate Hansard (attached) noting the same.

16. Report titled Dr Gordon Hughes – Interception of Telephone Conversations not addressed during Alan Smith's Arbitration, Prepared for the IAMA July 2009;
17. Report titled Dr Gordon Hughes, Arbitration, Prepared for the IAMA July 2009
18. Report titled Dr Gordon Hughes, Arbitration Billing Issues Not Addressed, Prepared for the IAMA July 2009;
19. Report titled Dr Gordon Hughes, Arbitration Service Verification Tests (SVT) Prepared for the IAMA July 2009;
20. Report titled Dr Gordon Hughes, Conspiracy to Pervert the Course of Justice, Prepared for the IAMA July 2009;
21. Report titled Dr Gordon Hughes' Resource Unit, Conspiracy to Pervert the Course of Justice, Prepared for the IAMA July 2009

The exhibits on the enclosed CD (point 5, above) should be read in conjunction with the AAT Statement of Facts and Contentions (point 4, above) – the appropriate exhibits are referred to in the AAT submission, with each number preceded by my initials, i.e. AS1, AS2 etc.

The documents at points 1 to 4, and the exhibits on the CD (point 5, above) were all provided to the Administrative Appeals Tribunal (AAT) between August and October 2008, in support of my AAT Statement of Facts and Contentions.

Although the document at point 6 (above) was not provided to the AAT, it will be useful to the Ethics and Professional Affairs Committee during their investigation into my matters because it includes a detailed explanation of the way our arbitration agreement was secretly altered.

The Ethics and Professional Affairs Committee should also know that, during my arbitration, I raised the problems with the arbitration SVT tests, and the ongoing billing problems associated with my 008/1800 phone service, with Dr Hughes, but not only did he fail to investigate my complaints, he also made no mention of them in my arbitration award. The award did mention that both AUSTEL and the COT claimants complained, in general, about the BCI testing process but did not note that BCI could not possibly have carried out the 13,000 test calls they record in their report on the Cape Bridgewater RCM Exchange. Dr Hughes did not instruct the arbitration technical resource unit to investigate any of the three issues covered by the enclosed reports, even though all three were registered in my claim documents.

I was telephoned late this afternoon by a representative (Alan) of the IAMA Ethics and Professional Affairs Committee of the Institute asking whether I had provided all the relevant information concerning my complaint against Dr Gordon Hughes.

I have attached here and in my previous correspondence to the Ethics and Professional Affairs Committee, all the information I consider relevant to my claims. However, I trust that if the IAMA require any further information that they might see is important to their investigations they will in fairness under the circumstances see a need to request any further documentation that they require.

I have also attached copies of Dr Hughes draft Award and final Award along with the 6th April 1995, draft Lane technical report and the Dr Hughes' copy of the DMR & Lane draft 30th April report as well as the final DMR & Lane 30th April 1995 formal technical report. My Letter of claim submitted 15th June 1994 to Dr Hughes, has also been attached as background information.

Please note: because some of the reports such as the Ferrier Hodgson Corporate Advisory financial draft and final report along with Telstra's interrogatories are voluminous they have not been attached. If any documentation along these lines is needed for assessment purposes please request for the information to be forwarded.

Sincerely,

Alan Smith

Seal Cove Guest House
1703 Bridgewater Road
Cape Bridgewater
Portland 3305

15th August 2009

The Hon David Hawker
Federal Member for Wannon
190 Gray Street
Hamilton 3300

Re: Darren Lewis
Cape Bridgewater Coastal Holiday Camp

Dear Mr Hawker,

Yesterday Darren Lewis emailed me a twenty-five-page document listing the problems he and his wife, Jenny, have experienced since they bought the Cape Bridgewater Holiday Camp from me in December 2001. In this document Darren refers to information I provided to you (as my local Federal Member of Parliament) and the Hon Senator Richard Alston (then the Minister for Communications) on 17th March 2003 and to the Australian Federal Police on 23rd March 2003. Darren complains that, when they were purchasing the business from me, I did not tell him about the ongoing telephone problems I was experiencing at my business at the time.

In defence of Darren's accusations, the attached letter to AFP shows how strongly I believed that I was a victim of Telstra's continuing (and unacknowledged) unethical conduct, and it explains that I had been convinced that, once I had sold the business to the Lewis', Telstra would go ahead and fix the phone problems because they would not have a grievance against the Lewis' in the same way as they had developed a grievance against me. As my letter also notes however, it seems that the problems were more network-related than I had thought. A further confirmation of why I believed that Telstra in general, and some Telstra employees in particular, might hold a grudge against me is detailed in a letter dated 28th January 2003, from the Telecommunication Industry Ombudsman (TIO) office to Telstra, regarding the Lewis' telephone problems they were then experiencing. In this letter for the TIO Ms McKenzie notes: *"Mr & Mrs Lewis claim in their correspondence that a Telstra technician 'Mr Tony Watson' is currently assigned to his case, but appears unwilling to discuss the issues with Mr Lewis due to his contact with the previous Owner, Mr Alan Smith"*. Ms McKenzie's letter shows that, even eight years after the end of my arbitration, Tony Watson was refusing to help Mr Lewis – because of me, how sick is that?

Point 9 in this same letter relates how the Lewis' stated that: *"the phone problems have decreased dramatically since Telstra rewired the business on 9 December 2002 and disconnected the phone alarm bell incoming phone calls to the business had increased dramatically"*, further supporting my belief that Telstra would fix the problems after the new owners took over. Later, when John Wynack, Director of Investigations for the Commonwealth Ombudsman, learned that Telstra had waited seven years before they finally re-wired the phone system at the Cape Bridgewater Holiday Camp (and then only for the new owners), he was so angry he could hardly contain himself and, when I wrote to the AFP noting that I thought some of the ongoing problems were more to do with Telstra's grievances against me than anything else, and that I therefore thought the problems would be fixed once the Lewis' moved in, I was only out in my estimation by ten months.

On 11th September 2004, I wrote to Darren noting: *"Many legal people and Senators plus the Australian Federal Police, David Hawker and the Board of Telstra all now know that Telstra relied on false documentation and false test results to support their defence of my arbitration claims. Because I believed these documents and therefore accepted Telstra's insistence that all the phone problems had been fixed, I accepted compensation from Telstra and when, I found the problems were not fixed at all, and continued*

to pressure Telstra to repair the damage, I believed Telstra then resorted to delaying tactics in retribution. This belief was a major factor in my decision to sell the business, because I believed Telstra would then have no reason to continue ignoring the phone problems. I truly believed that, once you took over, Telstra would immediately respond to your complaints and fix the phone problems for you. As we all now know, the phone problems were genuine and had not been 'manufactured' by Telstra to punish me"

Although the Camp was valued at $800,000 to $830.000 only three months before you purchased it, I sold it to you for $650,000 and since it has now been valued at $1.2 million it was clearly a business with a sound basis when you purchased it".

I believed that my letter would help Darren and his wife understand that they had purchased a good investment, and I was hopeful that Darren would be able to achieve what I could not – a proper telephone system to the Camp – so he could build the new units he wanted to add to the Camp. It was for this same reason that, on 16th September 2004, I also allowed the lifting of the caveats I held over the Camp, on the understanding that the Lewis' could borrow $520,000 from the NAB. When the Lewis' discovered that Mr Blaker (the solicitor who handled this matter) had forgotten to replace the caveats I held (on the Camp and on the Lewis' Healesville property), the Lewis' kept borrowing, to the tune of a further $200,000 and also sold the Healesville property. Even so, I have continued to help them to the best of my ability. I feel for the Lewis', and that is why I assisted them when they were recently preparing submissions for a Federal Magistrates Court action taken out by the ATO.

I have highlighted some sections of Darren's document to show how, as a direct result of his financial troubles, his ill-health is affecting the way he thinks. It is clear that I sold him a viable business that was generating a reasonable income regardless of the ongoing telephone problems, and this is supported by the vast improvement in revenue after Telstra finally re-wired the business. What Darren has failed to report though is that I funded $220.000 as part of the $650,000 he needed, at a more-than-reasonable interest rate of 4.5% for five years, because I wanted him to succeed where I felt I had failed. I understand that the business has since been valued at about $1.1 million, in 2006, and that sometime in 2007/08 Portland Coastal Real Estate passed on to Darren a sound offer of around $1.million, but the Lewis' apparently preferred to turn down that offer.

The Legal Services Commission submission is defamatory and includes passages obviously written in anger but, although I feel for them in their predicament, they cannot entirely blame the phone problems and (me) for their situation since profit from the business increased dramatically for the first three years after they took over. It appears as though Darren has also defamed me to the Glenelg Shire Community Connections Financial advisor and, as you would know, news travels fast in a town as small as Portland.

Darren's statutory declaration provided to you on 4th September 2006, shows quite clearly that local Portland technicians believed Darren had real ongoing facsimile problems up to at least 2005/06. Telstra Call Charge Analysis Data (CCAS) for that same period also confirm that the Lewis' suffered after the Camp itself was re-wired in 2002, but this fact was never correctly reported by Telstra to the Telecommunication Industry Ombudsman (TIO). Evidence I provided to you and the Hon Senator Richard Alston in 2002, show that Telstra swore under oath, during my arbitration, that their Cape Bridgewater Arbitration Service Verification Testing (SVT) met all the regulatory requirements when FOI documents received after my arbitration show the Australian Communications Authority AUSTEL (now ACMA) advised Telstra that their Cape Bridgewater Holiday Camp SVT tests were deficient.

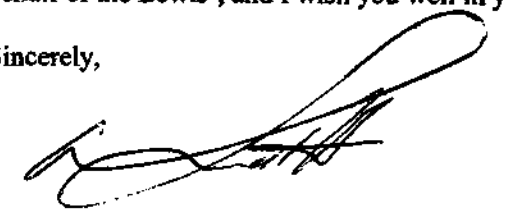
The transcript from my 3rd October 2008 Administrative Appeals Tribunal hearing in relation to my claims against the Australian Communication & Media Authority (ACMA) show I discussed in some detail the predicament the Lewis' were then facing and described Telstra's unlawful conduct towards me during my arbitration. I also advised Mr Friedman, the Senior AAT Member in charge of my case, that I am currently compiling a report (manuscript) regarding my case and this is why I was seeking FOI documents from ACMA. I expect the report to be completed by early next year and copies will then be

sent to all Australian Senators to demonstrate the grave miscarriage of justice of my Telstra arbitration, including what happened to the Lewis' and my beautiful partner Cathy, as a result of this miscarriage of justice. At the end of the hearing, Mr Friedman, noted: *"Let me just say, I don't consider you, personally, to be frivolous or vexatious – far from it. I suppose all that remains for me to say, Mr Smith, is that you obviously are very tenacious and persistent in pursuing the – not this matter before me, but the whole – the whole question of what you see as a grave injustice, and I can only applaud people who have persistence and determination to see things through when they believe it's important enough".*

The above information is provided in order to put on record all the reasons I had for selling the business to the Lewis' in the way that I did and, since Darren's submission to the Legal Services Commission appears to have been distributed to others, I am using your knowledge of my case (and the content of this letter) to defend myself against those statements. I ask that you cast your memory back to the **9th December 1993,** when you wrote to me noting: *"I would like to congratulate you in your persistence to bring improvements to Telecom's country services. I regret that it was at such a high personal cost",* now, sixteen years later, the personal cost has quadrupled; I no longer own the Camp; I have lost the $220,000 I lent the Lewis; and they are bankrupt.

As our elected Federal Member of Parliament, I am most grateful for all your attempts since December 1993, to have the ongoing telephone problems fixed at the Holiday Camp, both on my behalf and on behalf of the Lewis', and I wish you well in your retirement after the next election.

Sincerely,



Alan Smith

Copies to:

Ms Natalie Neil, Legal Services Commissioner 9/330 Collins St, Melbourne 3000, and other interested parties

CAPE BRIDGEWATER

HOLIDAY CAMP

REVIEW OF DOCUMENTATION

27th July 2007

Brian Hodge, B Tech; MBA
(B.C. Telecommunication)

486

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1. INTRODUCTION

I Brian Hodge having over forty years experience in telecommunications as a technician, Tech Office, Engineer & Manager (refer appendix 1), has been requested to examine a quantity of documentation relating to the services delivering to the Cape Bridgewater Holiday Camp (CBHC) at Cape Bridgewater.

In addition, to examine documentation that relate to the testing of services to the CBHC undertaken by Telstra/Telecom Australia and Bell Canada International (BCI).

I have been requested, based on the personal experience in the field, to comment on the reports, testing technique utilised, and other aspects relating to services delivery to CBHC.

A variety of testing techniques and call reporting systems were employed as the basis for the reports & documents prepared by Telstra/Telecom Australia.

2. TESTING SYSTEMS & RECORDING

A quantity of testing system were employed & consisted of the following:

2.1. TCARS/TRT

The TEST CALL ANSWER RELAY SET is utilised for remotely testing the transmission performance of a telephone circuit in both directions, where the operator controls the tests from one end.

The TCAR set is fitted in the automatic exchange & permanently connected to a subscriber number (ie. Fixed test number). The TCAR can therefore be called automatically from an outgoing testing facility (eg Traffic Route Tester – TRT) in any exchange.

The TRT tests are made by dialling a distant exchange (TCAR) number & performing a number of tests. The TRT operate in either of two modes.

a. Observed service performance runs;
b. Fault hold & trace runs

The TRT causes the TCAR to respond in a predetermined manner, and appropriate measurements of network performance can be determined.

One purpose of the TCAR is to ensure that the planned transmission losses are within specified limits.

To enable the fully testing cycle to be achieved, the period between seizure & release of the TCAR is a fixed 24 seconds.

2.2. PTARS

The portable equivalent to TCARS is the Portable Tone Answer Relay Set (PTARS).

The PTAR is a "Portable" testbox attached to a line location at a "terminating" exchange to provide answer supervision for test calls (refer BCI Addendum Report – Glossary).

As to the PTARs carries out the same functions as TCARS, the seizure – release time is equivalent.

2.3. NEAT Testing

Network Evaluation and Test System (NEAT) is an Ericsson designed & built testing system.

The system conducts transmissions & continuity tests between dedicated network test units.

"Each test call is held for 100 seconds to conduct transmission test & to detect drop outs" (ref. Telstra doc K35002).

The dedicated Network test unit is connected to the selected test number in the selected exchange line appearance.

Each test call takes 100 seconds to complete (refer K35002).

2.4. Call Event Monitoring

Dedicated test equipment (eg. ELMI event recorder) is provided at the customer's premises.

Hence, this device records all activities relating to the customer telephone handset such as;

a. Handset lift off
b. Outgoing call
c. No. dialled
d. Incoming ring
e. Answer time
f. Call/handset off duration
g. Call time

As this device is located at the customers premises, no exchange call data can be recorded.

2.5. Call Charge Analysis System

The Call Charge Analysis System (CCAS) is not a testing system but a call recording system. It is primarily used to provide information to enable billing to occur.

The system records & analyses the incoming & outgoing calls specifically:

a. Incoming call time
b. Incoming call status (eg. answer or non-answer)
c. Outgoing call time
d. Outgoing call dialling
e. Termination time

This system is associated with the main NODE or switching exchange (eg. Warrnambool - WBOX for Portland & Cape Bridgewater Service area).

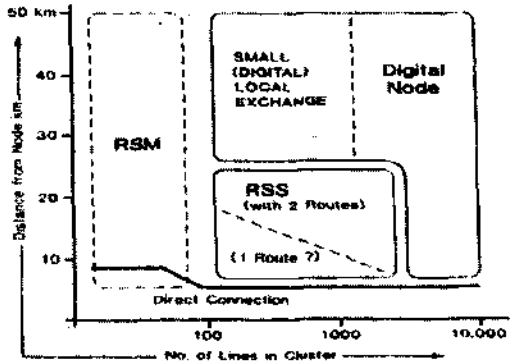
However, to prevent unnecessary data capture, short system seizure are not recorded unless three or more digits are dialled.

This can result in discrepancies between exchanged based (CCAS) data & customer end data (eg. ELMI).

Therefore, "Phantom calls" to the customer services may not be detected or recorded by the CSAS. (Phantom calls are calls generated by the network equipment usually resulting from a fault condition. The call causes an individual customer/subscriber or maybe a group of customers telephone to ring. When answered no calling party exists and maybe dial tone is received or no tone at all)

3. NETWORK TOPOLOGY

3.1. The network is made up of a hierarchy of exchanges. However, the type and selection of the specific connecting equipment depends on the number of customers in a cluster, and the distance of this cluster from the node or terminal exchange.



(Refer Telecom Aust, Engineer Development Program, Technical Publication TPH 1176, FIG.13)

Customers near the node can be directly connected. Small group of greater distances can be connected by "Remote Subscriber Multiplexer" (RSM) (the term RSM was later changed by Telstra to RCM – Remote Customer Multiplexing when the term Subscriber was replaced by Customer. The term RSM has been used in this report as it was the term utilised at the time in question) over a primary digital line system. Large clusters are best served by "remote switching stage" (RSS).

The RSS equipment being used extensively to make digital SWITCHING available in remote areas.

The RSM being used to make digital SERVICES available in remote areas.

The RSM, as the name implies, is a multiplexer connected to a distant termination exchange via a primary* PCM transmission system. The RSM is NOT an exchange but is a "concentrator" of services. The primary function of the RSM is to:-

a. Provide current feed to subscriber line
b. Detection of telephone hook state
c. Sending tones & ringing signal
d. Ring tripping
e. 2/4 wire conversion
f. Analogue to Digital conversion
g. Reception of dial pulses

The RSM DOES NOT

a. Undertake any analysis of the call
b. Carry out network switching
c. Carry out call charging
d. Carry out local call switching
e. Provide service numbers

All of these activities are undertaken in the terminal or network node.

Local calls between subscribers on a RSM result in "trombone trunking" of the call from and to the RSM AFTER switching has occurred.
(trombone trunking is a term used to describe the switching of local call traffic generated by equipment that has no analysis capabilities locally. All calls are immediately trunked to the main or higher exchange for analysis and all local calls are then sent back to the originating system for termination of the call. The path of the call therefore resembles the musical instrument the trombone)

The RSM is a true multiplexer extending a small number of subscriber appearance via a digital 30 channel PCM Link from the terminal switching

exchange to the remote subscriber cluster. (a multiplexer is a means of combining a number of services or circuits typically in multiples of 30, over one operational trunk or circuit. The multiplexer concentrates or condenses the circuits or services into a bearer trunk that enables simplified transmission of the service)

3.2. Primary Digital System

Digital Transmission Systems are arranged into a hierarchy of digital application based on equivalent channel capacity. The base application being the primary systems with the equivalent channel capacity of 30 channels.

The input being "voice frequency" (voice frequency is and analogue waveform typically 200hz – 3,000hz) & output 2.048 kbits/sec.

This application operating over typical standard pair cable or radio links.

4. NETWORK SIGNALLING

4.1. Common Channel Signalling (CCS 7)

Common Channel Signalling based on CCITT signalling system No. 7 (CCS 7) is used for inter-exchange telephone call signalling within the network.

The CCS network is a packet switch data network designed to provide reliable & speedy transfer of call control and other messages for the telecommunication network.

CCS is also used for non-telephony applications & advanced telephony services, such as network management & services that require translation of the called/calling party identity at centralised databases (eg. billing database). Users of the CCS network are connected at locations known as Signalling Points (SP).

The CCS network is composed of links connecting the nodes known as Signal Transfer Points (STP). Each SP is connected to at least two STP. The STP is also a SP.

Therefore digital exchanges are connected to the CCS via a SP and STP depending on it over hierarchy status.

However only digital systems (eg. switching exchanges & digital nodes) are connected & controlled by the CCS network.

4.2. Analogue Signalling

Signalling within the analogue network is/was via Multi-Frequency Code & T&G signalling system.

The analogue system & the signalling system utilised are/were not connected to the CCS network.

Both the signalling systems had the primary function to transfer called number data through the network to enable SWITCHING of the telephone call. (Switching is the functional carried out by the telephone network, based on the calling data or numbers dialled, to direct the call over trunks and circuits to the determined end destination. This switching action can take place through a single or multiple exchanges depending on the number dialled and the network infrastructure).

Where no call switching occurs CCS7 system is NOT provided.

5. DOCUMENTATION REVIEW

A quantity of documentation relating the testing of the service to and from the Cape Bridgewater area was examined. The documents related to the specifics of the test reported to have been undertaken as well as the Call Charge reports associated with services at Cape Bridgewater Holiday Camp.

A quantity of Telstra, Austel, Bell Canada International Reports were examined during the process. However the examination was by no means limited to the documents mentioned. Other Telecom Australia/Telstra documents were also examined as necessary to assist in the process.

5.1. Cape Bridgewater

The system located at Cape Bridgewater is a Remote Subscriber Multiplexer (RSM). This is NOT an exchange and as such DOES NOT:

a. Switch call traffic
b. Analyse call data (eg numbers)
c. Carry out call metering
d. Provide any network intelligence
e. Provide any subscriber monitoring.

As such the "number range" allocated to Cape Bridgewater resides at the Portland exchange. Numbers are therefore allocated at Portland & "extended" to Cape Bridgewater. Multiplexing a number of services over single transmission bearer using PCM technology, is the method of delivery of services to Cape Bridgewater RSM.

Therefore TCARS/PTAR connected to the test number 055 267 211 are within the Cape Bridgewater number range BUT this is physically located as part of the Portland exchange. The RSM has NO number range, this being allocated at the "parent" exchange (ie. Portland). (This is verified in document N00005 (A63152) paragraph 2+6.)

5.2. Common Channel Signalling (CCS7)

Common Channel Signalling No.7 DOES NOT appear or function at Cape Bridgewater RSM. As no switching, analysis, or billing take place CCS7 is not required.

However a similar signalling system operates on the PCM multiplexing transmission system between Portland & Cape Bridgewater BUT is NOT connected to or forms any part of the CCS network.

The purpose of this signalling link to maintain a functional transmission & multiplexing system.

Document K04555 paragraph 4 indicate that CCS 7 was only used to monitor calls to Portland via the Warrnambool node (agin 1993/94).

During the CCS7 network monitoring process, no calls within the Portland area were observed (refer Telstra document K04555 – CCS7 at time 1994, was only utilised on calls from Warrnambool AXE to Portland Axe, NOT during locals within the Portland area) . Indicating that the CCS7 network monitoring undertaken DID NOT take place in Portland, nor Cape Bridgewater systems or equipment.

As the CCS network transists the call through the network no CCS7 link existed from Warrnambool to Portland at this time (eg. 1993/4).

During the early 1990's (eg. 1993), the rollout of AXE & the CCS network was still expanding. NOT all links to within Portland utilised the CCS network for signalling purposes. MFC signalling was utilised in Portland (as CCS7 was not utilised in Portland at this time as mentioned previously, MFC was the signalling system still operational having bee n utilised as part of the ARF system that was the major component of the network at that time).

Therefore collection of CCS7 data & the associated reporting of the network performance when related to services connected to Cape Bridgewater RSM. was inconclusive & flawed, as it only enable parts of the network hierarchy to be monitored at this time. Where network upgrading had not been completed or implemented the old signalling system were still operational and required for network operation. The monitoring techniques utilised for CCS7 were not applicable or relevant to the existing and obsolete systems and technologies.

5.3. Test Calls

The documentation indicated that in the region of 13,000* test calls were placed to the test numbers nominated (eg. Portland number range).

These test calls were undertaken by Bell Canada International (BCI) and by Telstra Network Operations (NEAT testing).

5.3.1. BCI Testing

The BCI tests were primarily from Traffic Route Test located across the network to TCARS/PTARS connected to 055 267 211. As indicated previously, the testing time for such calls is typically 24* seconds (minimum). The actual time being 43.9 seconds (ref doc. N00006).

The analysis of times indicated for ALL tests reported from all TRT's listed, reveals major conflict in call traffic to the test numbers. Test times allocated from specific originating exchanges were in conflict with other simultaneous calls made from other locations. As the same test terminating number was also allocated to multiple originating testing (TRT) units, serious levels of call conflict would naturally occur.

Such significant (this is significant as the level of simultaneous call generation as documented could and would result in call conflict generating a HIGH level of fault reports during the testing regime) overlap of testing time & testing period WOULD result in high levels of call failures due to congestion, & busy number. (simultaneous calls to the same number where only 1 call can be successful MUST and WILL result in a large number of call failures being recorded – the test call is not successful – CALL FAILURE)

No such failures were reported. Hence the only realistic technical conclusions that can be derived are that the indicated tests were:

a. Not undertaken
b. Incorrected recorded and documented –fraudently or accidental it is not possible to tell as replication of the tests is not possible nor that the original test notes are not available for analysis
c. Testing periods flawed and were not undertaken as specified
d. Testing processes flawed and calls to different terminating numbers were undertaken
e. Testing processes incomplete – when call conflict was noted the tests were abandoned and results incorrectly documented

5.3.2. NEAT Testing

As indicated, the NEAT test requires:

a. Installation of NEAT test units to a dedicated test number.

b. Test calls held for minimum of 100 seconds.

The test numbers being located in the Portland exchange (number range allocated for Cape Bridgewater subscribers).

The allocated test number being 055 267 211, being the same number allocated for test calls as part of the Bell Canada International testing regime.

Discrepancies associated with the NEAT testing include:

a. Timing of recorded test are in conflict with the TRT test from numerous exchange – utilising same test numbers over same test period. (as mentioned in section 5.3.1 high levels of call failure would have been recorded with such call conflict – this was NOT recorded therefore major discrepancies in the testing and reporting process has been identified)

b. NEAT testing unit does not utilise the TCAR/PTAR terminating set (as NEAT test is a Ericsson designed system it utilises a dedicated terminating set. This set is not the same unit as the TCARS/PTAR. The TCARS/PTAR is not compatible with the NEAT testing system

The results of the test do NOT record any level of "busy connection" (calls failing due to simultaneous calls to the test answering unit) as would be expected (eg encountering busy number) from the high level of duplicated calls to the test number.

Similarly, the call terminating set utilised is not the same unit specified for the two different test regimes occurring at identical time period. Hence for simultaneous calls to be made to the same terminating number from two different testing systems the terminating set would have to be change for calls from both system to be successful. The time period for all calls from both originating systems makes this impossible to achieve

The results from both testing regimes are therefore:

a. Flawed – as simultaneous calls by two disparate systems to the same number is impossible to achieve
b. Lack creditability – results cannot be replicated nor can the raw data be examined
c. Dishonestly reported - to achieve the results as document significant fabrication of the document and report would be necessary.

and as such fail to meet the stated operational standard & quality contrary to the claims stated in the reports to Austel dated 10 November 1993 (Telstra doc K35002), BCI Report of 10 November 1993, and others.

5.3.3. 008/1800 Testing

Under the Service Verification Testing (SVT) testing of the 008 Service, terminating on service number 055 267 267, a number of calls were made via the new 1800 service terminating on service number 055 267 298.

During the early 1990's when the 008 service was being replaced by 1800, two separate and completely different networks were in operation. Both calls through the 008 & 1800 networks would translate to the customers end service.

The 1800 used the IN Network (Intelligent Network), and is via digital network. Concurrently, the 008, which was superseded by the 1800 was via the analogue (plus digital as necessary) network. Hence dual trunking of calls was occurring (that is calls via the 008 and 1800 service both terminated at the same destination BUT the route take by both calls were via two entirely different paths and equipment-hence no comparisons of call processes were accurate or possible.

Similarly separate billing systems were operating.

Therefore calls via the 008 & 1800 network were completely separate & different. To claim that a 1800 call is equivalent to a 008 call & translating to a different number is completely false & erroneous.

All tests carried out on the 1800 network are rejected as being irrelevant to the issue. Telstra was aware of the changes as the old obsolete 008 network was to be removed under Telstra network replacement plans & the fact that the calls were via old (008) and new (1800) technologies. Hence dual trunking of the calls was occurring, and did so for approximately 18 months to ensure that the amount of 008 calls could be rduced by advertising and documentation change by the customers.

5.4 Call Event Monitoring

Monitoring of services at the subscribers premises is obtained only when specialised equipment is provided such as call detail recording systems or ELMI event recorders.

Calls being made to the service number are recorded. Any activity (eg ringing, handset lift off, dialling etc) is recorded in real time as it occurs. All activity associated with the handset (event) is recorded

All activity at the subscribers premises is recorded, including short derivation incoming calls to the service number – eg. phantom calls (refer section 2.5).

Although acknowledge in the report no formal investigation appears to have been undertaken as no testing of services or data error rate testing of the multiplexing equipment was mentioned or recommended.

As the RSM equipment is a multiplexing of services via a PCM system from Portland, the failure of Telstra to carry out suitable & professional testing (eg. bit error rate tests of multiplexing system & link etc) is a serious concern as this is a basic system check and only this level of testing on such digital equipment will verify if the system is operating correctly. If such test are not undertaken the correct operation of that system and all related equipment cannot be guaranteed.

High or abnormal error rate can & will impact on the operation of the RSM equipment for both incoming & outgoing calls but generating or losing vital operational data. Such data loss can manifest in a numerous number of ways from generating fictitious (phantom) calls or more serious loss of call and call data

As the function of the RSM is to signal the service telephone & convert analogue (voice) to digital code, inferior performance of the equipment (including transmission system) would have detrimental impact on the overall operation & service delivery on both incoming & outgoing calls.

It is my opinion the failure of Telstra to undertake such tests (no evidence exists to confirm any such tests take place), is an indication of their failure to delivery/confirm the "service quality" to Cape Bridgewater.

5.5. Call Charge Analysis (CCAS)

Incoming & outgoing call traffic is recorded at the node (eg. Warrnambool) to allow billing of successful calls to take place.

Extensive examination of the available reports (Call Charge Analysis reports) was undertaken. These reports are produced for all incoming and outgoing calls and forms the basis of the Telstra billing system data for each customer

Areas of interest were the "Service Verification Tests" (SVT) reported to have taken place from the following services:

055 267 267
055 267 60
055 267 230

Twenty calls from each service number listed above were reported to have taken place.

Austel (Austel doc 94/0268 of 11 October 1994, 16 November 1994 and 9 November 1994) had specified the test calls (all 20/service) had to be "held" for a minimum of 120 seconds to ensure adequate testing time elapsed, and hence transmission quality is confirmed or measured.

Examination of the CCAS printout for the day specified (29 Sept 1994):

20 calls from each service number DID NOT take place;
The calls attempted WERE NOT held for the prescribed 120 seconds;
NO incoming test calls were made to the services in question. The CCAS printout for the period DO NOT indicate any calls to or from the service numbers in question. As this data is used for billing purposes ALL such call activity must be recorded

It is my opinion that the reports submitted to Austel on this testing program was flawed, erroneous, fictitious, fraudulent & fabricated, as it is clear that not such testing has taken place as Telstra's own call charge system DOES NOT record any such activities. Therefore the results are flawed or did not occur.

From these conclusions the statutory declarations by Gamble & others must be considered to be questionable and may be considered to be incorrect to say the least.

6. CONCLUSION

The regime of test calls established to verify the quality of the services at Cape Bridgewater must be considered to flawed and erroneous.

The fact that overlap of test calls from numerous locations & types of tests to specific test numbers indicates a serious flaw in the testing process, or simply that the tests were not carried completed successfully as stated.

As the Cape Bridgewater RSM is not a telephone exchange, no replicable tests were carried out to verify the conditions being experienced by the subscribers.

The so called tests reported to have taken place at Cape Bridgewater RSM cannot be verified by examination of the normal exchange based call data, neither incoming or outgoing. In addition, the failure to carry out the number & duration of the prescribed tests (eg. 20 calls per service, each held for 120 seconds), indicate the erroneous & fraudulent nature of the report to Austel.

The failure of Telstra to carry out standard performance tests (eg. bit error rate etc), at the multiplexer (RSM) at Cape Bridgewater is alarming & of concern. CCAS data over recent times (eg. 2004-2006), indicate a continuing & worsening level of "Outgoing Released During Setup" calls (ORDS). These reports on the CCAS data indicate that the calls are not successful in the call set up stage of the connection or is lost in the network

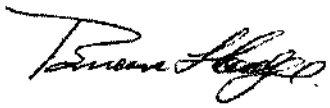
Such reports would indicate that the service was operating in a very unsatisfactory manner. The common factor being the multiplexer system & digital link, Portland exchange or subscriber usage.

However, the continuing report of phantom calls, lost faxes & missed calls ALL point to the network including the RSM at Cape Bridgewater being the source of the problem. As a significantly bit error rate in the data network can present it self to the end user in many different ways. Unfortunately all being a degradation of services

Telstra's failure to carry out detailed technical testing of the system, or to fabricated TRT calls to services not located at the source of the problem (eg, RSM) is negligent.

As the test cannot be reproduced or verified by an independent body, Telstra has failed to meet basic Professional Standards. As such, the results are flawed, erroneous & fraudulent.

Yours faithfully



BRIAN HODGE, B. Tech, MBA
(B.C. Telecommunication)

7.0 Appendix 1

Mr. Brian Hodge Btech. (Electronics), MBA (Uof A).

- Mr. Hodge has been involved in all facets of the telecommunications industry for over 40 years.
- Mr. Hodge commenced with the PMG in Adelaide in 1961 as a technician in training. This was a 5-year specialist industry based training scheme at the time recognized as the leading course of it type in Australia.
- After completion of the training Mr. Hodge, experienced all fields of technical work including system installation and maintenance.
- In the late 1960s Mr. Hodge moved to what was then classified as the sub/para professional ranks as a technical officer and draftsman. Then able to gain experience in medium to large design and installation projects. This included total project control and management.
- From 1970 Mr. Hodge commenced and completed tertiary studies at the University of South Australia (formerly the Institute of Technology) initially in the degree (Bachelor of Technology) specialising in electronic engineering.
- The last three years of this course was completed under a trainee engineer position awarded to Mr. Hodge.
- From the mid 1970 to the mid 1980s Mr. Hodge held various engineering positions in Telecom Australia (now Telstra) covering all disciplines within the organisation.
- With changes in the market place especially in the terminal products field, Telecom Australia introduced to the Australian market new generation products that are now accepted as the minimum requirements for business.
- Mr. Hodge was selected to lead and operate a division to introduce the new range of products to the market place and re-educate the technical, sales and support staff in use and support of the products(s). This was a major change in director not only for Telecom Australia (Telstra) but also the market place and the customers.
- During this time Mr. Hodge commenced and completed, on a part time basis (after hours only) a Master of Business Administration (MBA) at the University of Adelaide. The Masters Degree being awarded in 1986.

- From 1986 Mr. Hodge was appointed in to senior management in Telecom Australia directly and indirectly responsible for more the 500 staff through out South Australia and Northern Territory.
- In December 1990 Mr. Hodge left Telecom Australia and started Beta-Com Pty Ltd as a consultancy and facilities management company. Beta-Com has recently diversed into Audio Visual and Video Conferencing systems.
- Since deregulation of the telecommunications market in Australia Mr. Hodge has been involved in a number of companies covering both carrier service and terminal products. All companies have successfully traded for minimum of 8 years and have been or are in the process of being purchased by larger and more diverse organisations.
- Mr. Hodge commenced Digital Communication Systems in 1999 and selected and marketed a range of products and services to the Adelaide market.
- Digital Communication Systems in 2007 merged with a national company based in Sydney
- Mr. Hodge is now the Adelaide based Business Development Executive for this group.