

**CAV  
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**Exhibit 216 to 257**

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

To:	Ms Lesley Gordon FOI Co-Ordinator	Date:	28 April, 1995
Company:	Austel	Our Ref:	1787.DOC
From:	Mr Graham Schorer	Fax No:	820 3021
		Total Pages (including Header):	

MAILED: YES ( ) NO ( X )

Dear Ms Gordon,

I am now responding to our conversations and previous Austel correspondence regarding this FOI application.

As I have already informed you, given the nature and extent of the Austel inquiry into Telecom's conduct and manner in which Telecom dealt with Difficult Network Fault Customers, including those Telecom customers known as C.o.T. Cases.

The period of time the Telecom customers were experiencing the faults, the technical reasons these faults were occurring.

The amount of documents Austel had to obtain from Telecom as part of the Austel inquiry.

The time it took Austel to process those documents.

Other investigations Austel needed to make into Telecom as part of their overall inquiry requiring Austel to seek additional documents from Telecom regarding exchange, network and CAN performances, maintenance procedures, modifications and upgrades, plus results of monitoring and testing performed by Telecom regarding individual C.o.T. member services.

Austel reported to C.o.T. members, Austel's first hand experience of Telecom wrongly refusing to hand over documents regarding Telecom's investigations into complaints regarding various aspects of telephone service malfunctions, information that should have been provided to C.o.T. members when requested and not provided to Austel until Austel exercised their regulatory authority, before Austel were able to complete their first part of their inquiry, which resulted in the Austel Report.

Both Austel and I were well aware that a C.o.T. member's FOI application potentially involved many documents having to be processed.

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Mr Davey stated at a November meeting, when giving Austel and Telecom undertakings regarding FOI (Mr Davey, as a goodwill messenger, passed on Telecom's undertaking) which were given to induce the C.o.T. members to enter into the Fast Track Settlement Proposal, that Austel were aware of the probability for the need of C.o.T. members to make an FOI application on Austel to receive documents that would be part of the individual C.o.T. member's documentary evidence supporting the member's claim against Telecom under the Fast Track Settlement Proposal.

Mr Davey, during that meeting, made reference to the mountain of documents that were in the Telecom viewing room for Austel to access, plus the substantial amount of documents Austel had accumulated as the Austel inquiry was gaining momentum. At no time did Mr Davey attempt to qualify the Austel undertaking to the C.o.T. members regarding the C.o.T. members limiting the scope of their FOI application.

The amount of documents in Austel's possession that would have to be processed did not prevent Mr Davey, the then Chairman of Austel, in November 1993, from not qualifying his undertaking to the C.o.T. members for Austel to fast track any C.o.T. member's FOI application.

There had been many discussions with Mr Davey before this meeting, and since, in the discrepancies in what Telecom provided the C.o.T. members versus what Telecom have provided to Austel by way of documentation.

I appreciate that there are many documents and accept the validity of Austel's statement that there are approximately 45,000 documents that could be considered to be part of this FOI application.

As I have already stated, I am only too willing to work with Austel to reduce the scope of my FOI application where appropriate.

I do not wish my FOI application to include irrelevant documentation that does not assist me in my claim against Telecom.

I have to be very careful when working with Austel to reduce the potential scope of my FOI application not to exclude relevant documentation that does assist me in my claim against Telecom.

I appreciate your honest candour that Austel does not have an FOI department, therefore Austel has difficulty in processing FOI applications due to lack of resources.

Austel is very aware of the C.o.T. members reliance, and in some cases total reliance, on documentation to be received from Telecom and/or Austel, to demonstrate reasonable causal link between telephone difficulties, problems and faults to call losses before the individual C.o.T. member can quantify those call losses into different classes and types of losses before those losses can be quantified in dollar amounts before the C.o.T. member is in the position to have their claim independently assessed.

The reliance on the C.o.T. members and other Difficult Network Customers on technical Telecom documentation and information to substantiate call losses to quantify financial losses has been reported on in the Coopers & Lybrand and the Austel Report.

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For Austel, as the telecommunications industry regulator, to state that Austel are going to, under the Freedom of Information Act, limit my application to Schorer a specific file's Code L in the broad categories of material held by Austel is an unreasonable decision.

Austel know from their own experience, as a result of the Austel investigation and report, the relevance, and more importantly, the importance and dependency of myself to receive the documentation contained in the following Austel categories:-

- D. Early papers/drafts COT Case Report. 6 files.
- F. Bell Canada, Coopers and Lybrand Reports and assoc papers. 4 files. ↙
- G. Telecom internal docts. 4 files.
- H. Monitoring and testing: general. 5 files.
- J. Telecom monitoring, qualitative maint. difficult network fault data. 2 files.

Plus the individual C.o.T. Case files associated with Ann Garms, Maureen Gillman and Dawsons, which has already been demonstrated to Austel, during the Austel inquiry, to contain relevant material substantiating my own telephone service difficulties, problems and faults.

For Austel to invoke Section 24 of the FOI Act to refuse me documentation contained in Austel's categories D, F, G, H and J is wrong.

As I have stated to you, I am disappointed at this stage of events of having to make this type of application upon Austel because of how Telecom has processed my FOI application by not correctly discovering documents or wrongly claiming the documents do not exist.

I know that, as part of the FOI Act, it is irrelevant for what purpose I seek the documents for, however Austel, as the industry regulator, knows full well the importance of my receiving the type of information I am seeking and that was acknowledged by Austel to the foundation C.o.T. members prior to Mr Davey's undertaking in November 1993.

Mr Davey, the then Chairman of Austel, is a very cautious and precise person. Mr Davey would have qualified his Austel undertaking if he believed the individual C.o.T. member's FOI application had to be specific to the individual's telephone service for the C.o.T. member to receive the Austel held information that would enable the C.o.T. member to finalise their claim against Telecom.

Mr Davey had first hand knowledge of how C.o.T. members were seeking types and classes of information from Telecom under the FOI Act, as most of this FOI documentation received from Telecom was passed on to Austel and contained information about Telecom which became part of Austel's decision to conduct an inquiry into Telecom.

Given the findings of the Austel inquiry, and it should be noted that Austel, as industry regulator, used their position to get Telecom to "voluntary" enter into the Fast Track Settlement Proposal in November 1993, before the inquiry was finalised in April 1994, based upon the information Austel held at that date, much of which had been supplied by Telecom after Austel repeatedly had to invoke their regulatory powers.

For Austel to rely upon Section 24 of the FOI Act, because Austel do not have the need to have a fully established FOI department for reasons cited, being lack of demand, is simply not reasonable conduct or attitude of an industry regulator, especially an industry regulator that has conducted an extensive inquiry, given undertakings for full support for FOI applications, is fully informed of the importance and purpose of the information being sought, which is, to allow those C.o.T. members, including myself, to formalise my claim under the Austel produced Fast Track Settlement Proposal on a technicality is conduct mirroring Telecom's conduct in FOI matters, which Austel, as industry regulator, was most critical of Telecom.

I acknowledge that I have received verbal notice from Austel that unless I agree to reduce my scope of this FOI application to Schorer Specific Files, Austel have made the decision to reject the total FOI application.

If I was able to obtain the documentation I am seeking from another source, I would have done so.

- As a last resort, I am turning to Austel to seek the additional information I require which I have  
- been unable to extract from Telecom.

As I pointed out to you, Mr Gary Dawson's FOI documentation contains substantial information about my telephone service difficulties, problems and faults, national network investigations, working documents and diary notes and evidence of causal link of call losses regarding my phone problems for many periods of time, which Telecom has not provided to me under my own FOI application.

This irregular Telecom conduct was one of the first things brought to Austel's attention on 4 August 1993 at a meeting with the Chairman of Austel, which was one of the points that made up the reason Austel agreed to do an extensive inquiry into Telecom.

Again for this reason, I am turning to Austel, as industry regulator, to reconsider their verbally communicated decision to reject this FOI application under Section 24 as Austel's current intention to reject this FOI application does not mirror the Austel attitude and conduct displayed by Austel in first deciding to conduct an investigation into Telecom and the subsequent inquiry and report.

I await Austel's official response.

Yours sincerely,



**Graham Schorer**

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SENT BY: HUNT & HUNT

: 12-5-95 : 2:41PM :

MELBOURNE OFFICE

61 3 277 8797: # 2



# Hunt & Hunt

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 James C.F. Harrowell  
 Christine A. Galley  
 Gordon L. Hughes  
 Mark T. Knappman  
 Ian S. Craig  
 Peter J. Ewin  
 Wayne B. Cahill  
 Neville C.H. Debnoc  
 Grant D. Sefton  
 Charles Yevers  
 Andrew Leslie Smith  
 William P. O'Shea

**Consultants**  
 Kenneth M. Mardon  
 Richard J. Kellaway  
 Andrew Jenkins

**Associates**  
 Shane C. Hind  
 John S. Molnar  
 Melissa A. Henderson  
 Francis V. Galichio  
 John D.F. Morris

12 May 1995

Our Ref: GLH

Matter No:

Your Ref:

BY FAX: 277 8797

Mr Warwick Smith  
 Telecommunications Industry Ombudsman  
 21 Exhibition Street  
 Melbourne VIC 3000

Dear Warwick

### FAST-TRACK ARBITRATION PROCEDURE

You have asked me for my comments on the arbitration process, now that I have delivered my first ruling.

Upon my return from leave in 2 weeks, I would be happy to discuss this matter with you in detail.

In simple terms, my observations are as follows:

- as far as I could observe, both Telecom and Smith co-operated in the Smith arbitration;
- the time frames set in the original Arbitration Agreement were, with the benefit of hindsight, optimistic;
- in particular, we did not allow sufficient time in the Arbitration Agreement for inevitable delays associated with the production of documents, obtaining further particulars and the preparation of technical reports;
- there have been allegations by Smith and other claimants that Telecom deliberately slowed the process by delaying the production of documents under FOI - certainly the FOI claims have caused delays but I am unable to comment as to whether there has been a deliberate delaying tactic;
- request for further particulars are, I think, unavoidable - although the emphasis in the arbitration process is upon a quick resolution of the dispute, a party (in this case Telecom) faced with a significant claim

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 newcastle  
 perth  
 adelaide  
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:12- 5-85 : 2:41PM :

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against it is entitled to be presented with particularised complaints, not generalised and unsubstantiated allegations;

- the preparation of technical reports by the claimants is always going to be a problem - in simple terms, Telecom has all the information and the claimant has to pay a technical expert to examine and interpret it.

In summary, it is my view that if the process is to remain credible, it is necessary to contemplate a time frame for completion which is longer than presently contained in the Arbitration Agreement.

There are some other procedural difficulties which revealed themselves during the Smith arbitration and which I would like to discuss with you when I return. These centre principally upon the fact that claimants, who are often seeking large sums, are generally unable to specify the legal basis for their claim (eg negligence, breach of contract, Trade Practices Act), yet it is necessary for me to base my rulings upon a breach of legal duty. This means that I have to in part rely upon Telecom to identify the legal basis of the claim made against it (which is somewhat perverse and which was in any event handled by Telecom in a less than satisfactory manner), and/or I have to search myself for a legal basis without assistance from the parties (which inevitably contributes to the time and expense associated with the proceedings).

I wonder whether some pro forma document could be developed which could point claimants in the right direction.

I apologise for the brevity of these comments. I am happy to provide you with a more detailed written report when I return from leave in 2 weeks. Ultimately, I think we should have a conference involving you, me and Peter Bartlett to consider these and related issues.

Yours sincerely

  
GORDON HUGHES

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**Partners**  
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Edward S. Boyce  
James G.F. Harrowell  
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Gordon L. Hughes  
Mark T. Knapman  
Ian S. Craig  
Peter J. Ewin  
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Charles Veevers  
Andrew Logie-Smith  
William P. O'Shea

**Consultants**  
Kenneth M. Martin  
Richard J. Kellaway  
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Shane G. Hird  
John S. Molnar  
Melissa A. Henderson  
Francis V. Gallichio  
John D.F. Morris

12 May 1995

Our Ref: GLH

Matter No: 5126900

Your Ref:

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

Dear Mr Schorer

## ARBITRATION - TELECOM

I note I have not heard from you for some time.

I am departing today for two weeks leave. When I return, I intend convening a directions hearing in order to determine whether the parties wish this arbitration to proceed.

I would be interested to receive any written comments from you (or Telecom) in the meantime.

Yours sincerely

  
**GORDON HUGHES**

cc E Benjamin, W Smith, P Bartlett, J Rundell

melbourne

sydney

sydney west

brisbane

canberra

newcastle

represented in

adelaide

darwin



11464044\_ACZF/CF

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 614 8711.

Facsimile: (61-3) 614 8730. G.P.O. Box 1533N, Melbourne 3001. DX 252, Melbourne.

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6 September 1994

Central Area  
Network Operations  
6/171 Roma Street  
Brisbane  
AustraliaPh (07) 837 3212  
Fax (07) 236 4247

Mr G. Kealey  
Bell Canada International  
Suite 800, 1 Nicholas Street  
Ottawa, Ontario, Canada, K1N 9M1

Gerry,

N00005

As you have been made aware through discussions with Mr K. Dwyer, an anomaly has been found in the test call records contained in the report "Bell Canada International Inc. REPORT TO TELECOM AUSTRALIA 1 NOVEMBER 1993".

Specifically, the start and finish times for the test run from Richmond digital exchange (RCMX), test line 03 428 8974, to Portland exchange, Cape Bridgewater RCM (CBWR) number range, test line 055 267 211, (detailed in section 15.23 of the report) are impracticable. The number of calls made during the test run could not have been completed within the time span shown and the test run would have clashed with other test runs performed within those times.

An examination of the test result summary forms filled out after the test runs (a copy of the relevant record forms is enclosed) reveals that the report details have been correctly derived from the summary forms.

This inconsistency in recording of times for a test run is not a fundamental flaw in the test results or the conclusions of the report, but the proper times of the run should be recorded if at all possible.

Discussions with a number of people assisting with the test call program during that period confirmed that considerable care was taken to avoid clashes of test calls to test answering bases and to ensure that test calling devices originated calls only to a single terminating test code during any test run.

From their recollections of events several points regarding the sequence of events have been brought together:

- The tests were initiated to provide extra data from test calls into the number ranges of the CoT customers connected to Devlin's Bridge exchange and Portland exchange. The data was to be added as an addendum to the report dated 1 November 1993.
- Testing began Wednesday 3/11/93. Traffic Route Testers (TRTs) in the NIB test room 7/35 Collins Street Melbourne originated calls, via test lines connected to Richmond exchange, to test answering bases at Portland exchange and Devlin's Bridge exchange. A portable TRT at South Yarra exchange was also used to originate calls to the same exchanges.

A63152

File CoT

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FOI RECEIVED  
26/5/95

- As Mr G. Kealey and Mr R. Baltis intended to travel to Portland exchange (via Warrnambool exchange) on Friday afternoon 3/11/93, they ensured that a TRT run from Richmond had finished and that a run from the South Yarra TRT had commenced satisfactorily before they left Melbourne at approximately 12.45 that day. They also arranged for test calls to begin from Bendigo exchange that afternoon, and made a call from Warrnambool exchange to South Yarra exchange late in the afternoon to ensure the South Yarra TRT had completed its test run program and stopped.
- No staff recalls or attendances were recorded or required at either South Yarra or Richmond exchange to attend to TRTs on Friday 3/11/93 or the weekend 6/11/93 & 7/11/93.

A complete examination of the times of the test calls from all the exchanges to the test lines at Cape Bridgewater and Devlin's bridge over the period from 3/11/93 to 9/11/93 shows that the only time the test run from the Richmond digital test line to the Cape Bridgewater 055 267 211 test answer base could have been made, without clashing with other test calls to the same test number, was between the afternoon of 3/11/93 and about midday of 4/11/93.

It appears that the details for the test run from the Richmond digital test line (03 428 8974) to Cape Bridgewater RCM (055 267 211) should have been recorded as beginning at approximately 4.18 pm on 3/11/93 (rather than 12.45 pm on 3/11/93) and finishing at about 12.45 pm on 4/11/93 (rather than 4.18 pm on 3/11/93), with other aspects of the test run remaining the same as previously recorded. These timings fit in with other test runs from the Richmond TRT line and with other test runs from other exchanges to the same line at Cape Bridgewater. They also provide a logical sequence in the overall test program and a reasonable average test call interval (43.9 sec. per call).

A table has been drawn up to show the test calls made over the period and is attached, showing the test run between the Richmond digital test line and the Cape Bridgewater test line in this logical time-slot within the overall test run program.

Could you please confirm whether or not this interpretation of the sequence of test runs matches with your recollections and personal notes, or whether there is any other way to correct the records of the test runs shown in the report.

N00006

Alan Humrich  
GENERAL MANAGER  
CENTRAL AREA

219  
TOTAL P.07

✓ file

5th June, 1995

RE: SCHORER & COT CASES

Re Schorer & Cot Cases. Pursue Schorer & Thorpe to get authority to write to the Commonwealth Ombudsman about the inability or refusal to provide us with the tests that were conducted for purposes of both Schorer and for Smith. In particular I am to concern myself that the material has not been made available for inspection and it should be because it belongs to Telecom not to Bell Canada. I am also to make an issue that the material is being delayed in being produced and that it is being sent in Smith's case very late in the piece too late for him to use for his purposes of his arbitration and in particular some of it came after the arbitration had been decided.

WRH

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Dictated on Thursday, 1st June  
but transcribed on 7th June, 1995

FILE NOTE:                      GOLDEN MESSENGERS

Mr. Schorer and Mr. Thorpe were with me. We've had a meeting about bits and pieces. I want to record this.

In relation to the Bell Canada reports, the situation is apparently is that Bell Canada were engaged to give an appraisal by Telecom. Bell Canada asked Telecom to run certain tests for them and Telecom did that. Those tests were in some way or other reduced to paper, presumeably, and computer disks and they were made available to Bell Canada to make their report in writing. Bell Canada produced a report and then Telecom made a report on the Bell Canada report unto Austel.

The Bell Canada people were provided with the test material by Telecom and disks containing that information and perhaps other information. It is claimed by Steven Black that that material does not belong to Telecom and it was handed back to Bell Canada and Telecom are not in the position to get it from Bell Canada and they don't have copies of it. K

In January and February 1994 Steven Black has told Schorer that the material was not available from Bell Canada and Bell Canada has the proprietary rights in the whole lot and there were no contractual relationship between Bell Canada and Telecom whereby they could demand it back from Bell Canada.

Anne Garmes and Alan Smith have also been told much the same by Steven Black and others in Telecom. At or about the time he was so told, Schorer reported that by way of complaint to the Commonwealth Ombudsman verbally and possibly in writing. Mr. Thorpe will have a look to see if he can find a copy letter or fax to that effect.

Incidentally, Schorer also has a second Bell Canada report and he has been given the second raw data and disks which was presented to him as being reputedly the first material. The second material was after the 24th November 1993 and therefore referred and should be covered by Schorer's second FOI application, its got nothing to do with the first application as is alleged by the Telecom people.

19th May, 1995

FILE NOTE: GOLDEN - COT CASES

On 17th May attending Mr. Harry Thorpe who phoned and I dictated to him an answer to Gordon Hughes letter of 12th May which didn't arrive until the 16th. We discussed that Alan Smith had got a very poor settlement, namely a \$400,000.00 less 80 of which \$135 was then to out in cost to people who assisted him.

I said we should consider whether we may not be better off scrapping without letting this arbitration be scrapped and going public in litigation and complaints about the FOI lack of documentation received.

19th June, 1995

RE: SCHORER COT CASES

Schorer rang me on Friday 16th June saying that he was not going back to Warburton but he would be still under the clinical psychologist and he would be coming in to see me next Thursday.

WRH

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Telecommunications  
Industry  
Ombudsman

John Pinnock  
Ombudsman

27 June 1995

Mr William Hunt  
Hunts'  
358 Lonsdale Street  
MELBOURNE VIC 3000

Dear Mr Hunt

***Fast-Track Arbitration Procedure - Mr Graham Schorer and Telecom***

I understand you act for Mr Graham Schorer and the firm Golden Messenger.

As you may be aware, this arbitration has in effect been in abeyance for some months. This has apparently been due to the Claimant's outstanding requests for documentation, and Mr Schorer's ill health.

We have not heard from Mr Schorer for some time, and would be grateful if you could advise us as to how he intends to proceed.

Yours sincerely

**John Pinnock**  
Ombudsman

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

*with reference to [unclear]*



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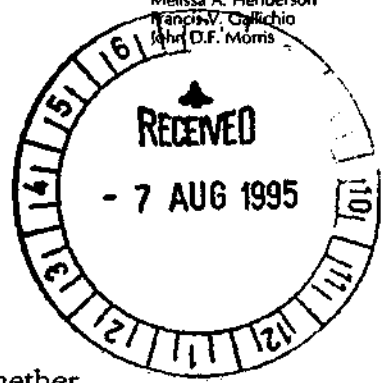
3 August 1995

Our Ref: GLH

Matter No: 5126900

Your Ref:

Mr E Benjamin  
National Manager  
Customer Response Unit  
Telecom Australia  
Level 37, 242 Exhibition Street  
MELBOURNE Vic 3000



Dear Mr Benjamin

### ARBITRATION - SCHORER

I telephoned the claimant on 3 August 1995 in order to determine whether he was now in a position to proceed.

Mr Schorer advised me that due to a combination of factors, including the current state of his health, the commercial pressures imposed by his business and an impending FOI claim, he is unable to submit a claim at present.

Mr Schorer has advised me, however, that he remains anxious to pursue a claim as soon as he is able to devote adequate time to its preparation.

Yours sincerely

**GORDON HUGHES**

cc **G Schorer**, Pinnock, P Bartlett, J Rundell

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sydney west  
brisbane  
canberra  
newcastle  
represented in  
adelaide  
darwin

11522702\_ACZF/CF

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 9614 8711.  
Facsimile: (61-3) 9614 8730. G.P.O. Box 1533N, Melbourne 3001. DX 252, Melbourne.

**225**





August 7, 1995

Telecommunications  
Industry  
Ombudsman

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

John Pincock  
Ombudsman

*By Facsimile: (055) 267 230*

Dear Mr. Smith,

I refer to your recent letters concerning the determination of your claim against Telstra under the Fast Track Arbitration Procedure (FTAP). In these letters you raise a number of complaints.

You have complained that Telstra (formerly Telecom) provided you with approximately 24,000 documents pursuant to Freedom of Information ('FOI') legislation in late December 1994 which was after you had submitted your claim documents, and indeed, after Telstra had lodged its defence.

The Arbitrator made his award on 11 May 1995. I consider that there was sufficient time for you to raise any relevant points arising from the FOI material provided to you prior to the Arbitrator making his award. In any event, the conduct of the Arbitration, including such matters as directions or submissions by the parties, was properly a matter for the Arbitrator.

You have also complained that on 26 May 1995 you received further FOI documents from Telstra which, you state, would have assisted your claim significantly.

In particular, you claim that:

- (a) the further FOI documents released confirmed that Telstra internally acknowledged to Bell Canada International Inc. ('BCI') that your complaints were correct in suggesting that the BCI testing of your telephone service was "fabricated" as the testing could not and did not take place as reported in the BCI Addendum Report;
- (b) Telstra deliberately delayed the release of FOI documents which contained material in support of your claim;

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

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**CONFIRMATION  
OF FAX**

- (c) Telstra was involved in a deliberate misrepresentation to the Arbitrator which has resulted in you failing to receive the benefits and concessions due to you;
- (d) Telstra has knowingly presented to the Arbitrator a "fabricated" testing and evaluation report that "... was allegedly independently and impartially performed and created" by BCI.
- (e) The Resource Unit took into account the flawed BCI report.

You claim that the assessment of your case by the Arbitrator would have been materially different if the Arbitrator had been aware of the details set out in the points above.

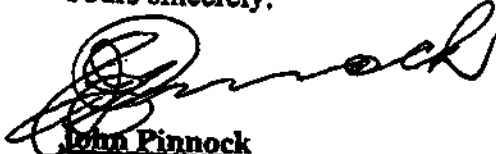
As Administrator of the FTAP, I have a duty to ensure the integrity of the procedure. Your complaints go to this issue, and accordingly, I would be pleased if you would provide me with:

- all documents supplied to you by Telstra on or after 26 May 1995 together with covering letters, schedules or annexures which may identify those documents.
- a concise explanation of the significance of the further FOI documents released by Telstra; in particular, specific instances which support your contentions in (a) and (e) above.
- any other evidence which supports the above contentions.

In order to deal with your complaints expeditiously, I would be pleased if you could provide this material to me within 14 days.

If you have difficulty in providing copies of the material or in otherwise complying with this request, please let me know.

Yours sincerely,

  
John Pinnock  
 Ombudsman





# Hunt & Hunt

LAWYERS

4 September 1995

Our Ref: GLH

Matter No:

Your Ref:

Mr G Schorer  
Golden Messenger  
493-495 Queensberry Street  
NORTH MELBOURNE Vic 3051

**Partners**  
David M. Scarlett  
Edward S. Boyce  
James G.F. Harrowell  
Gordon L. Hughes  
Mark T. Knapman  
David P. Cooper  
Ian S. Craig  
Peter J. Ewin  
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**Associates**  
Shane G. Hird  
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Francis V. Gallichio  
John D.F. Morris

Dear Mr Schorer

## ARBITRATION - TELSTRA

I refer to our telephone discussion on 3 August last and would be pleased to know if you are yet in a position to indicate whether, and if so when, you intend proceeding with the submission of your claim documentation.

Yours sincerely

  
**GORDON HUGHES**

CC E Benjamin, J Pinnock, P Bartlett, J Rundell

melbourne

sydney

sydney west

brisbane

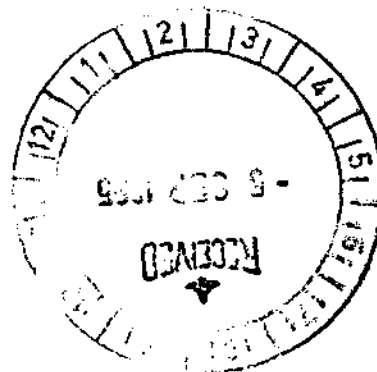
canberra

newcastle

represented in

adelaide

darwin



11544128\_GLH/RS

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 9614 8711.

Facsimile: (61-3) 9614 8730. G.P.O. Box 1533N, Melbourne 3001. DX 252, Melbourne.

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## MATTERS OF PUBLIC INTEREST

### Telstra

Senator BOSWELL (Queensland--Leader of the National Party of Australia) (1.08 p.m.)-- At the moment there are customers of Telstra who, for many years, have also been casualties of Telstra. For years they have experienced problems with dead lines, lines dropping out, busy signals when it was not busy and many more. They complained, even to the point of not paying their bills and having their phones cut off, which they desperately needed for their business, all in a desperate plea to Telecom to fix their lines.

In one member's case, there was acknowledgment of lines being physically removed, with Telecom officers stating that there was a prima facie case existing for conviction if the offender could be found. These were all once successful business people, with the type of business that relied on a telephone service fit for their purpose: a service they did not receive. Eleven years after their first complaints to Telstra, where are they now? They are acknowledged as the motivators of Telecom's customer complaints reforms. As a direct result, a telecommunications industry ombudsman has been set up and a complaints resolution process established. But, as individuals, they have been beaten both emotionally and financially through an 11-year battle with Telstra. Now their bankers have lost patience with their lengthy dispute settlement and they are going down fast.

Following an investigation of the initial settlement, accepted under duress, Austel, the industry watchdog, came out with a highly critical report of Telecom and the settlement was re-opened. The Austel report concluded that Telecom was less than a model corporate citizen--damning words for our nation's monopoly telecommunications provider which, at that stage, was entering a new period of competition. It recognised Telecom's failure to undertake preventative rather than corrective maintenance on its older analog equipment, some dating back 30 years, as a significant cause of persistent, intermittent faults and that Telecom had clearly put supply side efficiencies ahead of customer concerns.

There is the admission by Telecom to

Austel:

It is of little or no bearing on the case that some of the testing has been purged from the system because we do not require these records to be convinced that this customer has serious concerns with her telephone service.

Backing up the Austel inquiry were critical reports by Coopers and Lybrand, describing Telecom complaints handling as not meeting the minimum requirements of 'adequacy, reasonableness and fairness', and a technical review by Bell (Canada) of Telecom's testing and fault-finding techniques for network faults. Then followed the Federal Police investigation into Telecom's monitoring of COT case services. The Federal Police also found there was a prima facie case to institute proceedings against Telecom but the DPP, in a terse advice, recommended against proceeding.

To this day the parties of the parliament have been denied any access to the Federal Police inquiry or advice from the DPP on the matter--despite persistent demands not only from the coalition but from the Democrats--or matters of the DPP wrongly advising the Federal Police that Telecom was protected by the shield of the Crown and that they could not execute a search warrant against Telecom in their investigations of alleged phone monitoring and tapping.

Once again, the only relief COT members received was to become the catalyst for Telecom to introduce a revised privacy and protection policy. Despite the strong evidence against Telecom, they still received no justice at all. Meanwhile, COT members were still experiencing poor telephone services, their businesses were continuing to suffer and they had been forced to enter the exhausting and expensive process of involvement in all these major inquiries into Telecom.

A Senate inquiry began to be mentioned by senators on this side and the Democrats. In late 1993, Senator Alston and I, at a meeting in Senator Alston's Parliament House offices, were given an assurance by senior Telecom officers that a Senate inquiry would not be necessary--that a fast track, non-legalistic process could be set up, that it would facilitate

FOI access to **Telecom's** documents and that it would be all over by April 1994. That process was to be overseen by the Telecommunications Industry Ombudsman. FOI documents from **Telecom** show that **Telecom** certainly did not want a Senate inquiry when they refer to:

... walking away, but I do not believe this option would suit **Telecom's** wider strategy in that it would appear to lead directly to a Senate inquiry.

My course therefore is to force Gordon Hughes--

the arbitrator--

to rule on our preferred rules of arbitration.

A fast track settlement proposal was signed by the four COT members in November 1993 and the fast track arbitration procedure on 24 April 1994, involving a confidentiality clause forbidding COT members any further public comment on **Telecom**. Even during this period of negotiations on the arbitration rules, FOI was being held up by **Telecom**. One Commonwealth Ombudsman's report on delays in FOI information condemns **Telecom's** denial of documents in the following words:

It was unreasonable for **Telecom** to require the participants to make further assurances while **Telecom** was considering the arbitration agreement and thereby denying participants the opportunity to consider the rules that **Telecom** wished to have included in the agreement.

I ask the Minister representing the Minister for Communications and the Arts (Senator McMullan): is this fair play on the part of **Telecom**? The report goes on:

There is no provision in the FOI Act which would permit **Telecom** to impose such conditions on applicants prior to granting access to documents--access under the FOI Act is public access.

These COT members have been forced to go to the Commonwealth Ombudsman to force **Telecom** to comply with the law. Not only were they being denied all necessary documents to mount their case against **Telecom**, causing much delay, but they were denied access to documents that could have influenced them when negotiating the arbitration rules, and even in whether to enter arbitration at all.

This is an arbitration process not only far exceeding the four-month period, but one which has become so legalistic that it has forced members to borrow hundreds of thousands just to take part in it. It has become a process far beyond the one represented when

they agreed to enter into it, and one which professionals involved in the arbitration agree can never deliver as intended and never give them justice.

Firstly, it was represented to members that it would be fast. It was called a 'fast track arbitration process'. There were many documented assurances given to the COT members on timing and a quick resolution. The assurance was given by **Telecom** to the deputy Liberal Party Senate leader, Senator Alston, and to me, the leader of the National Party in the Senate, late in 1993 that it would be fast track and non-legalistic and would facilitate FOI documents.

There is the letter from Peter Bartlett, special counsel to the TIO, on 25 February 1994 saying:

The emphasis is on "fast track" resolution of these claims.

It stated also:

With this in mind the arbitration is likely to commence this week and will be completed at the shortest possible time frame.

There is the detailed timetable from the TIO scheduling the final report after four months. Then there have been the delays caused by **Telecom's** FOI documents. The Commonwealth Ombudsman has twice reviewed **Telecom** FOI delays and has been very critical of, in her words, '**Telecom's** defective administration'.

There have been further delays, referred to by the ombudsman as 'unreasonable', because **Telecom** sent FOI documents to be vetted by their lawyers before release to members, and delays caused by the destruction of documentation--in the case of the Tivoli Restaurant, all **Telecom's** raw data on testing from 1989 to July 1993. What this has meant is that the COT members, as **Telecom** has dripped their FOI, have had to resubmit their statements to the arbitrator to include the delayed information.

To give an example of the experience of COT member Ann Garms with FOI documents, she applied to **Telecom** for FOI in December 1993. In February she received approximately 10,000 documents. In April the arbitration procedure was signed; then in May 20,000 more documents turned up. From May to December 10,000 more documents were dripped, continuing till June this year--all for a process promised to be completed within four

months.

This is a situation of the might of a monopoly like Telecom, with all the resources behind it--said to add up already to millions of dollars--which has to be countered by four struggling business people. And now, despite assurances of fast track, which bankers and other supporters were reassured was the guiding principle of the arbitration, 18 months later the four suffering COT members are left with only one COT case settled and Telecom has made the non-legalistic arbitration process so legalistic that it has cost one COT member nearly \$300,000 to answer Telecom's protracted process.

There have been many scathing reports of Telecom's defective behaviour by Austel, Coopers and Lybrand, the TIO and the Commonwealth Ombudsman. A second Commonwealth Ombudsman report is due out any day--with the first going so far as recommending compensation from Telecom for any costs unnecessarily incurred because of the defective administration by Telecom, which ironically now involves another costly mediation process for the COT members involved. The TIO, in his annual report, described the whole process as:

... clearly the low water mark of effective customer relations, regulatory agency response and questionable direction from past management.

He continues:

Regrettable reliance on excessive legalism and failure to meet freedom of information requirements in a timely fashion has led in my view to an unnecessary prolongation of a process which was intended to be speedy.

The expense these COT members have been put to, arising from the so-called fast track arbitration process, has seen several go to the wall.

I regard it as a grave matter that a government instrumentality like Telstra can give assurances to Senate leaders that it will fast track a process and then turn it into an expensive legalistic process, making a farce of the promise given to COT members and the inducement to go into arbitration. The process has failed these people and can never give them justice--a point confirmed by professionals deeply involved in the arbitration process itself and by the TIO's annual report, where conclusion is described as 'if that is ever achievable'.

The COT members would never have opted for arbitration had they known it would go on so long at a cost of hundreds of thousands of dollars in legal and other expenses. Here are people who Telecom knows are on their knees, and the system becomes so legalistic that, to answer two Telecom requests for further particulars, it requires an additional \$45,000. These people have had their lives ruined by the process that has followed from daring to take on Telecom. It does not stop there. Many people have lent COT members funds to see them through the process based on assurances given by Telecom to Senator Alston and I and written assurances from the TIO that disputes would be settled within months, also risking their houses and businesses because of the outrageous delays.

Telecom has treated the Parliament with contempt. No government monopoly should be allowed to trample over the rights of individual Australians, such as has happened here. It brings me no joy to bring this matter before the Senate. I would rather be here praising Telstra, an Australian icon. But they are not bigger than the Australian people and, through them, the parliament. Telecom has been highly criticised by many government watchdogs all through the process, yet sadly, it is the poor struggling Telstra customers who are having to bear the ultimate burden of financial ruin.

Motion (by Senator Sherry)--by leave--agreed to:

That the sitting of the Senate be suspended till 2.00 p.m.

Sitting suspended from 1.21 to 2.00 p.m.



# Hunt & Hunt

LAWYERS

**Partners**  
David M. Scarlett  
Edward S. Boyce  
James G.F. Harrowell  
Gordon L. Hughes  
Mark T. Knapman  
David P. Cooper  
Ian S. Craig  
Peter J. Erwin  
Wayne B. Cahill  
Neville G.H. Debney  
Grant D. Sefton  
Charles Veevers  
Andrew Logie-Smith  
William P. O'Shea

**Consultants**  
Kenneth M. Martin  
Richard J. Kellaway  
Andrew Jenkins

**Associates**  
Shane G. Hird  
John S. Molnar  
Melissa A. Henderson  
Francis V. Galichio  
John D.F. Morris

6 November 1995

Our Ref: GLH

Matter No:

Your Ref:

Mr G Schorer  
Golden Messenger  
493-495 Queensberry Street  
NORTH MELBOURNE Vic 3051

Dear Mr Schorer

## ARBITRATION - TELSTRA

Please advise me within 7 days when you expect to complete the submission of your claim.

If you anticipate a delay of considerable or indeterminate length, I will give consideration to the question of whether this arbitration should be abandoned.

Yours sincerely



**GORDON HUGHES**

CC E Benjamin, J Pinnock, P Bartlett, J Rundell



melbourne  
sydney  
sydney west  
brisbane  
canberra  
newcastle  
represented in  
adelaide  
darwin

11589215\_GLH/CF

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 9614 8711.  
Facsimile: (61-3) 9614 8730. G.P.O. Box 1533N, Melbourne 3001. DX 252, Melbourne.

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5 Queens Road  
Melbourne  
Victoria 3004  
Tel: (03) 9828 7300  
Fax: (03) 9820 3021  
Free Call: 1800 335 526  
TTY: (03) 9828 7490

10 November 1995

The Hon Michael Lee MP  
Minister for Communications and the Arts  
Parliament House  
Canberra ACT 2600

Dear Minister Lee

**QUARTERLY REPORT ON PROGRESS OF TELSTRA'S  
IMPLEMENTATION OF RECOMMENDATIONS OF AUSTEL'S COT  
CASES REPORT**

I am pleased to provide AUSTEL's fifth quarterly report on Telstra's progress in implementing the recommendations of AUSTEL's *COT Cases Report*.

This quarterly report consists of two parts: a summary of significant developments to date; and a more detailed commentary on the status of implementation of outstanding recommendations.

AUSTEL considers that Telstra is continuing to demonstrate its commitment to implementation of the recommendations of AUSTEL's *COT Cases Report*. Of that report's forty-one recommendations, twenty-five are finalised. Recommendations 6, 7, 8, 10, 25 & 26 have been finalised since the last quarterly report was submitted. Recommendations 6, 7, 8, & 10 relate to Telstra's representation of its liability, and recommendations 25 & 26 concern resolution of difficult network faults. The substantive action required to progress implementation of the outstanding recommendations is being undertaken by Telstra.

Telstra is no longer required to report against recommendations 1, 4, 5, 6, 7, 8, 10, 11, 12, 16, 17, 19, 21, 23, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35 & 36, as these have either been fully implemented or the necessary action has been taken to achieve implementation. While these recommendations are regarded as being exempt from further routine reporting, AUSTEL may provide additional comment should any significant issues arise or milestones occur which concern any of these recommendations.

Yours sincerely

Cliff Mathieson  
General Manager  
Carrier Monitoring Unit

CMU/15/DK

Postal Address: P O Box 7443 St Kilda Road Melbourne Victoria 3004

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## Progress of COT Arbitrations

As discussed in previous COT Status Reports, an arbitration procedure was developed by the TIO, Telstra and four complainants described in AUSTEL's 1994 COT Cases Report as the *original* COT Cases, for these four complainants. The TIO has advised AUSTEL that the first of these arbitrations was finalised in May of this year, with the delivery of the arbitrator's award. The second and third arbitrations are expected to be completed by the end of the year. The claimant in the fourth arbitration has not yet submitted a claim.

A further Special Arbitration Procedure was developed by the TIO in mid 1994. This procedure was designed to cater for 12 further Telstra customers identified by AUSTEL as warranting special consideration and having problems similar to the original COT Cases. The TIO has advised AUSTEL that one of these customers subsequently reached a direct settlement with the carrier, and another elected not to pursue the matter further. The remaining 10 customers are involved in arbitrations, and are currently at different stages in the process of the submission of Claim, Defence and Reply Documents. Six of these arbitrations are expected to be completed early in 1996. As at November 1995 the remaining four customers had not yet submitted their claims to the Arbitrator.

The TIO has observed that the progress of arbitration for both the original four complainants and the other group involved in the Special Arbitration Procedure has been significantly hampered. The TIO attributes this to -

- delays in the provision of documentation and information by Telstra to the various customers under Freedom of Information entitlements;
- delays on the part of claimants in advancing their claims; and
- the legalistic approach adopted by Telstra in its defence against these claims.

In addition, the TIO has advised AUSTEL that there is a high degree of distrust between the parties who have rarely shifted from mutually entrenched positions, and that these factors have also had an adverse impact on the progress of the arbitrations.

Further comment is provided on arbitrations under recommendations 3 and 9.

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93/94 WRH:MYC

24th November, 1995

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

Dear Dr. Hughes,

RE: Arbitration - Golden Messengers and Telstra

We refer to your letter of 6th November last to our client and subsequent correspondence.

Our client advises that it is not in any position to advise with certainty whether or not it anticipates "a delay of considerable or indeterminate length".

The arbitration proceedings were entered into on a clearly accepted basis that Telstra would supply required documentation under FOI provisions. Our client cannot proceed without the relevant information being made available.

Without being critical of Telstra at this stage, the fact is that the material is being provided extremely slowly. The last delivery of documentation was received only this month. We are instructed that material which is well known to have existed (and presumably has not since been lost or destroyed) is still awaited.

Our client is aware of the disastrous state of affairs as to the supply of FOI documents in the recent Smith arbitration wherein documentation was supplied shortly before and after you made your decision; it does not want to be similarly disadvantaged in its own proceedings.

Your advice that you will give consideration to the question of whether the arbitration should be abandoned is noted. Our client, as we are at present advised, would not be agreeable to any such proposal.

However, if you personally find the present situation tedious and simply wish to resign as arbitrator for that or for any other reason, our client would not object, nor would it consider it would be entitled to offer objections.

Yours truly,

HUNTS'

231A

Office of Customer Affairs  
Commercial & Consumer

Level 37  
242 Exhibition Street  
Melbourne Vic. 3000

Telephone (03) 9632 7700  
Facsimile (03) 9632 3235

21 August 1995

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

By facsimile: (03) 9277 8797

Dear Sir

**Fast Track Arbitration Procedure - Alan Smith**

↘ I refer Dr Hughes' letter to you dated 21 June 1995, which enclosed a copy of a facsimile from Mr Smith to Dr Hughes dated 20 June 1995. Dr Hughes copied his letter to Telstra.

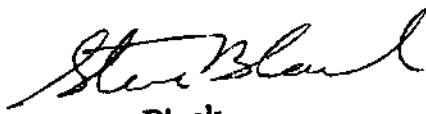
I refer also to our recent telephone conversations on this subject.

As you are aware Mr Smith alleges in the fifth paragraph of his letter of 20 June 1995 to Dr Hughes that "... the Bell Canada Testing was flawed". In support of this allegation Mr Smith refers to a letter from Telstra to Bell Canada International (BCI) dated 6 September 1994. The Telstra letter to BCI refers to the recording of an incorrect date on one test sheet and at no stage suggests or intimates in any way that the BCI results are "flawed".

I enclose a copy of the letter dated 11 August 1995 from Gerald Kealey of Bell Canada International to me which responds to Telstra's letter to BCI of 6 September 1994. That letter makes it clear that there is no question of the BCI results being "flawed" as alleged by Mr Smith.

I will have a copy of this letter forwarded to Mr Smith and trust that this will allay his concerns in relation to the BCI testing.

Yours faithfully



Steve Black  
Group General Manager  
Customer Affairs

sb-tp001.doc

231B

FAXED



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

Telecommunications  
Industry  
Ombudsman

## Facsimile Cover Sheet

TO: PLB

Company: Makers

Fax: 9617 4621

FROM: TAD

Company: TIO

Fax: 9277 8797

Date: 22.6.95

Pages: 1 (including cover sheet)

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

Kyle,

could you please have a look at Hughes' letter  
to Pinnock dated 21 June 95 re Alan Smith.

John wants to discuss it on Monday, and  
what the approach should be re parties  
seeking to revisit issues post Arb'n. His position  
is not to open the can of worms, but would  
like to discuss strategy with you.

Regards, Kai

231c

5	13 Oct 94	<p>A Telstra Whistleblower writes to the Communications Minister, alleging that Steve Black and Telstra's Rod Pollock were the two main offenders who were altering information of FOI documents legally requested by COT claimants, in an attempt to minimise Telstra's liability. In the margin of the first page of this document, someone has added a hand-written comment: <i>Warwick Smith has been critical of Pollock on same issues,</i>"</p> <p><i>E5(a)</i></p> <p>The <u>TIO File Note</u> for 14<sup>th</sup> and 16<sup>th</sup> May 1994 shows that Alan Smith warned both of them that Rod Pollock was not providing Alan with the correct FOI documentation that should have been attached to various documents Alan had requested during his time at Telstra's FOI viewing room. The TIO internal memo dated 16<sup>th</sup> May 1994, confirms Alan actually left samples of altered documents with the deputy TIO, Sue Harlow <i>E5(b)</i></p> <p>Pages 18 &amp; 19 of a thirty-two-page transcript of a Commonwealth Ombudsman interview with Graham Schorer on 23<sup>rd</sup> September 1994 confirms that Graham swore under oath that Rod Pollock had told him "Graham, my instructions are you get no documents until such time as you're fully immersed in the arbitration procedure. I said, "Whose instructions?" He said, I can't tell you that; "but I can tell you I've got instructions you won't get them until that happens <i>E5(c)</i></p> <p><i>See full transcript Relevant Information File Exhibit 11</i></p>
6	12 Dec 94	<p>Mr Black, Peter Gamble and Ray Bell (the author of the TF200 report) should have all known that the TF200 report had been manufactured and was therefore not a true account of the tests carried out on the TF200 phone that had been collected from Alan Smith's business. Mr Smith has used the original Ted Benjamin Target file (appendix 32 re naming the exhibit cover sheet as (Steve Black exhibit 6)</p> <p><i>E6</i></p>
7	12 Dec 94	<p>Mr Black, Mr Gamble and Ted Benjamin all knew that the Service Verification Tests (SVT) carried out at Alan Smith's premises on 29<sup>th</sup> September 1994 were deficient, but they still allowed the deficient SVT report to be used as defence material, covered by legally binding sworn statements. The two attached letters from AUSTEL dated 11<sup>th</sup> October and 16 November 1994, confirm the deficiencies in the SVT process <i>E7(a)</i> and <i>E7(b)</i></p> <p>Telstra Briefing B004 Paper dated 12<sup>th</sup> December 1994, confirms the SVT was used as arbitration evidence <i>E7(c)</i>. Steve Black's statutory declaration <i>E7(d)</i> confirms he stated: "...However, I have reviewed the Report and I am informed by each of the authors that the Report accurately states the facts stated in the Report".</p>
8	12 Dec 94	<p>Mr Black, Mr Gamble and Telstra's Kevin Dwyer all appear to have known that the Bell Canada International report was not a true account of the tests allegedly conducted at Cape Bridgewater in November 1993, but they still allowed the deficient report to be used as defence material.</p> <p><i>E8</i></p>
9	20 Jun 95	<p>Six weeks after his arbitration had been deemed to be completed Alan Smith advised Dr Hughes, that recently received FOI documents after his arbitration confirmed Telstra had used defence documents they knew were fundamentally flawed. In this letter Mr Smith reminds Dr Hughes that he sought this type of information from Telstra under FOI, as well as through the arbitration discovery process. The attachments accompanying Mr Smith's letter should have prompted Dr Hughes to start asking questions of Telstra. It is clear from Steve Black's letter shown below, that Mr Smith's 20<sup>th</sup> June 1995 letter was copied on to both Mr Pinnock and Telstra, for possible discussion purposes. As late as June 2007, Mr Smith has tried to access Dr Hughes' letter of 21<sup>st</sup> June 1995 letter to Mr Pinnock which was also copied to Telstra see below.</p>

		<p><b>E9(a)</b></p> <p><b>Commentary:</b>  The 21<sup>st</sup> August, 1995 letter from Steve Black to Mr Pinnock states: "<i>Dr Hughes copied his letter to Telstra</i>". The attached facsimile <b>E9(b)</b> cover sheet from the TIO's office to Peter Bartlett, discusses the 21<sup>st</sup> June letter from Dr Hughes to John Pinnock, the same letter that was also provide by Dr Hughes to Telstra. The statement on this facsimile:  "<i>...John  Wants to discuss it on Monday, and what the approach should be re parties seeking to revisit post Arb'n (Arbitration) His position is not to open the can of worms.</i>"</p> <p><b>Question</b></p> <ul style="list-style-type: none"> <li>• Why would an arbitrator who had already deliberated on a case (six weeks previously) see a need to write to the previous defendants without copying the same to the previous claimant?</li> <li>• Why has the TIO office ignored Alan Smith's request for a copy of the same letter they received from Dr Hughes as did Telstra?</li> <li>• Perhaps the contents of Dr Hughes' letter to John Pinnock and Telstra, would have opened the 'can of worms' if the Institute of Arbitrators had also been privy to Dr Hughes' letter?</li> </ul>
10	21 Aug 95	<p>Steve Black writes to John Pinnock, refuting Alan Smith's claims that the BCI tests were flawed (<u>see Dr Hughes' letter to Mr Pinnock on 21<sup>st</sup> June 1994, copied to Telstra</u> ) Mr Black's letter states that BCI "<i>...only recorded an incorrect date on one test sheet and at no stage suggests or intimates in any way that the BCI results are <u>flawed</u></i>"</p> <p>A letter dated 11<sup>th</sup> August 1995, from Gerald Kealey of Bell Canada to Mr Black is attached to Mr Black's letter to Mr Pinnock but, although it is apparently signed by Mr Kealey, it is not on a BCI letterhead. This letter was supposedly written in response to a letter from Telstra on 6<sup>th</sup> September 1994 (twelve months earlier) and although Mr Kealey states that his travel logbook records a trip from Melbourne to Portland, he does not indicate on what date that trip took place. Mr Kealey does note, however, that BCI recorded an incorrect date on 'one of the tests'.</p> <p><b>E10(a)</b></p> <p>On 27<sup>th</sup> July 2007, Alan Smith received a technical report from Brian Hodge, B Tech, MBA, of BC Telecommunications. After assessing numerous documents regarding Alan's case, Mr Hodge concludes that none of the alleged 13,000 BCI test calls shown in the BCI Cape Bridgewater Addendum Report could have terminated at the RSM/RCM at Cape Bridgewater in November 1993, because the RSM/RCM could not handle the CCS7 call trapping facility that the much-publicised BCI document reported as being the 'state-of-the-art' equipment they used.</p> <p><b>See Brian Hodge MBA Report Relevant Information File exhibit 11.</b></p> <p>On 26<sup>th</sup> September 1997, Telstra advised a number of Senator's, see Senate Hansard pages 107 to 109 attached at <b>E10(b)</b> when referring to the flawed BCI allegations that there was only a clash of one of the dates recorded in the report stating: Mr Armstrong – "<i>Yes. The basis upon which it was put that the report was fabricated was an apparent clash of dates, as I recall, with two sets of testing. This goes back a couple of years. I believe that claimants raised the matter with the TIO. Telstra went to Bell Canada and raised the clash of dates with it. As I recall, Bell Canada provided a letter saying that there was an error in the report.</i>" Senator SCHACHT – <i>Can you please provide us with a copy of that letter from Bell Canada?</i>" Mr Armstrong – "<i>I do not have it with me,</i>" Senator SCHACHT – <i>Can you get it for us?</i>" Mr Armstrong – "<i>Yes.</i>" Senator</p>



Office of Customer Affairs  
Commercial & Consumer

Level 37  
242 Exhibition Street  
Melbourne Vic. 3000

Telephone (03) 9834 2577  
Facsimile (03) 9832 3235

19 January 1996

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

**By facsimile: (03) 9614 8730**

Dear Dr. Hughes

**Schorer**

I refer to my letter of 16 January, 1996 and your direction made on 18 December 1995 which requires Telstra to make available to Golden Messenger:

*"such documentation in its possession or control which has not previously been made available to the claimant pursuant to an application under the Freedom of Information Act ["FOI Act"] and which might reasonably be considered relevant to the claim as set out in the claim documentation submitted by the claimant on an interim basis on 23 December 1994".*

I note that in your direction you have set out the parameters under which Telstra has agreed to disclose certain telephone number information. I assume that all information being made available for inspection by Golden Messenger must be used solely for the purposes connected with its claim and must be kept confidential by the claimant and his advisers and must be returned to Telstra in accordance with the *Fast Track Arbitration Procedure*. Please confirm that this is the case.

Following your direction, Telstra has conducted searches for documentation which may fall within the scope of your direction. These searches are continuing. These searches are in addition to the searches already carried out in response to various FOI Act requests by Golden Messenger.

As a result of these searches, further documentation has been located. Once this documentation has been analysed by Telstra, such of the documentation as is relevant to Golden Messenger's claim will be made available for inspection.

↓ I should note, however, that in the circumstances Telstra faces great difficulty in attempting to place practical limits on the scope of its searches. This is due both to the vague nature of Golden Messenger's claim and the wide scope of your direction, which is broadly analogous

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to a direction for Telstra to give discovery of documents, a situation which was not envisaged when the parties entered into the Fast Track Arbitration Procedure.

In this regard, I would like to make the following points:

1. A vast amount of information has already been provided to Golden Messenger under the FOI Act; approximately 66,000 pages and 45 computer disks. In processing Golden Messenger's various FOI Act requests, Telstra approached, among others, the following areas within Telstra:

Commercial Waverley  
 Commercial Area Sales Footscray  
 Commercial Queensland  
 NNI  
 Corporate Marketing  
 Commercial Waverley FM&D  
 Network Products  
 Commercial Waverley Test Centre  
 Commercial CED Heidelberg  
 Commercial Western  
 TRNS  
 Commercial Waverley Service Delivery  
 Commercial Central CED  
 Commercial  
 C&G  
 Commercial & Consumer Business, Noise Investigation  
 Service Delivery Vic/Tas Region  
 Metro West Operations  
 Heidelberg CED  
 CAN Construction & Design Melbourne Metro Region  
 Service Assurance Commercial Vic/Tas  
 C&C, Difficult Network Faults  
 Melbourne Network Operations - Exchanges  
 Network Products - Southern Region  
 Corporate Strategy  
 Board Support

Telstra is conducting a review of documents previously exempted in full under the FOI Act to determine which of these, if any, may fall within the scope of your direction. Documents exempted on the grounds of Legal Professional Privilege will not be reviewed. Telstra does not propose to review documents which have previously been released with deletions (that is, "B" documents), as those documents have clearly already been made available to Mr. Schorer. In many cases these deletions amounted to no more than the removal of 3rd party names.



2. The further searches carried out by Telstra following your direction have been restricted to:
- (1) the North Melbourne exchange building (incorporating the North Melbourne Telephone Exchange, the old North Melbourne tandem exchange and the North Melbourne ISDN node);
  - (2) the Footscray Exchange (the Footscray exchange is of particular relevance to Golden Messenger's claim because it provides the last choice routes for traffic into and out of the North Melbourne Telephone Exchange);
  - (3) the Footscray District Telstra office (at one time the administrative centre for the North Melbourne Telephone Exchange);
  - (4) the St Albans' Exchange Maintenance Group ("EMG") (the EMG responsible for the North Melbourne Telephone Exchange);
  - (5) Telstra's National Network Investigations group ("NNT"); and
  - (6) searches of various of Telstra's computer databases for information relating to the performance of the North Melbourne Telephone Exchange and the last choice routes into the North Melbourne Telephone Exchange.
3. The performance of the Inter-Exchange Network surrounding the North Melbourne exchange may, in a broad sense, be relevant to Golden Messenger's claim. The same could be said of Telstra's entire telephone network. Indeed, this appears to be Golden Messenger's intention judging by the content of its letter to you dated 22 December 1995. However, were Telstra to broaden the scope of its searches to, for example, *only* those exchanges with direct links to the North Melbourne exchange or tandem, it would need to search for documents relating to the performance of approximately 50 telephone exchanges, representing over one third of the telephone exchanges in the Melbourne metropolitan area. This would require a very large diversion of resources and would inevitably result in further long delays in the progress of this arbitration (in Telstra's estimate, thousands of hours of effort). Further, in Telstra's view, such searches would be highly unlikely to uncover any information which would, in a practical sense, materially alter the picture created by the documents which either have or will be made available to Golden Messenger.

#### Relevant classes of documents

Those classes of documents which, in Telstra's view, are likely to be of significance in this arbitration are set out here:

1. LEOPARD, which is a database tracking complaints to 1100 or 132999 operators concerning Mr Schorer's service. Those reports classified by operators as *Trouble Reports* (that is, which are considered to relate to faults which are likely to affect individual customers) are archived to MAPS; those classified as *Technical Assistance*

*Reports* (that is, which are considered to relate to faults which are likely to affect many customers) are archived to GAPS or, more recently, NSQSS.


2. Service Plus (a database performing a similar function, set up for use by business customers. Reports entered into Service Plus *via* 132999).
3. RASS (a similar database, intended to track complaints relating to special services - in Mr Schorer's case, ISDN services).
4. Documents created by Paul Killeen and other employees within the National Network Investigations group, including personal diaries, file notes, internal memoranda, letters and an extensive technical report on the performance of the North Melbourne Exchange, produced following lengthy investigations over a six month period in 1989.
5. Documents, including file notes, letters and internal memoranda created by customer service staff and managers.
6. Exchange trunking diagrams showing the configuration of the North Melbourne Telephone Exchange and surrounding Inter-Exchange Network at various points in time.
7. Exchange diaries indicating work performed on the North Melbourne Telephone Exchange equipment.
8. Details concerning complaints by all customers connected to the North Melbourne Exchange, extracted from the computer databases MAPS, GAPS and NSQSS;
9. Fault dockets, showing investigations by exchange technicians (whether referred to the exchange following a LEOPARD or Service Plus report or comprising a special investigation) and exchange clearances ;
10. Traffic information relating to routes into the North Melbourne Exchange and Tandem, sourced from various computer databases (RUBAS, TROB and ROMANS).
11. Exchange Maintenance Group ("EMG") reports, being management reports containing information relating to the performance of exchanges within the relevant EMG.
12. North Melbourne Telephone Exchange logbooks of Traffic Route Testing ("TRT") runs into the North Melbourne Exchange.

Some documents falling within these classes have already been provided under the FOI Act. Further documents will shortly be made available pursuant to your direction. Telstra is making all reasonable efforts to locate such documentation as may exist which falls within any of these categories. However, it is clear from searches carried out and documentation located to date that Telstra retains very few *manual records* relevant to Golden Messenger's claim for the period *pre* 1985, and virtually no relevant computer records for the period *pre* 1991.

\* \* \*

In the circumstances, Telstra submits that the provision by it of such documentation as may exist which falls within any of the categories numbered 1 to 12 under the heading "Relevant classes of documents" above satisfies your direction made on 18 December, 1995. If you do not agree with this approach then I suggest that the best way forward would be to discuss Telstra's approach to the provision of documentation at the directions hearing on 5 February 1996. It may be beneficial if the technical resource unit were also able to attend to assist in the discussion of these matters.

Yours faithfully



**Ted Benjamin**  
Group Manager  
Customer Affairs


cc: Mr John Pinnock, TIO  
By facsimile: (03) 9277 8797

Mr Graham Schorer  
By facsimile: (03) 9287 7099

Melbourne area, there is no such requirement for STD codes. [Ref: J05767 to J05770]

- d. **Exchange Faults:** two complaints for which exchange equipment was determined as the cause. Both of these complaints were caused by incorrect exchange data. (see explanations below)

**1.4.1.1. Network and Exchange Faults**

1. Details of the two exchange faults identified as a result of the Claimants' complaints are outlined below.
2. The first exchange fault occurred with the cutover of (03) 329 from ARE-11 (NMEL) to System12 (NMEE) on 11 April 1995, where the omission of specific exchange data did not allow the Claimants' to make outgoing STD calls during the actual cutover, accounted for one complaint. This was reported at 12 noon and rectified in the afternoon of the same day of the complaint. The effect to the Claimants' was negligible, as no incoming traffic, or local outgoing calls were affected, only outgoing STD calls were affected. This fault had no effect on the Claimants' ISDN service which was their primary service for incoming calls [Ref: A46746 & A46729].
3. The second exchange fault occurred as a result of an error in routing data loaded into and activated in Lonsdale AXE Telephone Exchange (LONU) on 10 October 1995. Under limited conditions and only from certain origins, callers to one hundred group (03) 9287 70xx (of the four one hundred groups) allocated to the Claimants' ISDN service would incorrectly receive an RVA message. The Claimants' ISDN service was connected to North Melbourne ISDN Telephone Exchange (NMEX). The data error was corrected on 23 January 1996. A detailed analysis of the impact of this fault is set out below.
4.  From 10 October 1995 customers whose services were directly connected to LONU exchange would incorrectly receive a RVA when calling (03) 9287 70xx (8 digit dialling). Customers connected to North Melbourne System-12 exchange (NMEE) would incorrectly receive the RVA on 50% of call attempts to (03) 9287 70xx as calls from NMEE to NMEX were trunked on a 50/50 basis via LONU and North Melbourne AXE Telephone Exchange (NMEA).
5. Calls from LONU and NMEE made to (03) 297 70xx (7 digit dialling) were not effected until 13 December 1995. [Ref: J06242 & J06243 & J06164 to J06181]
6. The implementation of a further data change (associated with AUSTEL Numbering Plan) in LONU on 13 December 1995 compounded the problem, in that callers from LONU and NMEE incorrectly received an RVA 100% and 50% of calls respectively to (03) 297 70xx.
7. Network routing of a small number of exchanges utilised LONU exchange to switch calls to NMEX only under overflow conditions. For the duration the data error only 2 calls destined for NMEX overflowed through LONU.
8. Traffic Observation data available for the codes (03) 286 & 287 xxxx and (03) 9286 & 9287 xxxx shows that the percentage of callers dialling new 8 digit codes was less than 20% in October 1995 and less than 50% in December 1995.

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noticeably, in fact he "needs the half installed computer system to manage the work".  
[Ref: J05777 to J05778]

8. On 31 October 1995 Mr Benjamin wrote to Mr Schorer in relation to the introduction of the AUSTEL Numbering Plan and eight digit numbers. Mr Benjamin advised that the 6 month period of dual numbers was about to end, and progressively from November 1995 callers failing to dial 9 as the first digit of a telephone number will not be able to successfully complete their call. He noted that some of the Claimants' vehicles still did not have the 9 included in the advertised number and this may cause difficulties for some of his customers. [Ref: J05780]

9. On 19 January 1996 the Claimants' complained that at 4:30pm they attempted to ring their own (03) 9287 7000 number following a clients complaint of receiving RVA intermittently. The fault was traced to incorrect data at LONU exchange on 10 October 1995. [Ref: J05771 to J05774]

A detailed analysis of this fault is provided in 'Investigations, Analysis and Supportive Data'. The estimation of the impact of this fault to the Claimants' ISDN service is:

- a. for 10 October to 12 December 1995, approximately 0.12% call loss from the Melbourne (03) network attempting to call the Claimants' ISDN services; and  
for 13 December 1995 to 23 January 1996, 0.23% call loss from the Melbourne (03) network attempting to call the Claimants' ISDN services.

Therefore the data error in Lonsdale had negligible effect on call delivery to the Claimants' ISDN services and no effect to their PSTN services. The Claimants' outgoing calls were not affected.

See 'Investigations, Analysis and Supportive Data' for full details.

10. On 22 January 1996 the Claimants' complained that while attempting to dial (055) 267 xxx and received (03) 905 5xxx. The Claimants' apparently dialled '9' in front of the 055 prefix. The Claimants' therefore, received (03) 905 5xxx which is an extension off another customers' PABX. A test call performing the same dialling error was answered by the same customer. Data at NMEE exchange was verified as being correct for the code (055). It apparent that this complaint was most likely due to the Claimants' mis-dialling. [Ref: J05767 to J05770]
11. On 11 March 1996 the Claimants' complained of receiving 3 different recorded voice announcements (RVA's) when calling mobile numbers 019 925 xxx and 041xxxxx. The Claimants' advised of the exchange code heard at the end of the RVA's. The exchange code given appeared to be a Mobile Network exchange. Clear codes indicate that the fault existed in privately maintained equipment. [Ref: J05314 to J05315 & J05137 to J05141]
12. On 11 April 1996, as requested by the Claimants', Telstra cutover 8 of the Claimants' PSTN lines from NMEE to NMEK and cancelled the remaining 29 PSTN lines (Telstra's records indicate 4 of these lines are not the Claimants' services). A personalised RVA (Messagebank) was placed on the Claimants' cancelled directory lines. The cutover was originally planned for 3 April 1996.

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- On 14 August 1991, in response to complaints of Smith's line being engaged, Telecom checked the traffic on the Inter Exchange Circuits (IEN) connecting Portland to Cape Bridgewater. It was discovered that between 7.30pm and 8.00pm all five circuits in the Portland to Cape Bridgewater direction were busy (reference document 5.08). Therefore non-local incoming callers to Cape Bridgewater at this time would have received congestion tone. Customers often have difficulty differentiating between congestion tone and busy tone as they are very similar. Smith's complaints that his line was engaged when he was not on the telephone may have resulted from a misunderstanding of the engaged and congestion tones.

Such congestion could account for the busy and unable to contact type complaints made by Smith in Period A.

A small level of congestion is a normal part of the operation of a telephone network at peak calling times. Because Cape Bridgewater is a rural area telephone traffic peaks after 6:00 pm when farmers have finished their work (reference document witness statement of Gordon Stokes). Some congestion had been observed at Cape Bridgewater through the monitoring of traffic to Cape Bridgewater. An upgrade of the Cape Bridgewater RAX to RCM on 21 August 1991 removed the chance of any peak period congestion between Portland and Cape Bridgewater.

**Conclusion** - The complaint was considered to be due to network congestion which occurred intermittently during high peak periods of traffic. There was no problem with Smith's service.

• **MELU - 4 March 1992**

In March 1992 a condition was located through Telecom's investigations in response to RVA complaint reports made to 1100 in relation to Smith's service (on 16 & 17 March 1992) and the service of two other customers at Cape Bridgewater (055 267 203 on 4 March 1992 and 055 267 252 on 10 March 1992). Telecom investigated these complaints and located a data entry error at its MELU Windsor Trunk Exchange ("MELU").

The error was made on 4 March 1992 and was located by test calls that were made by staff at Telecom's Lonsdale exchange. This problem was corrected on 19 March 1992 (reference document 5.14). Accordingly, the MELU problem existed between 4 March and 19 March 1992 (reference document 5.15). Whilst it was initially thought that the problem may have existed for a 6 week period, subsequent investigations confirmed its existence for a total of 16 days (refer witness statement of Hew Macintosh and David Stockdale).

assumed that this analysis was used as the basis for the letter to Smith of 24 November 1992 which stated that this problem had occurred 'for a period of up to 3 weeks.'

- 100 On 5 February 1993 the Manager - National Network Investigations (Melbourne) produced another report on the issues of RVA and NRR from the Cape Bridgewater Holiday Camp. This report was distributed to other National Network Investigations Managers, to the Manager - Tas/Vic Commercial Business, Commercial & Consumer Business, and to the Manager Warmambool Operations Management Group. In regard to the MELU RVA error, this report stated:

↘ *An exact period that this data error was effective for is difficult to obtain but analysis of MELU information indicates that the data change was in place for approximately 6 weeks.*<sup>48</sup> ↙

- 101 In mid 1993 a briefcase containing file information was inadvertently left at Mr Smith's premises during a visit by Telecom National Networks Investigation personnel, and Mr Smith subsequently viewed the contents of his file, which contained the 5 February 1993 report. Mr Smith noticed the discrepancy in the duration of the MELU RVA problem, and alleged to AUSTEL that he had been mis-advised on this issue by Telecom. Telecom responded to AUSTEL stating that the 6 week period identified in this report was an error, and that the earlier 3 week estimate was correct.<sup>49</sup>
- 102 AUSTEL has also viewed some documentation relating to the period the data error at MELU was causing RVA on calls to Cape Bridgewater. The circumstantial evidence indicates the problem may have occurred for only 3 weeks, but no precise or definitive duration of the problem can be ascertained from the available data. A more accurate assessment of the duration of the problem would

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<sup>46</sup>30

<sup>47</sup> 694 - Hew Macintosh for Manager - NNI - 28 August 1993

<sup>48</sup> NNI file - front page

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undoubtedly have been assisted by a much earlier examination of the problem.<sup>50</sup>

103 It is apparent from Telecom's documentation that no investigation of the duration of the MELU data error problem would have been initiated without the persistence of Mr Smith's complaints on the matter. It also follows that no investigation was intended into the circumstances which led to the error occurring. The lack of this process raises serious questions about Telecom's ability to ensure such errors are not repeated.

104 The assessment provided to Mr Smith that up to 50% of STD calls from Melbourne to the Cape Bridgewater Holiday Camp would have been affected by the MELU RVA problem appears to be accurate.

### **Conclusion**

105 The advise provided to Mr Smith on matters relating to the RVA message caused by the data error at MELU was inadequate. The impression conveyed by Telecom's letter of 24 November 1992 to Mr Smith was that Telecom was certain of the maximum duration of the RVA problem, a certainty which is not conveyed by internal communications on the matter. It should be noted that the original advice provided to Mr Smith must be assessed in the context that Mr Smith had submitted a claim for compensation.

106 Telecom also failed to investigate the cause of the MELU RVA within a timeframe which would have assisted a more precise identification of the duration of the RVA problem. This was a failure to initially treat this issue with sufficient gravity.

### **RVA Problem for calls made from Public Payphones**

107 Complaints of RVA have been received from callers using public payphones trying to contact the Cape Bridgewater Holiday Camp.<sup>51</sup>

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<sup>49</sup>Need to identify document which makes this claim

<sup>50</sup>Documentation shown and discussed with Cliff Mathieson on 17/2/94.

<sup>51</sup>see 18a - Macintosh to Exchange Managers.

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Internal Memo



To As listed

Network Operations  
Central Area

From Alan Humrich  
General Manager

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

Subject REQUEST FOR TELECOM RECORDS

Telephone 07 837 3212

Facsimile 07 236 4247

Date 21 January 1994

Attention *2511* Ross Marshall - National General Manager, Network Operations  
Rick Barry - A/General Manager, Network Operations Eastern Area  
John Seamons - National Manager, Network Performance  
Ian Comport - National Manager, Operations Processes & Support  
Les Chamberlain - Network Operations Manager, Metro Brisbane  
Greg Bannister - Chief Engineer, Multiplex & Transmission Technology

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

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

*Simon Chalmers - Freehill Hollingdale & Page (Mr C. Dobby West/2) (Mr P. Lewis Melbourne)*

*Simon Chalmers*  
*Referred for your attention etc.*

**233F**

*[Signature]* 23/1/94

R15696



**Customer Response Unit  
Commercial & Consumer**

Level 37  
242 Exhibition Street  
Melbourne Vic. 3000

Telephone (03) 634 2977  
Facsimile (03) 632 3235

25 January, 1996

Mr Graham Schorer  
GM (Melbourne) Holdings Pty Ltd  
493-495 Queensbury Street  
NORTH MELBOURNE VIC 3051

By facsimile: (03) 287 7001

Dear Sir

#### **Golden Messenger - Arbitration**

I refer to Telstra's letter of 31 January, 1995 to the Arbitrator, Dr Gordon Hughes, which enclosed Telstra's proposed Request for Production Documents and proposed Request for Further Particulars.

Telstra wishes to raise with you an issue in relation to documents and believes that an agreement from you on this issue will assist in expediting this arbitration.

At paragraph 16 of the Claimants' Statement of Claim, the Claimants state that they purchased from Honeywell Australia an AT&T Definity Computerised Telephone and Call Centre Management System for the purpose of allowing the Claimants to be connected to the Telstra Australia ISDN Network. I shall refer to this system as the PABX in this letter.

At paragraph 17 the Claimants state that their business was connected to the Telstra Australia ISDN Network in December 1993 by Telstra Australia, but the service difficulties, problems and faults previously experienced still continued.

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Telstra understands that the PABX generates reports at the premises at which it is located and also generates reports which are sent to or generated at the premises of the company responsible for servicing that PABX. Those reports are relevant to this Arbitration to enable Telstra to distinguish between the telephone service difficulties, problems and faults attributable to the CPE, CAN and Network and misoperations by the Claimants. Indeed these documents are requested at paragraph 7 (g) and (h) of Telstra's proposed Request for Production of Documents forwarded to the Arbitrator, Dr Hughes, under cover of Telstra's letter of 31 January 1995. Dr Hughes subsequently forwarded a copy of this proposed Request onto you. It would assist Telstra in the investigations it is presently carrying out if you, Honeywell and AT&T would provide those documents at this time. In the circumstances Telstra asks that you provide copies of those reports in your possession to Telstra and further that you instruct AT&T and Honeywell that it is in order for Telstra to contact each of those companies to request copies of those reports.

I look forward to hearing from you as to the above matters.

Yours faithfully



Ted Benjamin  
Group Manager  
Customer Affairs

9632.7700

9634 2977

cc: Mr John Pincock, TIO  
By facsimile: (03) 9277 8797

Dr Gordon Hughes, Arbitrator  
By facsimile: (03) 9614 8730

types

2nd February, 1996

FILE NOTE: COT CASES

On Wednesday, 31st January phoning Mr. Bongiorno's office leaving message. On Thursday, 1st February attending Mr. Bongiorno who rang with identification of the case Conlan v. Landsworth re. Copsey's Carlton Inn Hotel reported 1970 Law Reports on page 293. There was a decision on the question of discovery apart from the case itself as a whole. The ruling on discovery was apparently made on the 17th or 18th June, 1969. Copy judgments can be found in the Supreme Court library.

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Memo: WRH  
From: M. Burge

Research - Cases relating to Legal Prof 1st February, 1996  
privilege - ~~The Fraud and Illegal Purpose Exception~~

Wilson J - "generally speaking the public interest in the protection of alleged confidential professional communication will not be outweighed by the public interest in ensuring that all relevant evidence is admissible save when the professional relation is abused in a manner involving dishonesty that goes to the heart of the relationship".

A.G. (NT) v. Kearney (1985) 158 CLR500  
Majority - Gibbs, Mason, Wilson, Brennan J.J.

nb This case related to an abuse of regulation making power.

The following two cases were cited in the case above.

"I agree that fraud in this connection isn't limited to the tort of deceit and includes all forms of fraud and dishonesty such as fraudulent breach of trust, fraudulent conspiracy, trickery and sham contrivances.

Crescent Farm Sports v. Sterling Offices [1972] Ch. 553  
Goff J. p.565

The existence of an illegal purpose would prevent any privilege attaching to the communication...the contriving of a fraud is no part of his duty as a solicitor to advise his client as to the means of evading the law.

Russell v. Jackson (1851) 9 Hare 387 at 392-3  
68 ER 558 at 560

File: G Schorer / Telecom  
C.O.T.

Margaret Burge

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is made is required, but not such that the opponent may discover the contents of the document.

WATER AUTHORITY OF WESTERN AUSTRALIA v AIL HOLDINGS PTY LTD (1991) 7 WAR 135 (WA Sup Ct, Acting Master Adams).



4126. Government communications to obtain legal advice — [Improper use of regulation-making power alleged.] — Held, that where there was *prima facie* evidence that a government's communications with its legal advisers came into being as part of a plan to defeat the interests of a class by deliberately using regulation-making power for a purpose outside the enabling Act, sufficient colour existed to displace the usual privilege attaching to the professional legal advice.

((1984) 3 FCR 534; 55 ALR 545 affd.)

A-G (NT) v KEARNEY (1985) 158 CLR 500; 59 ALJR 749; 61 ALR 55 (HC).

4127. Statute abrogating claim.] — Two firms of solicitors were served orders to produce certain documents belonging to L. The documents were described as "property-tracking documents" as defined by the *Drug Trafficking (Civil Proceedings) Act 1990* (NSW). Both firms resisted the order claiming legal professional privilege but delivered the documents to the Law Society pending the resolution of the matter. Held: (1) Section 35(1)(b) of the *Drug Trafficking (Civil Proceedings) Act 1990* (NSW) does not apply to the position of the solicitor's client. However, it is directed at persons who have an obligation not to disclose the existence or contents of a document and applies to persons such as solicitors, accountants and others who are bound by professional codes of ethics to keep secret their client's documentation. (2) Section 35(1)(b) does abrogate a claim that a solicitor is not required to produce documents held by the solicitor on the ground of legal professional privilege.

STATE DRUG CRIME COMMISSION v LARSSON (1991) 53 A Crim R 131 (NSW Sup Ct, Newman J).

4128. Document prepared by agent or representative of party — [For advice as to possible litigation.] — Held: (1) In an action by an insured, being conducted on its behalf by an insurer pursuant to a right of

subrogation, loss assessors who provided reports to the insurer were in the position of agents of the insured. (2) A report by the loss assessors addressed to a solicitor but forwarded to the insurer was properly privileged as being a communication to the solicitor for the purpose of securing advice as to possible litigation. (3) The critical question was not the subsequent use of the report but the purpose for which it was brought into existence.

LEADER WESTERNPORT PRINTING PTY LTD (T/A WAVERLEY OFFSET PUBLISHING GROUP) v IPD INSTANT & DUPLICATING PTY LTD (1988) 5 ANZ Insurance Cases 75,364 (Vic Sup Ct, Gobbo J).

4129. —.] — Held, that documents prepared by agents or representatives of a party are subject to the "sole purpose test" in order to qualify for legal professional privilege, namely, was the confidential communication created or made solely for the purpose of submission to legal advisers for advice, or for use in legal proceedings.

NICKMAR PTY LTD v PRESERVATRICE SKANDIA INSURANCE LTD (1985) 3 NSWLR 44 (NSW Sup Ct, Wood J).

4130. Document prepared by third party.] — Held: (1) Legal professional privilege only attaches to documents prepared by third parties (not being servants or employees of the entity called upon to produce the documents) when they are prepared for or in contemplation of litigation or for the purpose of giving advice or obtaining evidence with reference to such litigation. (2) Documents obtained from third parties (eg investigators or experts) who are retained by solicitors, on the explicit instructions of a client, will be subject to legal professional privilege if the information can properly be regarded as collected and communicated confidentially on behalf of the client to its legal adviser, in the character, and for the purpose, of obtaining legal advice.

NICKMAR PTY LTD v PRESERVATRICE SKANDIA INSURANCE LTD (1985) 3 NSWLR 44 (NSW Sup Ct, Wood J).

4131. Statements obtained by plaintiff's solicitor from defendant's insured.] — The solicitors acting for the plaintiff in claims for damages for personal injuries arising out

16th February, 1996

RE: SCHORER & COT CASES

On 16th February attending Amanda Davis who rang on the suggestion of Schorer. She told me she had complained in effect to Bartlett of the legal support team to Hughes that the administrator (the Telecom Ombudsman's department) had been pressurising Hughes to produce results and get on with the matter generally. She was putting it to Bartlett that any pressure on Hughes should be related to getting Telecom to produce results and not just to wind the matter up. ✓

The impression I got was that Bartlett's view was that the administrator had to keep out of the rights and wrongs of the disputation between the parties to the arbitration. He was concerned with process and not with the matters of contest. ✓

In general terms Amanda Davis said her client Maureen Gillam was in the same boat as Schorer.

After lengthy discussion in terms of generalities mostly the point that it was not a battle between class that this was an unusual case in that all the proof of the claimant's case was within the documentation that ought to be there with Telecom and was not being produced.

She was certain that the parties in Telecom had convinced themselves that they were the subject of unreasonable demands by parties who had lost touch with reality.

One thing she did say is worth following up and that is that Telecom's defence in general terms is related to material that is put together after the event whereas the claimants have (or in Schorer's case ought to have available) documentation and records put together at the time and which ought to be given its proper weights even though item by item it may not be conclusive.

I suggested to Davis that she get her client the subject of a Section 9 in some way or other under the Ombudsman's Act and that in consequence we could then make a common cause to try and get an investigator put there by the Ombudsman to look for what must be there which will either prove that Telecom is right or that we are in each case.

On 15th February Schorer rang me and told me he was at the stage where he would have to put the whole thing on hold because he could not continue on. He had to attend to his business and he would need to concentrate on getting the costs paid as directed by the original Ombudsman.

WRH

5-4-1996  
A x JLA  
date received

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TRANSPORT & LOGISTICS  
UNION REPRESENTATIVES  
WATER

40 MARKET STREET  
MELBOURNE VIC 3000

FURTHER ADDRESS  
GPO BOX 7440  
MELBOURNE VIC 3001  
AUSTRALIA  
TICK 704 MELBOURNE

TELEPHONE (03) 617 4617  
INTERNATIONAL +61 3 617 4617  
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STANDARD BANK

(03) 617 4623  
28 April 1995

## STRICTLY CONFIDENTIAL

Mr Warwick J. Smith  
Telecommunications  
Industry Ombudsman  
Box 18098  
Collins Street East  
MELBOURNE 3000

Dear Warwick

Fast Track Arbitration - Smith

Further to our recent discussion, it seems to me that we should put to Gordon Hughes that we expect his Award to be made prior to his departure on 12 May 1995.

Attached is a draft letter to Gordon. It is in reasonably harsh terms.

Could you please consider whether a letter in this form or an amended form, should go to Gordon.

Regards

Peter L. Bartlett

enc.

1/p10511004

MELBOURNE SYDNEY BRISBANE CANBERRA GOLD COAST LONDON HONG KONG BEIJING  
ASSOCIATED OFFICES ADELAIDE PERTH AUCKLAND WELLINGTON JAKARTA SINGAPORE

# 236B



↑

**DRAFT**

↓

28 April 1995

Dr Gordon Hughes  
Hunt & Hunt  
Solicitors  
GPO Box 1533N  
MELBOURNE VIC 3000

By Facsimile: 614 8730

Dear Gordon

Fast Track Arbitration - Smith

I am becoming increasingly concerned at the delays in the finalisation of this matter.

The Resource Unit tells me that it expects its technical and financial reports to the Arbitrator will be released today to the parties. The parties will then of course have the right to a reasonable period within which to comment on these reports. The extent of this period would of course be in your discretion.

However, I understand you are to present a paper in Greece in mid May.

I would expect the Award would be delivered prior to your departure.

It would be unacceptable to contemplate the delivery of the Award being delayed until after your return.

Could you please contact me to discuss.

Yours sincerely

**DRAFT**  
Warwick L. Smith  
Ombudsman

236c



Office of Customer Affairs  
Commercial & Consumer

Level 37  
242 Exhibition Street  
Melbourne Vic. 3000

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

20 February 1996

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

By facsimile: (03) 9617 9299

Dear Dr Hughes

Re: Schorer

I refer to your letter dated 5 February 1996, and in particular to your direction that Telstra produce a list of exchanges directly linked into the North Melbourne exchanges. I apologise for the delay in responding to that request.

In relation to your direction I confirm that the number of exchanges directly linked into one or other of the exchanges to which the claimant was connected varied significantly from time to time during the period of the Interim Statement of Claim (the "Interim Claim"). These variations reflect the dynamic nature of the network generally as constant changes are being made as a result of the identified growth and traffic pattern changes that are occurring.

As at June 1987 Telstra's records indicate there were 48 exchanges with a significant number of circuits linking directly into the North Melbourne Analogue Terminal Exchange (ARE 11). This figure was referred to by me in Telstra's letter to you dated 19 January, 1996 and at the recent directions hearing for illustrative purposes.

The list does not represent all those exchanges which, at that time, trunked directly into the North Melbourne Analogue Terminal Exchange. Consequently, for the sake of completeness I have enclosed two lists of exchanges, one setting out the 48 exchanges with a significant number of circuits linking into the North Melbourne Analogue Terminal Exchange, the other setting out those exchanges with only a small number (less than seven (7)) of circuits linking directly into the North Melbourne Analogue Terminal Exchange.

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Telstra Corporation Limited  
ACN 051 776 688

In order to progress this matter without unnecessary delay Telstra looks forward to the receipt of Mr Schorer's map as required by your second direction.

Yours faithfully



**Ted Benjamin**  
Group Manager  
Customer Affairs

Encl:

cc: Mr John Finnock, TIO  
By facsimile: (03) 9277 8797

Mr Chalran Schorer  
By facsimile: (03) 9287 7099

TE-CH/2ALDC

237

**Telstra Confidential**  
List of 48 Exchanges ' 87

I.R.D	EXCHANGE
LONH	Lonsdale Central Y
MELB	Melbourne 2
NMES	Nth Melbourne Y1
HAWB	Hawthorn BY
NMES	Nth Melbourne Y2
WIRP	Windsor BY
CTON	Carlton
SMEL	Sth Melbourne
NCOT	Northcote BY
LONS	Lonsdale
BATX	Batman
EXDN	Russell/Exhibition
EXHN	Exhibition
FTON	Flemington
HGTT	Highbury
MELE	Melbourne 4
NCOE	Northcote
MLND	Moresland
CWOD	Collingwood
CLAY	Clayton
SUNS	Sunshine
WIRE	Windsor
SYRA	Sth Yarra
FSRY	Footscray
BKLN	Brooklyn
TNBY	Tullamarine
BRUK	Brunswick
FKNK	Fawkner
RCMD	Richmond
GNRY	Glenroy
TMNE	Tullamarine
SPLE	Springvale
STKA	St Kilda
ASCT	Ascot
WIRC	Windsor
SALB	St Albans
BLBN	Blackburn
RUSB	Russell
TRAK	Toorak
CBRG	Coburg
NESS	Nth Essendon
OAKL	Oakleigh
BDWS	Broadmeadows
EXBN	Exhibition
MDST	Maidstone
TYHO	Tully Ho
DAND	Dandenong
NIPT	Newport

**Telstra Confidential**  
**List of Remaining Routes '87**

LRD	EXCHANGE
PMEL	Port Melbourne
IIDBG	Heidelberg
PRTN	Preston
CRBY	Canterbury
BOXL	Box Hill
THTN	Thomastown
BAYR	Bayswater
CAUL	Canfield
MDST	Maidstone
WHLL	Wheeler's Hill
GBRI	Greensborough
ELSK	Elsternwick
MALV	Malvern
MITM	Mitcham
MLOC	Mordialloc
CTAM	Cheltenham
CMLL	Cammerwell
IVAN	Ivanhoe
KEWE	Kew
WESS	West Essendon
MLND	Moreland
WTON	Williamstown
ALTA	Altona
LVIN	Laverton
EWOD	Elwood
BATM	Batman
WERF	Werribee
HAWN	Hewthorn
RSVR	Reservoir
BURW	Burwood
DPRK	Deer Park
ELTM	Eitham
CSEA	Chelsea
RGON	Brighton
RWOD	Ringwood
BUEN	Bulleen
DNCT	Duncaster East
WRNA	Wantirna
KLOR	Keilor
SMRG	Stn Morang
EPPG	Epping
KEYS	Keyborough
HETH	Heatherton
SNDM	Sandringham
MLON	Melton
HEWS	Hewish
LILY	Lilydale
SUNB	Sunbury
TNTT	Tarnan
FTGY	Ferntree Gully
DONC	Duncaster

**Telstra Confidential**  
**List of Remaining Routes: R7**

SEAF	Seaford
KEWE	Kew
MELC	Melbourne 3
NMES	Nth Melbourne X
WIRP	Windsor AY
BATX	Batman
RUSS	Russell
CTWB	City West
BATM	Batman
NMET	Nth Melbourne L11
EXBN	Exhibition
NCOT	Northcote AY
LONA	Lonsdale O.W.N.
CROX	Croydon Y1
DANC	Dandenong Y
KYNG	Kooyong
BRUX	Brunswick
FTGC	Fern Tree Gully Y1
FRTD	Frankston Y
HILL	Hartwell
BKEW	East Kew

noticeably, in fact he "needs the half installed computer system to manage the work".  
[Ref: J05777 to J05778]

8. On 31 October 1995 Mr Benjamin wrote to Mr Schorer in relation to the introduction of the AUSTEL Numbering Plan and eight digit numbers. Mr Benjamin advised that the 6 month period of dual numbers was about to end, and progressively from November 1995 callers failing to dial 9 as the first digit of a telephone number will not be able to successfully complete their call. He noted that some of the Claimants' vehicles still did not have the 9 included in the advertised number and this may cause difficulties for some of his customers. [Ref: J05780]
9. On 19 January 1996 the Claimants' complained that at 4:30pm they attempted to ring their own (03) 9287 7000 number following a clients complaint of receiving RVA intermittently. The fault was traced to incorrect data at LONU exchange on 10 October 1995. [Ref: J05771 to J05774]

A detailed analysis of this fault is provided in 'Investigations, Analysis and Supportive Data'. The estimation of the impact of this fault to the Claimants' ISDN service is:

- a. for 10 October to 12 December 1995, approximately 0.12% call loss from the Melbourne (03) network attempting to call the Claimants' ISDN services; and  
for 13 December 1995 to 23 January 1996, 0.23% call loss from the Melbourne (03) network attempting to call the Claimants' ISDN services.

Therefore the data error in Lonsdale had negligible effect on call delivery to the Claimants' ISDN services and no effect to their PSTN services. The Claimants' outgoing calls were not affected.

See 'Investigations, Analysis and Supportive Data' for full details.

10. On 22 January 1996 the Claimants' complained that while attempting to dial (055) 267 xxx and received (03) 905 5xxx. The Claimants' apparently dialled '9' in front of the 055 prefix. The Claimants' therefore, received (03) 905 5xxx which is an extension off another customers' PABX. A test call performing the same dialling error was answered by the same customer. Data at NMEE exchange was verified as being correct for the code (055). It apparent that this complaint was most likely due to the Claimants' mis-dialling. [Ref: J05767 to J05770]
11. On 11 March 1996 the Claimants' complained of receiving 3 different recorded voice announcements (RVA's) when calling mobile numbers 019 925 xxx and 041xxxxx. The Claimants' advised of the exchange code heard at the end of the RVA's. The exchange code given appeared to be a Mobile Network exchange. Clear codes indicate that the fault existed in privately maintained equipment. [Ref: J05314 to J05315 & J05137 to J05141]
12. On 11 April 1996, as requested by the Claimants', Telstra cutover 8 of the Claimants' PSTN lines from NMEE to NMEK and cancelled the remaining 29 PSTN lines (Telstra's records indicate 4 of these lines are not the Claimants' services). A personalised RVA (Messagebank) was placed on the Claimants' cancelled directory lines. The cutover was originally planned for 3 April 1996.

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## FERRIER HODGSON CORPORATE ADVISORY

**FACSIMILE TRANSMISSION**

**ATTENTION:** Dr Gordon Hughes

**DATE:** 18 March, 1996

**COMPANY:** Hunt & Hunt

**FAX:** 9617-9299

**FROM:** Oren Zohar

**PAGES:** 1

Dear Gordon

**RE: SCHORER AND TELSTRA / SCHEDULING OF MEETINGS**

I refer to your recent correspondence to the parties (dated 8 March 1996) and your request that I make arrangements for the necessary informal meetings and subsequent directions hearing.

Telstra has proposed that the meetings be held on Monday, Wednesday and Friday of the week commencing 25 March 1996. Graham Schorer has yet to confirm whether these dates are acceptable and he has advised that he will contact me once he has spoken with George Close and his solicitor, Bill Hunt.

I kindly request that you ask Caroline to confirm whether your boardroom facilities are able to be used on the proposed dates as the venue.

Graham Schorer has also requested that I relay to you the following issues which he would like addressed prior to the proposed meetings.

1. That you be present at all meetings, including the proposed informal meetings.
2. That all meetings (including informal meetings) be transcribed.
3. That a copy of a resume/curriculum vitae for Doug Grady of Lane Telecommunications be provided, in the event that Mr Grady attends the proposed meetings with Andrew Crouch.
4. The involvement of staff from Lane Telecommunications other than David Read.

I have suggested to Graham Schorer that he may wish to put his concerns to you in writing or to contact you directly to discuss these matters. If we can be of assistance, please do not hesitate to contact either Susan (who is back on board as of today) or myself.

Regards,

Oren Zohar

MATERIAL IN THIS TRANSMISSION IS CONFIDENTIAL.  
NO CONFIDENTIALITY IS WANTED, LOST, STOLEN OR DESTROYED BY REASON THAT THIS FAX HAS BEEN MISTAKENLY TRANSMITTED.

**FERRIER HODGSON CORPORATE ADVISORY (VIC) PTY LTD**

A.C.N. 052 403 040 LICENSED INVESTMENT ADVISER

EXECUTIVE DIRECTORS: DOUG CARLSON, JOHN SELAK

LEVEL 25 140 WILLIAM STREET MELBOURNE VICTORIA 3000  
TELEPHONE 03 9602 3661 FACSIMILE 03 9642 8361

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18/03/96

239



Rec'd  
4:55 PM  
21/3/96



# Hunt & Hunt LAWYERS

66

21 March 1996

Our Ref: GLH

Matter No: 5126900

Ms S Hodgkinson  
Ferrier Hodgson Corporate Advisory  
Level 25, 140 William Street  
MELBOURNE Vic 3000

**Partners**  
David M. Scarlett  
Edward S. Boyce  
James G.F. Harrowell  
Gordon L. Hughes  
Mark T. Knapman  
David P. Cooper  
Ian S. Craig  
Peter J. Ewin  
Peter D. Francis  
Jenni M. Lightowers  
Wayne B. Cahill  
Neville G.H. Deboey  
Grant D. Sefton  
Charles Veevers  
William P. O'Shea  
David C. Watts

**Consultants**  
Kenneth M. Martin  
Richard J. Kellaway  
Andrew Jenkins

**Associates**  
Shane G. Hird  
John S. Molnar  
Melissa A. Henderson  
Francis V. Gallichio  
John D.F. Morris  
Michael S. Carrick

**Incorporating:**  
Francis Abourizk Lightowers

Dear Ms Hodgkinson

## ARBITRATION - TELSTRA AND SCHORER

I acknowledge receipt of your facsimile dated 18 March 1996.

If the meeting is to take place during the week commencing 25 March 1996, I am only available on Wednesday 27 March. Unfortunately a room of sufficient size would not be available at my office on that day. Could the meeting be held elsewhere?

As to the other issues which you raise, I offer the following comments (bearing in mind I have not sought a submission from Telstra);

- (a) I am prepared to be present at the proposed informal meeting;
- (b) I do not consider the meeting should be transcribed;
- (c) I do not consider that it is necessary or appropriate for Mr Grady to provide a curriculum vitae in the event that he attends;
- (d) it is a matter for the Resource Unit to select and allocate appropriate staff for involvement in these proceedings.

*for Gordon Hughes*

Yours sincerely

**GORDON HUGHES**

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

melbourne

sydney

sydney west

brisbane

canberra

newcastle

represented in

adelaide

darwin

239A

23 January 1996

Our Ref: GLH  
Master No:

Mr J Pinnock  
Telecommunications Industry Ombudsman  
321 Exhibition Street  
MELBOURNE Vic 3000

Partner  
Peter J. Babin  
Peter D. French  
James M. Lightowler  
Wayne S. Cahill  
Neville G.J. Debra  
Carmel D. Selton  
Claretha Vennart  
William P. O'Shea  
David G. White

Consultants  
Kenneth M. Morris  
Richard J. Kellaway  
Andrew Jenkins

Associates  
Shane G. Hird  
John S. Molnar  
Melissa A. Nambo  
Francis V. Galicchi  
John D.F. Morris  
Michael S. Casich

Incorporating  
Francis Abemack

Dear Mr Pinnock

**INSTITUTE OF ARBITRATORS - COMPLAINT BY ALAN SMITH**

I enclose copy letters dated 18 and 19 January 1996 from the Institute of Arbitrators Australia. I would like to discuss a number of matters which arise from these letters, including:

- (a) the cost of responding to the allegations;
- (b) the implications to the arbitration procedure if I make a full and frank disclosure of the facts to Mr James.

Yours sincerely

  
GORDON HUGHES

Encl.  
cc P Bartlett

Melbourne

Sydney

Sydney

Brisbane

Canberra

Newcastle

Perth

Adelaide

Darwin

239B

3/2



# Hunt & Hunt LAWYERS

15 February 1996

Our Ref: GLH  
Matter No: 5122795

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

Partners  
 David M. Scarlett  
 Edward S. Boyce  
 James G.F. Harrowell  
 Gordon L. Hughes  
 Mark T. Knapman  
 David P. Cooper  
 Ian S. Craig  
 Peter I. Erwin  
 Peter D. Francis  
 Jenni M. Lightowers  
 Wayne B. Cahill  
 Neville G.H. Debnay  
 Grant D. Selson  
 Charles Veevers  
 William P. O'Shea  
 David G. Watts

Consultants  
 Kenneth M. Martin  
 Richard I. Kellaway  
 Andrew Jenkins

Associates  
 Shane G. Hird  
 John S. Molnar  
 Melissa A. Henderson  
 Francis V. Galichio  
 John D.F. Morris  
 Michael S. Carrick

Incorporating:  
 Francis Abourizk Light

Dear Mr Pinnock

**ALAN SMITH**

I enclose a draft letter which I propose forwarding to the Institute of Arbitrators Australia in response to the complaint by Mr Smith.

I would appreciate your confirmation that there is nothing in the proposed letter which would embarrass your office or jeopardise the current arbitrations.

You may consider it appropriate for you to provide an independent letter of support. This is of course a matter for your discretion.

I await your response.

Yours sincerely

*Gordon Hughes*  
**GORDON HUGHES**

Encl.

*See covered with Lia  
To speak to Gordon re 3 matters X  
letter in support to be prepared.  
2da*

melbourn

sydney

sydney w

brisbane

canberra

newcastle

represented in

adelaide

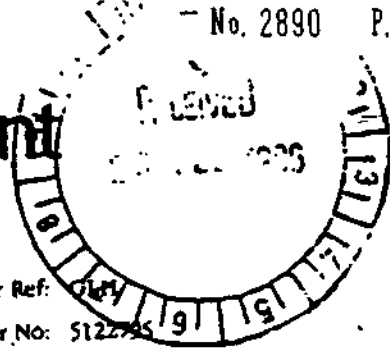
darwin

239c

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 9617 9200.  
11660442 Facsimile: (61-3) 9617 9299. G.P.O. Box 1533N, Melbourne 3001. DX 252, Melbourne.  
Email: Mail/hunt.hunt@interlaw.org

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**Hunt & Hunt**  
LAWYERS



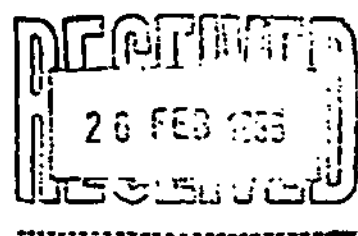
Our Ref: 01/1  
Matter No: 5122/95

- Partners**  
David M. Scarlett  
Edward S. Boyce  
James C.F. Marrow  
Gordon L. Hughes  
Mark T. Knappman  
David P. Cooper  
Ian S. Craig  
Peter J. Ewin  
Peter D. Francis  
Tenni M. Ughwomere  
Wayne B. Cahill  
Neville C.J. Deane  
Grant D. Sifton  
Charles Veevers  
William P. O'Shea  
David G. Watt
- Consultants**  
Kenneth M. Martin  
Richard L. Killam  
Andrew Jenkins
- Associates**  
Shane G. Hill  
John S. Stolar  
Melissa A. Hendry  
Frances V. Callaghan  
John D.P. Smith  
Michael S. Carrick

Incorporating  
Francis Abourizal U

16 February 1996

Mr L E James  
President  
Institute of Arbitrators Australia  
Level 1, 22 William Street  
MELBOURNE Vic 3000



Dear Mr James

**COMPLAINT - ALAN SMITH**

I acknowledge receipt of your letter dated 18 January 1996.

It is difficult for me to comment on a number of the matters raised by Mr Smith because of the confidentiality which surrounds not only his own claim but also numerous related claims which are still current.

**Smith's Letter of 15 January 1996**

There is no evidence of which I am aware to suggest that the arbitration rules were not followed or that either party was denied natural justice.

Mr Smith's recollection and interpretation of events surrounding the commencement of the arbitration in April 1994 are incorrect. He makes reference to the involvement of Peter Bartlett of Messrs Minter Ellison. I am enclosing a letter from Mr Bartlett to the Telecommunications Industry Ombudsman (the administrator of the arbitration procedure) dated 17 January 1996 which is self explanatory. I do not believe it is necessary for me to add more.

Mr Smith's assertion that the technical report of an expert witness has not been signed is incorrect. A copy of the signed cover letter to the document, dated 30 April 1995, is attached.

The assertion that another expert witness attached to the Resource Unit, John Rundell, deleted material from his report at my request is incorrect and misconceived. The allegation was first raised in a letter from Mr Smith's accountant, Derek Ryan, to the Telecommunications Industry Ombudsman, dated 22 December 1995. In this regard, I enclose copy of a letter from Mr Rundell (now of KPMG) to the Telecommunications Industry Ombudsman dated 13 February 1996 which addresses the allegation. Again I do not believe it is necessary for me to add more.

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

2397

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Document - "One Example of Incorrect Statements"

Mr Smith forwarded you a document headed "One Example of Incorrect Statements Made by the Technical Unit Attached to the FTAP". I am not convinced that this document contains any allegations to which I need respond. I note, nevertheless, some suggestion that evidence was ignored at an oral hearing. If, in paragraph (b), Mr Smith is referring to the oral hearing which took place on 11 October 1994, the transcript reveals no reference to "four exercise books" as he claims. Reference is made to "diaries" which contained evidence of complaints and these were in fact placed into evidence.

D M Ryan Letters

I have noted the two letters from D M Ryan Corporate dated 6 December and 22 December 1995. I have already commented on one of the letters above. Apart from being inaccurate, they reveal a misunderstanding by Mr Ryan of the arbitration agreement. He does not appreciate the unique role given to the "Resource Unit" comprising Ferrier Hodgson Corporate Advisory and DMR Group Inc (Canada). Perhaps Mr Ryan was not adequately briefed by Mr Smith in this regard.

Letter to Senator Evans

Mr Smith provided you with a copy of a letter to Senator Gareth Evans dated 4 January 1996. I presume you require me to comment on those aspects of the letter which reflect upon my conduct as an arbitrator.

The letter to Senator Evans is littered with inaccuracies. Some examples are:

- contrary to Mr Smith's assertion on page 3, his 24,000 (sic) documents were all viewed by me, Ferrier Hodgson Corporate Advisory, DMR Group Inc. (Canada) and Lane Telecommunications Pty Ltd in accordance with the arbitration procedure. Mr Smith was provided with a list of documents in a technical report from the Resource Unit dated 30 April 1995. This list summarised the major documents culled from the 24,000 documents and upon which the findings of the technical experts were based;
- Mr Smith's assertion on page 4 that a technical expert, Mr Read, refused to discuss technical information at his premises on 6 April 1995 is correct - in this regard, Mr Read was acting in accordance with his interpretation of my direction which prohibited him from speaking to one party in the absence of the other party at any site visit;
- if, on page 5, Mr Smith is disputing that I worked in conjunction with the Resource Unit throughout the weekend of 29 to 30 April 1995, he is incorrect;

the remainder of the letter deals with matters which have either been addressed above or which are generalisations of little or no relevance to my conduct as an arbitrator.

### Smith's Letter of 18 January 1996

I have noted Mr Smith's letter to you dated 18 January 1996. This does not raise any matter which is not dealt with above.

#### Comment

I sympathise in many respects with Mr Smith. This level of sympathy was reflected in my award and the reasons which accompanied the award. In essence, Mr Smith suffered financially and emotionally as a result of investing in a business which was in some respects, and to some extent, poorly serviced by Telstra.

Mr Smith was previously awarded a sum of money by Telstra in an out-of-court settlement. Telstra agreed to reopen his claim and submit his grievances to a dispute resolution process which ultimately took the form of an arbitration. I was asked by the Telecommunications Industry Ombudsman if I would act as arbitrator, and both parties subsequently acquiesced. As a result of the arbitration, Mr Smith was awarded further compensation.

I awarded Mr Smith a sum substantially less than the amount he was claiming and substantially less than the amount which Derek Ryan apparently led him to believe he would recover. It was, nevertheless, a sum in excess of the damages recommended by Ferrier Hodgson Corporate Advisory in its capacity as an independent financial expert witness.

It seems Mr Smith can only rationalise the result of the arbitration by retrospectively finding fault with the agreed procedure, by alleging a "conspiracy" between me and Telstra and by asserting that I have overlooked relevant information contained in the 24,000 documents to which he refers. Put simply, he is wrong.

I consent to you disclosing this letter to Mr Smith, save that I do not consent to the disclosure of the attached correspondence from third parties.

Yours sincerely



GORDON HUGHES

Encl.

cc J Pinnock (Telecommunications Industry Ombudsman)

19th March, 1996

RE COT CASES

On 22nd January 1996 Mr. Schorer points out to me that the letter from Telstra to Hunt & Hunt was dispatched to Gordon Hughes apparently on 19th January probably by fax by that doesn't necessarily follow but he didn't get his copy of the thing dated 19th January until this morning Monday 22nd January. Schorer points out that Telstra has been increasingly not running to the rules, ditto Hughes in the sense of the word that Hughes is apparently leaving it to Telstra to send copies to the other party Schorer whereas it should be Schorer receiving it from Hughes so that Hughes knows everybody's got it. This way he doesn't really know whether they have or they haven't. Also Schorer doesn't know for sure whether he's got everything he ought to have and Hughes would seeing a copy cc notice on a letter would assume for certain that Schorer did have it. Same is unsatisfactory because we don't trust Telecom.

Moreover it's a known fact that in the matter of Smith's case he Smith did not receive copies of what he should have received and in consequence material which should have alerted him to what was going to be dealt with in the arbitration was not known to him he therefore was prejudiced.

First testing of North Melbourne exchange calls to and from Golden under Austel directions known as the Neat Testing programme carried out by Telstra produced a result whereby more calls were received by Golden than were sent out according to the tests from the North Melbourne exchange for one week. This information has been published in a report given to Austel and obtained under FOI by Schorer.

At or about the same time Bell Canada had Telstra doing reports on its service in relation to Golden's receipt of same. At or about the same time similar tests were being done on the Telstra equipment relating to Smith and the results of thoses cover the demonstration that they could not have been done.

The continuation of the Telstra neat testing what was in place being conducted at the time the Bell Canada directives were being allegedly held or done.

As to the second Bell Canada test Schorer has on disk the Telstra abandoned certain tests as to part from certain exchanges. One can only assume that the reports were unsatisfactory to Telstra or supportive of Schorer.

Incidentally a forfeit means 2 lines. One for calls to come

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in the other for calls to go out. To allow 2 way communication because it means that x goes to y on one line as it were and y talks to x on the other line at the same time. They were for incoming and outgoing circuits between exchanges.

The problem between exchanges can be that you might have more or less outgoing circuits than you have more or less incoming circuits.

However even though there might be adequate incoming circuits from one exchange which is an outgoing circuit from the other exchange, there may be insufficient software capacity in the incoming exchange to allow all the calls to be received so that calls that exceed the capacity of the outgoing line from A being an incoming line from B exchange if B's exchange's software capacity is too little they miss all the calls that are above the capacity of the software equipment that is.

This means that depending upon how things are re-routed a call from say Brunswick might not go direct to North Melbourne because North Melbourne is overloaded at the time, it attempts to call or attempts to get through to Footscray, can't get through to Footscray either for good or bad reason.

In the ordinary course of events a call might be seeking to get through from say Preston to North Melbourne and does get to North Melbourne because the capacity of the circuit is good enough for it but at North Melbourne it can't be handled because the software can't handle it. If that's the reason of the problem then that call is lost. It isn't re-routed. However if the call was coming from Preston to North Melbourne and it reached North Melbourne however if to begin with all the circuits capacity outward from Preston inward to North Melbourne was full up and in use, it would automatically be re-routed on a trial and error basis to say Collingwood or Footscray. However if in seeking to find an outlet the call is blocked or stopped at another exchange because the software there is insufficient and inadequate then that call is lost forever whereas if it was simply that the outward circuitary from that exchange was full up and in use it would re-route itself seeking to get through by some means or other where the outward circuits were not fully engaged.

This is the view of one of the big problems that George Close has discovered for Anne Garms. And what concerns Close is he discovered Telstra's not to be worried about losses through congestion unless it exceeds 8% between exchanges in question.

The trouble is that the 8% from one exchange to another is only part of the story because there may be several



exchanges and if each exchange has got 8% leaway before Telecom are concerned with it the real truth of the matter is it's 8% multiplied by the number of exchanges it could possibly be a reason why calls don't get through. Bear in mind that these readings are only relevant from Schorer's point of view in peak periods because that's when his calls don't get through.

To: Mr Graham Schorer

Date: 25/3/96 ←

Company: Golden

Our Ref: 2557.doc

From: George Close

Fax No: (03) 9 287 7001

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Dear Mr Schorer,

**RE: YOUR INABILITY TO OBTAIN RELEVANT DOCUMENTS FROM TELSTRA RELATING TO THE TELEPHONE SERVICE PROBLEMS AND FAULTS, YOU HAVE EXPERIENCED AND REPORTED TO TELSTRA**

As you are still experiencing difficulties in obtaining relevant documents from Telstra containing information you require to finalise your claim, it is appropriate that I report to you a summary of my experiences whilst representing other C.o.T. members.

You are aware, I have been assisting a number of C.o.T. members in preparing their technical submission that demonstrates reasonable causal link between telephone service difficulty and faults experienced to call losses to be used in support of their claims being processed under arbitration.

My charter includes representation at Directions Hearings convened for the purpose of discovering documents from Telstra not supplied under FOI.

In all of the C.o.T. members claims I have been involved in, Mr Peter Gamble has been acting as Telstra's Technical Representative assisting in preparing Telstra's technical defence which Telstra has used to refute the validity of the claimants claim of call losses.

At a recent Directions Hearing held between Telstra and another C.o.T. member, the following was raised and discussed in detail with Mr Peter Gamble in the presence of the technical resource team.

**Telstra Use Of Final Testing Results As Evidence:**

Telstra has only employed successful final test call run results as a defence in response to all C.o.T. claim submissions made under Arbitration.

These final tests comprise over 50% of the Telstra defence evidence to establish the integrity of Telstra equipment, bearers, network performance and the degree of congestion.

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In examining the rationale of performing such tests it must be kept in mind that:

- (a) The principal reason for performing tests in response to complaints is to establish that the faults do or do not exist and if so to what degree.
- (b) Prior to performing final testing, a series of pre-dial tests are carried out and subject to the resulting grade of service experienced, a decision is made to either run the final tests, fix the fault(s) or block out the offending service (for future fixing).

Thus by Telstra using only final test runs as defence evidence attesting to be proof of service levels provided in response to a complaint made without including the pre-dialled test results places Telstra in a classic win-win situation as the final test runs by design are meant to produce a successful result once the complaint has been fixed.

Whilst we are in full agreement that the testing and fixing are an integral and necessary part of maintenance practice, no weight can be placed on these final results in reference to the complaints made when there is an absence of the documents relating to pre-dial testing and subsequent fixes unless these are declared and accompany the final test results.

At no time to my knowledge has Telstra included pre-dialling, testing and subsequent fixes with their final test call runs results submitted as defence in response to claims made under the C.o.T. Arbitration processes.

In essence, the use of Telstra's final test results should be totally disregarded as evidence unless pre-dial information, tests and fixes accompany the final test results attested under statutory declaration.

The present employment of Telstra's unsupported final test runs as evidence is unethical, misleading and deceptive.

- (c) Compounding the foregoing is the unarguable fact that the tests in question are not true end to end tests. At best they comprise of:

- (I) within an exchange
- (II) exchange to exchange
- (III) exchange to test-bed
- (IV) subscriber to test-bed

Accordingly they can only be construed as partial indicators heavily biased in Telstra's favour when not accompanied with pre-dial information tests and fixes.

#### Brief Description Of Pre-Dial Testing:

Pre-Dial Testing consists of either a short run of test calls or a series of short runs of test calls made prior to the final test call run.

The purpose in conducting Pre-Dial Testing is to establish:-

- (I) existence of dial tone
- (II) correct connection
- (III) program mode
- (IV) P.TARS (or alternative test equipment) is operating
- (V) presence of faults

Subject to the resulting grade of service experienced, a decision is made to either run the final tests, fix the fault(s) or block out the offending service (for future fixing).

Depending on the decision made and action taken, a further series of Pre-Dial Testing may be carried out before proceeding to the final test call run.

In a meeting with Bell Canada International personnel they acknowledged all testing performed by Telstra under their directives was suspended when a fault was detected, the fault was fixed before the testing was resumed.

This is demonstrated in the attached page extracted from the BCI Report. This page clearly demonstrates that a fault was detected during Pre-Dial Testing. The fault identified of no dial tone (N.D.T.) was fixed before commencing the final test calls run.

**Telstra's Mathematical Methods Of Calculations Used To Determine Performance Percentages And Submitted As Evidence:**

I stated to Mr Gamble at this meeting, in words to the effect of:

By Telstra combining unsatisfactory test run results which only consist of tens or hundreds of test calls (where the test runs were aborted due to fault difficulties encountered) with satisfactory test run results consisting of thousands of successful test calls without reducing the results of each run of test calls to a common factor before performing percentage calculations to create a percentage figure to be used by Telstra alleging to represent a network performance level of that part of the network tested is mathematically incorrect.

The only correct mathematical method to combine different test results containing different numbers of test calls to determine the success percentage of network performance level of that part of the network tested, requires each different test result obtained to be reduced to a common factor before doing the percentage calculation that will produce an accurate result.

Telstra are knowingly submitting as evidence invalid percentages allegedly representing network performance levels of that part of the network tested to refute reasonable causal link between telephone service difficulties, problems and faults experienced to call losses, by knowingly adopting an invalid mathematical method to combine different test run results to calculate a percentage to support Telstra's assertions.

Telstra's engagement in such conduct is unethical, wrong, misleading and deceptive.

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**Summary:**

I stated the above to Mr Peter Gamble who acknowledged the validity of my statements without challenge or qualification.

When I asked Mr Gamble the question that challenged the reasons why Telstra knowingly submitted as evidence and made representation without the required qualification that clearly served to mislead and deceive, he responded that this was the way people requested the information to be presented.

Mr Gamble refused to respond to my question as to who or which department within Telstra requested that Telstra present information without the limitations being identified or qualified and knowingly submitted, as evidence, Telstra reports created that are wrong, misleading and deceptive.

The technical resource team present at the meeting agreed with me that the Telstra method used to calculate the success percentages of the combined tests of the network performance of that part of the network tested, was producing invalid percentage figures by using incorrect mathematical methods to calculate the percentages.

I have previously stated in this correspondence that, *"Telstra has only employed successful final test call run results as a defence in response to all C.o.T. claim submissions made under Arbitration. These final tests comprise over 50% of the Telstra defence evidence to establish the integrity of Telstra equipment, bearers, network performance and the degree of congestion, and accordingly they can only be construed as partial indicators heavily biased in Telstra's favour when not accompanied with Pre-Dial information tests and fixes"*, which Mr Gamble has already acknowledged in the presence of witnesses.

In all of the C.o.T. matters I am involved in all of the C.o.T. Members have experienced difficulty in getting Telstra to correctly, including promptly, to respond to their FOI requests.

All of the C.o.T. members have complained that Telstra has failed to correctly discover, identify and supply all types and classes of documents requested.

From my own observations the types and classes of documents that Telstra has consistently failed to discover, identify and supply are those types and classes of documents containing the information the C.o.T. Members require to demonstrate reasonable causal link between telephone service difficulties, problems and faults experienced to call losses.

Based upon my experiences gained while assisting these C.o.T. Members prepare a technical report to establish reasonable causal link between telephone service difficulties, problems and faults to call losses I have formed an opinion that is made without any doubt that it is not accidental that Telstra only uses the final test call results not accompanied with Pre-Dial information testing and fixes as defence evidence attesting to be proof of service levels provided in response to complaints made.

I am convinced that the type of conduct that Telstra is engaging in is a deliberate action plan adopted by Telstra for the purpose to minimise or eliminate Telstra's liability to the C.o.T. claimants.

It was unfortunate that this Directions Hearing was not held in the presence of the Arbitrator (as a result of Dr Hughes last minute cancellation) because the meeting was not transcribed as it is essential that the Arbitrator fully understands the validity of my above statements.

Equally, it would have been most beneficial for all C.o.T. members for the Arbitrator to be present when Telstra openly acknowledged the validity of my statement without challenge or qualification as it would have enabled the Arbitrator to personally assess Telstra's admission of misleading and deceptive conduct.

**Conclusion:**

It is essential that you obtain from Telstra, either by FOI or Arbitration, the pre-dialling information, test results and fixes performed in response to your complaints prior to Telstra performing final test call runs to verify that the fault has been eliminated to substantiate a reasonable causal link between your telephone service difficulties, problems and faults experienced to call losses.

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

Yours sincerely,

**George Close**



5 Queens Road  
Melbourne  
Victoria 3004  
Tel: (03) 9828 7300  
Fax: (03) 9820 3021  
Free Call: 1800 335 526  
TTY: (03) 9828 7490

11 July 1996

Senator The Hon Richard Alston  
Minister for Communications & the Arts  
Parliament House  
CANBERRA 2600

Dear Senator Alston

**REPORT ON PROGRESS OF TELSTRA'S IMPLEMENTATION OF  
RECOMMENDATIONS OF AUSTEL'S *THE COT CASES* REPORT**

I am pleased to provide AUSTEL's sixth status report on Telstra's progress in implementing the recommendations of AUSTEL's April 1994 *The COT Cases* Report.

This report consists of two parts: a summary of significant developments to date; and a more detailed commentary on the implementation of outstanding recommendations.

Telstra has now implemented most of the recommendations of *The COT Cases* Report. However, some significant recommendations remain to be implemented, and Telstra's progress in relation to these is of concern to AUSTEL. Of particular concern is Telstra's failure to introduce its enhanced fault management support system. Telstra continues to utilise the LEOPARD fault management system, which was identified by its consultants Coopers & Lybrand in November 1993 as being urgently in need of replacement.

On a more positive note, Telstra has now fully implemented recommendation 1 of the Bell Canada International *Network Consulting Study*, so that greater information is now available on reasons for call failure, thus allowing improved network fault identification. Telstra has also decided to adopt a universal complaint management system, known as CICERO. AUSTEL understands that Telstra is already deriving considerable benefit from its analysis of the complaint data produced by CICERO, and that this will lead to customer benefits.

Also included in AUSTEL's report is a report by the Telecommunications Industry Ombudsman (TIO) on the *Status and Progress of the Fast Track, Special and Standard Arbitration Procedures*. The TIO is critical of Telstra's behaviour and attitude in relation to these arbitrations.

Yours sincerely

Sue Harlow  
Member

### **Standard Arbitration Procedure**

*There has been only one claim lodged under this procedure. That matter was settled by direct negotiation between the parties with the assistance of the Administrator. One further application for arbitration has been received by the TIO.*

*The TIO has instituted a review of the Standard Arbitration Procedure and has provided Telstra with some broad concepts for improvement. Telstra has indicated its willingness to canvass issues but is yet to provide any suggestions or reform proposals.*

### **Conduct of the Arbitrations**

*The TIO believes some comment on the behaviour and attitude of Telstra in the conduct of these Arbitration is warranted.*

*Recommendation 30 of the AUSTEL COT report recommends that the "proposed arbitration procedure only require a finding on reasonable grounds as to the causal link between a claim for compensation and alleged faults and allow reasonable inferences to be drawn from material". All three arbitration procedures make provision for this lower standard of proof. However, Telstra's conduct in the defence of most (if not all) claims has tended to assert that strict legal proof in relation to causation is required and is characterised by reliance on legal principles not in keeping with the spirit with which these arbitrations were instituted.*

*The TIO believes that Telstra has, in all claims, responded in an overtly legalistic manner. It has shown a tendency to deny liability under every potential clause of action on the basis of perceived statutory and contractual immunities. It has provided large and detailed defences, often out of proportion to the size or complexities of claims. It has lodged lengthy and detailed requests for further and better particulars in most arbitrations. In short, while the arbitration procedure has sought to relax the legal burdens, Telstra's conduct has certainly not.*

*This, in turn, has led many of the claimants to respond in kind, resulting in the expenditure of large amounts of money on technical, financial and legal advice. There is no provision in the Arbitration procedure for the recovery of these costs.*

*There have also been considerable delays in the provision of claim and defence materials and further information from both claimants and Telstra. Telstra has taken excessive time in the provision of material requested under FOI. This has been the subject of a report by the Commonwealth Ombudsman in two cases. These delays and*

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# Hunt & Hunt LAWYERS

COPY

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

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

**Associates**  
John S. Molnar  
Francis V. Gallichio  
John D.F. Morris  
Michael S. Carrick

**Incorporating:**  
Francis Abourizk Lightowers

22 July 1996

Our Ref: GLH

Matter No:

Mr W Hunt  
Hunts  
Solicitors  
Mitchell House  
358 Lonsdale Street  
MELBOURNE VIC 3000

Dear Mr Hunt

## ARBITRATION - TELSTRA AND SCHORER

I have considered the submissions of the parties in relation to the request by the claimant for an adjournment of this arbitration until January 1997.

The essence of the claimant's request is that:

- the claimant has to give priority to his business at present;
- the proceedings are placing a considerable strain upon the claimant and could affect his health;
- the claimant is still waiting for the payment of compensation pursuant to a direction by the Commonwealth Ombudsman in November 1994 in relation to the handling of certain FOI requests;
- Telstra has not been co-operative to date in responding to FOI requests but (as I understand how the argument is put) further information might be usefully produced if Telstra is granted an adequate period of time in which to produce it.

Telstra has responded by asserting that:

- the arbitration agreement provides for the completion of steps within agreed time frames;
- the history of this arbitration demonstrates that Telstra has taken all reasonable steps to provide the claimant with relevant information;
- the outstanding question of compensation payable pursuant to the Commonwealth Ombudsman's direction is not relevant to this issue;

melbourne

sydney

sydney west

brisbane

canberra

newcastle

represented in

adelaide

darwin

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

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Email: Mail/hunt.hunt@interlaw.org

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- in two years the claimant has failed to provide substantial supporting documentation for his claim despite having been given every opportunity;
- there is no guarantee that, even if adjourned until January 1997, the claim will proceed in accordance with any time frame set by the arbitrator.

I appreciate that other relevant factors have been advanced by both parties. A number of assertions have also been made in relation to the background to this arbitration and the subsequent conduct of proceedings but I do not regard these as pivotal to this ruling.

After considering the matters raised by both parties, I have come to the following conclusion:

- the claimant agreed to the procedure as set out in the Fast Track Arbitration Procedure;
- the procedure contemplated the submission of a Statement of Claim within four weeks;
- in an attempt to expedite matters, I have been prepared to extend the time for submission of a Statement of Claim in the hope that all relevant materials are available to the claimant when the claim is initially articulated;
- it is not, however, essential that all relevant information be available to the claimant at the time the Statement of Claim is submitted;
- although the process may be somewhat cumbersome, there is no reason why the parties cannot respectively submit the Statement of Claim, the Defence and the Reply before further consideration is given to the adequacy of the documentation provided by Telstra to date;
- I am not in a position to form a definitive view on the adequacy of information made available by Telstra to date until the issues in dispute have been more formally and fully addressed by both parties;
- I do not believe the claimant would be prejudiced by submitting a claim based on information presently available to him;
- notwithstanding the lapse of time since these proceedings were commenced, I am prepared to grant in excess of four weeks from this point for the claimant to submit his claim as an acknowledgment of the fact that he may at present be unprepared to make a submission and may be taken by surprise by this direction.

In the circumstances, I direct that the claimant submit the Statement of Claim as required by clause 7.2 of the Fast Track Arbitration Procedure on

or before 1 October 1996. In default of compliance with this direction, I shall consider an application by Telstra pursuant to clause 7.7 of the Fast Track Arbitration Procedure but I will not treat the arbitration as having been abandoned without inviting a further submission from the claimant on this point at the appropriate time.

Yours sincerely

**GORDON HUGHES**

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



**COPY**

**MEMORANDUM**

**TO :** Dr Gordon Hughes  
**FROM :** Susan Hodgkinson  
**DATE :** 2 August 1996  
**SUBJECT :** A Smith Letter dated 25 June 1996

I refer to your letter dated 31 July 1996 (received 1 August 1996) concerning Mr Smith's letter dated 25 June 1996. I have not received a copy of Mr Smith's letter however I have reviewed Matt Deeble's summary and provide the following information concerning Mr Smith's allegations:

Telstra letter referred to by A Smith	Letter from G Hughes with Telstra letter at attachment	Letter from G Hughes (with Telstra letter as attachment) sent to Mr Alan Smith and copied to:			
		Resource Unit	Telstra	TIO	Special Counsel
16 December and 8 December 1994	Letter addressed to J Rundell only				
27 April 1995	Letter addressed to J Rundell only				
12 April 1995	✓	✓	✓	✓	✓
Two letters dated 9 May 1995	✓	✓	✓	✓	✓
16 September 1994	Unable to locate a letter				
23 September 1994	Letter only, no Telstra attachment	Letter only	Letter only	Letter only	Letter only
3 October 1994	Letter only, no Telstra attachment	Letter only	Letter only	Letter only	Letter only
6 December 1994	✓	✓	✓	✓	✓
16 December 1994	Refer to comments above				
22 December 1994	✓	✓	✓	✓	✓
6 January 1995	✓	✓	✓	✓	✓
12 April 1995	Refer to comments above	✓	✓	✓	✓
23 December 1995	As the Arbitration was completed I did not research this further.				

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NB1 At the time of the letter from Austel, Mr Smith's telephone problems were being addressed in the Arbitration. Due to a number of factors including confidentially, it was felt not appropriate to answer Austel's comments in detail, in particular the issue was under consideration in the Arbitration. As agreed the Resource Unit did not respond to the Austel letter.

NB2 The covering letter refers to a number of letters from Telstra dated, 12 April 1995, I have assumed the relevant one concerning the TF200 was also enclosed.

I have attached copies and extracts of the relevant documents.

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

Regards



**Sussan Hodgkinson**

cc: Mr Matt Deeble, TIO Ltd

FAX FROM: ALAN SMITH

Cape Bridgewater  
Holiday Camp

Portland 3305

FAX NO: 055 267 230

PHONE NO: 008 816 522

FAX TO: MR JOHN PINNOCK  
TELECOMMUNICATIONS  
INDUSTRY OMBUDSMAN  
MELBOURNE

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DATE: 25.6.96

NUMBER OF PAGES (including this page)

If you have received this document in error, please phone us on 008 816 522.

Dear Mr Pinnock,

I am writing today regarding two separate issues:

**FIRST ISSUE**

Your statement to Mr Laurie James, President of the Institute of Arbitrators, regarding a telephone call to Dr Hughes, Arbitrator of the Fast Track Arbitration Procedure (FTAP).

To date I have had no response from you, personally, as to why you chose to tell Mr James that I phoned Dr Hughes's residence at 2.00 am on 29th November 1995 and that, in making this alleged call, I behaved unethically.

*John we are still waiting on a response from Gordon on this*

I have evidence which proves that your statement is incorrect but you have not had the courage to explain where you gained this incorrect information. I still await clarification of this situation.

**SECOND ISSUE**

FOI documents I received by courier on 23rd June 1996.

This delivery included letters from Dr Hughes to Telstra and from Telstra to Dr Hughes during the time leading up to the FTAP, and during the Arbitration Procedure.

It is clear from this material that Dr Hughes withheld information from me during the FTAP. This is against the FTAP rules which state that all correspondence sent to Dr Hughes, either by me or by Telstra, must be also forwarded on to the other party. Dr Hughes did not honour his role as Arbitrator as this material clearly shows.

**1. FOI documents L69036 and L69046**

These are two letters from Telstra, dated 16 December 1994. One is addressed to Mr Bruce Mathews of Austel and the other to Dr Hughes.

These letters refer to correspondence dated 8th December 1994 that Dr Hughes had previously received from Austel. In this earlier correspondence Austel stated that I had raised complaints with them regarding short duration and incorrectly charged calls to my phone service.

The letter to Mr Mathews refers to an attachment which clearly states that Telstra would defend these short duration and incorrectly charged calls, and the Recorded Voice Announcement faults, in their defence of the FTAP.

Telstra did not cover these faults in their Defence of 12 December 1994.

244 B

FOI document L69036 is the attachment which was re-sent to Dr Hughes by Telstra on 16 December 1994. This means that Dr Hughes was FULLY AWARE that Telstra had not defended these faults to my service during the FTAP.

20-1995 10:25 FROM LIFE BRIDGE FRONT UNIT

The last paragraph of FOI-document L69046 (letter from Telstra to Dr Hughes) states:

*"The simplest way forward may be for Mr Smith and Telecom and yourself to all confirm in writing that this information can be provided to Austel if this meets with your approval."*

The author of this document was Ted Benjamin.

This paragraph raises two issues:

A. Dr Hughes did not write to me with regard to this issue during the FTAP.

and

B. Dr Hughes did not forward a copy of this letter to me during the FTAP.

I raised these major faults during the FTAP and again after the FTAP and there has still been NO RESPONSE from Dr Hughes. Dr Hughes violated my rights under the rules of the FTAP (clause 6) by not providing me with a copy of this very important letter.

Evidence at hand also shows that Dr Hughes instructed DMR and Lanes to omit a proposed Addendum Report on some of these issues which had been raised through Austel.

I appeal to you, as Administrator of the FTAP, to ask Dr Hughes why he conducted the FTAP in this manner.

2. FOI document L69398, from Dr Hughes to Ted Benjamin of Telstra, dated 1st May 1995.

This document refers to an attached document numbered L69399 to L69449, the Technical Evaluation Report. There is NO signed letter from either Paul Howell of DMR or David Read of Lanes, even though your office had stated that Paul Howell would sign this report: I have not seen such a signature to this Report.

I appeal to your office to have this signature provided by Paul Howell. Evidence indicates that Telstra has not seen a signature to this Report either.

3. FOI document A63178, from Ted Benjamin of Telstra, dated 27th April 1995.

This document clearly shows that Dr Hughes was given historic information relating to the old RAX exchange at Cape Bridgewater. A copy of this letter was not forwarded to me by Dr Hughes - another violation of my rights under the rules of the FTAP (clause 6).

4. FOI documents A63339 to A63368, from Ted Benjamin of Telstra to Dr Hughes, dated 12th April 1995, regarding the TF200 Touch Phone Report.

The office of the TIO is aware of my request to Dr Hughes, covered by a Forensic Document Researcher, Paul Westward. Mr Westward is qualified to confirm the facts contained in the laboratory tests which were performed on the TF200 Touch Phone and on which the final Report was based. Dr Hughes refused my request.

In this letter (A63339 to A63368), Mr Benjamin states that each of the two authors of the TF200 Report would sign a Statutory Declaration covering the Report. Telstra also stated that they would return the TF200 Phone itself, for Dr Hughes to view.

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This letter, dated 12th April 1995, is another document which I did not see: once again Dr Hughes violated my rights under the rules of the FTAP (clause 6).

Because this particular letter from Mr Benjamin mentioned two Statutory Declarations it may well have swayed Dr Hughes in favour of Telstra. I was severely disadvantaged, again, because Dr Hughes did not allow me the opportunity to lodge a counter claim against this Technical Report, under the FTAP.

I have since proved that Telstra are nothing less than criminals who poured beer into my phone and then submitted this as defence material, stating that I had spilled the beer into the phone. Dr Hughes was wrong in not allowing me access to this information. //

5. FOI documents L69056 to L69086, from Ted Benjamin of Telstra to Dr Hughes, dated 9th May 1995: two responses from Telstra, one regarding the Technical Evaluation Report by DMK and Lanes and the other regarding the Financial Evaluation Report by Ferrier Hodgson Corporate Advisory.

I did not see this letter, or the attachments, during the FTAP: once again Dr Hughes violated my rights under the rules of the FTAP (clause 6).

6. FOI documents L69485 to L69537, a letter (and attachment) from Dr Hughes to Ted Benjamin, dated 9th May, 1995, regarding my response to the DMK/Lanes and FIICA Reports.

In relation to these two reports, it is clear that Dr Hughes provided Telstra with copies of documents from me, but he did not supply me with copies of documents from Telstra.

7. Further letters forwarded to Dr Hughes by Telstra but not forwarded on to me, by either Telstra or Dr Hughes, during the FTAP. These include FOI documents:

L68983 & 84	16/9/94	L63369	23/12/95	L63339	12/4/94
L68989 & 90	23/9/94	L63820	6/1/95	L69036 & 37	16/12/94
L68995	3/10/94	L63898	22/12/94	L69046	16/12/94
L63861	12/4/95	L69028	6/12/94		

Once again I appeal to the office of the TIO, as Administrator of the FTAP, to state what your office intends to do regarding these serious breaches of the rules of the FTAP (clause 6). I also make it known that FOI documents received on 23rd June, 1996, also show that Dr Hughes did not supply Telstra with all my information.

The evidence listed above includes only those FOI documents that I HAVE received from Telstra, under this FOI request. I have also notified Mr John Wynack of the Commonwealth Ombudsman's Office that Telstra still has not provided all the FOI documents which I requested. How many documents have I not yet seen?

I await your response.

Sincerely



Alan Smith

copies to:

Senator Richard Alston, Minister for Communications and the Arts, Canberra  
 Mr Daryl Williams, Minister for Justice and Attorney General, Canberra  
 Mr John Wynnack, Commonwealth Ombudsman's Office, Canberra  
 Mr Peter Barlett, Minister Ellison Morris Fletcher  
 Mr Laurie James, President, Institute of Arbitrators, Perth

244 B





# Hunt & Hunt LAWYERS

15 October 1996

Our Ref: GLH

Matter No: 5126900

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

*Received by  
Hand 3.50 15/10/96*

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

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

**Associates**  
Francis V. Gallichio  
John D.F. Morris  
Michael S. Carrick

**Incorporating:**  
Francis Abourizk Lightowlers

Dear Sir

## TIO AND SCHORER

You will have received a copy of Telstra's letter to me dated 9 October 1996.

In its letter, Telstra expresses concern about the adequacy of particulars and supporting documentation in respect of the claim. Nevertheless, in the interests of expedience, it is prepared to submit a defence within 4 weeks of a direction from me to do so.

I agree with Telstra that it is important for this arbitration to be brought to a conclusion. Whilst I express no view as to the adequacy or otherwise of the claim documentation, Telstra is accurate in its assertion that any lack of particularity in the claim documentation may be to the disadvantage of the claimant.

At the same time, I am mindful of the matters raised in your letter of 30 September 1996 and, in particular, the fact that quantification of the claim can (presumably) be concluded in the near future and that you believe a form of discovery should take place once the pleadings have closed.

Taking these matters into account, I direct as follows:

1. that the claimant submit any additional material in support of the claim within a period of 14 days;
2. that Telstra submit its defence within 4 weeks of the expiry of the period referred to in paragraph (1);
3. that the claimant submit his reply within 4 weeks of receipt of the defence.

melbourne

sydney

sydney

brisbane

canberra

newcastle

represented in

adelaide

darwin

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 9617 9200.  
Facsimile: (61-3) 9617 9299. G.P.O. Box 1533N, Melbourne 3001. DX 252, Melbourne.  
11858792\_GLH/RB Email: Mail/hunt.hunt@interlaw.org

**245**

I appreciate that the parties may seek minor adjustments to this timetable and any such adjustments can be accommodated. Given the delays associated with this arbitration to date, however, I would be disinclined to support an application for a substantial extension of time.

On the question of the production of further particulars by the claimant as requested by Telstra, and the production of further documentation by Telstra as foreshadowed by the claimant, I find it unnecessary to express any view at this stage. It should be emphasised that the Arbitration Agreement does not provide for discovery but I do have the power under Rule 7.6 to require either party to produce further documentary information or other particulars which I reasonably consider would be of assistance. I will give consideration to exercising my discretion under Rule 7.6 at an appropriate stage but I do not wish to create an expectation of either party that I will necessarily exercise such a discretion or that I will necessarily exercise that discretion to the extent requested by a party.

The parties will also be aware that pursuant to Rule 8.2, I can require the Resource Unit to examine documents, inspect premises or systems and carry out such other inquiries or research as I may direct. It may be possible for me to expedite this matter by utilising the services of the Resource Unit in the near future.

Yours sincerely



**GORDON HUGHES**

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

GLH 5126900  
93/194 WRH:DF

28th October, 1996.

BY COURIER and BY FAX TO: 9617 9299

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

Dear Dr. Hughes,

RE: Golden and Telstra - Arbitration

We refer to your letter dated 15th October 1996 and to your previous letter dated 22nd July 1992.

In your letter of 22nd July 1996 you stated:-

- ↘ \* "It is not however essential that all relevant information be available to the claimant at the time the statement of claim is submitted.
- \* Although the process may be somewhat cumbersome there is no reason why the parties cannot respectively submit the statement of claim, the defence and the reply before consideration is given to the adequacy of the documentation provided by Telstra to date.
- \* I am not in a position to form an objective view on the adequacy of information made available by Telstra to date until the issues in dispute have been more formally and fully addressed by both parties .
- ↘ | I do not believe the claimant would be prejudiced by submitting a claim based on information presently available to him".

In conformity with the above conclusions which you expressed in your letter a statement of claim was submitted by the claimant on 30th September 1996 "based on information presently available to him". Neither he, nor we, interpreted your letter as a request for the information upon which the statement of claim was based to be then submitted.

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We note then, with both surprise and concern, that you have been prevailed upon by Telstra to give a direction that any additional material be submitted within 14 days of your letter of 15th October. Your earlier letter contemplated the formulation of the claim, the defence and the reply and the subsequent consideration of documentation.

As you are aware, the claimant has been making, for a considerable time, requests to Telstra pursuant to the Freedom of Information Act to supply information about its various service faults and difficulties upon which his claim is based.

According to our instructions those requests for information have either not been complied with, or inadequately complied with. We note that he has set out his complaints about lack of, or inadequate compliance, by Telstra with his requests in letters to you dated 13th May 1996 and 21st June 1996.

We note further that in your letter dated 15th October 1996 you state that you find it unnecessary to express a view on the question of the production of further documentation by Telstra at this stage. You also state that you will give consideration to exercising your discretion under Rule 7.6 at an appropriate stage.

Because the claimant's claim to a large extent is reliant upon documentation held by Telstra, in our respectful submission, if the claimant is to be directed to submit any additional material in support of the claim within a very short time (as set out in your letter) the stage has been reached where the adequacy of the documentation provided by Telstra has to be considered, and the stage has also been reached where Telstra should be required to produce further documentary information.

There are of course other aspects to the claimant's claim which are financial rather than technical. In our letter to you of 30th September last, we have already adverted to the necessity of having our client's accountant prepare information about these aspects and confirm that this will be put in hand on his return from overseas.

The claimant has ascertained that Telstra holds on four discs an index of all information held by it relating to service difficulties and faults and technical matters concerning the malfunctioning of the service to our client. He has made a request for the discs pursuant to the Freedom of Information Act but they have not been forthcoming. The information indexed on the discs would, the claimant believes, cover the matters which form the technical basis of his claim.

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Our understanding is that the discs are known within Telstra as Schorer 1, Schorer 2, Schorer 3, and merged Schorer files, and were created under the Microsoft Excel for Windows for spread sheet application.

There is no question of professional privilege relating to the discs because the documents indexed are internal Telstra documents which are not privileged and the indexes were prepared by Telstra from its own records.

According to our instructions it is believed the four discs would have been easily located within the Telstra organization, and there is no valid reason why they should not be made available promptly. Such has not been the case, and that, of course, is in line with what has been happening with Telstra's handling of any previous request.

In all the circumstances therefore, we respectfully request that Item 1 of your Directions of 15th October 1996 be rescinded; and that when Items 2 and 3 of your Directions have been complied with, a conference be called by you for the purpose of discussion which might be of assistance to you in determining your further Direction.

A copy of this letter is being faxed forthwith to Mr. Ted Benjamin of Telstra.

Yours truly,

HUNTS'

C.C. Mr. Ted Benjamin

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# Hunt & Hunt LAWYERS

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

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

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

1 November 1996

Our Ref: GLH

Matter No: 5126900

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

Dear Mr Hunt

## **ARBITRATION - SCHORER**

I acknowledge receipt of your letter dated 28 October 1996.

I consider my recent directions are quite consistent with my letter of 22 July 1996.

As indicated previously, I may well exercise my discretion under rule 7.6 to require the production of further documentation from Telstra. I am most reluctant to do so, however, until I have at least received Telstra's defence. This will enable me to assess the parameters of the claim and form my own view (perhaps after receiving submissions from the parties) as to what further documentation, if any, should be provided.

This claim has been effectively dormant for three years. If an impasse because of a dispute remains between the parties as to production of documentation, I consider the interests of neither party are being served.

In the circumstances, I am not prepared to rescind my directions of 15 October 1996. I expect Telstra to comply with my directions to submit a defence within four weeks of 29 October 1996 and I am hopeful that, its defence will assist me in determining the broad parameters of the claim and the respective positions of the parties.

Obviously, if further documentation is produced, the claimant may be permitted to amend the claim documentation and Telstra may be permitted to amend its defence.

Finally, I draw your attention to Telstra's letter dated 29 October 1996 addressed to me (and copied to you) in which queries were raised regarding the identity of the claimants and the appropriate claim period. I invite your submission on the matters raised and would be pleased to receive a submission within seven days. In the absence of a submission, I am likely to direct that the only relevant related entities are those set out in

melbourne

sydney

sydney west

brisbane

canberra

newcastle

represented in

adelaide

darwin

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 9617 9200.  
Facsimile: (61-3) 9617 9299. G.P.O. Box 1533N, Melbourne 3001. DX 252, Melbourne.  
11875114\_GLH/AC Email: Mail/hunt.hunt@interlaw.org

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the schedule to the Fast Track Arbitration Procedure and that, for the sake of expedience, the claim period commences from April 1986.

I await your response.

Yours sincerely



**GORDON HUGHES**

cc T Benjamin, J Pinnock, P Bartlett, S Hodgkinson

November 1, 1996



Telecommunications  
Industry  
Ombudsman

Mr William Hunt  
Hunts' Solicitors  
Mitchell House  
358 Lonsdale Street  
MELBOURNE 3000

John Pinnock  
Ombudsman

*By facsimile 9670 6598*

Dear Mr Hunt

**Re: Fast Track Arbitration Procedure - Golden Messenger and Telstra**

I understand that you have responded to the Arbitrator in relation to his directions of 15 October 1996. I understand that a copy of this correspondence was provided to Telstra but not to this office or to Mr Peter Bartlett, the Special Counsel to the Administrator.

I advise that clause 6 of the Fast Track Arbitration Rules provides that a "copy of all documents are correspondence forwarded...by a party to the Arbitrator shall be forwarded to the Special Counsel". The common practice in other arbitrations has been for a copy of documentation and correspondence to also be provided to the TIO as Administrator of the procedure.

In future, would you please provide copies of your formal correspondence in this matter to the Arbitrator, Telstra, the TIO and the Special Counsel.

Yours sincerely

John Pinnock  
Ombudsman

cc *Dr Gordon Hughes (by facsimile)*  
*Mr Ted Benjamin (by facsimile)*  
*Mr Peter Bartlett (by facsimile)*

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





27 November, 1996

Mr William Hunt  
Hunts' Solicitors  
Mitchell House  
358 Lonsdale Street  
MELBOURNE 3000

**Telecommunications  
Industry  
Ombudsman**

**John Pinnock**  
Ombudsman

*By Courier*

Dear Mr Hunt

**Re: Fast Track Arbitration Procedure - Schorer and Telstra**

I enclose two copies of Telstra's Defence in the above matter consisting of six sealed boxes. These documents were received by my office on 26 November 1996.

I also enclose a copy of Telstra's covering letter setting out the volumes contained in these boxes. Would you please advise me if you have not received all the documents set out in that letter.

Please note that Telstra is still to provide certain documents. They will be forwarded to you as soon as they arrive at the TIO.

One copy of the Defence has today been couriered to the Arbitrator and a further two copies have been couriered to the Resource Unit.

Should you have any queries in relation to this matter, please feel free to contact me.

Yours sincerely

John Pinnock  
**Ombudsman**

cc *Mr Ted Benjamin (cover only - by facsimile)*  
*Dr Gordon Hughes (cover only - by courier)*  
*Ms Sue Hodgkinson (cover only - by courier)*  
*Mr Graham Schorer (cover only - by facsimile)*

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28th November, 1996

FILE NOTE: COT CASES

I rang Mr. Pinnock to ask why he is writing me letters, why matters are coming to me through him. I rang about 4.15 p.m. and was told by the receptionist that he wasn't available. Questioned she said he is in a meeting. Questioned further he'll probably be out in 10 minutes time. I left my telephone number and my name and the fact that he knew me and I was responding to his letters for him to ring me as soon as he could.

I later spoke to Pinnock who rang me back and told me that it was part and parcel of the requirement under the arbitration procedure whereby Telecom had to send up things through him and he wouldn't be reading it all unless he was required to for some person. Ditto with Ferrier Hodgson.

250

10 January 1996<sup>7</sup>

CONFIRMATION  
OF FAX



Telecommunications  
Industry  
Ombudsman

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

John Pinnock  
Ombudsman

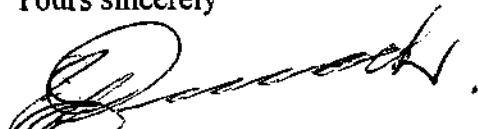
Dear Mr Smith

I refer to your letter of 31 December 1996 in which you seek to access to various correspondence held by the TIO concerning the Fast Track Arbitration Procedure.

The arbitration of your claim was completed when an award was made in your favour more than eighteen months ago and my role as Administrator is over.

I do not propose to provide you with copies of any documents held by this office.

Yours sincerely



JOHN PINNOCK  
OMBUDSMAN

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A Division of G.M. (MELBOURNE) HOLDINGS PTY. LTD. A.C.N. 006 905 046

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

To:	Mr Ted Benjamin	Date:	24 January 1997.
	Group Manager, Customer Affairs	Our Ref:	3060
Company:	Telstra	Fax No:	(03) 9632 3235
From:	Graham Schorer	Total Pages (Including Header):	2

Mailed: Yes ( ) No ( X )

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Dear Mr Benjamin,

Re: Your correspondence dated 20 April 1995 regarding Graham Schorer letter dated 4 April 1995: Ref.1704 Freedom of Information Act (The 'Act').

In this correspondence, Telstra has stated Telecom does not have in its possession the working documents of Bell Canada other than those which it has made available to Graham Schorer.

Telstra has also stated as Bell Canada is not an "agency" pursuant to the Act, Telecom cannot transfer any parts of Graham Schorer's request to it in accordance with Section 16, therefore Telecom has no further obligation in relation to Bell Canada working papers.

In the past, in response to the documents I am requesting from Telstra regarding the 'Bell Canada' information relating to the Performance Evaluation of Telstra's network conducted during late October to November 1993, I have been told by Mr Peter Gamble, Paul Rumble and Rod Pollock during the period of May 1994 to July 1994 that:-

Bell Canada took all of the working papers, diary notes, work orders, minutes of meetings etc., including those created by Telstra personnel who actually performed the tests under the guidance of Bell Canada, back to Canada after they have completed their respective assignments in behalf of Telstra.

Telstra had no ongoing commercial relationship with Bell Canada. The absence of an ongoing commercial relationship with Bell Canada prevented Telstra from requesting copies of documents I requested.

Telstra was not the proprietor of all the documents created by Telstra or received by Telstra from Bell Canada.

As my FOI request was lodged with Telstra on 23 November 1993, Telstra did at that time have a commercial relationship with Bell Canada and did have the documents requested under FOI in their possession.

Bell Canada performed other network evaluation performance tests on behalf of Telstra during the period of December 1993 and January 1994.

According to Telstra's own document supplied under FOI, Telstra and Bell Canada have entered into a joint venture regarding the marketing of a specialised voice mail software product.

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Voice: (03) 9 287 7099

Page No. 1

Fax: (03) 9 287 7001

493-495 Queensberry Street, North Melbourne Vic. 3051

Telstra employed Bell Canada as their agent to device, supervise and report on the original and other network evaluation performance tests conducted by Telstra personnel under Bell Canada's guidance on behalf of Telstra.

Telstra are again reminded that they are still in breach of the FOI Act by refusing to supply documents requested under FOI that were in their possession at the time they received the application.

It will be appreciated when Telstra advise me as to the date I can expect when these Bell Canada documents covered under the 23 November 1993 FOI application will be supplied.

Yours sincerely,



Graham Schorer

252

**FAXED**  
24/1/97

**GOLDEN**  
Transport Agency

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

To:	Mr John Pinnock Administrator of the Fast Track Special Arbitration Procedures	Date:	24 January 1997
Company:	c/- Telecommunications Industry Ombudsman's Office	Our Ref:	3057
From:	Graham Schorer	Fax No:	(03) 9277 8797
		Total Pages (including Header):	

Mailed: Yes ( ) No ( X )

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Dear Mr Pinnock,

Re: Your correspondence of 23 January 1997 and 20 December 1996, and my telephone conversation of 24 January 1997 in response to your latest correspondence regarding these matters.

I acknowledge I undertook to respond in writing to your correspondence of 23 January 1997 and 20 December 1996 during our telephone conversation outlining my reasons of concern, current inability to respond and/or possible rejection of the Administrator's binding conditional proposal forwarded to myself.

Before I am able to responsibly address in writing the matters referred to in your correspondence, I require written answers to the following questions:-

1.  
Is the Administrator of the Fast Track & Special Arbitration Procedure in possession of the knowledge that the Senate had voted in the affirmative for there to be an Inquiry into the costs incurred by Claimants against Telstra under the Fast Track & Special Arbitration Procedure. A "Yes" or "No" answer will suffice.

2.  
Is the Administrator of the FTAP in possession of the knowledge that both Telstra and Claimants, under the FTAP, are required to be present at all meetings between Administrator and/or Arbitrator and Telstra and the Claimants? A "Yes" or "No" answer will suffice.

3.  
Has the current Administrator of the FTAP acquainted himself with all correspondence between Telstra and the Claimants, memos and diary notes of minutes of meetings relating to the formation of FTAP? A "Yes" or "No" answer will suffice.

4.  
Will the current Administrator of the FTAP provide the Claimants under FTAP a copy of Telstra's preferred Rules of Arbitration provided to Warwick Smith on or before 12 January 1994 for onforwarding to the proposed appointed Assessor under the FTSP titled "Telstra's Corporation Ltd- 'Fast Track' Proposed Rules of Arbitration". A "Yes" or "No" answer will suffice.

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Voice: (03) 9 287 7099

Page No. 1

Fax: (03) 9 287 7001

493-495 Queensberry Street, North Melbourne Vic. 3051

JAN 28 1997 12:36 No. 013 P.05

28 JAN 97

ID:03-92877001

GOLDEN

5.

Please explain in words understood by a lay person the rationale the Administrator of the FTAP and Special Arbitration Procedures has undertaken to enter an agreement with Telstra committing a claimant under FTAP without prior notice or receiving a written or verbal request and approval to do so, or written authority to commit each claimant to conditions never discussed or disclosed with any claimant, particularly myself, prior to the Administrator entering into the Agreement with Telstra conditionally committing all claimants under the Fast Track and Special Arbitration Procedure.

6.

In response to your statement made in the telephone conversation of the 24 January 1997, please explain in words understood by a lay person why I am morally responsible to other claimants against Telstra under the Fast Track and Special Arbitration Procedures in assisting them being immediately equitably reimbursed for reasonable costs incurred.

Please explain in words understood by a lay person how I will be preventing other claimants from being immediately equitably reimbursed for reasonable costs incurred if I am unable, with rationale, able to submit a claim or make a claim on Interim basis when I am not in a position of all facts I require to assess with the rationale the proposition as presented.

7.

Please clarify whether the TIO will personally assess reasonableness of costs claimed or intend to appoint an Agent on their behalf. If the TIO does intend to appoint an Agent, ie Ferrier Hodgson, please advise the identity of the Agent who will be commissioned on behalf of the Administrator to perform the task.

8.

Has the Administrator of the Fast Track and Special Arbitration Procedures, in accordance with the FTSP Agreement, correctly addressed and/or clarify jointly with AUSTEL, Telstra and Claimants the following:-

- a. The Fast Track Settlement Proposal Agreement (FTSP) consists of verbal and written content.
- b. The definition of "losses" under the FTSP Agreement consists of all additional costs incurred as a result of the claimants' inability to receive incoming calls, includes all consequential losses including additional costs incurred in preparing claim for a non-legalistic commercial assessment process, as preparation of claim costs incurred are additional consequential losses.

Has the current Administrator under the FTAP impartially investigated allegations about the previous Administrator appointed under the FTSP and FTAP has failed to act to in accordance with the 'agreed to' procedures. A "Yes" or "No" answer will suffice.

In order to fulfill my verbal undertaking to you during our telephone conversation of 24 January 1997, an immediate written response specifically addressing each point will be appreciated.

Yours sincerely,

  
Graham Schorer

252

**FAXED**  
24/1/97

**GOLDEN**  
Transport Agency

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

To: Mr John Pinnock  
Administrator of FTAP  
Date: 24 January 1997

Company: C/- Telecommunications Industry  
Ombudsman's Office  
Our Ref: 3059  
Fax No: (03) 9277 8797

From: Graham Schorer  
Total Pages (Including Header):

Mailed: Yes ( ) No ( X )

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Dear Mr Pinnock,

Re: Your agreement to discuss into greater detail with me regarding mine and the other Claimants under the FTSP Agreement assertions that it is fact that the FTSP is both a verbal and written agreement, that includes all consequential losses including additional costs incurred in preparing claims under the FTSP Agreement and the Telstra alleged relationship to the FTAP.

In our telephone conversation on 24 January 1997, I appreciated your concern regarding the serious matters I brought to your attention. Your agreement to discuss these serious matters further is of comfort.

As pointed out in this conversation, your predecessor and others did not comply with the 'agreed to' procedures. Your predecessor met with Telstra and entered into an agreement with Telstra that wrongly disadvantaged the Claimants under the FTSP without a Claimant representative or a Claimant present. The other serious matters I brought into your attention also require impartial investigation. All these matters of conduct, in time, will be impartially investigated. However, if common sense prevails, it will be sooner rather than later, and I am willing to give you the opportunity to perform that task.

I do not believe it is appropriate for these discussions to take place by telephone.

It is essential that a Telstra representative be present when we discuss these matters in detail.

To avoid future misunderstanding and disagreement, the meeting should be taped and transcribed.

At your earliest convenience, I would appreciate of being notified when these discussions will take place.

Yours sincerely,

  
Graham Schorer

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Voice: (03) 9 287 7099

Page No. 1

Fax: (03) 9 287 7001

493-495 Queensberry Street, North Melbourne Vic. 3051

12:37 No. 013 P. 07  
JAN 28 '97 01:37PM

28 JAN '97

ID:03-92877001

GOLDEN



**FAXED**  
21/1/97

**GOLDEN**  
Transport Agency

A Division of G.M. (MELBOURNE) HOLDINGS PTY. LTD. A.C.N. 006 906 046

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

To:	Melanie Bleazby Document Line Manager - FOI Unit	Date:	24 January 1997
Company:	Telstra	Our Ref:	3058
From:	Graham Schorer	Fax No:	(03) 9634 2744
		Total Pages (including Header):	1

Mailed: Yes ( ) No ( X )

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Dear Ms Bleazby,

Re: Freedom of Information Request lodged with Telstra on 14 January 1997 (our Ref.3042).

On receipt of your correspondence dated 22 January 1997 re the above, my response to your requests is as follows:-

In my written correspondence, the following was stated: "GOLDEN request Telstra waive all charges associated with processing this application on the grounds of financial hardship plus on the basis the information sought is to be used in a process which is of public interest."

It is public knowledge and well known to Telstra that the process referred to in the above statement is the Fast Track Arbitration Procedure (FTAP).

Telstra have always stated to the public, Government, Commonwealth Ombudsman and other interested parties that the Fast Track Settlement Proposal (FTSP) Agreement was always meant to be an Arbitration procedure, and was the pre-requisites used to draft the FTAP. (The Claimants under the FTSP Agreement have always refuted the validity of Telstra's claim and in time will prove Telstra knowingly, falsely made representation that were not factual.)

The investigation by the Commonwealth Ombudsman's Office has clearly established with, and gained Telstra's agreement, that the FTSP and FTAP process is a matter of public interest, and that at all times, the Claimants under both agreements were entitled to gain of information and documents from Telstra at no cost under the FOI Act as obtaining documents under FOI was intrinsically linked with both processes.

Telstra, with the assistance of the Ombudsman's intervention, have already agreed that the Claimants under this FOI application are entitled to have their FOI applications related to the FTAP processed free of cost.

It would be appreciated if Telstra will immediately confirm in writing Telstra's previous commitment given to the Commonwealth Ombudsman and self, plus advise when the processing of this FOI application will be finalised.

Yours sincerely,

  
Graham Schorer

cc: Mr John Wynack, Commonwealth Ombudsman's Office

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Voice: (03) 9 287 7099

Page No. 1

Fax: (03) 9 287 7001

493-495 Queensberry Street, North Melbourne Vic. 3051

WAGE:10 26, 82 NHC  
JAN 28 '97 01:39PM

12:39 NO.013 P.10

28 JAN '97

ID:03-92872001

GOLDEN

*William M. Schor*



# Hunt & Hunt

LAWYERS

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

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

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

4 February 1997

Our Ref: GLH  
Matter No: 5126900

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

Dear Mr Hunt

## ARBITRATION - SCHORER AND TELSTRA

I have now had an opportunity to peruse the claim, defence and reply documentation.

A number of outstanding matters must now be addressed in order that this arbitration can proceed. Each party has foreshadowed in previous correspondence that it requires information from the other; in addition, I pointed out in my letter of 15 October 1996 that, upon receipt of the initial submissions of the respective parties, I would be in a position to make my own assessment as to what further documentation (if any) should be produced by either party.

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

I accordingly invite each party to advise me within seven (7) days as to whether it still requires the production of information or other material from the other party and, if so, I require a full description of that information or other material.

*XX*

I will then provide each party with a further seven days to comment on the other's submission. If necessary, at the end of that process, I will make a ruling.

I await your response.

Yours sincerely

  
**GORDON HUGHES**

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

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

11943677\_GLH/AK

Email: Mail/hunt.hunt@interlaw.org

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sydney  
sydney west  
brisbane  
canberra  
newcastle  
represented in  
adelaide  
darwin

**253**



Telecommunications  
Industry  
Ombudsman

John Pinnock  
Ombudsman

04 February 1997

## CONFIRMATION OF FAX

Mr Alan Smith  
Cape Bridgewater Holiday Camp  
RMB 4408  
CAPE BRIDGEWATER 3305

*Facsimile 03 5526 7230*

Dear Mr Smith

I refer to your letter of 4 February 1997.

I reject completely your assertion that Dr Hughes and David Read 'conspired to breach the rules of the Arbitration'.

Similarly, I reject your assertion that there was or ever has been a conflict of interest between Mr Benjamin's membership of the TIO Council and any role he may have had in relation to the supply of FOI documents. Please note that Mr Benjamin has never held any position as an 'executive officer' of the TIO.

Yours sincerely

JOHN PINNOCK  
OMBUDSMAN

254A

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TIO LTD ACN 057 634 787  
National Headquarters  
315 Exhibition Street  
Melbourne Victoria

Box 18098  
Collins Street East  
Melbourne 3000

Telephone (03) 9277 8777  
Facsimile (03) 9277 8797  
Tel. Freecall 1800 062 058  
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# Hunt & Hunt

LAWYERS

- Partners: Edward S. Boyce, James C.F. Harwood, Christine A. O'Leary, Ciaran T. Hughes, Mark T. Knappman, Ian S. O'Leary, Peter J. Sells, Wayne E. Cahill, Neville C.H. Deane, Grant D. Lohan, Charles Veerins, Andrew J. Smith, William A. O'Brien
- Charterers: Kenneth M. Marsh, Richard J. Kellaway
- Associates: Shane C. Hyde, John S. Melnar, Melissa A. Henderson, Francis V. Calchio, Ray Sell

30 November 1994

Our Ref: OJH  
Matter No:  
Your Ref:

BY FAX: 632 5255

Mr Ted Benjamin  
National Manager - Customer Response Unit  
Telecom Australia  
Level 37  
242 Exhibition Street  
Melbourne VIC 3000

Dear Mr Benjamin

### COT ARBITRATIONS - PREFERRED TIMETABLE

Your letter requesting an extension of time for submitting Telecom's defence in the Smith arbitration (to which I shall respond separately) has prompted me to consider my preferred timetable for the completion of the Smith, Garms and Valkob arbitrations.

My strong preference is to be in a position to instruct the Resource Unit to commence such formal inquiries and investigations as may be necessary from early January 1995. I understand that the relevant members of the Resource Unit will be available throughout January and I am anxious to make the most of this period.

It is also my preference that the Resource Unit be in a position to evaluate and investigate the Smith, Garms and Valkob claims simultaneously.

It follows that it is my further preference to receive Telecom's defence in relation to each of these claims, together with the respective claimants' replies (if any), prior to Christmas. This being the case, I would utilise the period between Christmas and New Year to determine what inquiries and investigations should be made by the Resource Unit.

I believe it is in the interests of all concerned for these matters to be resolved as soon as possible. It would not be possible to instruct the Resource Unit in early January 1995 in relation to any or all of the matters if Telecom requires the full time permissible under the Fast-Track Arbitration Procedure for the submission of its defence in each case (not to mention extensions) or if the claimants require the full time permissible

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Level 21, 438 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 614 8711.  
Facsimile: (61-3) 614 8730. G.P.O. Box 1333N, Melbourne 3001. DX 252, Melbourne.

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under the Fast-Track Arbitration Procedure for the submission of any replies.

If all parties are anxious for this matter to be dealt with expeditiously, and in particular if the parties are anxious for the matter to progress during the holiday period, all concerned must meet their commitments and exercise their rights within reduced time frames.

It follows that whilst I am prepared to grant an extension of time in the Smith arbitration, I am doing so in the hope that in a spirit of co-operation, Telecom will use its best efforts to submit its defences in Garms and Valkobi on or before the same date.

If Telecom is able to submit all three defences on or about the same date, I shall prevail upon the claimants to submit their replies (if any) prior to Christmas.

Having said this, I do not intend to place any pressure on any of the parties to compromise their rights under the Fast-Track Arbitration Procedure. The purpose of this letter is to emphasise, however, that an expeditious resolution of these three claims will require co-operation and compromise from all concerned.

I do not propose forwarding a copy of this letter to the claimants as I do not consider it appropriate for me to discuss any individual's claim with other claimants.

I would appreciate any comments you may have.

Yours sincerely

~~GORDON HUGHES~~

CC W Smith, P Bartlett, J Rundell

L69365



12 February 1997

**FAXED**  
12/2/97

Regulatory & External Affairs

Level 37  
242 Exhibition Street  
Melbourne Vic. 3000

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

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

✓ By Facsimile: (03) 9617-9299

Dear Dr Hughes

**Arbitration - Schorer and Telstra**

I refer to the Claimants' Reply dated 15 January 1997 and to your letter to the Claimants' solicitor dated 4 February 1997. I thank you for the opportunity to make further submissions as to the provision of documentation and other material by the Claimants.

I would like to make a number of points and submissions:

1. Telstra has on a number of occasions over the years indicated what documents, in its opinion, the Claimants should be filing and what information Telstra required from them. To take just one example, on or about 31 January 1995 Telstra submitted in this Arbitration a detailed list of the particulars and documentation which, in Telstra's submission, should have been provided with the Claimants' final Claim.
2. In spite of Telstra's repeated statements and requests, neither the final Claim submitted by the Claimants nor the Reply contain anything in the nature of adequate particulars nor do they include any supporting documentation. This is despite:
  - the Claimants' very lengthy delay in submitting their final Claim; and
  - the extensive defence documentation submitted by Telstra to which the Claimants' Reply was supposed to be directed.
3. Further, the Claimants have in fact obstructed Telstra's attempts to use or obtain relevant documentation on a number of occasions, contrary to certain allegations in their Reply.

In particular, the Claimants have refused Telstra permission to use documents discovered in the Flexitel litigation or to obtain information from the Claimants' PABX provider. In this regard, I refer you in particular to Telstra's letter to Mr Schorer dated 25 January 1996 and Telstra's letter to you dated 2 February 1996.

4. As I stated in my letter dated 9 October 1996, it is for the Claimants to file appropriate claim documents and supporting material. If they elect not to provide any such material, despite repeated requests, Telstra submits that the arbitrator should proceed to make an award on the basis of the material available. In particular, Telstra submits that there can be no justification in such a case for the Resource Units to be involved because:
- it is not for the Resource Units to seek to make out the Claimants' technical or financial case but merely to evaluate the material provided by the parties;
  - Telstra's defence documents are clear on their face and do not require analysis by the technical Resource Unit; and
  - there is no information from the Claimants that could be referred to the financial or technical Resource Units for consideration.
5. Given these circumstances and in particular the failure of the Claimants to provide any adequate material, Telstra submits that the arbitrator has no basis for making any award in the Claimants' favour. For these reasons Telstra requests that the arbitrator proceed to make such an award.

Should you not be minded to make an award in Telstra's favour based on the material before you, Telstra would like to make a further request for documents and material as proposed by you in your letter to the Claimant's solicitor of 4 February 1997. This is because the Claimants have refused to provide a range of information which is critical to any claim, including financial information about Golden Messenger, and business and technical information concerning the Claimants' PABX. Such information is wholly within the Claimants' knowledge and Telstra and the arbitrator cannot obtain such information without the Claimants' co-operation. Telstra reiterates its submission that the arbitrator cannot make any award, apart from an award dismissing the claim in its entirety, in the absence of such material.

Accordingly, I enclose a request for further documentation and particulars which is essentially a truncated version of the document provided on 31 January 1995. This document has been truncated by Telstra in the interests of expediting this Arbitration process. The justification for each requested class of documentation and particular is contained in the request. Telstra will provide further submissions in respect of each request if required.

In all the circumstances, Telstra submits that the Claimants be given no more than 30 days to provide the information requested, failing which an award should be made in the terms requested in paragraph 6 of this letter.

Yours faithfully



**Ted Benjamin**  
Director  
Consumer Affairs

Encs: 1

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

By facsimile: (03) 9670 6598

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

By facsimile: (03) 9277 8797

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

By facsimile: (03) 9287 7001

Mr Peter Bartlett  
Minter Ellison  
40 Marker Street  
MELBOURNE VIC 3000

By facsimile (03) 9229 2621



## REQUESTED DOCUMENTS

### 1. Documents Relating to the Purchase of Golden Messenger

Documents requested under this category are:

- (a) a copy of the terms of settlement of Court proceedings between the interests of Mr Allan Maller and Mr Graham Schorer transferring the former's interest in Golden Messenger to the latter;
- (b) a copy of the sale and purchase agreement pursuant to which GM (North Melbourne) Holdings Pty Ltd transferred the Golden Messenger business to GM (Melbourne) Holdings Pty Ltd; and
- (c) copies of all other agreements that relate to the structure of the Golden Messenger business during the period of the claim.

#### Grounds:

These documents are required:

- (i) to assess the reasonableness of the basis of the claim for loss of operating margin, market strength and market share, financial resources, goodwill and capital investment opportunity as identified in paragraph 29 of the Statement of Claim.
- (ii) to enable Telstra to make a meaningful assessment of each Claimant's interest in Golden Messenger.

### 2. Documents Relating to Staffing at Golden Messenger

Documents requested under this category are those relating to the date of commencement and departure of each telephonist, 2-way radio operator, carrier and other staff member, including a description of the duties of each, during the period of the claim.

#### Grounds:

These documents are required:

- (i) to enable Telstra to assess the number of carriers and other professionally experienced staff lost by the Claimants listed at Schedule B to the Fast Track Arbitration Procedure ("the Claimants").
- (ii) to enable Telstra to make a judgement as to the appropriate staffing levels at Golden Messenger

### **3. Documents Relating to Jobs and Clients of Golden Messenger**

The documents relating to jobs and clients during period of claim, including all supporting documents (invoices and daily job records) for the matters mentioned in schedules 9, 10 and 10A of the Claim

#### **Grounds:**

These documents are required to enable Telstra to audit and verify the:

- (i) number of jobs undertaken by the Claimants
- (ii) commission earned
- (iii) average commission per job

### **4. Documents Relating to the Finances of the Claimants**

Documents requested under this category are:

- (a) copies of the tax returns for the financial years ending 30 June 1983 to date;
- (b) copies of financial statements (including detailed balance sheets, profit and loss statements, cashflow statements, work papers and spreadsheets) for the financial years ending 30 June 1983 to date; and
- (c) copies of loan documentation and securities with any financiers
- (d) copies of trust deeds and memorandums of association

for each of the Claimants

#### **Grounds:**

These documents are required:

- (i) because each of the Claimants is an entity operating the Golden Messenger business
- (ii) to enable Telstra to assess the loss allegedly suffered by each Claimant
- (iii) to enable Telstra to assess each of the Claimant's ability to grow and expand the business of Golden Messenger but for the alleged telephone and landline service difficulties, faults and problems allegedly experienced.

## **5. Documents Relating to the Relationship between the Claimants**

Documents requested under this category are those relating to any transactions between the Claimants, including management fees, service fees and loans.

### **Grounds:**

These documents are required:

- (i) to enable Telstra to assess the loss suffered by each Claimant
- (ii) to enable Telstra to ascertain the trading position of each Claimant

## **6. Documents Relating to the Finances and Transactions between the Claimants and Related Entities Within the Golden Messenger Group**

Documents requested under this category are:

- (a) copies of tax returns for the financial years ending 30 June 1983 to date;
- (b) copies of financial statements (including detailed balance sheets, profit and loss statements, cashflow statements, work papers and spreadsheets) for the financial years ending 30 June 1983 to date; and
- (c) copies of loan documentations and securities with any financiers;

for each of the Claimants.

### **Grounds:**

These documents are required to:

- (i) enable Telstra to check and verify the trading position of each Claimant.
- (ii) enable Telstra to gain an understanding of the legal structure of Golden Messenger and the risks associated with its business.
- (iii) to enable Telstra to assess the ability of the Claimants to grow and expand the Golden Messenger business without the financial assistance of the related entities but for the telephone and landline service difficulties, faults and problems it allegedly experienced.

- (iv) enable Telstra to calculate and verify each Claimant's losses disregarding the interests of each of the related companies.
- (v) enable Telstra to determine the related party transactions between the Claimants and each of the related companies in the Golden Messenger business.

**7. Documents relating to Golden Messenger's business process**

- (a) Details of the Claimants' receipt and despatch systems and business process methodologies during the period of the claim
- (b) details of the Claimants' costing and management information systems during the period of the claim
- (c) copies of all business plans and business development documents

**Grounds:**

These documents are required to enable Telstra to assess:

- (i) the maturity and development of the Claimants' business during the period of the claim
- (ii) compare the Claimants' business with other businesses in the same industry

**8. Documents relating to services and pricing**

details of the types of services and charges offered by Golden Messenger during the period of the claim

**Grounds:**

These documents are required to enable Telstra to:

- (i) audit and review the claim document, in particular "average commission per job"
- (ii) compare the Claimants' business with similar businesses
- (iii) review the actual performance of the business against real business determinants

**9. Documents relating to agency agreements**

copies of contracts and agency agreements with all couriers during the period of the claim

**Grounds:**

The documents are required to enable Telstra to review the:

- (i) operational structure of the business post March 1986
- (ii) development and capacity of the business during the period of the claim
- (iii) trends in permanent hire and demand hire work

**10. Documents Relating to the Claimants' Telstra Communication Difficulties Problems and Faults**

Documents requested under this category are:

- (a) copies of communications between the Claimants and Telstra communication experts, including Telstra and any other person relating to the nature, cause and extent of the Claimants' telephone service difficulties, problems and faults since March 1986.
- (b) copies of communications between the Claimants and Telstra communication experts, any other person relating to the nature, clause and extent of the Claimants' landline service difficulties, problems and faults experienced since March 1986;
- (c) copies of communications between the Claimants and Telstra in which Telstra held itself out as having the skill, judgement, capacity, expertise and ability to advise, install, connect, maintain, operate and supply an efficient and reliable telephone and landline service;
- (d) copies of communications between the claimants and Telstra in which Telstra advised and recommended to the Claimants to install and retain customer premises equipment ("CPE") and systems which were inadequate to provide the telephone and landline services required and requested by the Claimants;
- (e) copies of communications between the Claimants and Telstra containing representations relating to telephone and landline service difficulties, problems and faults;
- (f) copies of documentary data generated by the VOCA Call Sequencer setting out the day to day operation of the Flexitel Key System since about July 1987;
- (g) copies of communications between the Claimants and Honeywell Australia Limited and AT&T Limited relating to the difficulties, problems and faults experienced by the Claimants as a result of the

**AT&T Limited Definity Computerised Call Centre and Management System ("PBX");**

- (h) copies of documentary data generated by the PABX setting out the day to day operation of the PABX since its purchase and installation in about September/October '992; and
- (i) copies of communications between the Claimants and the owner/operator of each 2-way radio base station to which a Telstra landline was and is connected since 1 February 1973.

**Grounds:**

These documents are required:

- (i) to enable Telstra to determine the nature and extent of the Claimants' telephone and landline service difficulties, problems and faults.
- (ii) to enable Telstra to determine the action taken by the Claimants to remedy the alleged telephone and landline service difficulties, problems and faults
- (iii) to enable Telstra to determine which of the alleged telephone and landline service difficulties, problems and faults are attributable to Telstra and non Telstra CPE.
- (iv) because it is alleged that Telstra made the communications set out in paragraphs (c) to (e) (both inclusive).
- (v) to enable Telstra to distinguish between the telephone service difficulties, problems and faults attributable to the CPE, CAN and network and misoperations by the Claimants.
- (vi) to enable Telstra to determine the extend to which the alleged landline service difficulties, problems and faults are attributable to the 2-way radio base station.

**11. Documents Relating to the use of CPE**

Documents requested under this category are internal communications of the Claimants relating to the use and training of their telephone operators, radio dispatch, operators and carriers of any CPE rented, installed, serviced, maintained, modified or added to CPE providers, including Telstra since 1 February 1973.

**Grounds:**

These documents are required:

- (i) to determine the extent of instruction and training provided by the Claimants to its staff in the use of CPE
- (ii) to enable Telstra to apportion between the alleged telephone and landline service difficulties, problems and faults attributable to Telstra and the Claimants.

## 12. Documents Relating to the Services Provided by Golden Messenger

Documents requested under this category are:

- (a) copies of documents describing the type of services provided by the Claimants since 1 February 1973;
- (b) copies of Claimants' financial statements and working papers relating to its operating margin for each type of service provided since 1 February 1973
- (c) copies of Claimants' financial statements and working papers relating to the revenue charged for each type of service since 1 February 1973 including price lists;
- (d) copies of the Claimants' financial statement and working papers relating to the expenses associated with each type of service since 1 February 1973 including direct and indirect, fixed and variable, actual or accrued expenses;
- (e) copies of documents, including tables, graphs, bars, charts and job sheets relating to the number of courier services performed by the Claimants on a daily basis since 1 February 1973; and
- (f) copies of the Claimants' banking records, including bank statements and cash receipt books since 1 February 1973.

### Grounds:

These documents are required:

- (i) because they are fundamental to the claim for loss of jobs, clients, operating margin, market share, goodwill and capital investment opportunity as set out in paragraph 29 of the Statement of Claim.
- (ii) to enable Telstra to analyse the trade figures for the Golden Messenger business since its purchase in about 1 February 1973.
- (iii) to enable Telstra to verify the sales of courier services on a daily basis

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- (iv) to enable Telstra to verify the number of jobs performed by Golden Messenger since 1 February 1973
  - (v) to enable Telstra to ascertain the Claimants' likely growth and expansion since 1 February 1973 but for the alleged telephone and landline service difficulties, problems and faults
- 13. Documents Relating to Losses Other Than Those Attributable to Telephone service Difficulties or Telstra**

Documents requested under this category are:

- (a) copies of communications between the Claimants and the provider of Computer Bureau services relating to the difficulties being experienced by the Claimants with respect to the Computer Bureau Services; and
- (b) copies of the terms of settlement, releases and judgements in every Court proceeding commenced by the Claimants for loss and damage (past or future) to Golden Messenger's business operations.

**Grounds:**

These documents are required:

- (i) to determine the loss and damage suffered by the Claimants which are not attributable to Telstra and which are attributable to causes other than the alleged telephone service and landline difficulties, problems and faults
- (ii) to quantify the compensation already received by the Claimants for loss and damage (past and future) to the Golden Messenger business.
- (iii) to determine loss and damage suffered by the Claimants which is attributable to causes other than the alleged telephone and landline service difficulties, problems and faults.

**14. Documents Relating to the Advertising and Promotion of Golden Messenger**

Documents requested under this category are:

- (a) copies of all advertisements promoting the services provided by the Claimants since 30 June 1983.
- (b) copies of all documents relating to the schedules for such advertisements and the media through which these advertisements were placed;



- (c) copies of all documents relating to the advertising or promotional expenditure of the Claimants for the Golden Messenger business operations; and
- (d) copies of all documents relating to the number, experience and capabilities of sales and marketing employees, servants, agents and sub-contractors engaged by the Claimants since 30 June 1983.

**Grounds:**

These documents are required:

- (i) to evaluate the promotional activities of the Claimants in relation to the Golden Messenger business
- (ii) to enable Telstra to analysis the levels of patronage for the services provided by the Claimants during certain times of the financial year
- (iii) to enable Telstra to determine the financial and other resources devoted by the Claimants for the maintenance and expansion of their courier business.

**15. Documents Relating to the Claimant's Health Problems**

Documents requested under this category are:

- (a) copies of Mr Graham John Schorer's medical files relating to physical and mental health treatment received due to the alleged telephone and landline service difficulties, problems and faults since 30 June 1983.

**Grounds:**

These documents are required to assess Mr Schorer's claim for loss and damage due to the deterioration of his health.

**16. Documents Relating to the Telstra Communications Services and Advice Provided by Telstra**

Documents requested under this category are:

- (a) copies of communications between the Claimants and Telstra relating to:
  - (A) the business interruption, disruption and loss being experienced by the Claimants; and
  - (B) the desirability of relocating to a different geographical location;

- (b) copies of communications between the Claimants and Telstra relating to the CPE to be utilised by the Claimants in their business operation since 30 June 1983 including the Multiphone Key system and Flexitel key System;
- (c) copies of communications between the Claimants the Telstra relating to the negotiation, installation, rental, purchase, addition, modification, maintenance and service of landlines connected to and from the properties situated at 21 Seymour Street, Elsternwick, 31 Cobden Street, North Melbourne, 4 Templestowe Road, Bulleen and 493-495 Queensberry Street, North Melbourne and any two-way radio base station equipment since 30 June 1983
- (d) copies of communication between the Claimants and Telstra relating to the connection of the Claimants to the ISDN including the provision of dual node access and PSTN backup; and
- (e) copies of communications between the Claimants and Telstra relating to the dependency of the Claimants upon the telephone and landline service provided by Telstra for the success of their business operations.

**Grounds:**

These documents are required:

- (i) because the Claimants allege that they have at all times advised Telstra that the success of their business operations depended upon the telephone and landline services provided by Telstra.
- (ii) because the Claimants allegedly advised Telstra that their business operations were suffering due to the poor telephone and landline service provided by Telstra.
- (iii) because the Claimants allegedly relied upon the advice communicated by Telstra for the installation, purchase or rental of CPE and other systems.
- (iv) because the claimants allegedly relied upon the advice communicated by Telstra for the rental and connection to the ISDN.

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**REQUESTED PARTICULARS****STATEMENT OF CLAIM****Structure of the golden Messenger Business****1. In relation to paragraph 3:**

The Claimants have stated that they commenced in the business of "on demand" courier and light truck services on 1 February 1973;

- (a) describe the legal relationship of the Claimants to the Golden Messenger business and each other.
- (b) Identify when and how this relationship changed from 1 February 1973 to date; and
- (c) Describe the nature of the Golden Messenger business and the type of services provided from time to time from 1 February 1973 to date.

**2. In relation to paragraph 4:**

The Claimants have stated that they operated the Golden Messenger business out of certain premises;

- (a) For each premises, state which of the Claimants owned or rented it;
- (b) For each premises, state when the Claimants purchased or leased it and set out the terms of the purchase or lease and identify any relevant documents; and
- (c) For each premises, if it was owned by one of the Claimants and subsequently sold, set out the C terms of the sale and identify any relevant documents.

**Details of the alleged telephone service problems****3. In relation to paragraphs 5, 9, 10, 11, 12, 14, 15, 17, 22 and 23;**

The Claimants have referred to telephone service difficulties, problems and faults, telephone landline problems and the fact that the telephone service was below the expressed and reasonable needs of their business operations;

- (a) State the nature of each difficulty, problem or fault, when it occurred (including the date and time), its duration and the identity of the caller where applicable; and

- (b) For each difficulty, problem or fault, identify any factors or things that caused or could have caused it.

***Details of alleged advice, representations or statements by Telstra***

**4. In relation to paragraphs 6, 7, 10, 13, 15, 22, 25, 26 and 27:**

The Claimants have stated that Telstra gave them advice or made representations and statements to them in relation to certain matters;

- (a) If the advice, representations or statements were partly or wholly oral, state by whom they were made and to whom they were made;
- (b) If the advice, representations or statements were partly or wholly written, identify the relevant documents;
- (c) State the substance of the advice, representation or statement and when they were made; and
- (d) State what each of the Claimants did in response to the advice, representation or statement and when they did it.

***Consumer premises equipment***

**5. In relation to paragraphs 7, 8, 13, 14 and 16**

The Claimants have referred to particular telephone systems or customer premises equipment ("CPE") from time to time;

- (a) State the substance of the contracts for the purchase, service and maintenance of each CPE and whether the contracts were written, oral or partly written and partly oral;
- (b) If the contracts were partly or wholly written, identify the relevant documents;
- (c) If the contracts were partly or wholly oral, identify by whom the statements were made and to whom the statements were made and state the substance of the statements; and
- (d) Provide the configuration of each CPE.

***Telephone landlines***

**6. In relation to paragraphs 5(c) and 9:**

The Claimants have referred to the telephone landlines that they were using;

- (a) State when each landline was first connected to each of the Claimants' premises;
- (b) Describe any change, addition or alteration to each landline from the date of installation to date;
- (c) Identify any documents that relate to the purchase, service or maintenance of the landlines or contain any advice the Claimants have received in relation to the landlines; and
- (d) Identify each two-way radio base station piece of equipment to which each Telstra landline was connected from time to time, setting out its geographical location and the name of its owner/operator.

### ***Claimants communications to Telstra***

#### **7. In relation to paragraphs 18(i) and (ii):**

The Claimants have stated that they have "made known" to Telstra certain matters:

- (a) State whether these matters were made known by written or oral communication;
- (b) If the communications were oral, state who made them and to whom they were made and the substance of the communication;
- (c) If the communications were written, identify the relevant documents; and
- (d) State when the communications were made.

### ***Claimants' conduct***

#### **8. In relation to paragraph 24:**

The Claimants have stated that they and their servants and agents manned and operated the business operations telephone systems correctly and properly;

- (a) Identify each and every servant and agent referred to;
- (b) Describe the training each servant and agent received in relation to the Claimants' telephone system.

**9. In relation to paragraph 25:**

The Claimants have referred to agreements that they entered with Telstra;

- (a) Identify each and every agreement and any document relevant to it;
- (b) State whether each agreement was written or oral and if oral, identify the people involved in the communication; and
- (c) Describe the substance of each and every agreement.

**10. In relation to paragraph 25:**

The Claimants have alleged that the Claimants were induced to enter into the agreements by Telstra's representations and warranties;

- (a) Give full details of each alleged representation or warranty;
- (b) State whether the alleged representation was oral or in writing or partly so;
- (c) If in writing identify the particular document; and
- (d) If oral, identify who made the alleged representation or warranty and state when it was made.

GLH 5126900

93/194 WKH:MYC

14th February, 1997

BY COURIER

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

Dear Dr. Hughes,

RE: Arbitration - Schorer & Telstra

We refer to your letter of 4th February, 1997 herein. Prior thereto on 24th January last, Mr. Schorer on behalf of the Claimants herein, had sought an immediate meeting with the Administrator (Mr. Pinnock) to discuss, inter alia, matters affecting the FTSP and the FIAP which prevent the Claimants from obtaining essential information from Telstra through FOI procedures.

It was Mr. Schorer's hope that the meeting could have been arranged at least at a very early date.

It was essential that Telstra be present at the meeting. However, the meeting date first agreed upon has been deferred to 26th February next apparently to accommodate Telstra.

In the Reply to Telstra's Defence, the Claimants indicated their continuing inability to process their claims because of the lack of essential information being released under FOI procedures.

Since late January the Claimants were and still are currently engaged in an exercise with one of their largest (if not the largest) "customers" to finalize arrangements for work to be done and income maintained at a given rate for the next few years. This process has completely precluded Mr. Schorer from responding usefully to your invitation to advise you on what information or other material is still required from Telstra. That position will unhappily continue in all probability until 10th March next.

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You will appreciate that the Claimants are small but busy organizations. Mr. Schorer alone is the only person in the various Claimants' structures who can deal with matters of policy or importance, or, for that matter anything other than the pre-determined routine procedures for the conduct of the Golden Messenger business.

Accordingly, it is respectfully requested that the 7-day response date to your letter (now past) be extended to the 11th March next. Alternatively and preferably it is requested a Directions Hearing be scheduled for that day (or later as may suit you or Telstra's convenience) to discuss and make submissions to you on the problems created for the Claimants by the continuing lack of material being made available to the Claimants under FOI procedures.

We wait on hearing from you.

Yours truly,

HUNTS'

c.c. Mr. J. Pinnock  
Mr. E. Benjamin  
Mr. P. Bartlett



# GOLDEN FACSIMILE TRANSMISSION



DATE: 14 February 1997

TO: Mr John Armstrong  
Consumer Affairs Counsel  
Telstra  
By facsimile: (03) 9634 8168

**FAXED**  
17/2/97

RE: FOI

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

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

Dr Gordon Hughes  
Hunt & Hunt  
Arbitrator  
By facsimile: (03) 9617 9299

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

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

Lanes Telecommunications Pty Ltd  
Technical Resource Unit 335  
By facsimile: (08) 8364 5225

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

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



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## PRIVACY AND CONFIDENTIALITY CLAUSE

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

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

To:	Mr John Armstrong	Date:	14 February 1997
		Our Ref:	3140
Company:	Telstra - Consumer Affairs Counsel	Fax No:	(03) 9634 8168
From:	Graham Schorer	Total Pages (including Header):	10

Mailed: Yes ( ) No ( X )

**PRIVACY AND CONFIDENTIALITY CLAUSE**

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Dear Mr Armstrong,

Re: Your November 1993 FOI application and the further Golden inquiries made to Telstra regarding the non-supply of documents requested from Telstra under FOI about the Telstra created documentation, work orders, work notes, E-mail, internal correspondence, minutes of meetings, diary notes etc including written instructions Telstra received from Bell Canada International and Telstra correspondence to Bell Canada before, during and after the monitoring and testing performed by Telstra personnel in accordance with the BCI devised policy, procedure and rules to be adhered to by Telstra personnel during the monitoring and testing programme relating to the devised Bell Canada testing that became the 1st Bell Canada Report re C.o.T. matters.

I refer you to the contents of your facsimile dated 13 February 1997 in response to my correspondence to Mr Benjamin dated 24 January 1997 and 29 January 1997 regarding the above, *incorrectly titled 'Fast Track Arbitration'*, instead of using the most appropriate and correct title, 'Your November 1993 FOI Application'.

Before I respond to the contents of your letter, I wish to draw your attention to the error contained in my 29 January 1997 correspondence to Mr Benjamin. The statement containing the error is repeated in italics with the error bolded and the statement containing the error correction is reprinted in normal print with the correction bolded.

*"Further to our correspondence dated 24 January 1997 Ref.3060, it is drawn to Telstra's attention that prior to 23 November 1993, Mr Ian Campbell, on behalf of Telstra, undertook to Graham Schorer to arrange the immediate supply of the documents, working papers, work orders, instructions, memos etc created by Telstra employees who were involved in supporting and/or performing the tasks devised by Bell Canada to test specific parts of the Telstra network that formed the basis of the first of the Bell Canada Reports."*

"Further to our correspondence dated 24 January 1997 Ref.3060, it is drawn to Telstra's attention that after 23 November 1993, Mr Ian Campbell, on behalf of Telstra, undertook to Graham Schorer to arrange the immediate supply of the documents, working papers, work orders, instructions, memos etc created by Telstra employees who were involved in supporting and/or performing the tasks devised by Bell Canada to test specific parts of the Telstra network that formed the basis of the first of the Bell Canada Reports."

You state in your correspondence "To assist Telstra would you please advise the date of the alleged undertaking, and provide copies of any written record you might have of it.", my response to Telstra's request is contained in the attached appendix.

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In your correspondence you draw my attention to the fact that Bell Canada was not part of Telstra and therefore Telstra could not transfer that part of my request to Bell Canada.

I have always known that Bell Canada is not an "agency" respondent to the 1982 Federal FOI Act.

I have never outrightly stated, suggested or attempted to imply that Bell Canada was an "agency".

It was Mr Peter Gamble and Mr Pollock who stated in the 1994 FOI meetings that Telstra did not have an ongoing commercial relationship with Bell Canada and that precluded them from asking Bell Canada for copies of all the Telstra papers they took back to Canada on the completion of their assignments with Telstra and as previously stated, I have FOI documents that substantiate Telstra did have a commercial relationship with Bell Canada after Telstra had received my FOI application and during the time I repeatedly reaffirm my request with Telstra.

In your correspondence, you have incorrectly titled the correspondence as "Fast Track Arbitration Procedure" rather than using the correct title, "Matters pertaining to the scope of your 23 November 1993 FOI application".

I refer to your statement, and I quote, "As stated in Telstra's letter to you of 20 April 1995, Telstra has made available to you all Bell Canada information in its possession, which falls within your FOI request. A list of the files containing these documents is attached for your convenience." is noted and appreciated as the documents you are referring to are not the documents I am still seeking to be provided with in accordance with the scope of my November 1993 FOI application.

Mr Armstrong, you have, like other Telstra personnel, have consistently with purpose, keep **incorrectly** referring to the Bell Canada working notes in response to my correspondence relating to Telstra failure to correctly discover, identify and supply the Telstra created and received documents relating to the BCI Report which were part of the scope of my November 1993 FOI request.

Regardless of reason as to why Telstra now does not have this material in their possession, Telstra did have this material in their possession after they received my November 1993 FOI application. In accordance with the obligation placed upon Telstra as a respondent to the 1982 Federal FOI Act, Telstra are required to reconstruct these files of missing documents that were in their possession after they received a FOI application containing a request for documents in Telstra's possession.

In accordance with my rights, under the 1982 Federal FOI Act, I formally request Telstra to reconstruct the files of missing documents and provide me with a copy.

As Telstra has demonstrated they did (and most likely still have) a mutual satisfying commercial relationship with Bell Canada, and I have no objections if Telstra do choose to invite Bell Canada to assist Telstra in helping to accurately recreate the files of documents that Telstra has wrongfully disposed of and/or destroyed.

As this matter has been brought to Telstra's attention since December 1993, I require your immediate written notification as to what actions Telstra intend to take to remedy their breach of the FOI Act.

Yours sincerely,

  
Graham Schorer

Voice: (03) 9287 7099

Page No. 2

Fax: (03) 9287 7001

493-495 Queensberry Street, North Melbourne, Vic. 3051

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**Appendix.**

My Fast Track Settlement Proposal was signed, dated and handed to AUSTEL on 23 November 1993.

My FOI application dated 24 November 1993 was physically lodged with Telstra by Hand Delivery.

On or about 24 November 1993, Telstra arranged (at short notice) for a Bell Canada International/Telstra personnel briefing of some of the C.o.T. members about the BCI Report.

On 25 November 1993, I wrote to Mr Robyn Davey, Chairman of AUSTEL, about the contents contained within the BCI Report. This was the first of the series of correspondence addressed to AUSTEL about the flaws contained within the BCI Report.

The meeting took place on or about 26 November 1993 and was convened in the morning at the Hilton Hotel, East Melbourne, Vic.

The purpose of the meeting was to enable the BCI personnel to explain the BCI Report to the present C.o.T. members, and provide answers to any questions raised at the meeting.

During the meeting, the Bell Canada personnel disclosed the following:-

- BCI devised a monitoring and testing procedures and rules to be used to capture the data relating to Telstra's network performance.
- Part of BCI devised monitoring and testing procedures and rules to be used included the instruction for all testing to be stopped when a problem and/or fault was experienced, the problem and/or fault was to be fixed before the testing will be resumed.
- BCI consulted with Telstra to obtain details about the C.o.T. members' telecommunication requirements and working hours to enable them to determine location of test sites and testing hours.
- Telstra personnel performed all of the monitoring and testing of Telstra network using Telstra equipment and collected all of the test data.
- BCI personnel, physically did not personally supervise all of the monitoring and testing performed by Telstra due to the diversity of the geographical locations from where the tests were conducted and the time constraint required to complete the report.
- Telstra provided BCI with copies of the test results.
- Telstra retained possession of all the work papers and documents created by the Telstra personnel during the monitoring and testing programme.

After the BCI-Telstra meeting with the C.o.T. members, on the same day, I attempted to make telephone contact with Mr Ian Campbell, a Telstra Director, who was then, on behalf of Telstra, in charge all of C.o.T. matters.

It took sometime after many attempts before I was able to make successful telephone contact with Mr Ian Campbell.

During my telephone conversation with Mr Campbell, I informed him what I and the other C.o.T. members had been told during the BCI meeting with C.o.T. members. (Refer to above.)

I requested of Mr Campbell that he arrange for me to be supplied with copies of all the Telstra work papers created during the Telstra monitoring and testing performed in accordance with the BCI procedures and rules, plus Telstra's response to AUSTEL regarding the contents of the BCI Report.

Mr Campbell agreed to arrange for me to be supplied with copies of all requested documents. During this conversation, I also stated to Mr Campbell that the BCI Report was flawed and that I had already written to the Chairman of AUSTEL about the matter.

I did not record or diarise the contents of this conversation with Mr Ian Campbell.

During the week commencing 29 November 1993, I made many attempts to make telephone contact with Mr Gerald Kealey from BCI who was staying at The Park on Exhibition Hotel in Melbourne.

My purpose in making contact with Mr Kealey from BCI was to obtain answers to questions I had asked during the BCI-Telstra briefing which Mr Pinel prevented him from answering and answers to questions I was prevented from asking as Mr Pinel purposely terminated the meeting on the grounds that the meeting was exceeding its charter and the time allocated for the meeting had expired.

On 30 November 1993, I received an AUSTEL correspondence in response to my 25 November 1993 correspondence to AUSTEL regarding the contents contained within the BCI Report stating *"In common with you, we take the view point that there were inadequacy in their study."*

On 2 December 1993, I received a facsimile from Mr Pinel, Telecom Commercial & Consumer stating that Consultants from BCI had asked him to respond to me and advise that the appropriate communication lines are via Telecom and not direct to them or other BCI personnel. This correspondence went on to say, and I quote:- *"They are engaged on further work for Telecom and are on a very tight time schedule to complete this work."*

On 3 December 1993, I faxed to Mr Pinel my response to his correspondence.

On 7 December 1993, I received from Telstra by mail Telstra's letter dated 3 December 1993 containing Telstra decision to refuse remission of fees in response to my November 1993 FOI application.

On 9 December 1993, in response to Telstra's 3 December 1993 FOI correspondence, I sent a letter to Telstra's Manager of FOI.

On 20 December 1993, I received a letter from Telstra dated 16 December 1993 containing Telstra's decision to still to refuse to remit FOI fees, after a Telstra voluntary internal review of the original decision.

In mid to late December 1993 and early January 1994, I tried to make telephone contact with Mr Ian Campbell in order to determine the progress of when I will be supplied copies of documents requested.

On or about 5 January 1994, I made an official complaint to the Commonwealth Ombudsman about how Telstra were refusing to accept my FOI application as a valid application.

In the middle of January 1994 (from memory on or about the week beginning Monday, 17 January 1994) Mr Black from Telstra made telephone contact with me on more than one occasion seeking my approval (as Spokesperson for the C.o.T. members who are Signatory to the FTSP Agreement) for Telstra to provide the Assessor, appointed under the FTSP Agreement, with copies of:-

- Telstra's submission to AUSTEL dated November 1993;
- BCI Supplementary Inter-Exchange Network Test Results;
- BCI Rotary Hunting Group Study

together with the original BCI Report and Coopers & Lybrand Report. During this conversation, Mr Black stated if I granted Telstra the approval to supply the Assessor ahead of time, he stated Telstra is prepared, on a commercial basis, in the context of having to submit my claim to Arbitration pursuant to the "Fast Track" Arbitration Scheme to give me, Mr Smith, Mrs Garms and Ms Gillan without charge copies of my individual files up to 30 November 1993 which exclusively concern my telephone service from the following sections within Telstra:

- Commercial & Consumer (excluding head office Commercial & Consumer)
- Network Operations
- National Network Investigations

During this conversation, Mr Black also stated the following:- he was recently appointed by Telstra to be in charge of the C.o.T. Arbitration Process. Mr Campbell was no longer in charge of the C.o.T. matters.

During this telephone conversation with Mr Black, I stated to him the following:-

- AUSTEL had, with purpose, departed from convention when drafting the FTSP Agreement.
- AUSTEL had always intended for the FTSP process to be a fast track, non-legalistic commercial assessment process, for assessment-reassessment of the C.o.T. members' claims, not arbitration.
- Garms, Gillan, Smith and myself had only entered the FTSP Agreement on the basis that it was commercial assessment process, not arbitration.
- I was still waiting for Telstra to honour their commitment given by Mr Campbell to provide me with the copies of the documents requested from Telstra with Ian Campbell. I fully explained to Mr Black the types and classes of documents I requested from Mr Campbell. I reminded Mr Black that some of the documents I was requesting were contained in my November 1993 FOI application.

On 28 January 1994, Mr Black facsimiled to me a copy of a Telstra letter dated 27 January 1994.

On 28 January 1994, I sent two facsimiles to Mr Black in response to his Telstra letter dated 27 January 1994 facsimiled to me on 28 January 1994. In one of these letters to Mr Black, on page 2, under point 3, I made brief reference to Telstra's failure to honour a previous commitment. My brief reference to Telstra's previous commitment did not describe in full detail the commitment and was referring to the telephone conversation I had with Mr Ian Campbell in the late November early December 1993 period. (Copy of letter enclosed.)

Contents of the Black letter and my responses was the beginning of the Commonwealth Ombudsman's full involvement in an investigation into Telstra that is now known as the Telstra C.o.T. FOI Matters.

Since January 1994, I had numerous telephone conversations with many Senior Telstra personnel about this matter, plus there has been many exchanges of correspondence between Telstra and myself regarding this same matter.

Mr Armstrong, I draw your attention to the following:-

Telstra were in possession of this material at the time they received my November 1993 FOI application.

The fact that Telstra were in possession of this material at the time they received my November 1993 FOI application means Telstra have either wrongly disposed of or destroyed material that was a subject of a received FOI application.

Telstra made no secret that they intended to supply the Assessor appointed under the FTSP Agreement with a copy of the BCI Report as evidence of Telstra's network performance. Telstra did provide the Assessor appointed under the FTSP, and the Arbitrator appointed under the FTAP with a copy of the BCI Report and did rely upon the contents of the report as evidence of Telstra's network performance during arbitration of other C.o.T. members.

As the arbitrations performed under the FTAP Agreement are in accordance with the Victorian Arbitration Act, it means these arbitrations are a legal process and the fact that Telstra has not retained copies of their working papers and correspondence and other information such as minutes of meetings, diary notes, work instructions etc created before, during and after the Telstra monitoring and testing that became the basis of the BCI Report means that Telstra has wrongly and wilfully disposed of or destroyed evidence that was used to create a report that is being used in a legal process as evidence.

You also stated in your correspondence that the answers I received from Senior Telstra personnel about this matter you do not believe are relevant to the issue of my FOI request.

Mr Armstrong, I cannot agree with you because you are wrong.

The answers I have received from Senior personnel being, Peter Gamble, Paul Rumble, Rod Pollock and Paul Haar, about this FOI matter are most revealing and relevant as they have all proven to be misleading, deceptive and wrong and are in violation of the FOI Act.

The misleading and deceptive statements made by Senior Telstra employees about these documents requested under FOI include the following, typed in italics, with my response in normal print:-

- *Telstra did not own the documents they created during the monitoring and testing programme Telstra performed in accordance with the BCI procedure, guidelines and rules.*
- This Telstra statement is misleading, deceptive and wrong as any competent solicitor or barrister specialising in Copyright Law will substantiate.
- *Telstra, in accordance with the commercial agreement entered into between BCI and Telstra, Telstra collected all of the correspondence between both parties plus all of the Telstra created documentation prior, during and after the completion of the BCI Report, and handed over all of these documents to BCI personnel on the completion of the assignments and on their return to Canada.*
- *Telstra does not have an ongoing commercial relationship with Bell Canada to enable them to request a copy of the documents contained under your FOI request.*
- According to the FOI documents I have received, Telstra and Bell Canada were engaged in a due diligence exercise to determine the worthiness of becoming involved in a joint venture project in the first half of 1994, therefore, at the time this statement was made on behalf of Telstra, it was misleading, deceptive and wrong, as Telstra did have an ongoing commercial relationship with Bell Canada.

Prior to July 1994, all Senior Telstra personnel I discussed this matter with, were asked by myself to confirm this Telstra undertaking directly with Mr Ian Campbell.

It has taken Telstra 3 years and 3 months, since the Telstra commitment was given to me, before Telstra inquire as to the date of the Ian Campbell undertaking and request copies of any written records.

**FAX Transmission**

To:	Mr. Steve Black	From:	C.O.T. Cases Australia
Company:	Telecom		P.O. Box 318, NORTH MELBOURNE. 3051.
Fax No:	(03) <del>632-3241</del> 632-3241		
			Phone: (03) 287 7099
Date:	28 January 1994		Fax: (03) 287 7001
			Pages: ( 2 ) Incl. Fax Header
Mailed?	YES ( ) NO ( X )	Contact:	Graham Schorer

Message:

Dear Mr. Black,

Further to my faxed letter sent to you today in response to your faxed letter dated the 27th January 1994 received the 28th January 1994, I am now, as previously stated, going to respond in detail to your faxed letter dated 27th January 1994.

You and I have had many discussions regarding Telecom's past and current conduct where I have continually stated to you that I and other C.O.T. Case Members, based upon our current experiences with Telecom, are of the opinion that Telecom are continually engaging in stonewall tactics by saying one thing and doing nothing or something entirely different, senior management (including Directors) not taking or returning phone calls or delaying in returning phone calls for up to two weeks.

My discussions with you included the statement that, contrary to popular opinion within Telecom, the C.O.T. Case Members were not intent on hurting or destroying Telecom just for the sake of it.

However, the C.O.T. Case Members are committed to stopping Telecom from continuing to hurt the C.O.T. Case Members and that if the only way left to get Telecom to stop hurting the C.O.T. Case Members was to hurt Telecom then so be it.

I also stated in relationship to the live monitoring and taping of the Member's telephone calls was, in our opinion plus independent legal opinions received, a crime committed by Telecom against the Telecommunications Interception Act (1979).

I stated to you that it was my preference to work with Telecom to resolve all the outstanding issues which are, supply of an adequate telephone service fit for service, plus to receive pro active response and actions by Telecom to ensure the *Fast Track Settlement Proposal* was entered into and finalised as soon as possible because all the C.O.T. Case Members wanted, apart from a reliable telephone service, was to be properly compensated for losses caused by Telecom.

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I also stated to you that the only way Telecom appeared to become pro active was as a direct result of adverse media reports that were allowing the public to decide as to whether Telecom were acting as a good corporate citizen.

I then stated to you that, as you were a newly appointed Telecom person responsible for the dealings on a day to day basis with the C.O.T. Case Members, I was prepared to take risks by talking openly with you and telling you what our intentions were if Telecom refused to work with us of which I was being criticised by fellow C.O.T. Members who stated I was informing Telecom (the adversary) which was tactically wrong considering C.O.T. Case Members and Telecom were still in a state of total conflict.

All I was intending to do was create a mutually respectable, openly honest and healthy working relationship between the C.O.T. Case Members and Telecom.

The agreement you sought when you first rang me to seek my permission for Telecom to supply the Coopers and Lybrand and Bell Canada Reports ahead of time to the Assesor I refused.

I stated to you if you read the Fast Treack Settlement Proposal, all parties had to be in a position to simultaneously place their presentations with supporting documents to the Assesor at the same time.

I also stated that the C.O.T. Case Members were not in a position to start their presentation because of :-

- (1) The Austel interim report had not been completed.
- (2) The Austel final report had not been completed.
- (3) Telecom had not as per previous committment provided the Members with Telecom's response to the Coopers and Lybrand/Bell Canada report plus the additional Bell Canada reports on addiutional testing and investigations done by Bell Canada plus Telecom's response to the additional report.
- (4) Telecom had not supplied any of the C.O.T. Case Members all of their files which would include such things as the maitenance reports on their respective exchanges free of charge under F.O.I.

However, I did state to you that if Telecom undertook to provide point 3 and 4 at no charge I would consider your request to supply the Bell Canada/Coopers and Lybrand reports ahead of time to the Assesor.

As a result of further discussion, the agreement I entered into you was that I would take your word, which I clearly understood you had given that Telecom would provide all documents contained in point 3 and 4 free of charge immediately and that by you agreeing to such an agreement on behalf of Telecom, would enable Telecom to provide the Assesor ahead of time the Coopers and Lybrand/Bell Canada report.

Your letter dated the 27th January 1994 received today does not accurately represent the agreement we reached.

You, on behalf of Telecom, have breached the verbal trust I gave openly to you.

My disappointment can not be expressed in words, however, it is not the first disappointment I have had in dealing with senior management of Telecom who do not honour their verbal commitments.

All future communications will be done in writing to avoid this happening again.



GRAHAM SCHORER.  
SPOKESPERSON.  
C.O.T. CASES AUSTRALIA.