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Exhibit 368-a to 409

30 June 1998



**CONFIRMATION
OF FAX**

**Telecommunications
Industry
Ombudsman**

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

**John Pinnock
Ombudsman**

Facsimile 9287 7001

Dear Graham

Schorer and Telstra Arbitration

I refer to your letters of 18 and 19 June.

It is unfortunate that the tape recording of our meeting on 22 May 1998 failed. I do not agree that the draft of the notes of the meeting do not record all the key words used. However, that is a matter of opinion.

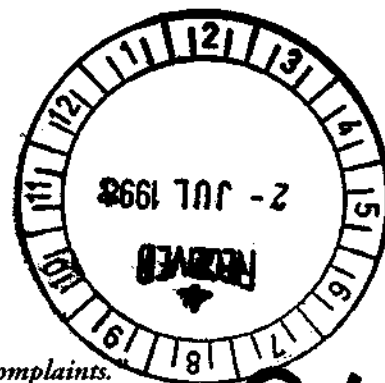
While I believe that the notes fully record the essential points of the meeting, it seems to me that the parties will have to add their own addenda to the minutes in respect of any aspect with which they disagree.

As to the questions raised in your letter of 18 June:

1. I do not propose to refer this matter back to the Australian Communications Authority.
2. I do not propose to call another meeting between the parties. They are deadlocked and I cannot see a way forward. If either the parties wish to make any suggestion to me they are welcome to do so.
3. While I assume that the document entitled 'Telstra Corporation Limited - Fast Track Proposed Rules of Arbitration' which you provided to Mr Bartlett on 22 May 1998 is a copy of the document provided to Warwick Smith on or before 12 January 1994, I cannot be certain it is.

Yours sincerely


**JOHN PINNOCK
OMBUDSMAN**



*cc Mr Peter Bartlett
"... providing independent, just, informal, speedy resolution of complaints."*

Att/cott/924

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on custom or business efficacy". In my view, for the reasons already stated, this approach must also be rejected.

In the light of the conclusion which I have reached, I do not need to consider whether the difficulties in defining the exceptions to any implied term forbidding disclosure are such as to preclude the implication of such a term. That the difficulties are considerable was acknowledged both by the Court of Appeal in *Dolling-Baker* and by Colman J in *Hussneh Insurance*. Colman J thought that a qualification could be formulated along the lines of the exceptions to a bank's duty of confidentiality, which had been discussed by the members of the English Court of Appeal in *Tournier v National Provincial and Union Bank of England* (65). In that case, the formulations of these exceptions differed to some extent. Colman J expressed the qualification applicable to arbitration agreements in these terms (66):

"If it is reasonably necessary for the establishment or protection of an arbitrating party's legal rights vis-à-vis a third party, in the sense which I have described, that the award should be disclosed to that third party in order to found a defence or as the basis for a cause of action, so to disclose it would not be a breach of the duty of confidence."

For my part, if an obligation of confidence existed by virtue of the fact that the information was provided in and for the purposes of arbitration, this statement of the qualification seems unduly narrow. It does not recognise that there may be circumstances, in which third parties and the public have a legitimate interest in knowing what has transpired in an arbitration, which would give rise to a "public interest" exception. The precise scope of this exception remains unclear.

The courts have consistently viewed governmental secrets differently from personal and commercial secrets (67). As I stated in *The Commonwealth v John Fairfax & Sons Ltd* (68), the judiciary must view the disclosure of governmental information "through different spectacles". This involves a reversal of the onus of proof: the government must prove that the public interest demands non-disclosure (69).

This approach was not adopted by the majority of the House of

(65) [1924] 1 KB 461 at 473, per Bankes LJ; at 481, per Scrutton LJ; at 486, per Atkin LJ.

(66) *Hussneh Insurance* [1993] 2 Lloyd's Rep 243 at 249.

(67) *Attorney-General v Jonathan Cape Ltd* [1976] QB 752; *The Commonwealth v John Fairfax & Sons Ltd* (1980) 147 CLR 39; *Attorney-General (UK) v Heinemann Publishers Australia Pty Ltd* (1987) 10 NSWLR 86; *Attorney-General v Guardian Newspapers Ltd [No 2]* [1990] 1 AC 109.

(68) (1980) 147 CLR 39 at 51.

(69) *John Fairfax* (1980) 147 CLR 39 at 52.

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declarations 6C and 6F or to make such orders as may be appropriate in the light of these reasons.

BRENNAN J. For the reasons which the Chief Justice gives, I agree that, when one party produces documents or discloses information to an opposing party in an arbitration that is to be heard in private, the documents or information are not clothed with confidentiality merely because of the privacy of the hearing. Nor does the use of a document in such proceedings make the document confidential. I agree also that absolute confidentiality of documents produced and information disclosed in an arbitration is not a characteristic of arbitrations in this country. Accordingly, a party who enters into an arbitration agreement is not taken merely on that account to have contracted to keep absolutely confidential all documents produced and information disclosed to that party by another party in the arbitration.

If a party to an arbitration agreement be under any obligation of confidentiality, the obligation must be contractual in origin. A term imposing an obligation of confidentiality could be expressed in an arbitration agreement but such a term would be unusual. Nor is such an obligation imposed by the *Commercial Arbitration Act 1984* (Vict).

A term is implied only where, *inter alia*, it is necessary (76) to give to the contract "such business efficacy as the parties must have intended" (77). The intended business efficacy must be inferred "from the very nature of the transaction" (78). The parties may not have consciously adverted to the subject matter of the term which is said to be implied, but implication is determined according to their presumed intention (79). Obligations which, if proposed to the parties when they entered into their contract, would not have been accepted by both are not thereafter implied in the contract (80).

Some obligation of confidentiality could be implied simply from the fact that, when a party claims the production of documents or the disclosure of information under an arbitration agreement for the purposes of the arbitration, the production or disclosure is given solely for that purpose. A duty to produce a document or to disclose information to another party, whether pursuant to an express stipulation or pursuant to the arbitrator's power to order discovery or production, is a duty imposed for the purposes of the arbitration (81).

(76) *Cudelfa Construction Pty Ltd v State Rail Authority of NSW* (1982) 149 CLR 337 at 347, 404.

(77) *Luxor (Eastbourne) Ltd v Cooper* [1941] AC 108 at 137.

(78) *The Mourcock* (1889) 14 PD 64 at 70.

(79) *Cudelfa Construction Pty Ltd v State Rail Authority of NSW* (1982) 149 CLR 337 at 352-353.

(80) *Con-Stan Industries of Australia Pty Ltd v Norwich Winterthur Insurance (Australia) Ltd* (1986) 160 CLR 226 at 241; *Reigate v Union Manufacturing Co (Ramsbottom)* [1918] 1 KB 592 at 605; *In re Anglo-Russian Merchant Traders & John Batt & Co (London)* [1917] 2 KB 679 at 685-686.

(81) See *Kursell v Timber Operators & Contractors Ltd* [1923] 2 KB 202 at 206.

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(82) cf (83) P. at (84) [1

15. The Arbitrator and Administrator shall conduct and progress the arbitration as quickly as justice to all the parties reasonably permits.

Confidentiality

16. For the purposes of this arbitration procedure, "Confidential Information" means information relevant to the arbitration, including the Claim and Defence Documents and any other documents provided in, or oral evidence given in, the arbitration by either party other than:

16.1 information which at the time of disclosure to a party to arbitration is in the public domain.

16.2 information which, after disclosure to a party to the arbitration, becomes part of the public domain otherwise than as a result of the wrongful act of the party to whom the information was disclosed.

16.3 information which was received from a third party, provided that it was not acquired directly or indirectly by that third party from a party to the arbitration.

17. This clause is to be read subject to any requirements of law or of any Court application relating to the Procedure. Upon making his award, the Arbitrator shall immediately forward two copies of it to the Administrator and the Administrator shall thereupon send a copy to each party. The Arbitrator's award, the subject matter of the arbitration proceedings, the conduct of the procedure and the Confidential Information shall at all times be kept strictly confidential by the Administrator, the Arbitrator and all of the parties to the arbitration. Telecom Australia has submitted to the arbitration in consideration of the subject matter and the conduct of the arbitration Procedure, the Confidential Information and the Arbitrator's award being kept strictly confidential by the Claimant. If there is any disclosure of any part of the

Schedule E

Confidentiality Undertaking

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

I, ALAN SMITH (print full name)
of (CPE BRIDGEWATER - TORTHANI) 3305 (print address)

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

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

Dated the 21st day of April 1994.

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

[Signature]
Signature of Witness

BARRY O'SULLIVAN
Full name of Witness

Our Ref: 3872.doc

GOLDEN

8 July, 1998

TELEPHONE (03) 9287 7099

Attention: Mr Neil Mounsher
Manager, Customer Response Unit
Telstra
242 Exhibition Street
Melbourne Vic 3000.

FAX (03) 9287 7001

493-495 QUEENSBERRY STREET
NORTH MELBOURNE VICTORIA 3051
PO BOX 313 NORTH MELBOURNE 3051

By facsimile: (03) 9634 3728 and hand delivery.

FAXED
8/7/98

Dear Mr Mounsher,

Re: Graham Schorer & associated companies, entities etc. claim against Telstra.
Re: The Telstra-GOLDEN 3-Part Agreement which Telstra initiated.
Re: Telstra and Deloitte's incorrect statement Schorer terminated the recent negotiations at his request.

Further to our telephone conversation of Monday, 6 July 1998, I am confirming in writing I did not terminate the Telstra-GOLDEN 3-Part Agreement which Telstra initiated; nor did I imply I was going to terminate the agreement.

It was by mutual consent between Telstra and GOLDEN that the expiry date for the Part 1 Agreement was extended from 4 June 1998 to 18 June 1998. Telstra did not seek a further extension, nor did GOLDEN require or seek a further extension, hence, Part 1 of this Agreement automatically expired at close of business of 18 June 1998.

GOLDEN's correspondence to Telstra dated 26 May 1998, 28 May 1998, 10 June 1998 and 18 June 1998, clearly sets out GOLDEN's understanding of the agreement reached between the parties, GOLDEN's commitment to achieve resolution by the use of the 3-Part Agreement, GOLDEN's conditional acceptance of the agreement, GOLDEN's total cooperation with Telstra, and GOLDEN's concerns that Telstra does not intend to continue participating in the 3-Part Agreement.

If necessary, I will take whatever steps I can to compel Telstra to participate in Part 2 and Part 3 of the mutually 'agreed to' agreement the parties entered into at Telstra's request.

The outcome of the proposed meeting between Telstra and GOLDEN, tentatively scheduled to take place on Friday, 10 July 1998, may result in Telstra re-committing to participate in Part 2 and Part 3 of the agreement between the parties.

I await advice as to whether the proposed Friday, 10 July 1998 meeting will take place.

Yours sincerely,


Graham Schorer

(The enclosed Appendix lists, in chronological order, all events.)

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22 July 1998

Mr G Schorer
493-495 Queensberry Street
NORTH MELBOURNE VIC 3051

John Armstrong
Customer Affairs Counsel
Legal Directorate

Level 38
242 Exhibition Street
Melbourne Vic. 3000

Telephone (03) 9634 6496
Facsimile (03) 9632 0965

By Hand

Dear Mr Schorer

Further to Telstra's letter to Mr Wynack of July 17 1998 this letter confirms that Telstra today provides for inspection documents referred to in the lists provided to you on July 8 1998.

The documents fall into two, broad, classes: documents containing information that may be relevant to your telephone service, such as documents related to the North Melbourne telephone exchanges; and documents of relevance to the wider network, such as network performance information for the region (see below). The former are designated in the attached tables by blue text and the latter by black text. Third Party information has been deleted from the documents. Pages on which Telstra claims Legal Professional Privilege have been removed and replaced with sheets giving the document numbers.

Network Performance Reports:

Network Performance Reports and Network Service Quality Reports typically contain information on the performance of the network and exchanges at a Regional level with detail being shown for service assessment measures such as congestion and switching losses and fault indicators such as Technical Assistance Reports.

National Network Management Centre Logbooks:

Also provided in addition to the above, is an example of a National Network Management Centre (NMC) Logbook. The NMC is responsible for monitoring traffic levels and blockages within the Telstra network and taking action to limit or redirect traffic as necessary. The NMC maximises the performance of the network in "real-time" by computer assisted monitoring and control of the network in response to network stress conditions (overloads & failures) and also performs a vital role in aiding the recovery of the network from major outages. The logbooks listed in the attached table are the record of events controlled or monitored by the NMC from 20 July 1984 to 4 June 1998. The record was a hand written log until March 1996 but is electronically recorded since that date. Provided for viewing is book 5 (of 20) being for the period 12 April 1992 to 5 October 1992. There are approximately 5,900 pages of NMC logbooks. The book provided contains 3 references (G41517, G41582 & G41750) that may have relevance to you or the businesses. A copy of these and the other 26 pages from the logbooks that may have relevance to you or the businesses is provided. The example logbook has been included to assist you in determining whether you will require to see the remainder of this type of report.

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Marked in red in the attached tables are a number of corrections to errors and additions to or omissions from the tables provided on July 8. A list of the pages on which Telstra claims Legal Professional Privilege is included at Attachment 2. A list of the pages from the NNMC logbooks made available today is included at Attachment 3.

Telstra invites you to make a list of the pages you have viewed of which you require copies. Two copies of the list will be prepared to ensure that both you and Telstra have a record of the requested pages. A complete record of the pages made available for viewing is contained in the attached tables and Telstra requests that no documents be removed from the viewing room. Telstra notes that many of the documents are commercially sensitive and makes them available under cover of the confidentiality agreement in place in the Arbitration process under the condition that all parties viewing them agree to be bound by said agreement.

Yours faithfully

John Armstrong
Customer Affairs Counsel

cc.

Mr John Wynack
Director of Investigations
Commonwealth Ombudsman's Office
GPO Box 442
CANBERRA ACT 2601

Mrs Ann Garms
Tivoli Restaurant & Theatre
52 Costin Street
FORTITUDE VALLEY QLD 4006

ATTACHMENT 1

List of Files

FILE START	FILE END	FILE DESCRIPTION	GROUP OR AREA FROM
G00535	G00578	NMU National Network Operations Monthly Report February 1992.	Network Performance
G00579	G00629	NMU National Network Operations Monthly Report March 1992.	Network Performance
G00630	G00669	NMU National Network Operations Monthly Report April 1992.	Network Performance
G00670	G00702	NMU National Network Operations Monthly Report July 1991.	Network Performance
G00703	G00736	NMU National Network Operations Monthly Report August 1991.	Network Performance
G00737	G00773	NMU National Network Operations Monthly Report September 1991.	Network Performance
G00774	G00805	NMU National Network Operations Monthly Report October 1991.	Network Performance
G00806	G00849	NMU National Network Operations Monthly Report December 1991.	Network Performance
G00850	G00889	NMU National Network Operations Monthly Report January 1992.	Network Performance
G01198	G01332	NMU National Network Operations Monthly Report Inputs. September 1992. Queensland report only not provided for viewing.	Network Performance
G01333	G01378	NMU National Network Operations Monthly Report Inputs. August 1992. Queensland report only not provided for viewing.	Network Performance
G01379	G01424	NMU National Network Operations Monthly Report Inputs. July 1992. Queensland report only not provided for viewing.	Network Performance
G01425	G01469	NMU National Network Operations Monthly Report Inputs. June 1992. Queensland report only not provided for viewing.	Network Performance
G01470	G01510	NMU National Network Operations Monthly Report Inputs. May 1992. Queensland report only not provided for viewing.	Network Performance
G01511	G01575	NMU National Network Operations Monthly Report Inputs. April 1992. Queensland report only not provided for viewing.	Network Performance
G01576	G01672	NMU National Network Operations Monthly Report Inputs. March 1992 Queensland report only not provided for viewing.	Network Performance
G01673	G01771	NMU National Network Operations Monthly Report Inputs. February 1992. Queensland report only not provided for viewing.	Network Performance
G01772	G01827	NMU National Network Operations Monthly Report Inputs. January 1992. Queensland report only not provided for viewing.	Network Performance
G01828	G01894	NMU National Network Operations Monthly Report Inputs. December 1991. Queensland report only not provided for viewing.	Network Performance
G01899	G01938	NMU National Network Operations Monthly Report Inputs. November 1991. Queensland report only not provided for viewing.	Network Performance
G01939	G02012	NMU National Network Operations Monthly Report Inputs. October 1991. Queensland report only not provided for viewing.	Network Performance
G04544	G04546	Email. COTS Arbitration Questions: North Melbourne HDA data had no evidence of congestion on routes to Nth Melb Giv. 28/05/1995	Network Performance
G05402	G05405	National "Top Ten Report" to the steering committee for October 1993	Network Performance
G05414	G05419	STD AXE Sunday Congestion, November, September, October 1993	Network Performance
G05429	G05429	STD AXE Sunday Congestion, Worst 10 CNA's September 1993.	Network Performance
G05430	G05445	Briefing on next Steering Committee Meeting 22/9/93, National AXE Congestion Fathers day 5/8/93. Note: Originals printed on back of recycled paper, G05431, G05433, G05435, G05437, G05439, G05441, G05443 & G05445 not relevant to this file.	Network Performance
G06733	G06746	COOS May 1993	Network Performance
G06753	G06767	Length of time Routes Remain in Congestion. June 93	Network Performance
G12185	G12211	Operations Transmission Support Report: August 1994	Network Performance
G12212	G12245	Operations Transmission Support Report: September 1994	Network Performance
G12246	G12270	Operations Transmission Support Report: October 1994	Network Performance
G12271	G12293	Operations Transmission Support Report: November 1994	Network Performance
G12294	G12318	Operations Transmission Support Report: January 1995	Network Performance
G13002	G13086	Network Performance Report - Victoria: December Quarter 1978	Ballarat NAC
G13087	G13188	Network Performance Report - Victoria: December Quarter 1980	Ballarat NAC
G13189	G13289	Network Performance Report - Victoria: March Quarter 1981	Ballarat NAC
G13290	G13390	Network Performance Report - Victoria: September Quarter 1980	Ballarat NAC
G13391	G13490	Network Performance Report - Victoria: March Quarter 1980	Ballarat NAC
G13491	G13602	Network Performance Report - Victoria: June Quarter 1982	Ballarat NAC

FILE START	FILE END	FILE DESCRIPTION	GROUP OR AREA FROM
G13603	G13710	Network Performance Report - Victoria: September/December Quarter 1981	Ballarat NAC
G13711	G13818	Network Performance Report - Victoria: March Quarter 1982	Ballarat NAC
G13819	G13904	Network Performance Report - Victoria: March Quarter 1978	Ballarat NAC
G13905	G13989	Network Performance Report - Victoria: June Quarter 1978	Ballarat NAC
G13990	G14074	Network Performance Report - Victoria: March Quarter 1979	Ballarat NAC
G14075	G14159	Network Performance Report - Victoria: June Quarter 1979	Ballarat NAC
G14160	G14255	Network Performance Report - Victoria: September Quarter 1979	Ballarat NAC
G14256	G14352	Network Performance Report - Victoria: December Quarter 1979	Ballarat NAC
G14353	G14398	Network Performance Victoria Period Report: Period 13 1987/88	Ballarat NAC
G14399	G14488	Network Performance Victoria: June Quarter 1987/88	Ballarat NAC
G14489	G14578	Network Performance Victoria: March Quarter 1987/88	Ballarat NAC
G14579	G14627	Network Performance Victoria Period Report: Period 13 1986/87	Ballarat NAC
G14628	G14739	Network Performance Victoria: September/December Quarters 1986	Ballarat NAC
G14740	G14839	Network Performance Victoria: June Quarter 1987	Ballarat NAC
G14840	G14939	Network Performance Victoria: March Quarter 1987	Ballarat NAC
G14940	G15075	Network Performance Victoria: December Quarter 1985/86	Ballarat NAC
G15076	G15204	Network Performance Victoria: June Quarter 1985/86	Ballarat NAC
G15205	G15335	Network Performance Victoria: September Quarter 1985/86	Ballarat NAC
G15336	G15444	Network Performance Victoria: June Quarter 1984/85	Ballarat NAC
G15445	G15532	Network Performance Victoria: September/December/March Quarters 1984/85	Ballarat NAC
G15533	G15578	Network Performance Victoria Period Report: Period 12 1987/88	Ballarat NAC
G15579	G15623	Network Performance Victoria Period Report: Period 11 1987/88	Ballarat NAC
G15624	G15673	Network Performance Victoria Period Report: Period 10 1987/88	Ballarat NAC
G15674	G15723	Network Performance Victoria Period Report: Period 9 1987/88	Ballarat NAC
G15724	G15773	Network Performance Victoria Period Report: Period 8 1987/88	Ballarat NAC
G15774	G15863	Network Performance Victoria: December Quarter 1987/88	Ballarat NAC
G15864	G15912	Network Performance Victoria Period Report: Period 7 1987/88	Ballarat NAC
G15913	G15964	Network Performance Victoria Period Report: Period 6 1987/88	Ballarat NAC
G15965	G16014	Network Performance Victoria Period Report: Period 5 1987/88	Ballarat NAC
G16015	G16058	Network Performance Victoria Period Report: Period 4 1987/88	Ballarat NAC
G16059	G16105	Network Performance Victoria Period Report: Period 3 1987/88	Ballarat NAC
G16106	G16211	Network Performance Victoria: September Quarter 1987	Ballarat NAC
G16212	G16323	Network Performance Victoria Monthly Report: July 1990	Ballarat NAC
G16324	G16416	Network Performance Victoria Monthly Report: June 1990	Ballarat NAC
G16417	G16533	Network Performance Victoria Monthly Report: April 1990	Ballarat NAC
G16534	G16622	Network Performance Victoria Monthly Report: February 1990	Ballarat NAC
G16623	G16736	Network Performance Victoria Monthly Report: January 1990	Ballarat NAC
G16737	G16824	Network Performance Victoria Monthly Report: December 1989	Ballarat NAC
G16825	G16911	Network Performance Victoria Monthly Report: November 1989	Ballarat NAC
G16912	G17025	Network Performance Victoria Monthly Report: October and September Quarterly 1989	Ballarat NAC
G17026	G17105	Network Performance Victoria Monthly Report: September 1989	Ballarat NAC
G17106	G17183	Network Performance Victoria Monthly Report: August 1989	Ballarat NAC
G17184	G17276	Network Performance Victoria Monthly Report: July 1989	Ballarat NAC
G17277	G17365	Network Performance Victoria Monthly Report: June 1989	Ballarat NAC
G17366	G17426	Network Performance Victoria Monthly Report: May 1989	Ballarat NAC
G17427	G17511	Network Performance Victoria Monthly Report: April 1989	Ballarat NAC
G17512	G17567	Network Performance Victoria Monthly Report: March 1989	Ballarat NAC
G17568	G17627	Network Performance Victoria: Period 9 - February 88/89	Ballarat NAC
G17628	G17705	Network Performance Victoria Period Report: Period 8 - 88/89	Ballarat NAC
G17706	G17758	Network Performance Victoria Period Report: Period 7 - 88/89	Ballarat NAC
G17759	G17809	Network Performance Victoria Period Report: Period 6 - 88/89	Ballarat NAC
G17810	G17885	Network Performance Victoria Period Report: Period 5 - 88/89	Ballarat NAC
G17886	G17938	Network Performance Victoria Period Report: Period 4 - 88/89	Ballarat NAC
G17939	G17989	Network Performance Victoria Period Report: Period 3 - 88/89	Ballarat NAC
G17990	G18035	Network Performance Victoria Period Report: Period 2 - 88/89	Ballarat NAC
G18036	G18081	Network Performance Victoria Period Report: Period 1 - 88/89	Ballarat NAC
G18082	G18149	Switching Operations Branch Network Performance Summary: August 1991	Ballarat NAC
G18150	G18244	Switching Operations Branch Network Performance Summary: May 1991	Ballarat NAC

FILE START	FILE END	FILE DESCRIPTION	GROUP OR AREA FROM
G18245	G18329	Switching Operations Branch Network Performance Summary: March 1991	Ballarat NAC
G18330	G18414	Switching Operations Branch Network Performance Summary: February 1991	Ballarat NAC
G18415	G18493	Network Performance Summary: January 1991	Ballarat NAC
G18494	G18554	Melbourne C.B.D Exchanges Network Performance Summary: November 1990	Ballarat NAC
G18555	G18665	Network Service Quality Melbourne Regional Performance Report: July 1992	Ballarat NAC
G18666	G18764	Network Service Quality Melbourne Regional Performance Report: June 1992	Ballarat NAC
G18765	G18872	Network Service Quality Melbourne Regional Performance Report: May 1992	Ballarat NAC
G18873	G18980	Network Service Quality Melbourne Regional Performance Report: April 1992	Ballarat NAC
G18981	G19087	Network Service Quality Melbourne Regional Performance Report: March 1992	Ballarat NAC
G19088	G19194	Network Service Quality Melbourne Regional Performance Report: February 1992	Ballarat NAC
G19195	G19302	Network Service Quality Melbourne Regional Performance Report: January 1992	Ballarat NAC
G19303	G19410	Network Service Quality Melbourne Regional Performance Report: December 1991	Ballarat NAC
G19411	G19487	Network Service Quality Melbourne: June 1991	Ballarat NAC
G19488	G19534	Monthly National Network Performance Report April 1993	Ballarat NAC
G19535	G19580	Monthly National Network Performance Report March 1993	Ballarat NAC
G19581	G19625	Monthly National Network Performance Report February 1993	Ballarat NAC
G19626	G19670	Monthly National Network Performance Report January 1993	Ballarat NAC
G19671	G19721	Monthly National Network Performance Report November 1992	Ballarat NAC
G19722	G19769	Monthly National Network Performance Report October 92	Ballarat NAC
G19770	G19796	Monthly National Network Performance Report July 1992	Ballarat NAC
G19797	G19842	Monthly National Network Performance Report June 1992	Ballarat NAC
G19843	G19883	Monthly National Network Performance Report May 1992	Ballarat NAC
G19884	G19923	National Network Operations Report: January 1992	Ballarat NAC
G19924	G19967	National Network Operations Report: December 1991	Ballarat NAC
G19968	G20000	National Network Operations Report: November 1991	Ballarat NAC
G20001	G20033	National Network Operations Report: July 1991	Ballarat NAC
G20034	G20060	National Network Service Quality Report Victoria / Tasmania: July 93	Ballarat NAC
G20061	G20092	National Network Service Quality Report Victoria / Tasmania: March 93	Ballarat NAC
G20093	G20121	National Network Service Quality Report Victoria / Tasmania: December 92	Ballarat NAC
G20122	G20147	National Network Service Quality Report Victoria / Tasmania: November 92	Ballarat NAC
G20148	G20175	National Network Service Quality Report Victoria / Tasmania: October 92	Ballarat NAC
G20176	G20199	National Network Service Quality Report Victoria / Tasmania: September 92	Ballarat NAC
G20200	G20227	National Network Service Quality Report Victoria / Tasmania: August 92	Ballarat NAC
G20228	G20249	National Network Service Quality Report Victoria / Tasmania: July 92	Ballarat NAC
G20250	G20273	National Network Service Quality Report Victoria / Tasmania: June 92	Ballarat NAC
G20274	G20298	National Network Service Quality Report Victoria / Tasmania: May 92	Ballarat NAC
G20299	G20383	Service Performance and Service Costs: 1980 to 1981	Ballarat NAC
G20384	G20478	Service Performance and Service Costs: 1981 to 1982	Ballarat NAC
G20479	G20583	Service Performance and Service Costs: 1982 to 1983	Ballarat NAC
G20584	G20625	National Network Performance: June 1988 to June 1989	Ballarat NAC
G20626	G20719	National Network Service Performance 1986 to 1987	Ballarat NAC
G20720	G20759	Network Performance Period Report Period 8 - 86/87 Exception Report	Ballarat NAC
G20760	G20799	Network Performance Period Report Period 7 - 86/87 Exception Report	Ballarat NAC
G20800	G20842	Network Performance Period Report Period 6 - 86/87 Exception Report	Ballarat NAC
G20843	G20884	Network Performance Period Report Period 5 - 86/87 Exception Report	Ballarat NAC
G20885	G20925	Network Performance Period Report Period 4 - 86/87 Exception Report	Ballarat NAC
G20926	G20954	National Switching Support Report Vic Regions: November 91	Ballarat NAC
G20955	G20982	National Switching Support Report Vic Regions: August 91	Ballarat NAC
G20983	G21006	National Switching Support Report Vic Regions: May 91	Ballarat NAC
G21007	G21029	National Switching Support Report Vic Regions: March 91	Ballarat NAC
G21030	G21055	National Switching Support Report Vic Regions: February 91	Ballarat NAC
G21056	G21080	National Switching Support Report Vic Regions: January 91	Ballarat NAC
G21081	G21102	National Switching Support Report Vic Regions: November 90	Ballarat NAC
G21103	G21104	Victoria / Tasmania: Executive Summary November 1995: Product Performance Report	Ballarat NAC
G21110	G21113	Victoria / Tasmania: Executive Summary August 1994: Product Performance Report	Ballarat NAC
G22911	G22990	Telcats Report: December 1994	Ballarat NAC
G24425	G25133	Telcats Victoria, Tasmania and National Reports: April - October 93	Ballarat NAC
G25134	G25245	Spine Pattern Network Data with Leopard Clearance Codes: July 94 to September 95	Ballarat NAC

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G25246	G25283	TROB data - 4/92, G Schorer letter of 27/6/94 & 15/7/94, NEAT Destination call analysis 12/9/93 to 8/11/93	C&C
G27288	G27382	Network Performance Victoria Monthly Report: November 1990	Ballarat NAC
G27383	G27468	Network Performance Victoria Monthly Report: September 1990	Ballarat NAC
G27469	G27560	Network Performance Victoria Monthly Report: August 1990	Ballarat NAC
G27613	G27639	National Network Service Quality Report Victoria / Tasmania: September 1993	Ballarat NAC
G27640	G27746	Network Performance Victoria Monthly Report: October 1990	Ballarat NAC
G27747	G27789	Network Performance Period Report - Period 9 86/87 Exception Report	Ballarat NAC
G27790	G27827	Product Performance Report for October 1994	Ballarat NAC
G27828	G27855	Product Performance Report February 1996	Ballarat NAC
G27856	G27884	Product Performance Report March 1996	Ballarat NAC
G27885	G27912	Product Performance Report April 1996	Ballarat NAC
G27913	G27944	Product Performance Report May 1996	Ballarat NAC
G27945	G27972	Product Performance Report June 1996	Ballarat NAC
G27973	G28000	Product Performance Report July 1996	Ballarat NAC
G28001	G28015	Product Performance Report August 1996	Ballarat NAC
G28016	G28030	Product Performance Report January 1997	Ballarat NAC
G28031	G28045	Product Performance Report February 1997	Ballarat NAC
G28046	G28063	Product Performance Report March 1997	Ballarat NAC
G28064	G28081	Product Performance Report April 1997	Ballarat NAC
G28082	G28092	Telecom National Agreement Network Service Performance 1993/94,	Ballarat NAC
G28093	G28096	Network Service Performance Branch Wholesale - Retail Summary Report August 1994	Ballarat NAC
G28097	G28105	Network Service Performance Contract Overview Executive Report - Draft September 1993	Ballarat NAC
G28106	G28118	Network Service Performance Contract Overview Executive Report - Draft November 1993	Ballarat NAC
G28119	G28131	Network Service Performance Contract Overview Executive Report - Draft December 1993	Ballarat NAC
G28132	G28145	Network Service Performance Contract Overview Executive Report - Draft January 1994	Ballarat NAC
G28146	G28159	Network Service Performance Contract Overview Executive Report - Draft February 1994	Ballarat NAC
G28160	G28172	Network Service Performance Contract Overview Executive Report - Draft March 1994	Ballarat NAC
G28173	G28186	Network Service Performance Contract Overview Executive Report - Draft April 1994	Ballarat NAC
G28187	G28199	Network Service Performance Contract Overview Executive Report - Draft May 1994	Ballarat NAC
G28200	G28215	Network Service Performance Contract Overview Executive Report - Draft June 1994	Ballarat NAC
G28216	G28229	Network Service Performance Contract Overview Executive Report - Draft July 1994	Ballarat NAC
G28230	G28242	Network Service Performance Contract Overview Executive Report - Draft September 1994	Ballarat NAC
G28243	G28256	Network Service Performance Contract Overview Executive Report - Draft November 1994	Ballarat NAC
G28257	G28270	Network Service Performance Contract Overview Executive Report - Draft December 1994	Ballarat NAC
G28271	G28284	Network Service Performance Contract Overview Executive Report - Draft January 1995	Ballarat NAC
G28285	G28298	Network Service Performance Contract Overview Executive Report - Draft February 1995	Ballarat NAC
G28299	G28312	Network Service Performance Contract Overview Executive Report - Draft April 1995	Ballarat NAC
G28313	G28365	Quality and Performance Report - Digital Exchange Systems April 1994	Ballarat NAC
G28366	G28417	Quality and Performance Report - Digital Exchange Systems May 1994	Ballarat NAC
G28418	G28439	Operations Transmission Support Branch Reports February 1994	Ballarat NAC
G28440	G28472	Operations Transmission Support Branch Reports March 1994	Ballarat NAC
G28473	G28499	Operations Transmission Support Branch Reports June 1994	Ballarat NAC
G28500	G28527	Operations Transmission Support Branch Reports July 1994	Ballarat NAC
G28528	G28565	O T S Transmission Network Performance Report Vic/Tas January 1994	Ballarat NAC
G28566	G28603	O T S Transmission Network Performance Report Vic/Tas February 1994	Ballarat NAC
G28604	G28640	O T S Transmission Network Performance Report Vic/Tas March 1994	Ballarat NAC
G28641	G28674	O T S Transmission Network Performance Report Vic/Tas April 1994	Ballarat NAC
G28675	G28710	O T S Transmission Network Performance Report Vic/Tas May 1994	Ballarat NAC

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G28711	G28741	O T S Transmission Network Performance Report Vic/Tas June 1994	Ballarat NAC
G28742	G28777	O T S Transmission Network Performance Report Vic/Tas July 1994	Ballarat NAC
G28778	G28806	O T S Transmission Network Performance Report Vic/Tas August 1994	Ballarat NAC
G28807	G28836	O T S Transmission Network Performance Report Vic/Tas September 1994	Ballarat NAC
G28837	G28866	O T S Transmission Network Performance Report Vic/Tas October 1994	Ballarat NAC
G28867	G28896	O T S Transmission Network Performance Report Vic/Tas November 1994	Ballarat NAC
G28897	G28930	O T S Transmission Network Performance Report Vic/Tas December 1994	Ballarat NAC
G28931	G28966	O T S Transmission Network Performance Report Vic/Tas January 1995	Ballarat NAC
G28967	G29003	O T S Transmission Network Performance Report Vic/Tas February 1994	Ballarat NAC
G29004	G29024	Network Performance Major Unplanned Outage Reports January 1994	Ballarat NAC
G29025	G29048	Network Performance Major Unplanned Outage Reports February 1994	Ballarat NAC
G29049	G29074	Network Performance Major Unplanned Outage Reports March 1994	Ballarat NAC
G29075	G29098	Network Performance Major Unplanned Outage Reports April 1994	Ballarat NAC
G29099	G29121	Network Performance Major Unplanned Outage Reports May 1994	Ballarat NAC
G29122	G29142	Network Performance Major Unplanned Outage Reports June 1994	Ballarat NAC
G29143	G29162	Network Performance Major Unplanned Outage Reports September 1994	Ballarat NAC
G29163	G29182	Network Performance Major Unplanned Outage Reports October 1994	Ballarat NAC
G29183	G29208	Network Performance Major Unplanned Outage Reports November 1994	Ballarat NAC
G29209	G29231	Network Performance Major Unplanned Outage Reports December 1994	Ballarat NAC
G29232	G29256	Network Performance Major Unplanned Outage Reports January 1995	Ballarat NAC
G29257	G29279	Network Performance Major Unplanned Outage Reports February 1995	Ballarat NAC
G29280	G29303	Network Performance Major Unplanned Outage Reports March 1995	Ballarat NAC
G29304	G29325	Network Performance Major Unplanned Outage Reports April 1995	Ballarat NAC
G29326	G29348	Network Performance Major Unplanned Outage Reports May 1995	Ballarat NAC
G29349	G29368	Network Performance Major Unplanned Outage Reports June 1995	Ballarat NAC
G29369	G29390	Network Performance Major Unplanned Outage Reports July 1995	Ballarat NAC
G29391	G29411	Network Performance Major Unplanned Outage Reports October 1994	Ballarat NAC
G29412	G29452	National SCAX Top-100 Congested Routes June 1995	Ballarat NAC
G29453	G29473	Performance of the Network Report October 1994	Ballarat NAC
G29474	G29491	Network Service Performance Cover Summary Report for CNA's - April to June 1994	Ballarat NAC
G29492	G29505	National COOS (Circuits Out Of Service) Report Week Commencing 28 February 1994	Ballarat NAC
G29506	G29509	National COOS (Circuits Out Of Service) Report Week Commencing 14 March 1994	Ballarat NAC
G29510	G29513	National COOS (Circuits Out Of Service) Report Week Commencing 28 March 1994	Ballarat NAC
G29514	G29518	National COOS (Circuits Out Of Service) Report Week Commencing 9 May 1994	Ballarat NAC
G29519	G29522	National COOS (Circuits Out Of Service) Report Week Commencing 20 June 1994	Ballarat NAC
G29523	G29530	National COOS (Circuits Out Of Service) Report Week Commencing 19 September 1994	Ballarat NAC
G29531	G29539	National COOS (Circuits Out Of Service) Report Network Operations Eastern Week Commencing 25 April 1994	Ballarat NAC
G29540	G29553	National COOS (Circuits Out Of Service) Report Network Operations Eastern Week Commencing 19 September 1994	Ballarat NAC
G29554	G29560	National COOS (Circuits Out Of Service) Report For Non-Regional Equipment Categories Week Commencing 9 May 1994	Ballarat NAC
G29561	G29567	National COOS (Circuits Out Of Service) Report For Non-Regional Equipment Categories Week Commencing 23 May 1994	Ballarat NAC
G29568	G29576	National COOS (Circuits Out Of Service) Report For Non-Regional Equipment Categories Week Commencing 19 September 1994	Ballarat NAC
G29577	G29583	National COOS (Circuits Out Of Service) Report Week Commencing 18 July 1994	Ballarat NAC
G29584	G29593	National COOS (Circuits Out Of Service) Report Week Commencing 23 May 1994	Ballarat NAC
G29594	G29597	Circuits Out Of Service on MTS-MTS routes Week Commencing 25/4/94	Ballarat NAC
G29598	G29601	Circuits Out Of Service on MTS-MTS routes Week Commencing 28/3/94	Ballarat NAC
G29602	G29608	National Top-40 Congested Routes 2 May - 29 May 1994	Ballarat NAC
G29609	G29614	National Top-40 Congested Routes 4 July - 31 July 1994	Ballarat NAC
G29681	G29688	Eight Computer Disks: Files related to Draft BCI Reports and Routing Data These disks are not available for viewing - see J62877 to J62968 below for case file extracts of disks.	NTG & M Melbourne
G29733	G29843	North Melb Exchange: CRIS Code Routing Information - Oct/Nov 1993, Routing Diagrams, Offered Traffic Route Reports	Ballarat NAC

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G29844	G30168	BCI Test Performance and Results: Network Arrangement; Rationale - Test Procedures; Routing Diagrams; Tests Per-med and Results; Summary 8/10/93 - 10/12/93	NTG & M Melbourne
G31181	G31188	NNI report (Abridged) into investigations into Golden Messenger problems - 28/04/1995	NTG & M Melbourne
G31192	G31193	Memo relating to Mr Schorer requesting copies of certain Telecom records - 06/05/1994	NTG & M Melbourne
G31194	G31196	Request by Mr Schorer (copy) Re: Provision of records - 21/04/1994	NTG & M Melbourne
G31197	G31204	NNI NI-NT 10/114 Final Report (Abridged) Golden Messenger - 17/11/1989	NTG & M Melbourne
G31262	G31262	Offered Traffic Report, North Melbourne T NMEA NMEL N1. 1992 to 1994	NTG & M Melbourne
G31263	G31278	Offered Traffic Report, North Melbourne T NMEL NMEL AA to DK. 1992 to 1994	NTG & M Melbourne
G31279	G31279	Offered Traffic Report, North Melbourne T NMEA NMEL N1. 1992 to 1994	NTG & M Melbourne
G31280	G31295	Offered Traffic Report, North Melbourne T NMEL NMEL AA to DK. 1992 to 1994	NTG & M Melbourne
G31296	G31297	North Melbourne L3 ARE-11 Cutover. 29/05/1985	NTG & M Melbourne
G31298	G31298	North Melbourne Step by Step 328/1-4 Cutover to Axe 1991 to 1993.	NTG & M Melbourne
G31299	G31300	North Melbourne 60 KVA Diesel Alternator replacement. 15/11/1963	NTG & M Melbourne
G31301	G31301	North Melbourne RCR list 1987 to 1985.	NTG & M Melbourne
G31302	G31304	Routing Change Required. RCR2718. Initiate Brooklyn P90 RSS parented off NMEC Code (03) 3251 & 93251. 19/05/1995	NTG & M Melbourne
G31305	G31312	Routing Change Required. RCR2673, 1997. Cut over NMEL ARE to NMEE S12. Code (03) 329. Nth Melb S12. 28/04/1995	NTG & M Melbourne
G31313	G31316	Routing Change Required. RCR1877, Ascot RSS Code (03) 326/0,1,2. & 372/0,9 to NMEX. Nth Melb AXE. 20/10/1993	NTG & M Melbourne
G31317	G31320	Routing Change Required. RCR1627, Transfer of Bank service from PSTN to ISDN Code (03) 3226. Nth Melb 16/04/1993	NTG & M Melbourne
G31321	G31325	Routing Change Required. RCR MDN0315, Open Code (03) 327. Nth Melb. 15/12/1992	NTG & M Melbourne
G31326	G31329	Routing Change Required. RCR MDN0285, Front end Code (03) 320, (03) 377 at Nth Melb NMEA. 18/09/1992	NTG & M Melbourne
G31330	G31333	Routing Change Required. RCR MDN0223, Cancel route T-NCOT-NMEL B1, redirect Code (03) 320, (03) 329 to Nth Melb NMEA. 18/09/1992	NTG & M Melbourne
G31334	G31336	Routing Change Required. RCR MDN0218, Front end Code (03) 329/6,7, at Nth Melb NMEA. 18/11/1991	NTG & M Melbourne
G31337	G31342	Routing Change Required. RCR MDN0184, remove traffic from route to be cancelled LONH - NMEA GIV Code (03) 32/3,4,5,7,9,0. to Nth Melb GIV NMEA. 19/04/1991	NTG & M Melbourne
G31343	G31345	Routing Change Required. RCR MDN0177, In preparation for cutover of Code (03) 328 SR-B to AXE. Nth Melb NMEA. 15/02/1991	NTG & M Melbourne
G31346	G31350	Routing Change Required. RCR MDN0176, Congestion relief of Codes (03) 32/0,3,4,9 to Nth Melb NMEA. 15/02/1991	NTG & M Melbourne
G31351	G31355	Routing Change Required. RCR MDN0170, Transfer of Remote Indial Code (03) 321 FRSX to Nth Melb NMEA. 06/12/1990	NTG & M Melbourne
G31356	G31356	Routing Change Required. RCR MDN0145, To reduce transit traffic through BRUX and FRSX reroute Codes (03) 326, 354, 372 to Nth Melb NMEA. 20/06/1990	NTG & M Melbourne
G31357	G31359	Routing Change Required. RCR MDN051, Temporary routing due to congestion FRSX to NMEL. Codes (03) 32/2-5, 7-0. Digital tandems only. 15/07/1988	NTG & M Melbourne
G31360	G31363	Routing Change Required. RCR MDN043, Setup Nth Melb IDN exit route to carry Codes (03) 32/2-5, 7-0. 25/05/1988	NTG & M Melbourne
G31364	G31365	Routing Change Required. RCR MDN023, Establish Remote indial at Nth Melb Code (03) 321. 10/02/1988	NTG & M Melbourne
G31366	G31368	Routing Change Required. RCR MDN573, Preparation for cutover SR-B to AXE Nth Melb Code (03) 328. 25/02/1991	NTG & M Melbourne
G31369	G31372	Routing Change Required. RCR MDN626, Preparation for cutover SR-B to AXE Nth Melb Code (03) 328. 04/04/1991	NTG & M Melbourne
G31373	G31376	Routing Change Required. RCR MDN632, remove traffic from route to be cancelled LONH - NMEA GIV, Nth Melb Code (03) 32/0,3,4,5,7,9. 15/04/1991	NTG & M Melbourne
G31385	G31387	Routing Change Required. RCR MDN385, To reduce transit traffic through BRUX and FRSX reroute Codes (03) 326, 354, 372 to Nth Melb NMEA. 24/05/1990	NTG & M Melbourne
G31388	G31390	Routing Change Required. RCR MDN460, Establish Remote indial at Nth Melb Code (03) 321. 23/08/1990	NTG & M Melbourne
G31391	G31393	Routing Change Required. RCR MDN527, Establish Remote indial at Nth Melb Code (03) 321. 06/12/1990	NTG & M Melbourne

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G31394	G31403	TRAC System Field Working Report. North Melb to Footscray AXE - 08/07/1991	NTG & M Melbourne
G31404	G31422	TRAC System Field Working Report. Footscray AXE to North Melb. 04/06/1992	NTG & M Melbourne
G31423	G31424	TRAC System Field Working Report. North Melb to Footscray AXE - 02/06/1992	NTG & M Melbourne
G31425	G31438	TRAC System Field Working Report. Footscray AXE to North Melb.	NTG & M Melbourne
G31439	G31458	TRAC System Field Working Report. North Melb to Footscray AXE	NTG & M Melbourne
G31461	G31461	Melbourne local Call Zone. North Melbourne GVX Originating Area. 01/01/1986	NTG & M Melbourne
G31462	G31462	Melbourne local Call Zone. North Melbourne GVX Terminating Area. 01/01/1986	NTG & M Melbourne
G31463	G31463	Melbourne local Call Zone. North Melbourne L11 (03) Area origins. 01/01/1986	NTG & M Melbourne
G31464	G31464	Melbourne local Call Zone. North Melbourne Step by Step Tandem Terminating Area. 01/01/1986	NTG & M Melbourne
G31465	G31465	Melbourne local Call Zone. North Melbourne 1st Selector Origins. 01/01/1986	NTG & M Melbourne
G31466	G31466	North Melbourne Node Cutover Certificate. 26/03/1990	NTG & M Melbourne
G31479	G31481	Routing Change Required. RCR2718, Establish Brooklyn P90 RSS parented off Nth Melb NMEC, Code (03) 3251. 19/05/1995	NTG & M Melbourne
G31615	G31615	Routing Change Required. RCR MDN0158, To Relieve Priority One Congestion on NMES Y2 route, Increase IDN EXIT ROUTE MDST - 16/07/90.	NTG & M Melbourne
G31616	G31616	ISSUE 2 of Routing Change Required. RCR MDN0158, To Relieve Priority One Congestion on NMES Y2 route, Increase IDN EXIT ROUTE MDST - 16/07/90.	NTG & M Melbourne
G31617	G31617	Routing Change Required. RCR MDN0160, To Relieve Priority One Congestion on NMES Y2 route, Increase IDN ROUTE from Footscray to Maidstone ARF . 23/08/1990	NTG & M Melbourne
G31705	G31705	Network Data Golden Messenger, Nth Melbourne, Vic - 01/10/1993	NTG & M Melbourne
G31719	G31719	Network Data Golden Messenger, Nth Melbourne, Vic 01/10/1993	NTG & M Melbourne
G31730	G31730	Network Data Golden Messenger, Nth Melbourne, Vic - 01/10/1993	NTG & M Melbourne
G32579	G32579	Email Re: Trunking Information on Nth Melbourne Exchange. 08/06/1995	NTG & M Melbourne
G32810	G32810	Chain Email Re: Trunking Information On North Melbourne Exchange. 08/06/1995	NTG & M Melbourne
G32814	G32814	Email Re: Trunking Information On North Melbourne Exchange. 08/06/1995	NTG & M Melbourne
G34712	G34841	Vic Trunk Network Traffic Reading Report - December 1987	Ballarat NAC
G35921	G35998	Switching Operations Branch Network Performance Summary: February 1992	Network Technology Group and Multimedia
G36015	G36058	National Network Operations National Report February 1992	Network Technology Group and Multimedia
G36059	G36103	National Network Operations National Report August 1992	Network Technology Group and Multimedia
G37256	G37282	National Network Service Quality Report Victoria / Tasmania: January 1993	Network Technology Group and Multimedia
G37283	G37316	National Network Service Quality Report Victoria / Tasmania: February 1993	Network Technology Group and Multimedia
G37317	G37336	National Network Service Quality Report Victoria / Tasmania: December 1993	Network Technology Group and Multimedia
G37337	G37364	National Network Service Quality Report Victoria / Tasmania: April 1993	Network Technology Group and Multimedia
G37365	G37395	National Network Service Quality Report Victoria / Tasmania: May 1993	Network Technology Group and Multimedia
G37396	G37419	National Network Service Quality Report Victoria / Tasmania: October 1993	Network Technology Group and Multimedia
G37420	G37434	National Network Service Quality Report Victoria / Tasmania: November 1993	Network Technology Group and Multimedia
G37435	G37486	Network Performance - Metropolitan Operations Review - Melbourne 1976/77	C&C North West AFG
G37487	G37540	Network Performance - Metropolitan Operations Review - Melbourne 1977/78	C&C North West AFG
G37541	G38049	Telcats Reports - Jan to Apr 93	C&C Melb West AFG
G38391	G38408	National Switching Support Report Vic Regions: February 1993	C&C North West AFG
G38409	G38435	National Switching Support Report Vic Regions: November 1991	C&C North West AFG
G38436	G38438	National Switching Support Melbourne Activity Report	C&C North West AFG
G38439	G38466	National Switching Support Report Vic Regions: August 1991	C&C North West AFG
G38467	G38493	National Switching Support Report Vic Regions: July 1991	C&C North West AFG
G38494	G38515	National Switching Support Report Vic Regions: June 1991	C&C North West AFG
G38516	G38538	National Switching Support Report Vic Regions: April 1991	C&C North West AFG
G38539	G38561	National Switching Support Report Vic Regions: March 1991	C&C North West AFG
G38562	G38587	National Switching Support Report Vic Regions: February 1991	C&C North West AFG

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G38588	G38609	National Switching Support Report Vic Regions: November 1990	C&C North West AFG
G38610	G38627	National Switching Support Report Vic Regions: October 1990	C&C North West AFG
G38628	G38647	National Switching Support Report Vic Regions: August 1990	C&C North West AFG
G38648	G38664	National Switching Support Report Vic Regions: July 1990	C&C North West AFG
G38665	G38681	National Switching Support Report Vic Regions: June 1990	C&C North West AFG
G38682	G38698	National Switching Support Report Vic Regions: March 1990	C&C North West AFG
G38699	G38715	National Switching Support Report Vic Regions: March 1990	C&C North West AFG
G38716	G38728	National Switching Support Report Vic Regions: August 1989	C&C North West AFG
G38808	G39790	Telcats Reports Feb. 87, Sept, Nov and Dec 92, and Jan 93, June 95 -Aug 96	C&C North West AFG
G40328	G40342	Service Assessment Report for Metro Area - 7/8/85	C&C North West AFG
G40343	G44609	National Network Management Centre Melbourne - Log Books for 20/11/84 to 25/3/96	Melb NAC
G44610	G46024	National Network Management Centre Melbourne - Log Books for 1/1/97 to 4/6/98	Melb NAC
G46725	G46741	National Switching Report May 1989	C&C North West AFG
G46742	G46743	ESD Static Discharge Notice	C&C North West AFG
G49643	G50528	Vic Traffic Reports: Feb. 89 - Mar 92	NTG Network Performance
G50529	G50951	Telcats Reports: Melb - May, June and Dec 1992	Melb South AFG
G50952	G51522	Telcats Reports: May, June and September 1993	Melb South AFG
G51523	G52143	Telcats Reports: Mar, Apr, Aug, Oct and Nov 1993	Melb South AFG
G52144	G53293	Telcats Reports: January - October 1992	Melb South AFG
G53294	G53965	Telcats Reports: December 1993, Jan, Feb., Mar, May and July 1994	Melb South AFG
G53966	G54195	Quality Performance Reports: Aug, Sept, Nov 1992 and Jan 1993	Melb South AFG
G54203	G54205	Customer Listing Information 18/1/94, Various Golden Numbers	Directories
G54541	G54767	National Network Management Centre - Electronic Log Printouts 25/3/96 to 31/12/96	Melb NAC
G54768	G54768	Service Plus Sales Order Display	Regional Material Management Melb
G54769	G54780	Cable Pair Test Results	CAN Measurement Group 2
J42566	J42598	Nth Melb Exchange Capacity and Growth Program, Global Number Allocation, Types of Services, AXE Installed Capacity Monthly Report: 1990 to 1993	DNFAG
J42599	J42610	Traffic Summary Nth Melb AXE Exchange NMEA: 11/6/90 to 15/6/90, and 15/10/90 to 19/10/90	Network and Technology Group
J42611	J42681	Traffic Summary North Melbourne GIV, GUV, SLD, STUL, Date Ranges 1/2/93 to 8/4/96	Network and Technology Group
J42682	J42721	Traffic Summary Nth Melb Tandem Exchange NMES: Date Ranges 8/4/88 to 23/4/98 and 10/4/89 15/4/89	Network and Technology Group
J42722	J42769	Nth Melb Exchange Work Authority for cancellation of PCM Systems. Junction Record Circuit Identity: Date Ranges 20/3/95 to 28/2/96	DNFAG
J42770	J42838	Service Assessment TA & TR Summaries Footscray ARE, Greensborough ARE, North Melb ARE, South Yarra ARE, Traffic Summary North Melbourne: Date Ranges March-94 to April-95	DNFAG
J42839	J42844	North Melbourne Cable and conduit Plans - DA34	DNFAG
J42845	J42873	Network Transformation Guide lines: October 1993	NTG&M Melb
J42874	J42907	EPMS Summary Report - June 95, Fault Note of 15/6/96, CM CCAS printout 9/8/93 & 16/7/93, RASS Private Line Fault History. Date ranges - 1993 to 1996	DNFAG
J42908	J43211	Account Billing Details, 725 9958 000, 270 8112 000, 334, 6140 000, Date ranges Dec-95 to Oct-96	DNFAG
J43212	J43300	Account Billing Details, 329 7788 and Associated lines, Customer Complaint of RVA - October 95. Date Ranges Dec-95 to Oct-96	DNFAG
J43301	J43328	Fault report North Melbourne Exchange, Traffic Summary - Footscray Exchange -1988, North Melb Exchange - 1987, Cable Plan NMEL DA34, Service Details ISDN Macrolink and Private Lines, Date Ranges 1987, 1988 and 1993	DNFAG
J43329	J43351	St Kilda Road Catchment: 1996	DNFAG
J43352	J43353	North Melb Cable Plans Generated 15/8/96	Melb West AFG
J43354	J43385	Fault History - Lonsdale 108, 329 0055, 329 0088, 329 7255, 329 7355. date Ranges 1989 - 1993	DNFAG
J43386	J43448	AT&T Product Brochures, 1996	DNFAG
J43449	J43493	Trob data, North Melb Exchange: Date Ranges Sept-91 to Sept-95	DNFAG

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J43494	J43586	Letter from Golden re Service Details of 29/3/96 and DCRIS Service Configuration Details March - April 1996	DNFAG
J43587	J43630	CABS Customer Billing Details - April to August 1994	DNFAG
J44045	J44085	AXE 10 Exchanges Node / Tandem GSS Dimensioning Guide, 1992	Metro Design
J44086	J44138	North Melb Exchange - MUX System and Channel Allocation Date Ranges 1993, 1996	Melb West AFG
J53490	J53492	Proposed Footscray 'A' (FSRX) AXE-D10 Exchange Node Trunking Schemes: February 1988, October 1989, and November 1990	NTG & M Melb
J54586	J54765	Correspondence: Emails, Cabs data, Sales, Flexitel 1993 - 1996	Vic Sales
J54766	J54932	Correspondence; Service Order Forms - ISDN; DCRIS Printouts	Vic Sales
J56836	J56849	RCR's for Nth Melb ISDN: Various Dates 1/6/95 to 6/3/98	Metro Design
J56850	J56881	RCR's for Nth Melb ARE11: Date Various Dates 11/91 to 4/95	Metro Design
J56882	J56911	RCR's for Nth Melb System 12: Various Dates May 1998	Metro Design
J57064	J57296	EPMS Data: Date Ranges Dec-92, Jan-94, Apr-95 and Apr-96	DNFAG
J58981	J58981	Computer Screen Printout of event and action taken dated 11/4/95	SYS-12 TMG
J58982	J58995	Correspondence: Fax, Email, service order, and Order Narratives 13/6 to 30/6 1997	ISDN Regional Support Group
J58996	J59025	Correspondence : Fax's, letters - date ranges 3/8/90 to 11/7/94	Vic Sales
J59026	J59059	AXE Outage Reports - date ranges 1/1/91 to 31/12/96	DNFAG
J59060	J59071	Computer printouts and copy of Yellow Pages Entry	Directories (Pacific Access)
J59072	J59099	File notes, letters, Emails - Date ranges 15/11/94 to 7/2/95	C&C, Rem Vic/Tas
J59100	J59127	Fault Log and Memo's, and Email - date ranges 21/3/94 to 16/9/96, and Floppy Disk	Melbourne NAC
J59128	J59336	Traffic Dispersion Lonsdale	Archive
J59337	J59406	SVT Testing North Melbourne	Archive
J59407	J59559	Traffic Reading Reports	Archive
J59560	J59768	Traffic Reading Reports	Archive
J59769	J60117	Route Details for NMES	Archive
J60701	J60820	Micro Fiche Printout - Dialled Traffic Reading Report Data: Metro Exchanges	Archive
J62068	J62343	Part 4 of 4: Floppy Disk Contents - Smart 10 Log (J59100)	Melbourne NAC
J62344	J62447	Part 3 of 4: Floppy Disk Contents : NEPR Log, (J59100)	Melbourne NAC
J62449	J62631	Part 2 of 4: Floppy Disc Contents - CCS-7 monitoring, Overflow for NMEX, (J59100)	Melbourne NAC
J62632	J62744	Part 1 of 4: Floppy Disk Contents - Email Log - Inbox and sent (J59100)	Melbourne NAC
J62745	J62745	Floppy disk relating to J62068 to J62744 for case file extracts above This disks is not available for viewing.	Melbourne NAC
J62877	J62968	Case file extracts from floppy disk's (G29681 to G29688), Nth Melbourne Routing Patterns, BCI related Tests and Documents	Planning - ND&C

ATTACHMENT 2
Legal Professional Privilege Pages

FROM	TO	FILE DESCRIPTION
J43229	J43229	Email from G Potts to S Hodgson
J43231	J43231	Email from P Haar to B Di Conza
J43233	J43234	Email from P Haar to J Armstrong
J54586	J54586	Email from S Hodgson to P Cirillo and J Cashmore
J54622	J54623	Letter from Freehill Hollingdale & Page solicitors to P Cirillo
J54629	J54629	Fax from D Krasnostein to P Cirillo
J54630	J54630	Telecom Australia arbitration procedure form from P Cirillo to S Chalmers
J54686	J54686	Email from A Law to T Cook
J54702	J54703	Memo from A Law to P Cirillo and other internal personnel
J58996	J59000	Fax from J Buzza to C Pask with attachment
J59010	J59010	Part Memo from C Pask to J Buzza
J59011	J59015	Fax from J Buzza to C Pask with attachment
J62631	J62631	Email from R Simpson to G Potts
J62638	J62639	Email from P Colenso to G Potts
J62722	J62729	Report prepared early 1996

ATTACHMENT 3
National Network Management Centre Logs

G40497	G40558	G40559	G40565	G40566	G40567
G40573	G40700	G40802	G40955	G41066	G41267
G41270	G41331	G41480	G41517	G41582	G41750
G42087	G42225	G42469	G42858	G43215	G43253
G43692	G43834	G44468	G44469	G44486	



COMMONWEALTH & DEFENCE FORCE
OMBUDSMAN

Prudential Building, enr London Circuit & University Avenue, Canberra City
GPO Box 442, Canberra, A.C.T. 2001, Australia
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~~10~~ November 1994

C/94/225

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

Attention Ms Joy Geary

Dear Mr Blount

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

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

2.3.94 Telecom has delayed providing access to documents.

2.3.94 Deletions from documents provided and exemptions were not explained.

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

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

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

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

Telecom unreasonably deleted information from documents released.

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

5.5.94 Telecom unreasonably delaying providing access to many documents.

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

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

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

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

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

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

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

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

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

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

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

Yours sincerely


John Wynack
Director of Investigations

STATEMENT

Of Des DIREEN

NAME:	Des DIREEN
ADDRESS:	
OCCUPATION:	
TELEPHONE:	

1. My name is Des DIREEN and my address and contact details are known to Mr Bob Hynninen.
2. In September 1995 I commenced employment with Telecom Australia which later changed its business name to the Telstra Corporation. I was originally employed as an Investigator attached to the Special Services Unit within Telecom Investigations which was later to become Telstra Protective Services. Over the next twelve years I was promoted to the roles of Senior Investigator and then Principal Investigator.
3. My duties over the years included initiating and conducting investigations involving all types of fraudulent activity against Telecom/Telstra as well as the unlawful use of the Telephone network. I was also very heavily involving in assisting Law Enforcement Agencies such as the Victorian, NSW and Queensland Police Task forces set up to investigate SP Bookmaking throughout those states which involved the use of Telephone Landlines as well as the Mobile phone network.
4. In April 1997 Telstra was downsizing its staff and offering redundancy packages. I applied and was granted a package leaving the company after completing just short of twelve years service.
5. After leaving Telstra, I am not sure of actual dates but it was either late 1997 or early 1998. I received a call from a person who I know as Rod KUERIS. Rod was working as a Detective Sergeant at the Victoria Police Fraud Squad, St. Kilda Road, Melbourne. I can recall that at the time, Rod was investigating criminal behaviour allegations directed against Telstra. The allegations, which related to 'Perverting the Course of Justice', were initiated by a group of complainants who called themselves Casualties of Telstra (COT Cases).




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Statement by Des DIFREEN

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6. At the time when Rod called me, I had left Telstra. He called me and asked me to meet him at his private address in Coburg, Victoria. He told me at the time that he was reading reports submitted by Telstra that related to his investigation. He had trouble deciphering the acronyms, abbreviations etc. that were in the report. He knew of my background as an investigator with Telstra and that I could assist him.
7. I attended at his house in Coburg. It was either on a Saturday or a Sunday. I can remember that it was on a weekend.
8. When I got there and during general talk, he stated that he believed that his phones were being 'bugged'. He seemed to be quite distressed at the time. He said that his phone was making clicking noises, the same noises that were occurring on the phones at the Fraud Squad.
9. I said to him that we should do a quick drive around to find out where the nearest pillar or telephone line pit was to his home because if what he was telling me, was true, it was possible that his telephone line could be being tapped from that location and his telephone conversations monitored. He told me that he thought there was pillar down on a corner about two hundred (200) metres away. We left together and when we got to the corner, a plain van was present and a male person was replacing the cover to the pillar. The male then got into his van and left.
10. We then drove to the main exchange in Sydney Road, Brunswick. There were two other vehicles at the exchange as well as the same van. These vehicles were in behind the exchange compound and were not marked with the company logo which indicated that they were not technician's vehicles.
11. It was unusual to have any vehicles at exchanges on weekends unless there was repair work being conducted by technical crews, but as I said all these vehicles were ^{not} marked with the Telstra logo.
12. From what I observed on this day, and applying the knowledge that I gained during my twelve years at Telstra, I have no doubt in my mind that the phones at Rod KUERIS's home address were possibly being interfered with.
13. Rod had also informed me that he believed that the phones at the Fraud Squad were also being monitored. He stated that the clicking noises were constantly being heard while using the phones.



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Statement by Des DUREN
Page 3 of 4

14. Rod also stated that he believed that all of his actions and meetings were pre-empted by Telstra. He stated that he thought it was possible that someone from Telstra was monitoring his calls.
15. This belief was later reinforced by what happened after this event.
16. A few weeks later on a Saturday morning Rod had to go to Tullamarine Airport to meet one of the complainants in his investigations, Anna GARMES. He called me early on this day and stated that he believed that he was being followed and wanted me to help him verify this.
17. Rod was going to meet Anna GARMES at Tullamarine Airport in the Ansett Departure area on the 1st floor. He was driving his private car to the airport. I arranged to meet Rod at Keilor Park Drive, East Keilor. I sat off his car as he drove past. I then followed him at a reasonable distance to the Ansett Departure Area Cafeteria on the 1st floor.
18. I met him outside the Cafeteria, and he pointed out Anna GARMES and her husband who were already there and then pointed out a male person sitting near them who he said he recognised as being a person who was following him around Melbourne. This guy was reading the paper. When this person realised that we had noticed him, he left. Rod appeared angry and distressed by this.
19. I also know that these occurrences were causing problems with Rod's family life. I believe that Rod left the police force not long after these events.
20. Finally, I would like to say that while I was working at Telstra and it would have been the early nineties I had cause to travel to Portland in western Victoria in relation to a complaint involving suspected illegal interference to telephone lines at the Portland telephone exchange.
21. As part of my investigation, I first attended at the exchange to speak to staff and check the exchange log book which was a record of all visitors to the exchange and a record of work conducted by the technical officers.
22. When I attended at the exchange, I found that the log book was missing and could not be located. I was informed at the time by the local staff that a customer from the Cape Bridgewater area south of Portland was also complaining about his phone service and that the log book could have been removed as part of that investigation. I was not told about this complaint prior to travelling to Portland and when I made inquiries by telephone back to

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Statement by Des DIRZEN
Page 4 of 4

Melbourne I was told not to get involved and that it was being handled by another area of Telstra. I later found out that the Cape Brigewater complaintant was a part of the COT cases.

Signature: [Signature]

Date: 10/08/06

I hereby acknowledge that this statement is true and correct and I make it in the belief that a person making a false statement in the circumstances is liable to the penalties of perjury.

Signature: [Signature]

Date: 10/08/06

Acknowledgment made and signature witnessed by me at MELBOURNE on 10/8/06
at 5.15 am/pm

Signature: [Signature]

Name: P. J. SPENCE

Title: SENIOR INVESTIGATOR

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Our Ref: 3951



1 September, 1998

TELEPHONE (03) 9287 7099

Attention: Mr John Pinnock
Telecommunications Industry Ombudsman
Telecommunications Industry Ombudsman's Office
315 Exhibition St
Melbourne VIC 3000.

FAX (03) 9287 7001

493-495 QUEENSBERRY STREET
NORTH MELBOURNE VICTORIA 3051
PO. BOX 313 NORTH MELBOURNE 3051

By facsimile: 9277 8797 and post.

FAXED
19/98

Dear Mr Pinnock,

Re: Point 3 in the TIO's letter dated 30 June 1998 re the document entitled, "Telstra Corporation Limited 'Fast Track' Proposed Rules of Arbitration".

In Point 3, you state you cannot be certain that the document I provided to Mr Bartlett on 22 May 1998 is a copy of the document Telstra provided to Warwick Smith on or before 12 January 1994. I have broadly interpreted your response. Are you suggesting the TIO received more than one draft of the document entitled, "Telstra Corporation Limited 'Fast Track' Proposed Rules of Arbitration"?

I have further examined a copy of the document provided to Mr Bartlett on 22 May 1998, and discovered there are two separate additional imprints added to the base document on the bottom of each page. These additional imprints read as follows:-

- "FHPMELC4\93349015.6-10 January 1994 (15:47)", and
- a symbol of an old-fashioned telephone handset, plus "61 3 9277 8797 TIO LTD".

Both of these additions to the "original" document (in my possession) is difficult to read on most pages, however, it is clear to read on Page 11, heading "Schedule C".

I have conducted further investigation into these imprints and discovered the following:-

- A. The TIO, in 1993, 1994 and 1995, when faxing a document, its fax machine was adding an imprint to the document being transmitted that included a symbol of an old-fashioned telephone handset, plus "61 3 277 8797 TIO LTD". Refer to enclosed TIO facsimiles dated 23 December 1993, 11 January 1994 and 9 March 1995.

In 1993, 1994 and 1995, the addition of "9" in the front of the Melbourne Exchange prefixes, as part of the AUSTEL national re-numbering plan, had not been implemented.

The inclusion of the "9" in the additional imprints on the copy of the document supplied to Mr Bartlett proves that the copy provided to him was in the TIO's possession and was re-faxed by the TIO to other parties after the AUSTEL national re-numbering plan had already been implemented.

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- B. The imprint "FHPMELC4\93349015.6-10 January 1994 (15:47)", identifies the document was either E-mailed or facsimiled from Freehill Hollingdale & Page Melbourne Office, the legal firm Telstra instructed to draft its Preferred Rules of Arbitration, and the date it was facsimiled to either or both Telstra and the TIO.

The TIO was provided with the Telstra document entitled, "Telstra Corporation Limited 'Fast Track' Proposed Rules of Arbitration", on or about 10 January 1994, and the provision of the Telstra document to the TIO was facilitated by Mr Steve Black.

- C. On 1 September 1998, I obtained a Table of Telstra documents that are located in a Telstra file entitled, "CoT Arbitration Process".

This Table identifies date and type of documents created or received by Telstra or exchanged between Telstra and the TIO, during the period of December 1993 till 3 February 1994. Example and identity of documents that exist within Telstra include:-

- (i) 13 December 1993 handwritten note from Jim Holmes, Corporate Secretary, to Ian Campbell re Arbitrator.
- (ii) 21 December 1993, Ian Campbell's letter to Telecommunications Industry Ombudsman re Telecom Arbitration Procedure.
- (iii) 24 December 1993, Jim Holmes' letter re Proposed Arbitration Procedure.
- (iv) 10 January 1994 to Telecommunications Industry Ombudsman re Fast Track Arbitration Procedure.

The document identified under Point (iv) has the same date and like description as the document I provided to Mr Peter Bartlett on 22 May 1998.

I have enclosed two internal Telstra E-mails and the recently acquired Telstra Media Release dated 23 November 1993 entitled, "Arbitration agreed by some CoT Customers", for your consideration.

After taking into consideration the documents identified in the Telstra Table of documents, the comments made by Warwick Smith on 12 January 1994 to myself and other C.o.T.s present at the meeting, and the contents of the Telstra document entitled, "Telstra Corporation Limited 'Fast Track' Proposed Rules of Arbitration", other Telstra and TIO documents in my possession, plus events that have occurred, it is my opinion that:-

- a) Telstra never intended to participate in the Fast Track Settlement Proposal (FTSP) Agreement as it allowed the C.o.T. claims against Telstra to be commercially assessed.
- b) Telstra, prior to and since 23 November 1993, always intended to force (by one means or another) the Foundation C.o.T. members into a highly legalistic arbitration process, irrespective of the agreement entered into by both parties.
- c) Warwick Smith, as Administrator of the FTSP Agreement, in the period between December 1993 and January 1994, secretly acted in concert with and supported Telstra to achieve its objective of forcing the Foundation C.o.T.s into a highly legalistic arbitration process, using as a base the agreement drafted by Telstra's solicitors.

- d) The allegedly independently drafted "Fast Track Arbitration Procedure" (FTAP) by Dr Hughes and Mr Sheldon is essentially a reproduction of the Telstra document entitled "Telstra Corporation Limited 'Fast Track' Proposed Rules of Arbitration" with minor amendments and superficial changes made.
- e) Warwick Smith failed to discharge his duty of care to the Foundation C.o.T. members, acted in a bias manner against the C.o.T. members and wrongly withheld from the C.o.T. members on 12 January 1994 and since, the Telstra document entitled "Telstra Corporation Limited 'Fast Track' Proposed Rules of Arbitration".

D. I previously consulted with my solicitor, Mr Hunt, on this matter. At the time, Mr Hunt stated he is prepared to proof read both documents with Mr Peter Bartlett or yourself. The purpose of the exercise would be to establish if the copy of the document I provided Mr Bartlett is, in fact, an exact copy of the document Telstra provided the TIO on or before 12 January 1994.

CONCLUSION.

Mr Pinnock, it has been important to establish, beyond reasonable doubt, whether the copy of the document I supplied to Mr Bartlett is an exact copy of the document Telstra provided to the TIO.

I have previously brought to your attention the existence of the internal Telstra E-mail that says in words to the effect:- "Force Gordon Hughes to accept Telstra's Preferred Rules of Arbitration." Copy enclosed.

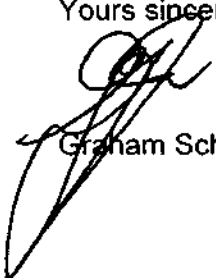
This document identifies a further copy of Telstra's Preferred Rules of Arbitration was being prepared as at 2 March 1994. As Administrator, the TIO would have been supplied with a copy. The other C.o.T. members and I were not provided with such a copy.

The TIO has always asserted this is an equal partnership process and, as such, entitles me to receive a copy of this document and all other documents exchanged between the TIO, Telstra, Dr Hughes and the participating C.o.T. members. The immediate supply of same will be appreciated.

The information uncovered during my investigation has been revealing. I now believe it is reasonable to take the document supplied to Mr. Bartlett to be an exact copy of the Telstra document supplied to Warwick Smith, on or before 12 January 1994, and subsequently provided to Dr Hughes, with the TIO instruction to implement Telstra's Preferred Rules of Arbitration.

The absence of any advise to the contrary will be taken as an act to substantiate the document supplied to Mr Bartlett by myself is an exact copy of the Telstra document supplied to the TIO.

Yours sincerely,

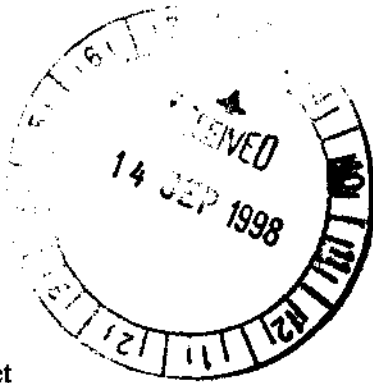


Graham Schorer

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11 September 1998

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



Telecommunications
Industry
Ombudsman

John Pinnock
Ombudsman

CONFIRMATION OF FAX

Dear Mr Schorer

Telstra's Fast-Track Proposed Rules of Arbitration


I refer to your letter dated 1 September 1998.

Neither myself nor Special Counsel believe we retained the document you showed Mr Bartlett on 22 May 1998 by placing it on the conference table at the TIO. Accordingly, we can not make a comparison to conclusively advise you whether that document is a copy of the document Telstra provided to Warwick Smith on or before 12 January 1994.

Your letter contains serious allegations against Telstra, Warwick Smith, Dr Hughes and Mr Shelton. I am not in a position to comment on the allegations contained in paragraphs (a) and (b). However, I can say that paragraphs (c) and (e) are certainly incorrect. The TIO did everything in its power to achieve a just result for the COT. In relation to paragraph(d), the drafting of the FTAP was done in consultation with the COT and Telstra. I understand it was an extensive and thorough negotiation process. Mr Shelton who assisted in the drafting was President of the Institute of Arbitrations and is now a County Court Judge.

I'm not aware of a further copy of Telstra's Preferred Rules of Arbitration which was being prepared as at 2 March 1994. The FTAP went through many drafts, incorporating amendments by both Telstra and the COT. I do not see how providing you with these drafts will be of assistance to you.

Yours sincerely,



JOHN PINNOCK
OMBUDSMAN

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

Telecommunications Industry Ombudsman Ltd ACN 057 634 787

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**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL LIST**

19 No. of

**IN THE MATTER of an Arbitration
under the COMMERCIAL ARBITRATION ACT**

BETWEEN:

**TELSTRA CORPORATION LIMITED
(ACN 051 775 556)**

Plaintiff

-and-

GRAHAM SCHORER

Defendants

and others

AFFIDAVIT

Date sworn:	19 October 1998
Deponent:	Edward John Benjamin
Filed on behalf of:	The Defendant
Prepared by:	Solicitors Code: 420
Freehill Hollingdale & Page	DX: 240
101 Collins Street	Tel No: (03) 9288 1234
MELBOURNE Vic 3000	Ref: DBG:MAC:CPT:20085748

I, EDWARD JOHN BENJAMIN of Level 37, 242 Exhibition Street, Melbourne in the State of Victoria, Manager, **MAKE OATH AND SAY** as follows:

- 1 I am the Director of Consumer Affairs for the plaintiff, Telstra Corporation Limited ("Telstra") and have been in that position since June 1996. Prior to that, I held the position of Group Manager of Customer Affairs for Telstra. I have had responsibilities relating to Telstra's conduct of the arbitration with the defendants (the "Schorer Arbitration") since

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September 1994 and am responsible for Telstra's conduct of this proceeding. I am duly authorised to make this Affidavit on Telstra's behalf.

Background

2 On or about 21 April 1994 Telstra and the first defendant, Mr Graham Schorer ("Schorer"), on behalf of the other defendants to this matter, entered into an agreement entitled the Fast Track Arbitration Procedure ("the FTAP") to resolve a dispute between them. Clause 1 of the FTAP provided that the arbitration was to be pursuant to the *Commercial Arbitration Act 1984*. The FTAP sets out the rules under which the parties agreed the Arbitration was to be conducted. Now produced and shown to me and marked with the letters "EJB1" is a copy of the FTAP.

3 As outlined in Schedule A to the FTAP, the dispute related to:

"The liability of Telstra to the Claimant in respect of alleged service difficulties, problems and faults in the provision to the Claimant of telecommunications services (other than the matters covered by the earlier settlement between Graham Schorer's company and Telstra)."

The telecommunications services in question were those provided by Telstra to the premises of the 'Golden Messenger' courier business, 493-495 Queensberry St North Melbourne. I understand that the other defendants are companies or trusts controlled and beneficially owned by Schorer. The FTAP describes the defendants collectively as "the Claimants" and for convenience, I will use that terminology in this affidavit.

4 The FTAP, at clause 3, provides that the Arbitration was to be administered by the Telecommunications Industry Ombudsman ("TIO"). The TIO, with the agreement of the parties, appointed Dr Gordon Hughes as assessor under an agreement headed the "Fast Track Settlement Proposal" entered into in November 1993 but superseded by the FTAP.

① The FTAP was prepared after Dr Hughes advised the parties that his functions could most effectively be discharged if he was appointed as Arbitrator rather than assessor. On this basis, clause 3 of the FTAP goes on to specify that Dr Hughes would conduct the arbitration. Now produced and shown to me and marked "EJB2" is a copy of a record of meeting between Mr Schorer, Mrs Garms (another member of the so-called "Casualties of Telecom" or "COT Cases" group), Mr Bartlett, Special Counsel to the Administrator under the FTAP and Dr Hughes prior to execution of the FTAP. In addition, a solicitor

representing Telstra attended as an observer. This exhibit records Dr Hughes recommendation regarding resolution by way of arbitration rather than assessment.

The procedure

5 The procedure for the submission of material in the arbitration set out in clause 7 of the FTAP was, subject to an overriding discretion of the Arbitrator, as follows:

- (a) the Claimants were to submit their statement of claim and any other written evidence and submissions in support of that claim within four (4) weeks of the commencement of the arbitration (clause 7.2);
- (b) Telstra was to submit its statement of defence and any written evidence and submissions in support of that defence within four (4) weeks of receiving the Claimants' claim documents (clause 7.3); and
- (c) The Claimants were given an opportunity to submit their reply to the statement of defence together with any supporting documents if any within a further four (4) weeks of receipt of Telstra's defence documents (clause 7.4).

6 Clause 7.5 of the FTAP provided, inter alia, that:

"either party may, upon reasonable notice in writing to the other party, apply to the Arbitrator for directions upon any matter in relation to the proceedings including an amendment to the Statement of Claim, Defence or Reply, the production of further documents, further particulars of Statement of Claim, Statement of Defence or Reply. Each party is entitled to be heard on any such application."

7 In addition, the Arbitrator had a discretion under clause 7.6 to order the production of documents or further particulars which he reasonably considered would assist him by either party on his own motion.

Progress of the arbitration

8 On 20 May 1994, the Claimants applied for an extension of time in accordance with clause 7.1 of the FTAP. On or about 25 May 1994 the Arbitrator adjourned the date for the lodging of the claim documents to 15 June 1994. Now produced and shown to me and marked "EJB3" are copies of the letters exchanged between the Arbitrator and the Claimants on 20 and 25 May 1994.

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- 9 On 15 June 1994, the Claimants submitted a statement of claim which was expressed to be "interim" in nature. Submitted to the Arbitrator at the same time by the Claimants was a document entitled "History of Events and Complaints about Telephone Service Difficulties, Problems and Faults".
- 10 On 22 June 1994 the Arbitrator accepted Telstra's submission made in its letter dated 21 June that the "interim statement of claim" filed by the Claimants did not satisfy the requirements of clause 7.2 of the FTAP and directed that the time for lodging the defence documents had not yet commenced to run. Now produced and shown to me and marked "EJB4" is a copy of the letter from the Arbitrator to Telstra.
- 11 On 11 August 1994 the Arbitrator advised the Claimants that he was still awaiting receipt of documents in support of the claim from the Claimants. The Arbitrator indicated that there may come a point when the Claimants would need to convince the Arbitrator of the relevance of any outstanding requests for documents under the *Freedom of Information Act* ("FOI Act") if the Arbitrator continued to extend the deadline for the submission of the Claimant's claim documentation. The Arbitrator requested a report from the Claimants and Telstra concerning the progress of the FOI application and any other matters which may need to be resolved between the parties before the submission of the Claimants' claim under the arbitration process. Now produced and shown to me and marked "EJB5" is a copy of the letter from the Arbitrator to the Claimants dated 11 August 1994.
- 12 On 7 September 1994 the Arbitrator wrote to the Claimants in response to a telephone discussion outlined in the letter. The Arbitrator informed the Claimants that he was considering requiring the Claimants to formally submit their claim on the basis of material presently available to them. The Arbitrator indicated that he would review the matter on 1 October 1994. Now produced and shown to me and marked "EJB6" is a copy of the letter from the Arbitrator to the Claimants dated 7 September 1994.
- 13 On 13 October 1994 the Arbitrator directed the Claimants to commence the preparation of the submission of their claim following a further telephone conversation with the Arbitrator on 12 October 1994, the nature of which was again detailed in his letter. Now produced and shown to me and marked "EJB7" is a copy of the letter from the Arbitrator to the Claimants dated 13 October 1994.

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- 14 On 10 November 1994 the Arbitrator advised the Claimants that while he was unable to compel them to lodge a claim, he was able to set deadlines, and if the Claimants were unwilling or unable to comply with them, Telstra may chose to make a submission as to the future of the arbitration which the Arbitrator would consider. The Arbitrator indicated that it was open to him to conclude at some point that the "attempt to arbitrate the dispute is futile", in which event he may withdraw. On this basis, the Arbitrator directed that the claim documentation be submitted by 12 December 1994. Now produced and shown to me and marked "EJB8" is a copy of the letter from the Arbitrator to the Claimants dated 10 November 1994.
- 15 Following a meeting between Telstra and the Claimants on 26 November 1994 the deadline for submission of claim documents was extended to 30 December 1994 with the consent of Telstra. Now produced and shown to me and marked "EJB9" is a copy of the letter from the Arbitrator dated 14 December 1994 recording the revised deadline.
- 16 On 23 December 1994 the Claimants submitted a document headed "The Statement of Claim of the Claimants". Now produced and shown to me and marked "EJB10" is a copy of the covering letter from the Claimants to the Arbitrator.
- 17 On 31 January 1995, Telstra submitted a request for both further documents and further particulars to be submitted in support of the Claimants' Statement of Claim. Now produced and shown to me and marked "EJB11" is a copy of a covering letter from Telstra to the Arbitrator which enclosed a copy of the Request.
- 18 On 23 February 1995, the Arbitrator wrote informing me that the Claimants had said that they were unable to complete preparations for a directions hearing nor complete the submission of the claim at that time. Now produced and shown to me and marked "EJB12" is a copy of the Arbitrator's letter to Telstra.
- 19 On 20 April 1995 Telstra advised the Claimants that it was of the opinion that it had supplied them with all of the documentation that it had relating to the Claimant's FOI requests (subject to some documentation which it indicated would be forwarded in the near future). Now produced and shown to me and marked "EJB13" is a letter from Telstra to the Claimants.

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- 20 On 12 May 1995 the Arbitrator indicated to the Claimants that he had not heard from them for some time and that he would be convening a directions hearing in order to determine whether the parties wished the arbitration to proceed. Now produced and shown to me and marked "EJB14" is a copy of the letter from the Arbitrator to the Claimants.
- 21 On 31 May 1995 the Arbitrator notified Telstra that the Claimants had informed him that they had been unable to give attention to the claim and they anticipated that they may be available to attend a Directions Hearing later in June 1995. Now produced and shown to me and marked "EJB15" is a copy of the letter from the Arbitrator to Telstra.
- 22 On 3 August 1995 the Arbitrator advised Telstra that he had been advised by the Claimants that due to a combination of factors, including health and commercial pressures imposed by business, the Claimants were unable to submit a claim. Now produced and shown to me and marked "EJB16" is a copy of the letter from the Arbitrator to Telstra.
- 23 On 4 September 1995, the Arbitrator wrote to the Claimants querying when they would be in a position to proceed with the submission of their claim documentation. Now produced and shown to me and marked "EJB17" is a copy of the letter from the Arbitrator to the Claimants.
- 24 On 6 November 1995, the Arbitrator requested the Claimants to advise him within 7 days when they expected to complete the submission of their claim indicating that if the Claimants anticipated a delay of considerable and indeterminate length, the Arbitrator would give consideration to the question of whether the arbitration should be abandoned. Now produced and shown to me and marked "EJB18" is a copy of the letter from the Arbitrator to the Claimants.
- 25 On 24 November 1995, the solicitors for the Claimants indicated that their clients were not in any position to advise for certain whether or not they anticipated "a delay of considerable and indeterminate length". The letter went on: "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". Now produced and shown to me and marked "EJB19" is a copy of the letter from the Claimants' solicitors to the Arbitrator.

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26 On 30 November 1995, Telstra made a written submission to the Arbitrator that pursuant to clause 7.7 of the FTAP, the Claimants should be given one week to lodge their claim and if they failed to do so, the Arbitrator should forward to them written notice of the default. Telstra submitted that, should the claimants not remedy the default then the Arbitrator should treat the Claimants as having abandoned their claim in accordance with clause 7.7. Now produced and shown to me and marked "EJB20" is a copy of the letter from Telstra to the Arbitrator.

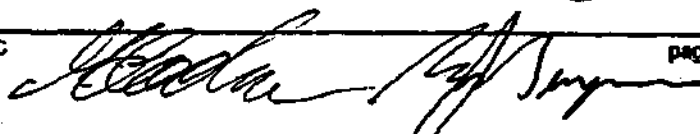
27 At a Directions Hearing held on 14 December 1995, the Arbitrator issued directions, inter alia, that:

- Telstra provide documentation to the Claimants not previously made available pursuant to an application under FOI which might reasonably be considered relevant to the claim on or before 16 January 1996;
- there would be a further Directions Hearing at the Arbitrator's office on 5 February 1996, and
- at this Directions Hearing the Arbitrator would seek from the Claimants an estimate of the time they expected would be involved in completing the submission of the claim.

Now produced and shown to me and marked "EJB21" is a copy of the letter from the Arbitrator to Telstra dated 18 December 1995 recording those directions.

28 On 27 December 1995, the Arbitrator forwarded to Telstra the Claimants' request for a large number of documents from Telstra. On 19 January 1996 Telstra indicated that following the Arbitrator's direction it had conducted searches for documentation and that such documentation had been located and would be provided to the Claimants. Telstra noted that it faced great difficulty in attempting to place practical limits on the scope of its searches due to the vague nature of the Claimants' claim and the wide scope of the Arbitrator's direction which Telstra noted was analogous to a direction for Telstra to give discovery of documents. Telstra also indicated that a "vast" amount of information had already been provided to the Claimants under the FOI Act (being approximately 66,000 pages and 45 computer disks). Now produced and shown to me and marked "EJB22" is a

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copy of the Arbitrator's letter to Telstra dated 27 December 1995 and Telstra's response of 19 January 1996.

- 29 On 5 February 1996, an oral hearing was held attended by the Arbitrator and the parties to address the future direction of the arbitration. Now produced and shown to me and marked "EJB23" is a copy of the transcript supplied under cover of a letter from the Arbitrator dated 8 February 1996.
- 30 On 10 April 1996, the Arbitrator convened a meeting at his office to resolve the Claimants' outstanding concerns as to the provision of documents by Telstra. As a result of this meeting it was agreed that the Claimants would ask certain questions which would be provided to Telstra for it to consider. Now produced and shown to me and marked "EJB24" is a copy of the letter from the Arbitrator to Telstra dated 11 April 1996 recording his directions.
- 31 On 13 May 1996 the Claimants wrote to the Arbitrator requesting an adjournment of the arbitration until January 1997 for business reasons and so as to enable the Claimants to receive and analyse documents from Telstra. Now produced and shown to me and marked "EJB25" is a copy of the letter from the Claimants.
- 32 On 14 June 1996, Telstra wrote to the Arbitrator formally opposing the application for an adjournment and submitted that the Claimants should have four weeks in order to finalise their claim. Now produced and shown to me and marked "EJB26" is a copy of Telstra's letter to the Arbitrator.
- 33 On 22 July 1996, Dr Hughes directed that the Claimants submit their final Statement of Claim by 1 October 1996. Now produced and shown to me and marked "EJB27" is a copy of the direction of the Arbitrator, attaching a submission of the Claimants dated 21 June 1996.
- 34 On 30 September 1996 the Claimants submitted a document entitled "Claimant's Statement of Claim". Now produced and shown to me and marked "EJB28" is a copy of a letter from the Arbitrator noting the submission of the claim.

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35 On 9 October 1996, Telstra wrote to the Arbitrator alleging that the Claimants' "Statement of Claim" remained deficient in a number of important respects. Now produced and shown to me and marked "EJB29" is a copy of Telstra's letter.

36 On 15 October 1996, Dr Hughes wrote to the solicitors for the Claimants and directed that:

- (a) the Claimants submit any additional material in support of that claim within 14 days of the date of the letter;
- (b) Telstra submit its Defence to the Claimants Statement of Claim within four weeks of the expiry of the 14 day period; and
- (c) the Claimants submit a reply, if any, within four weeks of receipt of the date of Telstra's defence material.

Now produced and shown to me and marked "EJB30" is a copy of the letter from the Arbitrator.

37 In the absence of any further material from the Claimants, Telstra submitted its defence documentation on or about 26 November 1996. Now produced and shown to me and marked "EJB31" is a copy of a letter under cover of which the TIO provided copies of the Telstra defence to the Arbitrator.

38 On 2 January 1997, the Arbitrator notified Telstra of the Claimants' application for an extension of time until 20 January 1997 in order to deliver their reply. The Arbitrator indicated that he was disposed to grant this extension. Now produced and shown to me and marked "EJB32" is a copy of the letter from the Arbitrator.

39 On or about 15 January 1997, the Claimants submitted the Claimants' Reply to Telstra's Defence. In the conclusion to that Reply, the Claimants stated the following:

"The Claimants respectfully request that when the FOI [Freedom of Information] documentation and records become available the Claimants then be given a proper opportunity if necessary to comment further on the legal submissions of Telstra.

This last request is submitted on the premise that sooner or later the lack of FOI documentation and records will be satisfactory [*sic*] resolved. When that has taken place and having regard to the Arbitrator's remarks set out in his letter of 15th October 1996 to the Claimants' solicitor, it is anticipated a reasonable opportunity

will be then given to the Claimants to prepare and produce all evidence in support of the Claimants' contentions necessary for the finalisation of this Arbitration."

Now produced and shown to me and marked "EJB33" is a copy of the Claimants' reply to Telstra's defence.

40 On 4 February 1997 the Arbitrator invited submissions from the Parties as to whether further documents or information was required from the other party. Now produced and shown to me and marked "EJB34" is a copy of a letter from the Arbitrator.

41 Between February and July 1997 the Arbitrator continued to respond to submissions of the parties as to the adequacy of the information provided by the Parties. Now produced and shown to me and marked "EJB35" are copies of various of the Arbitrator's letters dated 18 February, 1 April, 7 July and 25 July 1997.

42 On 14 August 1997 the Arbitrator made directions in relation to the involvement of Mr Paul Howells of DMR Group Australia Pty Ltd, in accordance with Clause 8.1 of the FTAP, in assisting the Arbitrator in relation to technical telecommunications issues arising out of the claim materials and the defence. Additionally, on 18 August 1997, the Arbitrator wrote to Ferrier Hodgson Corporate Advisory, chartered accountants, also of the Resource Unit, to commence their review of the claim and defence. Now produced and shown to me and marked "EJB36" is a copy of the Arbitrator's letters to the solicitors for the Claimants and to Ferrier Hodgson Corporate Advisory.

Resignation of the Arbitrator

43 On or about 29 December 1997, the Arbitrator resigned his position as Arbitrator on the basis of a perceived conflict of interest due to his joining the partnership of the law firm Blake Dawson Waldron. Now produced to me and marked "EJB37" is a copy of the Arbitrator's letter of resignation. The letter of resignation indicated that the TIO was to appoint a new Arbitrator and followed a directions hearing which addressed the future direction of the arbitration. It also specified that the Resource Unit would suspend work on the arbitration pending the appointment of a new Arbitrator.

44 On 17 March, 1998, a meeting convened by the administrator and attended by the parties was held at the offices of the TIO in order to discuss the future course of the arbitration following the resignation of Dr Hughes and objections by Mr Schorer to the continued

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involvement of DMR Group Australia, the technical resource unit named in the FTAP. The Administrator determined that in order to progress the arbitration it was necessary for the parties to agree upon a new Arbitrator and a new technical resource unit. The Administrator directed that the parties propose nominees for the role of Arbitrator by 15 May 1998 accompanied by curriculum vitae for the nominees. The Administrator also foreshadowed providing the parties with curriculum vitae of proposed applicants for the position of technical resource unit. The Administrator directed that the parties reconvene for a further meeting on 22 May 1998 at the offices of the TIO to discuss the appointment of a new Arbitrator and technical resource unit. Now produced to me and marked "EJB38" is a copy of the minutes recorded by a representative of the TIO's office. Subsequently, on 25 March 1998, the TIO wrote to me clarifying the directions made on 17 March 1998, and, as foreshadowed, attached curriculum vitae for five potential technical consultants. Now produced to me and marked "EJB39" is a copy of the letter to me from the TIO.

- 45 On or about 17 March 1998, Telstra provided by hand to the TIO copies of curriculum vitae for Dr Clyde Croft, Mr George Golvan QC and Mr Maurice Phipps QC. Now produced to me and marked "EJB40" are copies of the relevant curriculum vitae.
- 46 On 26 March 1998, Mr Peter Bartlett, special counsel to the TIO, provided advice to the TIO as to the status of the arbitration and, specifically, the appointment of a new Arbitrator. Additionally, Mr Bartlett confirmed the position stated by Dr Hughes in his letter of resignation that the arbitration remains on foot. Now produced to me and marked "EJB41" is a copy of the letter to the TIO from Mr Bartlett.
- 47 On 15 May 1998, Telstra again wrote to the TIO and enclosed curriculum vitae for three further nominees for the role of Arbitrator, being Mr Geoff Nettle QC, Mr Julian Burnside QC and Mr Jonathan Mott. Now produced to me and marked "EJB42" is a copy of the letter from Telstra and attached curriculum vitae.
- 48 On 22 May 1998, I attended a further meeting at the TIO. Mr Schorer and his solicitor were also present. Again, the purpose of the meeting was to attempt to progress the arbitration by appointing a new Arbitrator. In the absence of agreement by the parties as to an appropriate Arbitrator, the meeting was concluded. Now produced to me and

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marked "EJB43" is a copy of a draft of the minutes of the meeting prepared by the TIO's office.

49 On 18 June 1998, I wrote to the TIO noting the absence of agreement as to an appropriate Arbitrator and requesting that the TIO advise of its intentions in relation to the appointment of an Arbitrator. Now produced to me and marked "EJB44" is a copy of my letter to the TIO.

50 Also on 18 June 1998, I wrote to Mr Schorer and noted that without prejudice discussions aimed at settling the matter had not brought the matter to conclusion. In those circumstances, I advised that Telstra would be continuing to seek the appointment of a new Arbitrator. Now produced to me and marked "EJB45" is a copy of my letter to Mr Schorer.

51 On 30 June 1998, I received the TIO's response to my letter of 18 June 1998. The TIO took the position that it does not have the power to appoint a new Arbitrator in the absence of agreement of the parties. Now produced to me and marked "EJB46" is a copy of the letter from the TIO.

52 As a result of the impasse reached, Telstra requests this Court to appoint a new Arbitrator under the *Commercial Arbitration Act 1984*.

Choice of arbitrator

53 It is Telstra's position that if this Honourable Court is minded to appoint an arbitrator (which it is respectfully requested to do), the arbitrator so appointed should be a lawyer of high standing. There are a number of reasons for this including:

- As Dr Hughes was such a person, Telstra believes that the continuity of the arbitration would be better served by an appointment of a similarly qualified person. Indeed, the agreement of the parties prior to the commencement of the arbitration that Dr Hughes was an appropriate choice for arbitrator supports the view that at the time of entering into the FTAP, both parties considered it appropriate to appoint a lawyer as arbitrator.
- The Statement of Claim dated 30 September 1996 involves questions of general law duty of care, a duty alleged to arise by Statute, a duty alleged to arise by

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contract (paragraph 24) and the alleged breach of any such duties (paragraph 25). Additionally, there are breaches of the *Trade Practices Act 1974* and the *Fair Trading Act 1985* alleged (paragraph 29). Now produced to me and marked "EJB47" is a copy of the Statement of Claim dated 30 September 1996. The Defence submitted by Telstra dated on or about 26 November 1996 provided legal responses to these allegations. Now produced to me and marked "EJB48" is a copy of the Principal Submissions and Legal Submissions provided by Telstra as part of its Defence documentation. The allegations raised in the Statement of Claim, and the issues joined in the defence, raise questions of law which would be more appropriately determined by an arbitrator with legal expertise.

- Further, the FTAP makes provision in clause 8 for the Arbitrator to use a Resource Unit to assist the Arbitrator in both financial and technical areas. The FTAP specifies that Ferrier Hodgson, Chartered Accountants, and DMR Group Australia Pty Ltd were to provide this assistance to the Arbitrator where he required it. On this basis, the FTAP, while appointing a lawyer to the position of Arbitrator, facilitated an appropriate assessment of technical issues through the assistance of the Resource Unit.
- As noted in the draft minutes of the meeting with the TIO on 22 May 1998, referred to at paragraph 48 above, the Claimants have proposed that Mr Tom Amos, a technically trained person, is the only appropriate choice known to them for appointment as arbitrator. It is Telstra's position that Mr Amos is an inappropriate person to be appointed as arbitrator by this Court. To my knowledge, Mr Amos has no training nor experience as an arbitrator.


54 All of the persons suggested by Telstra as appropriate arbitrators are lawyers of the highest standing. I am currently requesting the written consent of a number of these persons to act as arbitrator if so appointed by this Honourable Court. Any consents obtained by me will be exhibited to a subsequent affidavit to be sworn by me.

55 In the circumstances, it is respectfully requested that this Honourable Court make an order pursuant to section 10 of the *Commercial Arbitration Act 1984* appointing one of the persons nominated by Telstra as arbitrator of the Schorer arbitration.

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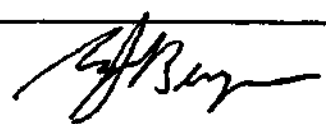
SWORN by EDWARD JOHN BENJAMIN)
at Melbourne in the State of Victoria)
this 19th day of October 1998)



Before me: 

MALCOLM A. COOKE
Freehill Hollingdale & Page
101 Collins Street Melbourne
A current practitioner under
the Legal Practice Act 1996

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**Telecommunications
Industry
Ombudsman**

**Warwick L Smith LLB
Ombudsman**

March 9, 1995

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

By facsimile: (055) 267 230

Dear *Alan*,

Re: Resource Unit - Technical Support

As the executive of DMR Group Australia Pty. Ltd. is unavailable to provide locally based technical assistance, I propose to utilise the services of Mr. David Read and Mr. Chris Soutter of Lane Telecommunications (based in Adelaide) who are suitably qualified and independent.

Messrs. Read and Soutter will assist Mr. Paul Howell of DMR Group Inc. (Canada) in the technical assessment under the Fast Track Arbitration Procedure. Mr. Howell the principal technical advisor to the Resource Unit will be in Australia within two weeks. The technical enquiries will commence on Thursday 16th March, 1995.

Could you please confirm with me in writing that you have no objection to this appointment so the matter can proceed forthwith.

Yours faithfully,


Warwick L. Smith
Ombudsman

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

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

Box 18098
Collins Street East
Melbourne 3000

**CONFIRMATION
OF FAX**

Telephone (03) 277 8777
Facsimile (03) 277 8797
Mobile 018 591 208



Telecommunications
Industry
Ombudsman

September 27, 1994

Warwick Smith, ILO
Ombudsman

Mr John and Mrs Anna Main
Glenwaters Glenburn Pty Ltd
Break O-Day Road
GLENBURN VIC 3717

Dear Mr & Mrs Main,

During recent meetings with some claimants, it occurred to me that it might be useful to provide an informal overview of how the arbitrations would work in the event that any of the claimants, once satisfied that they have received sufficient information from Telecom, agree to sign the procedure.

The procedure is far simpler and more user-friendly than it might first appear.

I am yet to formally appoint an Arbitrator to be involved to hear any cases, and will not do so until such time as it is clear that some claimants are willing to proceed. However, already established is a Resource Unit made up of a representative of the senior accounting firm Ferrier Hodgson and the DMR Group, who are Canadian communications experts.

What I would propose is to provide you with the opportunity to meet with Peter Bartlett, a senior partner with Minter Ellison Morris Fletcher who has acted as my legal counsel for the purposes of establishing the ongoing process with the early 'Fast-Track' COT claimants and also helped establish the Rules that are currently being offered under an agreement between AUSTEL and myself that are now with you.

Peter could take you through the process and also introduce you to John Rundell who heads up the Resource Unit to give you some broad indication as to how the process will actually work.

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Nadone Headquarters
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Melbourne 3000

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Mobile 018 991 208

I think this would be particularly helpful to you in making a decision as to whether or not you proceed. As you know, I have not set any date by which you have to respond as it is my view that you should not be asked to enter into the process until you are fully comfortable with what is proposed. However, I of course cannot leave this matter in abeyance for a long period of time and therefore I think that what I am proposing would be of assistance to you in making your decision. If you think that it would be of use to yourself or to your advisors, could you let Pia Di Mattina know and she will arrange an appropriate time to meet with Peter Bartlett.

Yours sincerely,


Warwick L. Smith
Ombudsman

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FORM 43A

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL LIST

19 No. of

IN THE MATTER of an Arbitration
under the COMMERCIAL ARBITRATION ACT

BETWEEN:

TELSTRA CORPORATION LIMITED
(ACN 051 775 556)

Plaintiff

-and-

GRAHAM SCHORER

First Defendant

and others

CERTIFICATE IDENTIFYING EXHIBIT

Date of document:	19 October 1998
Filed on behalf of:	Plaintiff
Prepared by:	
Freehill Hollingdale & Page Solicitors	Solicitors Code: 420 DX: 240
101 Collins Street MELBOURNE Vic 3000	Tel No: 9288 1234 Ref: DBG:MAC:20085748

This is the exhibit marked "EJB1" produced and shown to Edward John Benjamin at the time of swearing his affidavit sworn this 19th day of October 1998.

Before me:


Signature of person taking affidavit

MALCOLM A. COOKE
Freehill Hollingdale & Page
101 Collins Street Melbourne
A current practitioner under
the Legal Practice Act 1996

Exhibit "EJB1"

FTAP 21 April 1994.

SUPREME COURT OF VICTORIA

COURT OF APPEAL

No. 2032 of 1995

ISI JOSEPH LEIBLER, LEIBANT INVESTMENTS PTY LTD
and NINTH ASTJET PTY LTD

Appellants

v.

AIR NEW ZEALAND LTD and ENZEDAIR TOURS LTD

Respondents

JUDGES: WINNEKE, P. PHILLIPS and KENNY, JJ.A.

WHERE HELD: MELBOURNE

DATE OF HEARING: 17, 18 and 19 November 1997

DATE OF JUDGMENT: 30 April 1998

CATCHWORDS: Unilateral mistake - Claim for rectification -
Deletion of material provision - Solicitors acting -
Mistake by solicitor - Actual knowledge of other party -
Failure of other party to bring mistake to mistaken
party's attention - Assessment of witnesses by trial judge
- Whether findings of trial judge justified order for
rectification.

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the Appellants	Mr N.J. Young Q.C. and Mr M.D. Wyles	Arnold Bloch Leibler
For the Respondent	Mr P.J. Jopling Q.C. and Mr P.H. Solomon	Arthur Robinson & Hedderwicks.

VICTORIAN GOVERNMENT REPORTING SERVICE
167 Queen Street, Melbourne - Telephone 9603 2404
32060

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LEIBLER & ORS. v. AIR NEW ZEALAND & ANOR.

KENNY, J.A.: I have had the advantage of reading in draft the reasons for judgment prepared by Phillips, J.A. I also agree with them and have nothing to add.

CERTIFICATE

I certify that this is a true copy of the reasons for judgment of Kenny, J.A. of the Court of Appeal (Winneke, P., Phillips and Kenny, JJ.A.) of the Supreme Court of Victoria delivered on 3rd October, 1997.

DATED this 3rd day of October 1997.

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WINNEKE, P.: I have formed the view jointly with Phillips, J.A. that this appeal should be dismissed and I publish our reasons.

KENNY, J.A.: I agree and I publish my reasons.

WINNEKE, P.: The formal order of the Court will be that the appeal is dismissed with costs.

MR KUHN: Would that include reserved costs as well?

WINNEKE, P.: Are there reserved costs?

(Discussion ensued re costs.)

I think we will amend our order to the following: The appeal is dismissed with costs but excluding those costs of the application on summons previously made to this court.

PHILLIPS, J.A.: That is the summons of 29 August 1997.

MR PERLMAN: That is correct.

WINNEKE, P.: Whatever the date is, you know what we are talking about.

MR PERLMAN: Yes. Your Honour.

Associate

SUPREME COURT OF VICTORIA

COURT OF APPEAL

No. 2032 of 1995
F.4413

ISI JOSEPH LEIBLER, LEIBANT INVESTMENTS PTY. LTD.
and NINTH ASTJET PTY. LTD.

Appellants

v.

AIR NEW ZEALAND LTD and ENZEDAIR TOURS LTD.

Respondents

JUDGES: Winneke, P., Phillips and Kenny, J.J.A.

WHERE HELD: MELBOURNE

DATES OF HEARING: 17, 18 and 19 November 1997

DATE OF JUDGMENT: 30 April 1998

CATCHWORDS:

Unilateral mistake - Claim for rectification - Deletion of material provision - Solicitors acting - Mistake by solicitor - Actual knowledge of other party - Failure of other party to bring mistake to mistaken party's attention - Assessment of witnesses by trial judge - Whether findings of trial judge justified order for rectification.

APPEARANCES:

For the Appellants

Counsel

Mr. N.J. Young, Q.C.
and Mr. M.D. Wyles

Solicitor

Arnold Bloch Leibler

For the Respondents

Mr. P.J. Jopling, Q.C.
and Mr. P.H. Solomon

Arthur Robinson &
Hedderwicks

VICTORIAN GOVERNMENT REPORTING SERVICE

9603 2404

.LMH:CAT
Leibler

JUDGMENT

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LEIBLER & ORS. v. AIR NEW ZEALAND LTD. & ANOR.

WINNEKE, P.,
PHILLIPS, J.A.:

Two points must be made at the outset of this appeal which is brought by the unsuccessful defendants from a judgment given on 19 November 1996 after a trial lasting some 10 days.

First, the pecuniary consequences of this appeal lie only in costs. By the judgment given on 19 November 1996, the respondents, as plaintiffs in the proceeding, succeeded in their claim for rectification of an agreement formally entered into by them with the appellants and dated 12 December 1988. The agreement was one of a number negotiated at about the same time for the sale to the respondents (or the interests of the respondents) of one-half of the issued capital in Jetset Travel and Technology Holdings Pty. Ltd. ("Jetset") which was owned by the appellants (or the interests of the appellants). The agreement which was subject to the claim for rectification is conveniently called "the shareholders' agreement": it was designed to regulate dealings between the co-owners in Jetset in the years that were to follow the sale. Amongst other things, it was designed to control and regulate the manner in which either party could dispose (either directly or indirectly) of its half interest to third parties whose interests were, or might be thought to be, inimical to the interests of the other co-owner. The trial judge ordered that the shareholders' agreement be rectified by inserting what had earlier been clause 10.9, albeit with some amendment.

The appellants instituted this appeal on 3 December 1996, contending by their notice that the respondents' claim for rectification ought to have been rejected. Before the appeal came on for hearing, however, the appellants sold their remaining one-half of the issued capital in Jetset to the respondents and in consequence the

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PHILLIPS, J.A.
State of Victoria v. Bacon & Ors.

1

WINNEKE, P. and

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shareholders' agreement was of no further significance, or of no further significance in any respect which was put in issue at trial. This precipitated an application by summons on the part of the respondents that the appeal be dismissed summarily. In October last, this Court dismissed the respondents' application, giving detailed reasons therefor which it is unnecessary to repeat now: Leibler & Ors. v. Air New Zealand Ltd. & Anor. (Court of Appeal, 3 October 1997, as yet unreported). Essentially, the appeal proceeds because the respondents, having been awarded costs below, do not abandon their claim to those costs and the appellants seek to have that order for costs reversed. Costs having followed the event, the appellants therefore undertake to establish that judgment was wrongly given and that the respondents' claim for rectification ought to have been dismissed.

Secondly, this is yet another instance of the Court being required to undertake the difficult and at times unsatisfactory task of examining, and where necessary determining, the intention of parties who many years ago negotiated and then executed a formal agreement between them, in circumstances where one of them now claims that the written agreement did not truly reflect the common intent. As we have said, the shareholders' agreement is dated 12 December 1985, yet the respondents commenced this proceeding, seeking rectification, by filing a writ on 16 April 1995, more than nine years after the event. The trial took place towards the end of 1995, almost 10 years after the date of the shareholders' agreement. Of course memories had blurred by then. At trial the Court was presented with a vast array of letters, memoranda and successive drafts, all put forward to demonstrate that the contention of the one side or the other ought to be accepted. In the end probably neither side is wholly satisfied with the result; it may or may not represent what truly happened but it is the answer that our system provides. So far as we are concerned, delay on the part of the respondents might have been a substantial impediment to their success, but the

appellants made no particular point of the delay, pleading neither laches nor acquiescence, and in the result delay did not figure below.

We turn now to the merits of the appeal. There is, we think, nothing to be gained in seeking to distinguish between the appellants, who may be treated as the vendors of one-half of the issued capital in Jetset, or between the respondents, who may be treated as the purchasers of that half interest. Until that sale was negotiated and completed in December 1985, Jetset was owned by the appellants, an associate and their family trusts. Mr. Isi Leibler (now the firstnamed appellant) was the managing director of Jetset and he was to remain as such. So far as relevant to the trial of this proceeding, the negotiations of most significance were over what should transpire upon his death or his ceasing to have control of Ninth Astjet Pty. Ltd., the vehicle by which the Leibler family was maintaining its unsold half interest in Jetset. Although as a whole the negotiations ranged over a number of agreements - and no doubt all of them were difficult and complex - this dispute centred on two clauses in the shareholders' agreement: clauses 2(1)(f) and 10.9.

The first of these provided for the appointment of a managing director, should Mr. Leibler die or become incapacitated, and the second provided for a right of pre-emption to arise in the respondents in that event - and to that extent the two clauses were inter-related. Towards the end of October 1985 the parties were negotiating over what should be the consequences if Mr. Leibler died or became incapacitated and whether in that event his family should be entitled to succeed to his interests within the framework of the agreement. On 28 October, in a discussion between Mr. Leibler himself and Mr. Geary (then managing director of the principal respondent) it was agreed (as the trial judge found) that, should the Leibler family

succeed to Mr. Leibler's interests upon his death, his death should not give rise to a right of pre-emption in the respondents. While this agreement no doubt called for some amendment to clause 10.9, it did not in itself require the deletion of that clause or the protection which that clause otherwise gave the respondents and which had never been in dispute. Yet on 29 October the respondents' solicitors notified the appellants that clause 10.9 was being deleted. This is the step that was now said by the respondents to have been a mistake, though how the mistake had come about was never clearly identified. Clause 10.9 should, the respondents said, have been amended only and rectification was sought to restore clause 10.9 as so amended.

Of course the respondents faced considerable difficulties in their claim for rectification, not the least being that clause 10.9 had been deleted by their own solicitors; it was not something sought or even suggested by the appellants. Moreover, there were subsequent negotiations over clause 2(1)(f) which might have been expected to draw the respondents' attention to the mistake over clause 10.9, if such it was; secondly, the relevant board, acting for the respondents, authorised the execution of the shareholders' agreement and indeed the other agreements, in the form in which they were finally settled by the respondents' solicitors and those solicitors were certainly not unaware of the deletion of clause 10.9, however mistaken they may have been in their instructions; and thirdly, the Court was being required to inquire into the matter long, long after the event and when many of the records of the respondents had been destroyed or lost. As already mentioned, no point was taken by the appellants about delay as such: both sides appeared keen to have the matter resolved before the appellants proceeded to sell their remaining half interest in Jetset free of the impediment otherwise imposed by the missing clause 10.9.

In a careful and comprehensive judgment, the trial judge examined the evidence, such as it was, and resolved all of the issues of fact that were necessarily involved in the respondents' suit. Thus he found that the inclusion of a

right of pre-emption such as that accorded by clause 10.9 was of fundamental importance to the agreement (it being not unlike a similar right of pre-emption conferred upon the appellants themselves by clause 10.8); that the deletion of clause 10.9 had not been agreed; that the agreement reached on 28 October had required only the amendment of clause 10.9; and that when notified of the deletion of clause 10.9 those acting for the appellants understood that its deletion was a mistake. His Honour found, too, that notwithstanding the further negotiations over clause 2(1)(f) the mistake had persisted and that, when the parties executed the shareholders' agreement not long afterwards, the one was continuing to labour under the mistake that clause 10.9 had not been deleted, but merely amended and the other remained aware that the former was labouring under that mistake. His Honour found further that although clause 10.9 had been solely for the benefit of the respondents and had been deleted by the respondents' own solicitors (albeit by mistake), the appellants ought to have drawn the mistake to attention and, not having done so, had acted unconscionably. In short, his Honour made all the findings of fact necessary to sustain an order for rectification and, in the result, ordered that the agreement be rectified by re-inserting clause 10.9, amended however to accord with the agreement for its amendment reached on 28 October.

On this appeal the appellants challenged the findings made below at nearly every point, contending that the respondents, as plaintiffs, had not discharged the heavy onus resting on them of proving that the respondents had been affected by mistake at the time when they executed the agreement, and that the appellants must have known of that mistake, and that the appellants had acted unconscionably (given, in particular, the way in which negotiations had been conducted between solicitors and the fact that clause 10.9 had been deleted by the respondents' solicitors). There is, we think, much force in some of the criticisms made by the appellants and, having listened

very carefully to the arguments that were put on this appeal it may be that we would not have made all of the findings that the trial judge made. For instance, we might have been less persuaded of the findings underlying the unconscionability of the conduct of the appellants when confronted by the solicitors' notification that clause 10.9 was being deleted, particularly in the light of continuing negotiations over other clauses including 2(1)(f). But our task is that of an appellate court; we are not here to conduct a second trial, nor can we do so as we have not had the benefit of seeing and hearing the witnesses.

The matter in dispute was a complex and difficult one, the more so 10 years after the event when, as we have said, documents were missing, memories were poorer and to a greater or lesser extent much of the evidence must have been an attempt at re-construction. This Court is constrained by authority to recognise that in seeing and hearing the witnesses the trial judge had a benefit which cannot be replicated on appeal and was therefore in a far better position than we to make the relevant findings of fact. Accordingly, although we entertain some doubt about the extent to which the trial judge was prepared to make findings of fact adverse to the appellants, who were after all defendants and not plaintiffs, we are not persuaded at the end of the day that this Court can interfere with those findings.

In short, although appellants' counsel in a careful, elaborate and detailed argument put everything that could be said in support of the appeal, the trial judge's findings must stand and, when that is said, the judgment below is unassailable. The trial below depended essentially on matters of fact and no error of principle was demonstrated on this appeal. We have had the considerable advantage of reading the judgment prepared by Kenny, J.A. and we find ourselves in substantial agreement with her Honour. We confess to some regret in the matter as the respondents delayed for so

many years before instituting the proceeding for rectification, but in the end we are persuaded to the conclusion that this appeal should be dismissed.

CERTIFICATE

I certify that this and the 5 preceding pages are a true copy of the reasons for judgment of Winneke, P. and Phillips, J.A. of the Court of Appeal (Winneke, P., Phillips and Kenny, J.J.A.) of the Supreme Court of Victoria delivered on 30 April 1998.

DATED this day of 1998.

Associate

Our Ref: 3998

OLDEN

5 November, 1998

TELEPHONE (03) 9287 7099

Attention: Mr Neil Jepson
Barrister and Solicitor
Manager Legal Investigations
Major Fraud Group
VICTORIA POLICE
Crime Department
Level 2, 549 St Kilda Rd
Melbourne VIC 3004.

FAX (03) 9287 7001

493-495 QUEENSBERRY STREET
NORTH MELBOURNE VICTORIA 3051
PO. BOX 313 NORTH MELBOURNE 3051

Dear Neil,

In following up on the outcome of my Monday, 12 October 1998 interview, the enclosed Attachments contain documents of events I have referred to during my interview. The supply of these documents may assist the Victorian Police Major Fraud Group's investigation.

Enclosed is a Draft copy of letters I will be sending to other C.o.T. members. As you will note, the letter seeks supply of Telstra and others' documents in their possession, which should be included in these files I am providing to you.

If there is any way the Major Fraud Group feels I may be of assistance, please make contact.

Regards,


Graham Schorer

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STATEMENT Of Bob HYNNINEN

NAME:	Robert Thomas HYNNINEN
ADDRESS:	Unit 4, 79 Mimosa Road, Carnegie Victoria 3163.
OCCUPATION:	Public Servant - Australian Taxation Office
TELEPHONE:	(03) 9285 1570

1. My full name is Robert (Bob) Thomas HYNNINEN. I currently reside at Unit 4, 79 Mimosa Road, Carnegie, Victoria.
2. I had been previously involved in an arbitration process with Telstra. I was part of a group known as the Casualties of Telstra (COT Cases).
3. I can recall that during the period 2000/2001 I had arranged to meet Detective Sergeant Rod KUERIS from the Victoria Police Major Fraud Squad at the foyer of Casselden Place, 2 Lonsdale Street, Melbourne. At the time, I was assisting Rod with his investigation into alleged illegal activity of Telstra against the COT Cases.
4. Rod and I would occasionally meet in the city to discuss the progress of his investigation.
5. I met Rod at about mid - morning. I observed him seated on a sofa in the foyer near the right side of the entrance. I approached him and sat down next to him. When I did this, I noticed that he appeared to be distressed and red in the face.
6. Rod then stated that he wanted me to follow him to the left side of the foyer. When we did this he then directed my attention to a male person seated on a sofa opposite our seat. He then told me that this person had been following him around the city all morning. At this stage Rod was becoming visibly upset and I had to calm him down.
7. This male then noticed that we were both looking at him and got up and left the building.
8. Rod kept on saying that he couldn't believe in what was happening to him. I had to again calm him down.



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Statement by Bob Hynninen
Page 2 of 2

- 9. When I spoke to Rod on a number of occasions at the Fraud Squad, he stated that he believed his office phones were being monitored by Telstra. He said that they were continually making clicking noises.
- 10. He told me that he had complained to senior management about the problem.
- 11. Over time, I believed that this investigation had caused a number of health problems with Rod. It also had an affect on his marriage.
- 12. Rod called me during the latter part of 2001 to inform me that he has resigned from the police force.

Signature:

Date:

I hereby acknowledge that this statement is true and correct and I make it in the belief that a person making a false statement in the circumstances is liable to the penalties of perjury.

Signature:

Date:

Acknowledgment made and signature witnessed by me at MELBOURNE on 8/8/2006
at 1.40 am/pm

Signature:

Name:

Title:

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VICTORIA POLICE

Major Fraud Group
2/549 St Kilda Road
MELBOURNE. 3004
Tel: 9526 6666
16 February, 1999

Mr Julian Burnside Q.C.
C/- Glenda McNaught Pty Ltd
205 William Street
MELBOURNE. 3000

Dear Sir,

Arbitration between Telstra and Mr Graham Schorer.

I have been requested to write to you in your capacity as the arbitrator in the dispute between Telstra and Mr Graham Schorer.

The Victoria Police Major Fraud Group has received a number of complaints from persons, collectively known as the COT people, including a complaint from Mr Schorer. These complaints relate to the conduct of Telstra in connection with its defence of the claims the subject of the arbitration.

These complaints are currently being assessed to ascertain if any criminal offences have been committed and if it is established that such offences have been committed the complaints will be fully investigated with a view of bringing criminal prosecutions.

Yours faithfully


Neil Japson
Manager, Legal Investigations.

COPY

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C.o.T. Cases Australia

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

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

22 February, 1999

Our Ref: 4067.doc

Attention: Mr Tony Shaw
Chairman
Australian Communications Authority
Level 13, 200 Queen Street
Melbourne VIC 3000.

By facsimile: 9963 6907; (02) 6256 5200.
Total pages (including this page) : 1.

FAXED
22/2/99

Dear Mr Shaw,

- Re:
- Confirmation Telstra are complying with AUSTEL's recommendations.
 - TIO's administration of the Telstra arbitration.
 - Complaints made to and within the ACA jurisdiction not investigated.

After the release of the AUSTEL C.o.T. Cases Report in April 1994, AUSTEL declared it was a C.o.T. free zone and unilaterally refused to investigate any C.o.T. complaint about Telstra's network performance and corporate conduct. The complaints being referred to AUSTEL were part of its legislative charter and within its jurisdiction.

This was directly reported to you in July 1997. Your office has received written representations about the same matters from C.o.T. members.

C.o.T. members have lodged formal complaints with the Minister for Communications, the Attorney General, Minister for Justice, Australian Securities Commission, ACCC, the TIO and the Federal Police. The net result has been to refer these complaints to another agency or back to AUSTEL/ACA.

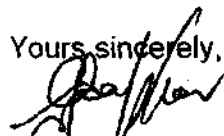
A number of these complaints are currently under investigation by the Major Fraud Group, Victorian Police Crime Department.

The matters we wish to directly raise with you, whilst serious, the C.o.T.s do not consider them as criminal acts.

We formally request a meeting with you in Melbourne to present material to support the validity of our previous assertions made to and not addressed by AUSTEL/ACA. Monday, 1 March 1999 is our preferred option for the date of the meeting.

Your confirmation of the meeting's date and time is required by close of business Wednesday, 24 February 1999.

Yours sincerely,


Graham Schorer
Spokesperson
C.o.T. CASES AUSTRALIA

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C.o.T. Cases Australia

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

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

24 February, 1999
Our Ref: 4070.doc

Attention: Mr Tony Shaw
Chairman
Australian Communications Authority
Level 13, 200 Queen Street
Melbourne VIC 3000.
By facsimile: (03) 9963 6907; (02) 6256 5200.
Total pages (including this page) : 1.

FAXED
24/2/99

Dear Mr Shaw,

Re:

- Confirmation Telstra are complying with AUSTEL's recommendations.
- TIO's administration of the Telstra arbitration.
- Complaints made to and within the ACA jurisdiction not investigated.

We require specific information from ACA to facilitate the finalisation of our preparation for the meeting between yourself and three executive members of C.o.T. Cases Australia.

As time is of the essence, the receipt by return facsimile of the following information is required:-

1. List the AUSTEL recommendations Telstra assert it has complied with.
2. Identify which AUSTEL recommendations Telstra has not complied with.
3. Briefly describe what investigations, examinations and audits (and resultant outcomes, if any) AUSTEL/ACA has embarked upon to independently determine whether Telstra is maintaining compliance on the AUSTEL recommendations Telstra states it has implemented.
4. List the number of TIO referrals to AUSTEL/ACA of complaints and matters regarding systemic problems and faults within the Telstra network, received from the TIO since its inception.

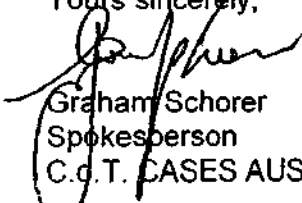
Mr Cliff Matherson has made contact to suggest a meeting date of 3rd or 4th of March 1999.

As previously stated, Monday, 1st of March 1999 was our preferred option. We are in the process of finalising our report to the Senate Committee, and part of the report will address the outcome of the meeting with the ACA. Sufficient time must be allowed for the distribution and dissemination of the information contained in the report prior to us presenting ourselves before the Committee on Tuesday, 9 March 1999.

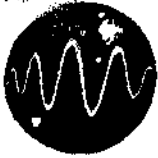
As one of the executive members will be traveling from Queensland to attend the meeting, and the other will be driving from Portland, Victoria, the convenient time to commence the meeting would be 3:00 PM.

Arranging the meeting to commence at 3:00 PM on Monday, 1 March 1999 will be appreciated.

Yours sincerely,


Graham Schorer
Spokesperson
C.o.T. CASES AUSTRALIA

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**Australian
Communications
Authority**

Our Ref: V1999/84

C.o.T. Cases Australia
C/- Mr Graham Schorer
PO Box 313
NORTH MELBOURNE VIC 3051

Dear Mr Schorer

REQUEST FOR INFORMATION
(Your Ref. 4070.doc, dated 24 February 1999)

In your letter of 24 February 1999 to the ACA you requested certain information which you state is required for preparation of a report to a Senate Committee. The following responses are provided, in the order in which the matters were listed in your letter.

1. *Recommendations (ref. "The COT Cases" Report, April 1994) with which Telstra asserts it has complied:*

No's. 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 and 41.

2. *Recommendations for which Telstra has not yet formally reported compliance:*

No's 2, 14, 15, 37, 38, 39 and 40.

3. *Investigations, examinations etc. undertaken in relation to the recommendations:*

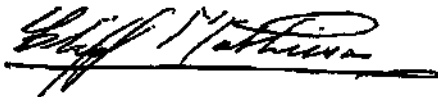
- AUSTEL/ACA monitored details of Telstra's FMO (network digitalisation) progress, in relation to recommendation 2.
- AUSTEL/ACA staff undertook field visits to appropriate sites to inspect and discuss the operation of Service*Plus, the fault management support system which Telstra is deploying to satisfy recommendations 14 and 15.
- AUSTEL/ACA staff received, perused and continuity-checked periodic reports from Telstra outlining progress with implementation of all the recommendations.

4. *Referrals by the TIO to AUSTEL/ACA, regarding systemic problems and faults within the Telstra network.*

No referrals regarding systemic network problems and faults have been received. However, in 1995/96 the TIO raised with AUSTEL matters relating to deficiencies in Telstra's handling of fault reporting and recording processes. These matters are being addressed by Telstra's deployment of Service*Plus, as outlined in 3. above.

↙ In reference to your request for a meeting, relevant ACA staff are not available on 1 March 1999. Given that we have brought you up to date regarding the matters raised in your letter, there seems little point in proceeding with a meeting as requested.

Yours sincerely



Cliff Mathieson
Special Advisor

25 February 1999

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

Account 776 7288 200

Issue Date 01 Mar 99

Page 4

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

STD calls *continued*

	Date	Time	Place	Number	Rate	Min:Sec	\$
	Telephone Service 03 5526 7265 <i>continued</i>						
247	21 Feb	06:15 pm	Melbourne	0398761853	Economy	1:17	0.30
246	21 Feb	06:17 pm	Melbourne	0398761254	Economy	0:50	0.20
245	21 Feb	06:39 pm	Colac	0352322449	Economy	1:08	0.30
219	22 Feb	12:12 pm	Melbourne	0392877099	Day	8:40	2.50
221	22 Feb	12:28 pm	Melbourne	0395266614	Day	2:34	0.80
220	22 Feb	12:32 pm	Melbourne	0395266614	Day	0:07	0.10
222	22 Feb	12:33 pm	Melbourne	0395266616	Day	9:30	2.70
256	22 Feb	02:41 pm	Melbourne	0398761254	Afternoon	4:05	1.10
271	22 Feb	03:40 pm	Warrnambool	0355616193	Afternoon	1:36	0.40
273	22 Feb	04:31 pm	North Geelong	0352794444	Afternoon	0:55	0.30
239	22 Feb	08:08 pm	Melbourne	0398761254	Economy	1:08	0.30
194	22 Feb	09:12 pm	Warrnambool	0355614038	Economy	1:14	0.20
207	24 Feb	07:42 pm	Melbourne	0395114336	Economy	17:22	2.50
216	24 Feb	08:30 pm	Grovedale	0352414045	Economy	3:39	0.60
264	24 Feb	08:34 pm	Melbourne	0395538030	Economy	34:05	3.00
265	24 Feb	09:19 pm	Buderim	0754453198	Economy	14:03	2.10
268	24 Feb	09:57 pm	Buderim	0754453198	Economy	1:09	0.30
218	25 Feb	09:41 am	Melbourne	0392877099	Day	18:22	5.20
217	25 Feb	10:00 am	Melbourne	0392877001	Day	2:13	0.70
223	25 Feb	11:41 am	Grassmere	0355654227	Day	3:11	0.70
224	25 Feb	11:58 am	Port Fairy	0355681057	Day	1:36	0.40
198	25 Feb	12:26 pm	Melbourne	0392877099	Day	8:58	2.60
263	25 Feb	01:07 pm	Melbourne	0392877099	Afternoon	1:05	0.40
258	25 Feb	03:51 pm	Melbourne	0398761254	Afternoon	4:50	1.30
259	25 Feb	03:56 pm	Melbourne	0398761853	Afternoon	1:02	0.40
257	25 Feb	03:57 pm	Melbourne	0398761254	Afternoon	1:34	0.50
231	25 Feb	06:48 pm	Melbourne	0392877001	Afternoon	0:52	0.30
208	25 Feb	07:18 pm	Melbourne	0398761853	Economy	1:19	0.30
195	26 Feb	08:39 am	Melbourne	0398761853	Day	0:57	0.40
244	26 Feb	10:48 am	Melbourne	0398761254	Day	0:19	0.20
243	26 Feb	10:55 am	Melbourne	0392877001	Day	0:47	0.30
229	26 Feb	11:05 am	Melbourne	0392877099	Day	10:12	2.90
228	26 Feb	11:20 am	Melbourne	0392877001	Day	1:57	0.60
227	26 Feb	11:24 am	Canberra	0262711000	Day	0:10	0.10
230	26 Feb	11:46 am	Melbourne	0392877099	Day	7:40	2.10
197	26 Feb	01:04 pm	Melbourne	0392877099	Afternoon	7:55	2.10
196	26 Feb	01:37 pm	Melbourne	0392877001	Afternoon	0:46	0.30
277	26 Feb	03:38 pm	Melbourne	0392877099	Afternoon	0:35	0.30
276	26 Feb	04:01 pm	Melbourne	0392877099	Afternoon	2:32	0.80

SID : GOLDEN

Number L1 : 613 9287 7881
 Number L2 :

Date : 26-02-99 14:14

Date/Time	Subscriber	Mode	Pages	Durat.	Status	Note
25-02 15:29	3266229	FINE	1	2'14"	Correct	L1
25-02 15:39	613395889446	NORMAL	1	8'27"	Correct	L1
25-02 16:45	+61 7 3257 1583	NORMAL	3	1'37"	Correct	L1
25-02 17:11	61 3 98287389	NORMAL	3	8'49"	Correct	L1
25-02 17:17	61 3 92138849	FINE	1	8'49"	Correct	L1
25-02 18:12	+61 7 3257 1583	NORMAL	3	1'44"	Correct	L1
25-02 18:46	865 267238	NORMAL	1	8'47"	Correct	L1
26-02 7:51	93281881	NORMAL	1	8'47"	Correct	L1
26-02 8:28	61 6 249 7829	NORMAL	1	8'21"	Correct	L1
26-02 9:01	61 3 96865838	NORMAL	2	8'48"	Correct	L1
26-02 10:21	61 3 96328875	NORMAL	11	5'24"	Correct	L1
26-02 10:30	61 3 9432 4716	NORMAL	1	8'37"	Correct	L1
26-02 10:40	61 3 96328875	NORMAL	12	5'41"	Correct	L1
26-02 10:53	855 267238 ✓	NORMAL	1	8'42"	Correct	L1
26-02 11:00	61 3 96328875	NORMAL	3	1'12"	Correct	L1
26-02 12:01		FINE	1	8'39"	Correct	L1
26-02 13:35	855 267238 ✓	NORMAL	1	8'41"	Correct	L1
26-02 14:12	+6132652556	NORMAL	3	8'54"	Correct	L1

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

26 February, 1999

*Phone: 03 55 267 267
Fax: 03 55 267 230*

**The Co-ordinator
Public Law Clearing House
GPO Box 2786Y
Melbourne 3001**

Dear Madam/Sir,

I have been advised to contact you by the office of John Phillips, Chief Justice of the Supreme Court of Victoria (refer copy of a letter dated 11/2/99).

Also included is a copy of a draft of my forthcoming book, currently titled "COT Case: one of the stories from the 'Casualties of Telstra' saga." This book clearly proves that my arbitration was not conducted in accordance with the principals of Natural Justice and I am therefore writing to you in the hope that you can advise me on the following matters in relation to my arbitration and my extensive and on-going battle for justice.

***The first issue* relates to the reasons I was involved in an arbitration with Telecom/Telstra in the first place, including the proven fact that my business phone accounts from Telstra continually included incorrectly charged amounts.**

Back in August 1992, Austel, the Telecommunication Regulator, became involved, and Freedom of Information (FOI) documents show that Amanda Davis, then the General Manager for Consumer Affairs at Austel, also suffered from incorrect charging when making contact with my business. This continuing fault had existed on my phone line from 1988/89 and so, in December 1992, I had Telstra connect another service to handle a 1800 freecall number, in the hope that it would give prospective customers easier access to my business. By February 1993 however it was evident that Telstra were incorrectly charging calls to this account also, including calls that were not connected and STD calls that actually lasted for only seconds but which were charged for as lasting minutes.

I have since obtained copies of Telstra's own CCAS data regarding this 1800 line. When this data is compared to my phone accounts it is clear that my allegations are correct and Telstra forwarded incorrect accounts to my business on many occasions.

There are documents in the draft of my book which show that Telstra wrote to Austel on 11/11/94 stating that they would address this incorrect charging in their defence of my arbitration claims but this never happened. The incorrect charging was never addressed even though, according to the rules of my arbitration, the arbitrator had to make a written finding on each of the claims I lodged and I therefore made sure that I had submitted the incorrect charging as a separate claim issue.

What is more, Telstra also wrote to the arbitrator on 16/12/94, confirming that they had informed Austel that they would address the incorrect charging in their defence of my arbitration claim, and attaching a copy of the letter to Austel to the letter to the arbitrator.

The draft of my book also discusses the value placed on my claim by the technical resource unit assigned to the arbitration, DMR and Lanes. According to their report, they intended to address the incorrect charging but I have been informed by the TIO, Mr John Pincock, that, without mentioning any names, someone instructed DMR and Lanes NOT to address these issues.

Because the TIO would also not address the issues relating to my 1800 account, neither why these faults were not covered by my arbitration nor why the faults continued after my arbitration, I have now been forced to have this service disconnected.

The second issue relates to the rules originally covering a commercial agreement which Telstra and I signed 23/11/93. This agreement stated that, before the commercial assessor could bring down his findings, all the phone faults raised by the members of COT (Casualties of Telstra) had to be rectified by Telstra.

The rules governing my arbitration were based on the rules of this commercial agreement and so it follows that the arbitrator could not hand down *his* findings until all the phone faults had been fixed. This, however, was not the case and this situation is also described in the draft of my book: the incorrect charging to my 1800 account continued right through my arbitration and for at least a further 20 months after the 'completion' of my arbitration on 11/5/95.

Since the 'completion' of my arbitration I have sent more than 120 letters and numerous submissions to the TIO, asking him to look into the past and continuing incorrect charging by Telstra, but to no avail.

In the draft of my book I have also challenged the technical resource unit's findings (and Telstra) regarding other incorrect charging in relation to my customer gold phone. Incorrect charging on this line continued over the full 6½ years covered by my claim (from late 1988 to May 1995) but, like the incorrect charging on my 1800 line, this was not addressed in my arbitration either.

The gold phone was an integral part of the service I offer to my customers because most digital mobile phones are out of range at my camp. The gold phone service was disconnected by Telstra in December 1995 because I refused to pay the account until the incorrect charging had been corrected. This phone remains disconnected today.

I later complained to the TIO about all these issues. He advised me that I had to pay the incorrect account before Telstra would re-connect the phone. This puts me in a catch 22 situation: if I pay the incorrect account, even though Telstra's own data proves that Telstra is wrong and I am right, surely it will seem that I am condoning Telstra's corporate thuggery? If I don't pay the account my customers will continue to complain about the lack of phone contact with the outside world and my business is likely to suffer as a result of this lack of service.

***The third issue* relates to my separate fax line. During my arbitration, the arbitrator was bound by the rules of the arbitration to forward all my claim documents on to Telstra (and vice-versa). Assuming that an independent and impartial arbitrator would abide by the rules of arbitration, we must also assume that he forwarded on to Telstra all the claim documents he received from me. Since Telstra has confirmed, in writing, that their arbitration defence unit never received copies of 43 separate claim submissions and their supporting documents which I forwarded to the arbitrator during my arbitration, it would therefore seem that this proves that the arbitrator never received these 43 faxes in the first place.**

My telephone/fax accounts, however, include charges for all of these 43 faxes as if they each terminated successfully at the arbitrator's office.

Even after my award was handed down, four separate professional businesses have written of their difficulties in attempting to send or receive faxes to or from my business.

In relation to my gold phone in particular, as an Australian citizen I should not be made to pay an account which has been clearly shown to be incorrect (using Telstra's own data). To have the service covered by that account disconnected because I disputed the account, without the dispute being settled in any way, raises questions about civil liberties and democratic rights in this so-called 'free' country.

Since the TIO has demonstrated his lack of impartiality in my matters by misrepresenting my situation to Senators and legal people on a number of occasions, I am at a complete loss as to where to turn now and so, as advised by the Chief Justice's office, I am turning to your organisation for help since these incorrect charging issues were not addressed in my arbitration and I have not been able to have them addressed since, no matter who I approach or how hard I try.

I await your response.

Sincerely,

Alan Smith

copies to:

Mr Justice John Phillips, Chief Justice, Supreme Court of Victoria.

Professor Alan Fells, ACCC, Melbourne

Mr John Pinnock, TIO, Melbourne.

C.o.T. Cases Australia

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

Telephone: (03) 9287 7095
Facsimile: (03) 9287 7001

Attention: Mr Tony Shaw
Chairman
Australian Communications Authority
Level 13, 200 Queen Street
Melbourne VIC 3000.
By facsimile: (03) 9963 6907; (02) 6256 5200.

26 February, 1999
Our Ref: 4080.doc

FAXED
25/2/99

Dear Mr Shaw,

Re: C.o.T. complaints made to and within the ACA jurisdiction not investigated.

I refer you to our correspondence dated 22 February 1999 and 24 February 1999, and ACA's response dated 25 February 1999. The ACA correspondence states, at the end of its letter on page 2, "...Given that we brought you up to date regarding the matters raised in your letter, there seems little point in proceeding with a meeting as requested." This ACA statement of "being brought up to date" only refers to the C.o.T. request for information regarding Telstra's compliance with AUSTEL's April 1994 recommendations.

Both AUSTEL and the ACA have been advised of/supplied with C.o.T. documentary evidence proving the existence of systemic difficulty, problems and faults within the Telstra network, including network and Telstra's billing software negatively impacting on Telstra subscriber's services and charges.

AUSTEL and ACA's collective refusal to register and investigate C.o.T. complaints until the complaint has been lodged with the offices of the TIO and after formally referred to it by the TIO, does not justify AUSTEL's and ACA's refusal to investigate/act in the best interest of Telstra subscriber.

The C.o.T. complaints, commenced in July 1994, made to and within AUSTEL/ACA jurisdiction, not investigated, is a decision that rose from AUSTEL's own determinations made in 1994. C.o.T. members did register complaints of systemic problems within the Telstra network with the TIO. ACA's correspondence dated 25 February 1999 confirmed ACA has not received one request/referral from the TIO to investigate complaints regarding the existence of systemic network problems and faults.

Both AUSTEL's and ACA's decision of continual refusal to address/investigate C.o.T. complaints re the C.o.T. complaints made to and within the AUSTEL/ACA jurisdiction not investigated are wrong and in breach of their respective legislative charter.

C.o.T. Cases Australia are aware of the differences between the current Telecommunications Act and the Telecommunications Act it replaced. The current Telecommunications Act proclaimed by the Federal Parliament does not include retrospective provisions.

These matters of complaint occurred during the period covered by the 1991 Telecommunications Act, therefore the ACA must register the complaint, investigate, act on outcome.

The ACA's current decision not to accept a briefing from the C.o.T.s on this matter and not to investigate this complaint, requires the ACA to provide a written statement to C.o.T. Cases Australia:-

- a. stating ACA refuses to:-
 - be briefed by the C.o.T.s on these formal complaints,
 - accept from C.o.T.s evidentiary material that validate the complaint,
 - investigate the complaint.
- b. provide an explanation of the ACA's decision.

A prompt response is required.

Yours sincerely,


Graham Schorer
Spokesperson, C.o.T. CASES AUSTRALIA

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FAX FROM: ALAN SMITH

*Cape Bridgewater
Holiday Camp*

Portland 3305

FAX NO: 03 55 267 265

PHONE NO: 03 55 267 267

FAX TO: Mr John Pinnock
TIO
Melbourne, Victoria.

DATE: 9.3.99

NUMBER OF PAGES (including this page)

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

Dear Mr Pinnock,

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

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

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

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

Sincerely,

Alan Smith

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C.o.T. Cases Australia

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

Telephone: (03) 9287 7095
Facsimile: (03) 9287 7001

10 March, 1999

Our Ref: 4096.doc

Attention: Mr Tony Shaw
Chairman
Australian Communications Authority
Level 13, 200 Queen Street
Melbourne VIC 3000.
By facsimile: (03) 9963 6907; (02) 6256 5200.

FAXED
10/3/99

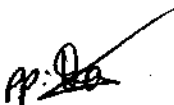
Dear Mr Shaw,

Re: TIO's administration of the Telstra arbitration.

I refer to C.o.T.s' correspondence (Ref. No. 4079) dated 26 February 1999. To date, we have not received ACA's response.

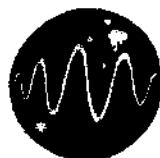
Please take this correspondence as a second request on the same matter, and advise by return mail when ACA intends to respond.

Yours sincerely,



Graham Schorer
Spokesperson
C.o.T. CASES AUSTRALIA

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**Australian
Communications
Authority**

Our Ref: Y1999/84

C.o.T. Cases Australia
C/- Mr Graham Schorer
PO Box 313
NORTH MELBOURNE VIC 3051

Facsimile (03) 9287 7001

Dear Mr Schorer

**REQUESTS FOR INVESTIGATION OF
C.O.T. COMPLAINTS MADE TO THE ACA, AND
COMPLAINTS REGARDING TIO'S ADMINISTRATION OF ARBITRATION,
(Ref. your letters 4079.doc and 4080.doc, dated 26 February 1999)**

I refer to your two letters to the Chairman of the Australian Communications Authority ('the ACA') dated 25 February 1999. I have been asked to reply to your two letters on behalf of the ACA.

I am writing to advise you that the ACA does not propose to take either of the actions which you have sought.

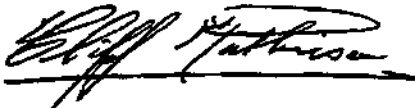
In relation to your request that the ACA investigate the Telecommunications Industry Ombudsman's ('the TIO's') administration of the Telstra arbitration, the regulatory framework in which the ACA operates does not provide any specific power for the ACA to undertake such an investigation in the circumstances which you claim to exist. Accordingly, the ACA is unable comply with this request.

In relation to your statement that complaints have been made to the ACA which are within the ACA's jurisdiction and have not been investigated, the ACA disputes this suggestion. The TIO was established to investigate complaints about carriage services by end users of those services, which includes the types of complaints covered by the C.o.T. cases.

The TIO's relationship with AUSTEL was set out in section 339 of the *Telecommunication Act 1991* and provided for the reference of complaints to the TIO. Therefore, with the establishment of the office of the TIO, AUSTEL referred all complaints within the jurisdiction of the TIO to that office in accordance with the clear intent of the legislation. Accordingly, the ACA rejects the basis for your request for an investigation.

As the C.o.T. complaints are still before the TIO, my suggestion is that you provide the TIO with all of relevant evidentiary material which you state is in your possession to assist in the progress of the arbitration or its related processes.

Yours sincerely



Cliff Mathieson
Special Advisor

11 March 1999

392-A

TAITS

SOLICITORS - CONSULTANTS

Reply to: Warrnambool
Our Ref: Mr. Ezzy:7:18
Your Ref:

June 29, 1995.

Mr. Neil Tuckwell,
Chairman,
Austel,
P.O. Box 7443,
ST. KILDA ROAD,
MELBOURNE. 3004
FAX 03/9820 3021

29/6/95

Dear Sir,

Alan Smith - Cape Bridgewater Holiday Camp

We act for Mr. Alan Smith of Cape Bridgewater Holiday Camp, Portland.

Mr. Smith instructs:

1. He has had recent correspondence with your office and also discussions with Mr. Matherson regarding the testing by Bell Canada International Inc. and Neat during November 1993.
2. From 28.10.93 to 8.11.95 the Neat Testing was being evaluated. To perform the test an Ericsson Neat Network Test Unit was connected to the test number at the Cape Bridgewater RCM 055 267 211 in the same line group as Mr. Smith's number (055 267 267). Mr. Smith has the results of those tests.
3. Over the same period, during the Neat testing, Bell Canada International Inc. performed their tests to the same RCM number at Cape Bridgewater PTARS 055 267 211, from 12.45 p.m. on 5.11.93 until 4.30 p.m. 5.11.93 (from South Yarra 03 867 1234). Also, on the same day, from Richmond (03 428 8974), between 12.45 p.m. and 4.18 p.m. further tests were done to the same PTARS 055 267 211.
4. On 6.11.93 from 054 434 234 to the PTARS 055 267 211 more tests were done to that same number, finishing at 10 a.m. on 8.11.93.
5. Mr. Smith has already refuted the amount of test calls that took place over these days.

Please within 14 days advise our client as to whether or not the NEAT Testing was performed over the same period and time-frame as mentioned (November 5th, 6th and 8th), while Bell Canada International were also performing their own tests.

Yours faithfully,

Tait
TAITS SOLICITOR

3298

WARRNAMBOOL

1 Kepler Street,
Warrnambool.

2. Box 311,
Warrnambool, 3280

(28008 Warrnambool

1: (055) 61 4111
2: (055) 61 4567

ST FAIRY

14000 Street,
St Fairy.

1. Box 121
St Fairy, 3284

(055) 68 1010
2: (055) 68 2751

WILAKE

Dunlop Street,
Wilake.

Box 1
Wilake, 3272

(055) 99 2504
(055) 99 2036

WILAKES

14000 Street,
Wilakes.

Box 1
Wilakes, 3272

WILAKES

14000 Street,
Wilakes.

WILAKES

14000 Street,
Wilakes.
Business Law:
& Estate Planning;
Government,
Mining & Environment.

14000 Street,
Wilakes.
Commercial Litigation.



5 Queens Road

Melbourne

Victoria 3004

Tel: (03) 9828 7300

Fax: (03) 9820 3021

Free Call: 1800 335 526

TTY: (03) 9829 7490

94/0269 -10

12 July 1995

Taits Solicitors
PO Box 311
WARRNAMBOOL 3280

Facsimile (055) 61 4567

Attn Mr Ezzy

Dear Sir

Re: ALAN SMITH - CAPE BRIDGEWATER HOLIDAY CAMP

This letter responds to your correspondence dated 29 June 1995 (your reference Mr Ezzy:7:18) in relation to your client Mr Alan Smith. Mr N Tuckwell, Chairman, AUSTEL, has requested that I reply on his behalf.

The tests to which you refer were neither arranged nor carried out by AUSTEL. Questions relating to the conduct of the tests should be referred to those who carried them out or claim to have carried them out.

Yours faithfully

Cliff Mathieson
General Manager
Carrier Monitoring Unit

cc Mr A Smith
Facsimile (055) 267 230

329c

C.o.T. Cases Australia

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

Telephone: (03) 9287 7095
Facsimile: (03) 9287 7001

15 March, 1999

Our Ref: 4105.doc

Attention: Mr Tony Shaw
Chairman
Australian Communications Authority
Level 13, 200 Queen Street
Melbourne VIC 3000.
By facsimile: (03) 9963 6907; (02) 6256 5200.

FAXED
15/3/99

Dear Mr Shaw,

Re: TIO's administration of the Telstra arbitration.

I refer to the ACA's letter dated 11 March 1999, in response to C.o.T. correspondence dated 22 February, 24 February, 26 February and 10 March 1999.

The ACA's response has ignored the fact that AUSTEL:-

- Did conduct an investigation into the C.o.T. complaints about Telstra's network performance and corporate conduct.
- During the course of this investigation, drafted and endorsed an agreement for a Fast Track Settlement Proposal for an independent assessment of the C.o.T.s' claims against Telstra.
- Agreement signed by Telstra and the C.o.T.s contained the AUSTEL determination that appointed the TIO as Administrator of the process. This AUSTEL determination was made without discussion with or inviting input from the Four C.o.T. members bound by the agreement. In fact, at the time AUSTEL drafted the agreement, the TIO's office was not established.
- Records should contain the C.o.T.s' objection to the AUSTEL's appointment of the TIO as Administrator of the AUSTEL Fast Track Settlement Proposal process.

The C.o.T. Cases Australia's complaints/assertions made to AUSTEL and the ACA that the TIO:-

- is acting in a bias manner as Administrator,
- was part of a January 1994 clandestine agreement entered into between Telstra and an AUSTEL Board Member, where TIO accepted the appointment as Arbiter of what Telstra documents, if any, were to be supplied to the C.o.T.s,

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- has, in written statements to Parliamentary members and others, made misleading and false statements to the detriment of individual C.o.T. members,

are within the AUSTEL/ACA legislative charter and jurisdiction and should be of concern to the ACA and immediately investigated.

The ACA's decision not to accept complaints from C.o.T. Cases Australia about the TIO's administration of the Telstra arbitration, and/or to accept evidence to support validity of the complaints, and its absence of explanation for refusing to do so, is wrong and does not comply with AUSTEL's/ACA's legislative charter or procedures required of a Government Agency.

The ACA's action requires C.o.T. Cases Australia to acquaint interested and concerned Senators with all known facts and lodge a complaint with the Commonwealth Ombudsman about the ACA's conduct.

Yours sincerely,



Graham Schorer
Spokesperson
C.o.T. CASES AUSTRALIA

CC: Senator Richard Alston	By facsimile: (02) 6273 4154.
Senator Mark Bishop	By facsimile: (02) 6277 3123.
Senator Ron Boswell	By facsimile: (02) 6277 3246.
Senator Vicki Bourne	By facsimile: (02) 6277 3815.
Senator Kim Carr	By facsimile: (02) 6277 5911.
Senator Mal Colston	By facsimile: (02) 6277 3694.
Senator Alan Eggleston	By facsimile: (02) 6277 3413.
Senator Brian Harradine	By facsimile: (02) 6277 3739.
Senator Chris Schacht	By facsimile: (02) 6277 3121.

(Note: The following P.S. only applies to all cc'd Senators, not ACA.)

P.S.

Enclosed are:-

- C.o.T. Cases Australia's correspondence dated 22 February, 24 February, 26 February and 10 March 1999.
- ACA correspondence dated 25 February and 11 March 1999.

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C.o.T. Cases Australia

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

Telephone: (03) 9287 7095
Facsimile: (03) 9287 7001

Senator Richard Alston
Minister for Communications
Parliament House
Canberra ACT 2600.
By facsimile: (02) 6273 4154.

15 March, 1999
Our Ref: 4106.doc

Dear Senator Alston,

FAXED
15/3/99

Re: **The TIO administration of the Telstra arbitration.**

↘ C.o.T. Cases Australia and its members have concerns and reasons to challenge the continuance of the TIO's administration of the Telstra arbitrations.

) The appointment of the TIO as Administrator of the AUSTEL Fast Track Settlement Proposal and other Telstra arbitrations was a determination made by AUSTEL without discussion with or inviting input from the C.o.T. members subject to the AUSTEL Inquiry.

C.o.T. Cases Australia and its members have made complaints and assertions to AUSTEL and the ACA that the TIO:-

- is acting in a bias manner as Administrator.
- was part of a January 1994 clandestine agreement entered into between Telstra and an AUSTEL Board Member, where TIO accepted the appointment as Arbiter of what Telstra documents, if any, were to be supplied to the C.o.T.s.
- did, on behalf of Telstra, apply duress to C.o.T. members, Garms, Gillan, Smith and Schorer, to abandon the AUSTEL Fast Track Settlement Proposal and force their acceptance of Telstra's Preferred Rules of Arbitration.
- in written statements to Parliamentary members and others, made misleading and false statements to the detriment of individual C.o.T. members.

) All of these matters are within AUSTEL's/ACA's legislative charter and jurisdiction and should be of concern to the ACA. Enclosed are copies of recent correspondence to and from ACA on this matter.

Both AUSTEL and ACA have, and still, refuse to accept complaints from, meet with, be provided with Telstra documents that are evidentiary material, or investigate this matter.


The ACA's current decision to refer the C.o.T.s and their complaint back to the TIO is a ludicrous situation and non-sensible decision, given it is the TIO's conduct which is the cause of the complaint.

↘ As Telecommunications Minister, please provide written advice of which Government Agency must investigate this serious complaint.

Senator Alston, will you, as Minister, support your advice with a written recommendation the Agency you nominate must investigate this matter?

A prompt response will be appreciated.

Yours sincerely,


Graham Schorer
Spokesperson, C.o.T. CASES AUSTRALIA

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C.o.T. Cases Australia

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

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

29 March, 1999

Our Ref: 4172.doc

Attention: Mr Tony Staley
Chairman of the TIO Board
Telecommunications Industry Ombudsman Limited
Level 15/114 William Street
Melbourne VIC 3000.
By facsimile: (03) 8600 8797 and hand by courier.

FAXED
30/3/99

Dear Mr Staley,

Re: Telstra's corporate conduct.

Individual C.o.T. members, during the last five years, have drawn the respective Telecommunications Industry Ombudsman's attention to matters of Telstra's corporate conduct.

From C.o.T. members' perspective, these matters have not been correctly addressed, nor did individual members receive a written response from the respective Telecommunications Industry Ombudsman setting out how the TIO intended to address these matters.

If the TIO did take action, it failed to address the matters of complaint.

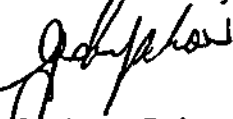
Approximately six months ago, these same matters of conduct were placed before the Victorian Police Major Fraud Group Crime Department, who immediately commenced an initial investigation.

This letter is to inform the Chairman and all members of the TIO Board that the Major Fraud Group:-

- has completed its initial assessment,
- is satisfied that on the material, there is sufficient evidence to warrant further investigation, and
- have recommended a Task Force be assigned to the matter.

For the Chairman's and individual Board Member's information, enclosed are copies of two letters from the Major Fraud Group to an individual C.o.T. member and an Arbitrator.

Yours sincerely,



Graham Schorer
Spokesperson
C.o.T. CASES AUSTRALIA

395

Telephone conversation between Mr Wm Hunt and Mr Alan Smith.

WH Hello

AS Hello William

WH How you're doing

AS I'm alright William

WH

AS Graham will be coming to see you shortly.

WH Yes

AS Um Graham is having a conflict. I wanted to see if I can talk to you. I don't how -- I know I'm not allowed to talk between one client to the other.

WH I can listen

AS Graham is having conflict with himself. He believes he owes me part of the for. I've got a feeling Graham ---

WH He believes what?

AS Well Graham doesn't want to take the money that is being offered because it might not be incorporated into the procedure and I've got a feeling that Graham is not taking the money because he's got this conflict that he's leaving me behind. Now, his health is good and.....
if it's legal the way its been set out, Graham must take this money, I mean I, I am going to do thingspossible anyway, but he's got this bloody thing that he, I know what's going behind him when we meet, he just thinks he's letting me down and he's not. I don't hold any malice. I mean the man has been presenting himself and the COT for six years and if you could advise him if that's the correct way by advising him and as long as it's legal I think the man has got to take the money and he's got to try and put all his past behind him William because he's very sick inside and it's concerning me that he's worrying about me. I would much prefer him to take the money and we can work something out later, do you know what I mean?

WH Yes.

AS I know he's going to come, he's been to see Derek and he's nearly crying on the phone and I'm not bloody, I'm nearly crying me bloody self listening to him and somehow you've got to get through to him that he's got to look after his own health and when he's what he takes the money could finance me to um for legal, you know, we could have a look ata senior barrister or something to see what's good claim mine is. I mean if that's what he wants to do, we can do that, but for him to hold back for me, um till I --- it's just ridiculous William.

WH Yeah, I follow.

AS If you can just get him to you know itit doesn't matter. I'm going to win this my own way, legally, the same as he. He's got to take that money William. He just won't make it, he just won't make the course.

WH Yes

AS He'll kill himself.

WH Okay then

AS Alright William

WH Thank you most kindly

AS My mate he is. Okay

WH Right ho. Well thank you most kindly. Bye -bye now.

AS Bye.

14 April 1999

CONVERSATION BETWEEN WRH AND ANTHONY HONOUR WITH GRAHAM SCHORER IN MR. HUNT'S OFFICE ON TUESDAY 13TH APRIL 1999.

H. What you are saying is that at the present moment we have got \$3.7 which is in theory available for both of us. Between us we have asked for \$4.6 and the difference between them is \$900,000. I was thinking the sensible thing to do is to say well split the difference and bring \$4.6 million down to \$4,150,000.00 and of that you would need \$1 million that would leave Graham with \$3,150,000.00. If Graham is not agreeable to that and are you able to say whether you are agreeable to it now or not.

Schorer I'm not.

H. You are not agreeable.

S. ↘ ↗ Not agreeable and I think Anthony's doing a lot and is great. I'm not prepared to prostitute my claim any further.

H. O.K. Well that means that if you want to negotiate you are now free to do so. Well I can't take it any further. Sould we not give our friend Bruce Aikhursts the telephone number direct 03 9634 3128.

Honour. What's his situation. Is he still on the phone now.

H. To recopitualate the situation is I ring Aikhurst this evening if I can get hold of him. If I can't I ring him tomorrow. I tell him that you and Graham have spoken together on the telephone and you are totally dissatisfied with Telstra and that \$4.6 remains the bottom line.

Honour I can give him a ring in half an hour or so and go from there.

ALAN SMITH

Cape Bridgewater Holiday Camp
Blowholes Road, RMB 4408
Portland, 3305, Vic, Aust.
Phone: 03 55 267 267
Fax: 03 55 267 265

LETTER NO. 1

25 April, 1999

Mr Tony Staley
Chairman of the Board
Telecommunications Industry Ombudsman Office
Level 15
114 William St
Melbourne 3000

Dear Mr Staley,

The enclosed FOI document, No. M33445, titled "*Meeting to Discuss Fast Track Rules of Arbitration*", 22 March 1994, was forwarded to me last Monday, 19 April 1999. As you can see, this document records the details of a meeting attended by:

- 1 Steve Black
- 2 David Krasnostein
- 3 Simon Chalmers
- 4 Peter Bartlett
- 5 Gordon Hughes
- 6 Warrick Smith and
- 7 Jenny Henright.

The first three people on this attendance list represented Telstra, the defendants in the matter.

The fourth, sixth and seventh people represented the TIO's office.

The fifth person was the official arbitrator in this matter.

This meeting was clearly called to discuss the rules of the COT arbitrations and, since there were no representatives of COT present, the arbitrator should not have been there either. This situation is no different to a defendant (in this case, Telstra) in a court action meeting with the Judge to pass on instructions regarding how the matter before the court should be addressed.

Since you are the Chairperson of the TIO's office Mr Staley, and your office attended this meeting, I would be grateful if you could explain to me why the TIO allowed the meeting to take place without any input from the members of COT.

I look forward to your early reply.

Yours sincerely,

Alan Smith

copies to:

Mr Neil Jepson

Major Fraud Group, Victoria Police

Senator Kim Carr

Labor Party, Parliament House, Canberra

Senator Chris Schacht

Shadow Minister for Communications, Parliament House, Canberra

Mr Robert Richter

Civil Liberties, Melbourne.

398-A

ALAN SMITH

Cape Bridgewater Holiday Camp
Blowholes Road, RMB 4408
Portland, 3305, Vic, Aust.
Phone: 03 55 267 267
Fax: 03 55 267 265

LETTER NO. 2

25 April, 1999

Mr Tony Staley
Chairman of the Board
Telecommunications Industry Ombudsman Office
Level 15
114 William St
Melbourne 3000

Dear Mr Staley,

The following FOI document, No. M33449, dated 23 February 1994, was prepared by Freehill Hollingdale and Page, Telstra's solicitors in this so-called non-legalistic arbitration procedure, and comes from the minutes of a meeting held that day. This meeting was attended by representatives of Telstra, COT and the TIO's office, together with the arbitrator, Dr Gordon Hughes and the TIO's Legal Counsel, Mr Peter Bartlett.

This was the only official meeting between all parties that was attended by the four members of COT before we signed what we believed was a set of rules drawn up independently by Gordon Hughes and Minter Ellison, the TIO's Legal Counsel.

Both your own office, and the then TIO, Warrick Smith, were aware that the rules that we signed on 21 April 1994 had not been drawn up independently, as we were led to believe, but had, in fact, been drawn up by Telstra and their Legal Counsel, with only a few minor cosmetic alterations made later. Nevertheless, there is another issue regarding FOI document M33449, which I would now like you to consider, namely:

On page 3, paragraph 1, Dr Hughes, the arbitrator, states that, "... as arbitrator, he would not make a determination on incomplete information."

It is clear (refer bottom left-hand corner of the page) that this document came from Freehill, Hollingdale and Page, Telstra's solicitors.

398-B

As your office is already aware, in the course of preparing my claim I had unsuccessfully attempted to have documents supplied, under FOI, over a long period of time. Three weeks after the award was handed down, however, more than 6,000 discovery documents finally arrived at my office, too late to be of use. Three of these documents showed that Telstra had knowingly used flawed defence material and that these documents had been supplied, by Telstra, to their defence witnesses before those witnesses gave evidence under oath.

So, even though the arbitrator had stated that "*he would not make a determination on incomplete information*" he did make a determination without having the complete story in front of him. The TIO's office has been advised by their own Legal Counsel, Minter Ellison, that this is not the only area in which my arbitration remains incomplete. For instance, it is now five years since I first asked Telstra to supply copies of raw ELMI data in support of incorrect charging and I am yet to receive this information either. Since this issue was never addressed by Telstra or the arbitrator, this is another area where my arbitration remains incomplete. It now seems that, under my latest FOI request, I may finally receive this information (four years too late), along with other material relating to congestion at the telephone exchange at Cape Bridgewater.

I am now asking you, in your role as Chairperson of the Board of the TIO's office, to ask Dr Gordon Hughes why he did not abide by the assurances he gave. Why did he decide to hand down my 'award' even though he knew (and the TIO's office also knew) that I was still trying to obtain discovery documents from Telstra?

If you believe that I should now take my case to the Supreme Court, could I first remind you that Austel and the TIO's office both assured the Senate (as recorded in Hansard) that the four COT arbitrations were to be non-legalistic. Since this is not what actually followed, your office, as administrator to the process, has an obligation to comply with my requests and ask Dr Hughes to explain his actions.

I await your response.

Yours sincerely,

Alan Smith

copies to:

Mr Neil Jepson

Major Fraud Group, Victoria Police

Senator Kim Carr

Labor Party, Parliament House, Canberra

Senator Chris Schacht

Shadow Minister for Communications,

Parliament House, Canberra

Mr Robert Richter

Civil Liberties, Melbourne.

398 B



13 July 1999

Mr Alan Smith
Cape Bridgewater Holiday Camp
Blowholes Road, RMB 4408
PORTLAND 3305

Telecommunications
Industry
Ombudsman

The Hon. Tony Staley
Chairman of the Council

Dear Mr Smith

I refer to your letters of 19 and 25 April 1999 addressed to me as Chairman of the TIO Board. Please note that I am Chairman of the TIO Council.

The Ombudsman has briefed the Council on various complaints which you have made concerning the Fast Track Arbitration Procedure (FTAP) and concerning the conduct of the Arbitrator, Special Counsel, the Resource Unit and the TIO in his role as Administrator of the COT Arbitrations.

I note that your Arbitration was concluded in May 1995 with an Award made in your favour by the Arbitrator. I also note that, to the extent that many of your complaints raise what may be considered legal issues, you have never exercised any rights to appeal against the Award under the Victorian Commercial Arbitration Act (Vic).

In this regard it is not Council's role to request Dr Hughes, the former Arbitrator, to 'explain his actions' as Arbitrator, nor to respond to an allegation that he has breached an undertaking not to make an award on incomplete information. Further, the Ombudsman has advised that, contrary to your assertion, the Special Counsel has not advised the TIO in his role as Administrator that your arbitration remains incomplete.

Council takes the same view in relation to the conduct of the Special Counsel, Mr Bartlett.

The Ombudsman has also advised that, again contrary to your claim, he has never refused to return your claim documentation to you. The Ombudsman has confirmed that material returned to you following the Award did not contain a promotional video which you had produced. This was subsequently found and returned by the Arbitrator.

Finally, in relation to your letter of 30 June 1999, I authorised the TIO to accept and sign for correspondence addressed to me which you had sent to the TIO.

Yours sincerely


TONY STALEY
CHAIRMAN TIO COUNCIL

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

Con/1175

Telecommunications Industry Ombudsman Ltd

ACN 057 634 787

Website: www.tio.com.au

mail: tio@tio.com.au

National Headquarters

Level 15/11A William Street Melbourne Victoria 3000

TO 0392877001 P.01

PO Box 276

Collins Street West

Melbourne

Victoria 3007

FROM CAPE BRIDGE HOLIDAY CAMP

Telephone (03) 8600 8700

Facsimile (03) 8600 8797

Tel. Freecall 1800 062 058

Fax Freecall 1800 630 614

16-07-1999 10:01



26 May, 1999

Telecommunications
Industry
Ombudsman

John Pinnock
Ombudsman

Mr Alan Smith
Cape Bridgewater Holiday Camp
Blowholes Road
RMB 4408
PORTLAND 3305

Dear Mr Smith

I refer to numerous letters addressed to the Chairman of the TIO Council, The Hon Tony Staley, and which I have forwarded to him.

The Chairman has asked me to advise you that Council will discuss the matters raised in your letters at its next meeting scheduled for 21 June 1999.

Yours sincerely



JOHN PINNOCK
OMBUDSMAN

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

Telecommunications Industry Ombudsman Ltd

ACN 057 634 787

Website: www.tio.com.au
Email: tio@tio.com.au
National Headquarters
Level 15/114 William Street Melbourne Victoria 3000

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Collins Street West
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Victoria 8007

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

C O R R S

C H A M B E R S

W E S T G A R T H

L A W Y E R S

19 July 1999

BY FACSIMILE: 9287 7001

C.o.T. Cases Australia
 P O Box 313
 NORTH MELBOURNE VIC 3051

Contact
 David Smith (03) 9672 3345
 Email: David_Smith@coorcs.com.au

Partner
 David Smith

Our reference
 DS/DSS/TELE1971-6342417

ATTENTION: Mr Graham Schorer

Dear Mr Schorer

TELECOMMUNICATIONS INDUSTRY OMBUDSMAN LTD

We act for the Telecommunications Industry Ombudsman Ltd (the "TIO Ltd").

We have been provided with a copy of your letter to Mr John Rohan, the Chairman of the Board of the TIO Ltd, dated 17 June 1999.

Your letter, which was apparently copied to the Victoria Police, the Minister for Communications, the auditors of the TIO Ltd and "All concerned Senators", states that "a number of individual C.o.T. members are taking steps to have the Members of the TIO Board made accountable for the conduct of some of its senior officers, servants and agents during the Telstra-TIO Arbitrations". Your letter also states that "C.o.T. members' complaints about the conduct of named Telstra and TIO's officers, servants and agents, were lodged with the Victorian Police Major Fraud Group in mid-1998".

We understand that you also telephoned HLB Mann Judd, the auditors of the TIO Ltd, on 15 June 1999 and said words to the effect that action was being commenced against the TIO. We understand that you used the word "fraud" and made a statement to the effect that the TIO engaged in collusion with Telstra to disadvantage the C.o.T.

The TIO Ltd takes very seriously the matters you have raised.

We are instructed that the TIO Ltd, having made due internal enquires, it unable to identify any basis on which civil or criminal claims might be brought against the TIO Ltd or its officers, employees or agents in connection with any matter relating

BOURKE PLACE 400 BOURKE STREET MELBOURNE VIC 3000

GPO BOX 9925 VIC 3001

TELEPHONE (03) 9672 3000 INT +613 9672 3000 FAX (03) 9602 5544

DX 336 MELBOURNE

SYDNEY

MELBOURNE
M/450041

BRISBANE

PERTH

CANBERRA

GOLD COAST

401



19 July 1999

Page 2

C.o.T. Cases Australia

TELECOMMUNICATIONS INDUSTRY OMBUDSMAN LTD

to the arbitration procedures you and other of the C.o.T. have been involved in with Telstra and in relation to which the TIO Ltd has played the role of administrator.

So that the TIO Ltd may properly consider, if necessary investigate, and respond as appropriate to the issues you have raised, we request that as soon as possible you provide us with full details of:

- 1 the names of the "individual C.o.T. Members" affected by the conduct in question;
- 2 the precise nature of the conduct in question;
- 3 the dates on which the conduct occurred;
- 4 the particular TIO Ltd personnel who were involved in the conduct;
- 5 where each instance of the conduct occurred; and
- 6 any other facts which may be relevant.

We also request that so far as possible, you provide us with copies of any correspondence or other documentation or materials which provide evidence of the above details.

Please also let us know as soon as possible whom you believe is aggrieved by any relevant misconduct, which of those persons you represent and the precise basis on which you represent them.

In your letter of 17 June 1999 you implied that "the immediate intervention of the TIO Board" was required "to correctly address these matters". We would be grateful if you could also, as soon as possible, provide us with details of the intervention you suggest is appropriate.

The TIO Ltd has received your letter dated 19 July 1999, in which you indicated your withdrawal from the arbitration with Telstra and that you have reached a settlement with Telstra. Can you please advise us as soon as possible whether your settlement with Telstra and withdrawal from the arbitration are in your view likely to affect the bringing of any civil or criminal action against the TIO Ltd or any officer, employee, agent or contractor of the TIO Ltd.



L A W Y E R S

19 July 1999

Page 3

C.o.T. Cases Australia

TELECOMMUNICATIONS INDUSTRY OMBUDSMAN LTD

You signed the letter of 19 July 1999 on behalf of yourself "and on behalf of all other Claimants". We would be grateful if you could also let us know on behalf of precisely which other claimants you signed.

Please direct all further communications or enquiries regarding any of the above, or regarding any possible steps to be taken against the TIO Ltd or any associated person, to us.

Yours faithfully

CORRS CHAMBERS WESTGARTH

A handwritten signature in cursive script, appearing to read "David Smith".

David Smith
Partner

C.o.T. Cases Australia

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

Telephone: (03) 9287 7095
Facsimile: (03) 9287 7001

Attention: Ms Deirdre Mason
Member, TIO Board
Telecommunications Industry Ombudsman Limited
Level 15/114 William Street
Melbourne VIC 3000.
By facsimile: (03) 8600 8797 and hand by courier.

17 June, 1999
Our Ref: 4301d.doc

FAXED
17/6/99

Dear Ms Mason,

C.o.T. Cases Australia formally advise the Chairman and all Members of the Telecommunications Industry Ombudsman Ltd Board that a number of individual C.o.T. members are taking steps to have the Members of the TIO Board made accountable for the conduct of some of its senior officers, servants and agents during the Telstra-TIO Arbitrations.

The substance of the individual C.o.T. member's complaint have been presented to Warwick Smith and/or John Pinnock and Peter Bartlett, progressively since 1994 to 1998 and were made verbally and in writing, accompanied by documents that support the assertions made.

C.o.T. members' complaints about the conduct of named Telstra and TIO's officers, servants and agents, were lodged with the Victorian Police Major Fraud Group in mid-1998.

On the 22nd of March 1999, the Victorian Police advised it had completed its initial assessment of the complaints and is satisfied that on the material provided to it, there is sufficient to warrant further investigation and have recommended a Task Force be assigned to the matters.

On the 26th of April 1999, the Victorian Police notified the C.o.T. member complainants that further investigations have been allocated to Division 5 of the Major Fraud Group.

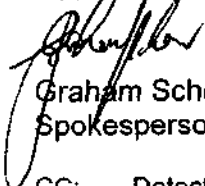
All inquiries to the Victorian Police you may have on this matter should be directed to Detective Senior Sergeant Sommerville. He can be contacted on telephone number (03) 9526 6666.

Inquiries made of the Telecommunications Industry Ombudsman Ltd auditors, Mann Judd, established that the TIO's Balance Sheet and Financial Statements do not include the provision for a contingent liability to certain C.o.T. members as a result of the TIO's conduct during the TIO's administration of a number of Telstra-TIO Arbitrations.

The loss and damage incurred by certain C.o.T. members has not been formally assessed. Indications are, the value of the combined complaints' resultant claims will exceed \$5million.

The Victorian Police involvement does not prevent the immediate intervention of the TIO Board to correctly address these matters.

Yours sincerely,



Graham Schorer
Spokesperson, C.o.T. CASES AUSTRALIA

CC: Detective Sergeant Sommerville, Victorian Police Major Fraud Group.
Senator The Hon Richard Alston, Minister for Communications.
Mr John Barkla, c/- Mann Judd, TIO Auditors.
All concerned Senators.

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ALAN SMITH

Cape Bridgewater Holiday Camp
Blowholes Road, RMB 4408
Portland, 3305, Vic, Aust.
Phone: 03 55 267 267
Fax: 03 55 267 265

9 May 2000

ALAN SMITH, CASUALTY OF TELSTRA
FAST TRACK ARBITRATION PROCEDURE: 1993 /1994 / 1995

Mr Bob Mansfield, Chairman of the Board of the Telstra Corporation, Melbourne
The Hon. Daryl Williams, Federal Attorney General, Parliament House, Canberra
Senior Detective Rod Keuris, Major Fraud Group, Victoria Police, Melbourne
Mr John Wynack, Senior Investigation Officer, Commonwealth Ombudsman's Office
→ *Ms Roslyn Kellcher, Australian Communications Authority, Melbourne.*

Dear Madam and Sirs,

In relation to the enclosed copy of my letter of today's date to Mr John Pinnock, TIO, and the attachments to that letter, I would be grateful if you would try to imagine what you would have done if you had the misfortune to find yourself in my shoes;

- a) with little understanding of the legal system;
- b) involved in an arbitration process with a mammoth corporation (Telstra);
- c) at the mercy of an arbitrator and an ombudsman who advised you that they would address your ongoing phone and fax faults

and then, years after the so-called 'completion' of your arbitration, to find that, after reluctantly agreeing to a new set of arbitration rules (17/2/94):

- a) These rules were not drawn up by the President of the Australian Institute of Arbitrators (Mr Sheldon) and the arbitrator (Dr Hughes) as you had been advised but were in fact drawn up by Telstra's lawyers, Freehill Hollingdale & Page.
- b) Telstra, Telstra's lawyers, the arbitrator and the TIO held a secret meeting in relation to the drawing up of these rules, without your involvement or knowledge, in clear contravention of the rules of the arbitration (refer FOI documents M33445 and 6) and changed the rules again so that, when you actually signed, you were not signing the rules you believed you were signing.
- c) A laboratory report (regarding 'wet and sticky beer residue' which was purported to be inside your telephone) was fraudulent.
- d) The TIO had written to the new President of the Australian Institute of arbitrators stating that you had phoned the arbitrator's wife at 2 am, knowing that this was not correct.
- e) The technical unit attached to the arbitration were stopped from addressing allegations of incorrect charging on phone accounts.
- f) The arbitrator removed the technical unit's comments on the incorrect charging issue from their report.

I can't begin to imagine what each of you might have done in these circumstances but I can tell you what I did: since the TIO's office had been appointed to administer my arbitration, when I uncovered the secret meeting mentioned in point 2 above I asked the TIO why I was not notified of this illegal secret meeting. Mr Pinnock has never replied.

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Over the course of my arbitration I had already:

- a) Provided the arbitrator with volumes of claim documents in support of my claims of incorrect charging on my service lines – incorrect charging that had continued for more than three and a half years.
- b) Provided evidence at a five-hour oral hearing on 11/10/94 where, using Telstra's own data, I proved the existence of this incorrect charging.
- c) Provided a video, again using Telstra's own documents, proving that my phone calls had been diverted.

In further support of my allegations regarding problems with my fax line, I enclose three documents (one a statutory declaration) from business associates, together with and an FOI document, numbered K01489. These documents:

- a) Detail the problems encountered by my associates when I attempted to send faxes to them, until Telstra disconnected my phone/fax line in August of 1998.
- b) Clearly demonstrate that the writers had experienced problems with my fax line over an extended time.
- c) Show that the same problems were occurring as far back as 29 October 1993.
- d) Prove that these problems continued to occur, after the 'completion' of my arbitration, until at least July of 1998.

Even with all this evidence, even with my question to the TIO about the illegal secret meeting, even though I provided documented evidence to support all the allegations I submitted to my arbitration, still the incorrect charging, the illegal call diversion and the phone bugging have never been addressed according to the rules set out in the arbitration.

This debacle has been dragging on for years now and it continues to drag on. As recently as just six weeks ago, on 28 March this year, a Mr Knight from Telstra phoned me looking for information about lost faxes. As you can see from the attachments to Mr Pinnock's letter, James Cameron informed me as late as February last year that Mr Pinnock agreed that my phone and fax line problems needed to be investigated. Why then has nothing been done? Why have my fax and gold-phone lines remained disconnected?

Although I have provided irrefutable evidence regarding the incorrect charging issues, it appears that Telstra, John Pinnock and others have joined forces in an attempt to hide this evidence. I would be most grateful if you could see your way clear to assist me in some way; perhaps you could suggest where in Australia I can go to have these valid complaints correctly investigated by an impartial assessor or ombudsman. Surely there must be some people within the Australian Government who have not lost their ethics and moral values?

I look forward to receiving your reply to my questions (and please do not suggest that I contact Mr Pinnock).

Sincerely,

Alan Smith

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

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

22 May 2000

Our Ref: 4487
Pages in Total: 4

Ms Kathryn Taylor
Freedom of Information Officer - Legal Group
Australian Communications Authority (ACA)
PO Box 78
Belconnen Act 2616

Facsimile: 02 / 6256-5353

Dear Ms Taylor

THIS IS A FREEDOM OF INFORMATION ACT REQUEST FOR DOCUMENTS

In accordance with the Federal Freedom of Information Act 1982, we enclose a \$30.00 cheque as the lodgement fee for this freedom of information request for documents and information.

This request includes copies of correspondence sent or received by Austel and the ACA to/from:

Telecom now Telstra

I draw your attention to the fact that:

- Austel (now the ACA) has always been a party to the Fast Track settlement proposal; Fast Track arbitration procedure and Special Arbitration administered by the TIO.
- The workings of the dispute resolution process used between Telstra and its customers administered by the TIO are of public interest and concern to the Senate. To date the Senates concerns have resulted in a Senate Inquiry and a Senate recommendation.
- The conduct of Telstra and others participating in this dispute resolution process are the subject of the Victorian Police Major Fraud Group investigation. The Major Fraud Group's are committed to continue the investigation for the purpose of prosecuting those who have committed criminal acts.

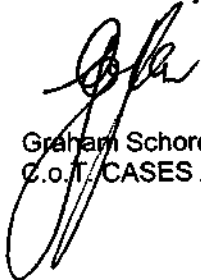
The attached appendix sets out the precise details of each of the 8 parts of this FOI request. C.o.T. Cases Australia formally request that during the course of processing this FOI application, when each part is correctly completed, that part be promptly forwarded by the ACA. to C.o.T.

Many documents requested have been identified in the Telstra Microsoft Excel files prepared for participation in and during Fast Track Settlement Proposal, Fast Track Arbitration procedure and Special Arbitration administered by the Telecommunications Industry Ombudsman.

It is not appropriate for the ACA to transfer all or part of this request to Telstra. Transfer of all or part of this request would prevent the discovery of notes and comments made by Austel and/or ACA Officers on the copies of documents distributed in draft form prior to sending or received correspondence distributed for comment and/or action.

Enclosed is a cheque for \$30 dollars for the required lodgment fee.

Yours sincerely



Graham Schorer - Spokesperson
C.o.T./CASES AUSTRALIA

2/...

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Precise details of the 8 parts of this FOI request are as follows:

Part 1 – For the period between 22 November 1993 – 30 April 1994

All correspondence between Austel/ACA and Telecom now Telstra relating to:

Copy of correspondence sent by Austel/ACA from the Office of the TIO relating to COT Members verbal and/or written complaints made to Austel/ACA about the continued existence and experience of systemic service difficulties, problems and faults within the Telstra network.

The details of these complaints of experienced systemic problems within the Telstra network include:

- experienced service difficulties, problems and faults within the Telstra network and billing system software resulting in Telstra clients and/or COT Members receiving Telstra accounts containing incorrect charges for successful calls and charges for unsuccessful calls;
- experienced service difficulties, problems and faults within the Telstra network resulting in Telstra clients and/or COT Members inability to receive incoming telephone calls from the "A party" on their first and/or subsequent attempts.
- experienced service difficulties, problems and faults within the Telstra network resulting in Telstra clients and/or COT Members inability to receive incoming facsimiles from the "A party" on their first and/or subsequent attempts.
- experienced service difficulties, problems and faults within the Telstra network resulting in Telstra clients and/or COT Members inability to send outgoing facsimiles to the "B party" on the first and/or subsequent attempts.

Part 2 – For the period between 22 November 1993 – 30 April 1994

All correspondence between Austel/ACA and Telecom now Telstra relating to:

Copy of correspondence received by Austel/ACA from the Office of the TIO relating to COT Members verbal and/or written complaints made to Austel/ACA about the continued existence and experience of systemic service difficulties, problems and faults within the Telstra network.

The details of these complaints of experienced systemic problems within the Telstra network include:

- experienced service difficulties, problems and faults within the Telstra network and billing system software resulting in Telstra clients and/or COT Members receiving Telstra accounts containing incorrect charges for successful calls and charges for unsuccessful calls;
- experienced service difficulties, problems and faults within the Telstra network resulting in Telstra clients and/or COT Members inability to receive incoming telephone calls from the "A party" on their first and/or subsequent attempts.
- experienced service difficulties, problems and faults within the Telstra network resulting in Telstra clients and/or COT Members inability to receive incoming facsimiles from the "A party" on their first and/or subsequent attempts.
- experienced service difficulties, problems and faults within the Telstra network resulting in Telstra clients and/or COT Members inability to send outgoing facsimiles to the "B party" on the first and/or subsequent attempts.

Part 3 – For the period between 1 May 1994 – 30 June 1995

All correspondence between Austel/ACA and Telecom now Telstra relating to:

Copy of correspondence sent by Austel/ACA from the Office of the TIO relating to COT Members verbal and/or written complaints made to Austel/ACA about the continued existence and experience of systemic service difficulties, problems and faults within the Telstra network.

The details of these complaints of experienced systemic problems within the Telstra network include:

- experienced service difficulties, problems and faults within the Telstra network and billing system software resulting in Telstra clients and/or COT Members receiving Telstra accounts containing incorrect charges for successful calls and charges for unsuccessful calls;
- experienced service difficulties, problems and faults within the Telstra network resulting in Telstra clients and/or COT Members inability to receive incoming telephone calls from the "A party" on their first and/or subsequent attempts.

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- experienced service difficulties, problems and faults within the Telstra network resulting in Telstra clients and/or COT Members inability to receive incoming facsimiles from the "A party" on their first and/or subsequent attempts.
- experienced service difficulties, problems and faults within the Telstra network resulting in Telstra clients and/or COT Members inability to send outgoing facsimiles to the "B party" on the first and/or subsequent attempts.

Part 4 – For the period between 1 May 1994 – 30 June 1995

All correspondence between Austel/ACA and Telecom now Telstra relating to:

Copy of correspondence received by Austel/ACA from the Office of the TIO relating to COT Members verbal and/or written complaints made to Austel/ACA about the continued existence and experience of systemic service difficulties, problems and faults within the Telstra network.

The details of these complaints of experienced systemic problems within the Telstra network include:

- experienced service difficulties, problems and faults within the Telstra network and billing system software resulting in Telstra clients and/or COT Members receiving Telstra accounts containing incorrect charges for successful calls and charges for unsuccessful calls;
- experienced service difficulties, problems and faults within the Telstra network resulting in Telstra clients and/or COT Members inability to receive incoming telephone calls from the "A party" on their first and/or subsequent attempts.
- experienced service difficulties, problems and faults within the Telstra network resulting in Telstra clients and/or COT Members inability to receive incoming facsimiles from the "A party" on their first and/or subsequent attempts.
- experienced service difficulties, problems and faults within the Telstra network resulting in Telstra clients and/or COT Members inability to send outgoing facsimiles to the "B party" on the first and/or subsequent attempts.

Part 5 – For the period between 1 July 1995 – 31 May 1999

All correspondence between Austel/ACA and Telecom now Telstra relating to:

Copy of correspondence sent by Austel/ACA from the Office of the TIO relating to COT Members verbal and/or written complaints made to Austel/ACA about the continued existence and experience of systemic service difficulties, problems and faults within the Telstra network.

The details of these complaints of experienced systemic problems within the Telstra network include:

- experienced service difficulties, problems and faults within the Telstra network and billing system software resulting in Telstra clients and/or COT Members receiving Telstra accounts containing incorrect charges for successful calls and charges for unsuccessful calls;
- experienced service difficulties, problems and faults within the Telstra network resulting in Telstra clients and/or COT Members inability to receive incoming telephone calls from the "A party" on their first and/or subsequent attempts.
- experienced service difficulties, problems and faults within the Telstra network resulting in Telstra clients and/or COT Members inability to receive incoming facsimiles from the "A party" on their first and/or subsequent attempts.
- experienced service difficulties, problems and faults within the Telstra network resulting in Telstra clients and/or COT Members inability to send outgoing facsimiles to the "B party" on the first and/or subsequent attempts.

Part 6 – For the period between 1 July 1995 – 31 May 1999

All correspondence between Austel/ACA and Telecom now Telstra relating to:

Copy of correspondence received by Austel/ACA from the Office of the TIO relating to COT Members verbal and/or written complaints made to Austel/ACA about the continued existence and experience of systemic service difficulties, problems and faults within the Telstra network.

The details of these complaints of experienced systemic problems within the Telstra network include:

- experienced service difficulties, problems and faults within the Telstra network and billing system software resulting in Telstra clients and/or COT Members receiving Telstra accounts containing incorrect charges for successful calls and charges for unsuccessful calls;
- experienced service difficulties, problems and faults within the Telstra network resulting in Telstra clients and/or COT Members inability to receive incoming telephone calls from the "A party" on their first and/or subsequent attempts.
- experienced service difficulties, problems and faults within the Telstra network resulting in Telstra clients and/or COT Members inability to receive incoming facsimiles from the "A party" on their first and/or subsequent attempts.
- experienced service difficulties, problems and faults within the Telstra network resulting in Telstra clients and/or COT Members inability to send outgoing facsimiles to the "B party" on the first and/or subsequent attempts.

Part 7 – For the period between 1 June 1999 – 30 April 2000

All correspondence between Austel/ACA and Telecom now Telstra relating to:

Copy of correspondence sent by Austel/ACA from the Office of the TIO relating to COT Members verbal and/or written complaints made to Austel/ACA about the continued existence and experience of systemic service difficulties, problems and faults within the Telstra network.

The details of these complaints of experienced systemic problems within the Telstra network include:

- experienced service difficulties, problems and faults within the Telstra network and billing system software resulting in Telstra clients and/or COT Members receiving Telstra accounts containing incorrect charges for successful calls and charges for unsuccessful calls;
- experienced service difficulties, problems and faults within the Telstra network resulting in Telstra clients and/or COT Members inability to receive incoming telephone calls from the "A party" on their first and/or subsequent attempts.
- experienced service difficulties, problems and faults within the Telstra network resulting in Telstra clients and/or COT Members inability to receive incoming facsimiles from the "A party" on their first and/or subsequent attempts.
- experienced service difficulties, problems and faults within the Telstra network resulting in Telstra clients and/or COT Members inability to send outgoing facsimiles to the "B party" on the first and/or subsequent attempts.

Part 8 – For the period between 1 June 1999 – 30 April 2000

All correspondence between Austel/ACA and Telecom now Telstra relating to:

Copy of correspondence received by Austel/ACA from the Office of the TIO relating to COT Members verbal and/or written complaints made to Austel/ACA about the continued existence and experience of systemic service difficulties, problems and faults within the Telstra network.

The details of these complaints of experienced systemic problems within the Telstra network include:

- experienced service difficulties, problems and faults within the Telstra network and billing system software resulting in Telstra clients and/or COT Members receiving Telstra accounts containing incorrect charges for successful calls and charges for unsuccessful calls;
- experienced service difficulties, problems and faults within the Telstra network resulting in Telstra clients and/or COT Members inability to receive incoming telephone calls from the "A party" on their first and/or subsequent attempts.
- experienced service difficulties, problems and faults within the Telstra network resulting in Telstra clients and/or COT Members inability to receive incoming facsimiles from the "A party" on their first and/or subsequent attempts.
- experienced service difficulties, problems and faults within the Telstra network resulting in Telstra clients and/or COT Members inability to send outgoing facsimiles to the "B party" on the first and/or subsequent attempts.

END

404

ALAN SMITH

Cape Bridgewater Holiday Camp
Blowholes Road, RMB 4408
Portland, 3305, Vic, Aust.
Phone: 03 55 267 267
Fax: 03 55 267 265

3 June 2000

Ms Kathryn Taylor
Freedom of Information Officer
Legal Group ACA
Purple Building, Benjamin Offices
Chan St
Belconnen
ACT 2616

Re Casualties of Telstra - Alan Smith v Telstra

Dear Ms Taylor,

The following documents were received from Telstra in April 1999, under FOI:

- **No. M34049, letter dated 15/7/94 from Rod Pollock of Telstra's Arbitration Defence Unit.**
In this letter Mr Pollock confirms his question of the arbitrator in relation to whether certain documents should be supplied to the COT four. *In relation to this question it is interesting to note that documents I received from Steve Black's files, under FOI in 1999, confirm that not only did my arbitrator meet with Telstra's solicitor without the presence of a COT spokesperson but many letters were exchanged between Telstra and the arbitrator without copies being forwarded to me. This is a direct breach of the signed Fast Track Arbitration Process agreement. The Steve Black file also confirms that Rod Pollock withheld 500 to 700 documents that had previously been requested by my technical advisor, George Close.*
- **No. M34128, letter dated 18/5/94 to the arbitrator**
This letter asked that the arbitrator allow me an extension on the time allowed for me to submit my claim since Telstra had delayed the supply of discovery documents under FOI.
- **No. M34127, letter dated 23/5/94 from the arbitrator**
This letter was written in response to my request for an extension to allow me to submit my arbitration claim by 15/6/94.
- **No. M34124, my Statutory Declaration of 14/5/94**

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The number allocated to this Statutory Declaration is one in the range allocated to the Steve Black file, thereby indicating that Telstra and my arbitrator, as well as the Federal Police, all knew that Telstra's defence unit was withholding discovery documents as early as one month into my arbitration.

As you can see, my Statutory Declaration refers to a conversation I had with Detective Superintendent Jeff Penrose of the Federal Police regarding approximately fifty-six different sets of FOI documents with identical fax headers but with different attachments. This indicates that Rod Pollock, Telstra's defence spokesperson, knowingly supplied incorrect information.

- **No. M34122-3, letter dated 23/5/94 to the arbitrator**

In this letter I detail the extreme difficulty I had in preparing my submission because Telstra did not supply numerous discovery documents. Since this document was returned to me from Telstra and my arbitrator, this further confirms that both the defence (Telstra) and my arbitrator (Dr Gordon Hughes) were clearly aware of my concerns early on in my arbitration.

- **No. 94/0269-05-06**

This document, originally addressed to the Hon. Michael Lee's office on 13/10/94, was recently supplied by the ACA to the members of COT. Both pages have information blacked out. It can be seen, however, at point 2 on page 1, that the same Rod Pollock that I discussed with Detective Superintendent Penrose (see point 4, above) was still withholding documents from the COT claimants six months after my first complaint to the Federal Police, the arbitrator and the arbitration administrator in May of 1994.

At point 4 of this letter, the writer confirms that Steve Black and his senior executives had sought to influence and manipulate the COT arbitrations in the following ways:

- Remove or change information regarding Telstra's liability
- Diminish the level of compensation payable to COT customers
- Dismiss breaches in relation to matters of customer privacy.

Clearly Telstra's defence unit knowingly committed a number of unlawful acts in an attempt to 'diminish the level of compensation payable to COT customers.'

It is also clear from my letter at point 5 on page 1 of this letter that I made it very clear to my arbitrator that my claim could only include a limited amount of supporting information because Telstra would not supply the discovery documents I sought under FOI. Even so Dr Hughes only allowed me a single week's extension to prepare my claim for 15/6/94.

It is also amazing to note that, after the arbitrator allowed me this one brief week's extension, he allowed Telstra's defence six months to answer my claim, even though the arbitration rules allowed for only one month for Telstra to respond to my claim. And this was after I had alerted both the arbitrator and the Federal Police to Telstra's unlawful withholding of discovery documents.

This scenario is important because neither my arbitrator's award nor the technical resource unit's assessment and report valued or addressed the relevance of even one late discovery

document. In other words, the more than 24,000 FOI discovery documents received from Telstra after I had submitted my claim were never addressed in my arbitration even though much of the information was presented in bound volumes submitted with covering letters explaining how important these late discovery documents were.

The fact that neither my arbitrator nor the technical resource unit addressed these late claim documents confirms my belief that Telstra's defence team were fully aware that, according to the Victorian arbitration act, material submitted by the claimant, after his claim has been addressed by the defendants, cannot be addressed by the arbitrator. Why else would Mr Pollock and Telstra's defence unit wait until I had submitted my claim and they had submitted their defence before releasing these 24,000 or more discovery documents under FOI? It can only be because Telstra were determined to diminish the level of compensation payable to me as the claimant in this process.

The most horrifying aspect of this saga is the fact that many of the documents received too late to include in my claim prove without a doubt that Telstra knowingly perverted the course of justice in my arbitration procedure.

I ask that the ACA to look again at my letter to the arbitrator (point 3, page 1) and my Statutory Declaration (point 4). These two documents highlight the way Mr Pollock conducted the interview on 14/5/94 in relation to supply of discovery documents. I would then ask that the ACA's legal advisors assess the 2 page document dated 13/10/94 to Parliament House. Taken together, these documents confirm Mr Pollock's unlawful behaviour. In light of this information, why didn't the Federal Police, or my arbitrator, abandon these COT arbitrations? How much proof of wrongdoing did they require?

↙ **All this information shows clearly that an injustice has taken place in the COT arbitrations. The ACA should now be seen to be cooperating in an effort to minimise any future suffering of the COT members. To this end, I now seek, from the ACA, a full and complete copy of the document of 13/10/94, without any areas blacked out, to enable me to obtain a legal opinion. I have enclosed a \$30.00 cheque to cover the application fee under the Freedom of Information Act to facilitate the process of my request by the ACA.**

I await your response.

Sincerely,

A Smith.

Copies to:

Mr Bob Mansfield, Chairman of the Board of Telstra Corporation, Melbourne

The Hon Daryl Williams, Federal Attorney General, Parliament House, Canberra

Senior Detective Rod Keuris, Major Fraud Group, Victoria Police, Melbourne

Mr John Wynack, Senior Investigation Officer, Commonwealth Ombudsman's Office, Canberra

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23 May 2000

**Telecommunications
Industry
Ombudsman**

**John Pinnock
Ombudsman**

Mr Alan Smith
Cape Bridgewater Holiday Camp
Blowholes Road
RMB 4408
PORTLAND 3305

Dear Mr Smith

Fast Track Arbitration Procedure

I refer to your letter of 17 April 2000 concerning a letter dated 19 May 1995 from Mr Steve Black to the former Ombudsman, Mr Warwick Smith. This letter is referred to in a letter dated 24 May 1995 from the then Ombudsman to the Arbitrator Dr Hughes, copy of which you have.


→ You have requested me, as Administrator of your Arbitration, to supply you with a copy of the first mentioned letter. I have caused an exhaustive search of your Arbitration files held by the TIO but have been unable to find the letter. It may be that it is on other equally voluminous files held by the TIO relating to the original AUSTEL COT report.

You suggest from the brief reference to the letter in the Ombudsman's letter of 24 May that 'this letter ...shows that Dr Gordon Hughes, Arbitrator, provided Telstra with a legal opinion as to Telstra's legal liability in matters before the arbitration procedures'. You also argue that 'since Dr Hughes made no mention of Telstra's legal liability in his written findings regarding (your) award (you) have not been provided with all of his findings pertaining to (your) arbitration'.

The construction you place on the letter is incorrect.

The Arbitrator's award does address issues concerning Telstra's legal liability in paragraphs 4.2 to 4.10 inclusive, which cover more than 11 pages of a 42 page award.

Yours sincerely


**JOHN PINNOCK
OMBUDSMAN**

**406
A**

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

Plainant/1401

Telecommunications Industry Ombudsman Ltd

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file



24 May 1995

Private & Confidential

**Telecommunications
Industry
Ombudsman**

**Mr Steve Black
Group General Manager
Customer Affairs
Telecom
37/242 Exhibition Street
MELBOURNE VIC 3000**

**Warwick L Smith U.S.
Ombudsman**

Black
Benjamin
Geary
Evert
Armstrong
Phillips
Shannon

Hear
Chisholm
Gamble
Levy
Deloitte
Sutton
Kearney

Freemills
Holding Redlich
Munn
D'Aug

By facsimile: 9632 3235

File Smith / T.10

Dear Steve,

RE: ALAN SMITH

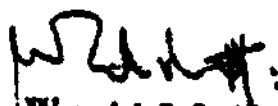
Under the terms of the Fast-Track Arbitration Procedure, Cl.14 provides that payment is due within 3 weeks of the despatch of the award, unless appeals in accord with Cl.12 of the Arbitration agreement proceed.

I understand from Mr Paul Rizzo last evening that the matter of payment will be settled forthwith. Other matters relating to liability will be dealt with separately. Dr Hughes is in his office from 30 May 1995.

Can we please now discuss finalisation.

I have to hand your letter of 19 May 1995 to AUSTEL's Carrier Monitoring Unit which refers to the Smith decision and the reconciliation of the Arbitrator's comments on Telstra's legal liability. I am happy to discuss this matter. AUSTEL has sought my views.

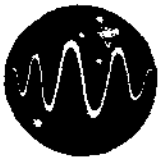
Yours sincerely


**Warwick L. Smith
Ombudsman**

M34131

406B

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



Australian
Communications
Authority

Our Ref: Y2000/15

Mr Alan Smith
Cape Bridgewater Holiday Camp
Blowholes Road, RMB 4408
Portland Vic 3305

Dear Mr Smith

RE: FAST TRACK ARBITRATION AND RELATED MATTERS

I refer to your letter of 9 May 2000, in which you raise yet again a number of concerns relative to your Fast Track Arbitration Procedure and subsequent events.

You raised similar issues in a letter to the Australian Communications Authority (ACA) dated 26 January 2000. In his response to that letter dated 15 February 2000, Neill Whitehead indicated the ACA's position with respect to such issues.

This position has not changed, and I have nothing further to add save to emphasise that it is not part of the ACA's role to pursue these matters and that it does not intend doing so.

Yours sincerely

A handwritten signature in cursive script that reads "F. Nowlan".

Frank Nowlan
Manager
Codes and Consumer Safeguards

13 June 2000

COMMONWEALTH & DEFENCE FORCE
OMBUDSMAN

Postal & Mailing: Commonwealth Ombudsman, Canberra City
370 Elizabeth Street, Sydney NSW 2000 Australia
Telephone: (06) 626 4000 Fax: (06) 626 4009

20 January 1994

C/94/195.C/94/225:JW

Mr J R Holmes
Corporate Secretary
Telstra Corporation Ltd.
38th Floor, 242 Exhibition Street
MELBOURNE VIC 3000

Dear Mr Holmes

I received complaints from three of the 'COT Cases', Mr Graham Schorer, Mr Alan Smith and Ms Ann Garms, concerning TELECOM's handling of their applications under the Freedom of Information Act (FOI Act) of 24 November 1993 and 21 December 1993 respectively.

I have summarised Mr Smith's complaint as alleging that TELECOM unreasonably has decided to apply charges to his FOI request and that the charges will be considerable.

Mr Schorer's complaint is that TELECOM unreasonably refused to remit the application fee and is proposing to impose processing charges.

Ms Garms also has complained that TELECOM unreasonably is imposing charges.

All three assert that they require the information to support their submissions to the imminent review in accordance with the Fast Track Settlement Proposal (FTSP) agreed between TELECOM and AUSTEL, and endorsed by the then relevant Minister.

I understand that the FTSP provides a basis for a Proposed Arbitration Procedure that may be applied as a dispute resolution process additional to the Telecommunications Industry Ombudsman scheme. I also understand that TELECOM acknowledges that the COT Cases proposal has assisted TELECOM to clarify its views about dispute resolution processes suitable for small business in the future.

Clearly it is important that the FTSP be given every opportunity to achieve its objectives. As clause 2(e) stipulates that the review will be primarily based on documents and written submissions and that each party will have access to the other party's submissions and have the opportunity to respond, TELECOM should facilitate access by the parties to relevant information. Furthermore, it is important that TELECOM be seen to be co-operating as far as is reasonable.

In the circumstances, the giving of access to information required by the applicants to present their cases to the assessor appointed under the FTSP is in the general public interest, in the context of s 29(5) and s30A(1)(b)(iii) of the FOI Act. Accordingly, it is my view that TELECOM should waive payment of the application fees in respect of the FOI applications. Also, TELECOM should waive that part of the charges which relates to the information requested which is required to enable the applicants to present their cases under the FTSP.

I should also draw your attention to section 14 of the FOI Act which states:
Nothing in this Act is intended to prevent or discourage Ministers and agencies from publishing or giving access to documents (including exempt documents), otherwise than as required by this Act, where they can properly do so or are required by law to do so.

In view of the importance of the FTSP, I think that TELECOM should release to the applicants all of the information required by them in connection with presentation of their cases to the assessor, outside the provisions of the FOI Act. TELECOM could invite the applicants to make an application under the FOI Act if they require further information which TELECOM is not prepared to release without considering an application under the FOI Act. Should you decide to withhold some documents, it would be helpful to the applicants if you would describe them so that they may make an informed judgement as to whether to pursue access through the FOI Act.

I should be grateful for your early comments on my views.

Should your officers wish to discuss any of the foregoing they could contact John Wynack on 06 2760153.

Yours sincerely



Philippa Smith
Commonwealth Ombudsman.



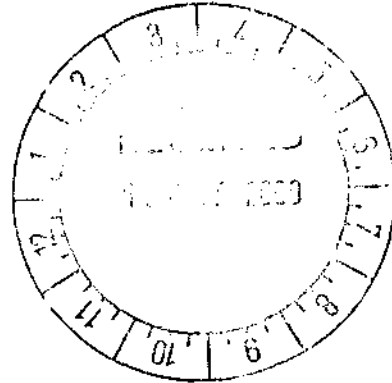
Australian
Communications
Authority

SENDER TO KEEP
BV2335105 AME.G.

SENDER TO KEEP
BV2335107 Alan S.
12/10/00

File Reference: x2000/431

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



Dear Mr Schorer

RELEASE OF INFORMATION AS PER REQUEST UNDER THE FREEDOM OF INFORMATION ACT

I refer to your numerous requests for information under the *Freedom of Information Act 1982*, in which you sought access to documents relating to correspondence between the ACA/Austel, the TIO, Telecom/Telstra, the arbitrators and the Minister for and/or Department of Communications.

I have decided to release this information to you in full. I note that your original requests were quite substantial and due to the large quantity of documents being sought, I will be releasing the information to you as the ACA is able to locate it. This will, therefore, be the first of a number of packages of documents that I will be sending to you over the coming months.

Thank you for your patience with this matter. If you have any further questions, please do not hesitate to contact me on (02) 6256 5311.

Yours sincerely

K.G. Taylor

Kathryn Taylor
Freedom of Information Co-ordinator
Legal Group

10 October 2000

Enclosures

*M. Giller
Bren Pat Smith*

*A. Smith
G. Dawson
M. Weyman*

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