

STATUTORY DECLARATION

VICTORIA

I, Alan Smith of Cape Bridgewater in the State of Victoria,

do hereby solemnly and sincerely declare that: On 21st March 1995, at a Senate Committee Hearing into the Telecommunications (Interception) Amendment Bill 1994, in Parliament House, Canberra, I introduced a number of documents, including two pages from a transcript of an interview conducted by the Australian Federal Police on 26th September 1994. These two pages are attached to my Administrative Appeals Tribunal Statement of Facts and Contentions as Exhibit (AS 332).

Shortly before this Senate Committee Hearing I had discussions with AUSTEL's Cliff Mathieson regarding flaws I had discovered in the Bell Canada International (BCI) 'Cape Bridgewater (Addendum)' Report. During this discussion, Mr Mathieson informed me that AUSTEL had written to Telstra during the preparation of the AUSTEL COT Report into the tests carried out by BCI at both Cape Bridgewater and at the Glen Waters Fish Farm (Victoria). Mr Mathieson also told me that none of the tests described in the 'Cape Bridgewater (Addendum) Report' could possibly have been conducted at either the times or on the dates included in the report. My response to Mr Mathieson was to confirm that nothing had changed and my business was still plagued by phone problems. Mr Mathieson then commented that he understood my frustration with the arbitration process but AUSTEL could not become involved, as these were matters for the arbitrator and the arbitration consultants. Mr Mathieson appeared to be reluctant to broadcast his knowledge that the BCI Cape Bridgewater tests were flawed, even though he advised me that AUSTEL was fully aware that Telstra were using the known flawed BCI tests in the COT arbitrations. This, together with other information in my Statement of Facts and Contentions, is further proof that AUSTEL deliberately hid their knowledge of the way Telstra had submitted, to the arbitration process, sworn witness statements that Telstra knew were flawed.

It is particularly important to note Cliff Mathieson's comments that AUSTEL had written to Telstra during the preparation of the AUSTEL COT Report, with particular regard to the BCI 'Cape Bridgewater (Addendum) Report' but ACMA's FOI schedule of documents currently under review by the AAT does not include any mention of this contact in any file notes or letters exchanged between AUSTEL and Telstra. This is therefore yet another example of material that could be sensitive for Telstra, but which ACMA say they cannot find.

On 26th August 2001, I wrote Mr Tony Shaw of the ACA (now ACMA). The full letter, which was prepared on the advice of a Senator, is attached to my Statement of Facts and Contentions as Exhibit (AS278-b). I have not yet received permission to identify the Senator in relation to these matters but I have, however, provided the Senator's name to my legal advisor and will pass the name on to the AAT at the appropriate time, in confidence. That a Senator would actually suggest that I forward this quote to the Chairman of the Australian Communication Authority (ACA) indicates just how concerned this particular Senator was, in relation to the way that a Government Agency, like the ACA (now ACMA) did not address Telstra's unlawful behaviour during a Government-endorsed arbitration process that the Regulator had facilitated. The following quote is taken from my letter to Mr Shaw: **"...We suggest that any Regulator and or agent of the Federal/Crown, who possessed knowledge of the nature of these unlawful acts and events by Telstra during the AUSTEL facilitated COT**

arbitration procedure, and specifically have concealed these acts by not broadcasting to the appropriate law enforcement agencies, would be acting outside of the law, and would be engaging in prima facie abuse of office, and obstruction of justice.

In all these respects, the law is clear, it prohibits such conduct "

This was not the only Senator to indicate concerns regarding Telstra's abuse of the Australian Legal system during my arbitration when he wrote: "The appalling manner in which you have been treated by Telstra is in itself reason to pursue the issues. Your manuscript demonstrates quite clearly how Telstra has been prepared to infringe upon the civil liberties of Australian citizens in a manner that is most disturbing and unacceptable."

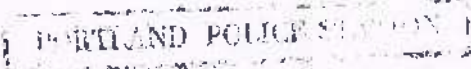
During 2001, Tony Shaw was provided some of the information now included in my Statement of Facts and Contentions, information confirming that, during my arbitration, Telstra perverted the course of justice in a number of ways, including relying on deficient Service Verification Tests (SVT) that AUSTEL themselves declared deficient, as well relying upon the BCI's impracticable Cape Bridgewater Report that Cliff Mathieson declared fundamentally flawed in March 1995.

I can say though that, before these Senators offered their opinions, they had each only seen less than half the material now provided as attachments to my Administrative Appeals Tribunal Statement of Facts and Contentions.

An independent technical consultant Brian Hodges, (an ex-Telstra veteran - 29 years), noted in his report of 27th July 2007, similar findings to that reached by Cliff Mathieson, regarding BCI's flawed tests allegedly conducted at BCI Cape Bridgewater, and AUSTEL's findings regarding the deficient Cape Bridgewater SVT tests. Although ACMA was recently provided with Mr Hodges' report in May 2008, they have not yet notified any relevant law enforcement agency regarding Telstra's use of known flawed reports as defence documents.

I have prepared this Statutory Declaration because it shows that, since ACMA has been prepared to hide Telstra's unlawful acts for so many years, there is a strong possibility they are still withholding relevant FOI documents that might prove to be detrimental to either ACMA or Telstra.

AND MAKE this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of an Act of Parliament of Victoria rendering persons making a false Declaration punishable for wilful and corrupt perjury, the Statutory Declaration Act, 1959, (Commonwealth) and subject to the penalties provided by that Act for the making of false statements in Statutory Declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

DECLARED at 

this 26th day of JULY 2008

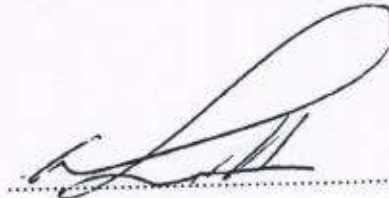
Before me



(Signature of person before whom the declaration is made)

B. HARVEY

SLC 33490.



(Signature of Declarant)

**ADMINISTRATIVE APPEALS TRIBUNAL
GENERAL ADMINISTRATIVE DIVISION
MELBOURNE REGISTRY**

No 2008/1836

Between

**ALAN SMITH
Applicant**

And:

**AUSTRALIAN COMMUNICATIONS AND
MEDIA AUTHORITY
Respondent**

**The Applicants Report Statement of Facts
and Contentions (i.e. written summary of
facts and arguments the applicant relies
upon to support the view that the decision
under review is not correct.)**

**Alan Smith
Seal Cove Guest House
1703 Bridgewater Road
Portland 3305
Victoria**

26th July 2008

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

26th July 2008

Conference Registrar
Administrative Appeals Tribunal
PO Box 9955, Melbourne
Victoria 3001

Re: CONFERENCE REGISTER LETTER
Dated: 2nd July 2008 **Complaint No:** 2008/1836

Dear Sir or Madam,

The following attached documents support the applicant's evidence, and the documents upon which the applicant relies:

1. Document titled "*Statement of Facts and Contentions*", referred to throughout as '*The Chronology of Events*' or '*The Chronology*'. This is the written summary of the facts and arguments that the applicant relies on to support his view that the decision under review is not correct, as per your point (ii). Please note that the applicant refers to himself in the third person throughout this 'Chronology', i.e. as Alan Smith or Alan;
2. 339 exhibits, collated into three spiral-bound books, in support of the 157-page Chronology of Events (see point 1, above), together with a CD of the same. The exhibits are labelled as (AS 1) to (AS 339), with the 'AS' representing Alan Smith.
3. A document labelled as "*Attachment Two*". This sixty-nine page draft report, dated 3rd March 1994, is titled "*Re Alan Smith*", was prepared by Bruce Matthews of AUSTEL (now ACMA) and is referred to on page 3 of this letter. It is enclosed here for your information.
4. A Statutory Declaration sworn by the applicant.

The applicant's FOI issues are not the only matters that are currently of concern. The information recently provided, both to the AAT and ACMA, proves that the applicant has been a victim of a crime perpetrated by a Government-owned corporation during a Government-facilitated and endorsed arbitration procedure that was expected to provide justice but, instead, provided the exact reverse. Because some of the applicant's FOI issues are linked to these crimes; because those crimes were committed by a Government-owned corporation; and since both the AAT and ACMA are also Federal Government agencies, the applicant believes that perhaps his present AAT and ACMA FOI issues should be put on hold until the information in the applicant's Statement of Facts and Contentions and Argument (the Chronology) has been properly and fully investigated by an appropriate State law enforcement agency.

In the applicant's Statement of Facts and Contentions, he has proved the existence of the Telstra-related FOI documents that are not included in the list of FOI documents that ACMA say they have retrieved in relation to the matters under review. It is important to note that, in response to previous FOI requests, ACMA have noted that: "*Some (but not all) of these documents may contain information about business affairs of a third party ACMA is required to consult the third party about these documents before releasing them under the FOI Act.*" The applicant understands that this is a normal position for any Government agency to take when assessing the

validity of any FOI request, and he is aware that ACMA would therefore have had to seek permission from Telstra before they could release some of the FOI documents the applicant has requested. Some of the material included in the request of 21st May, and the FOI issue currently before the AAT however, will prove to be quite damaging for Telstra, and this raises questions of justice if ACMA has to approach Telstra for permission to pass on to the applicant, copies of documents proving that Telstra perverted the course of justice during the applicant's arbitration. What sort of justice is that? It is tantamount to asking the criminals to investigate themselves! It would therefore be inappropriate for ACMA to ask Telstra for permission to provide documents that prove that Telstra committed crimes.

In mid-1998, John Wynack, Director of Investigations, Commonwealth Ombudsman's Office, provided to an In-camera Senate Estimates Committee Hearing into COT claimants' FOI issues, a scathing report in relation to Telstra. This report is not available for public comment but could possibly be accessed by the AAT. A number of other statements from this In-Camera Hearing (made on 6th and 9th July 1998) are however included in the applicant's Statement of Facts and Contentions – which also describes how a Coalition Minister has twice threatened the applicant with the possibility of a jail sentence, if the applicant publicly releases these In-camera Hansard documents, even though they only relate to the COT claimants' FOI issues. These two In-camera Hansard reports would be most useful for the AAT and, if the AAT were to ask the applicant, under confidentiality rules, to provide them, they would help to show, more clearly, how the FOI matters presently under review are linked to Telstra's previous decisions to withhold documents from AUSTEL (now ACMA).

In the applicants Statement of Facts and Contentions, he has provided information confirming that a number of Senators, during this same Senate Estimates Committee Hearings (refer above), damned Telstra for withholding COT related FOI documents from the Commonwealth Ombudsman Officer assisting the Senate Estimates Committee investigations. The applicants Statement of Facts and Contentions also provides evidence showing that Telstra was withholding *technical* information from him at least up to October 1998, under Legal Professional Privilege (LPP). Some of this same LPP technical information Telstra had already provided AUSTEL in February/March 1994, see ("*Attachment Two*"), the same technical information that ACMA now state they cannot locate.

A list provided by AUSTEL to some of the second group of COT claimants to go through arbitration includes three documents proving that the TIO's Special Counsel (Peter Bartlett), AUSTEL and Telstra's Steve Black exchanged correspondence during June 1994 in relation to providing material, free of charge, to the second group of COT claimants. The ACMA list provided to the applicant in response to his FOI application covering February to June 1994 however, does not include any letters from Peter Bartlett or Steve Black, even though the applicant's arbitration was under review between February and April 1994. Surely, since arbitrations for the first group of four (which included the applicant) and the second group of twelve COT claimants were all facilitated by AUSTEL, and Steve Black (Telstra) and Peter Bartlett (the TIO's Special Counsel) were both involved in all the arbitrations, then AUSTEL would have received similar correspondence from Steve Black and Peter Bartlett in relation to the applicant's arbitration – so why is none of this correspondence included in the ACMA list provided to the applicant?

A copy of a letter dated 26th August 1993, from Robin Davey, then-Chairman of AUSTEL, to the then-Communications Minister, the Hon David Beddall MP, is included in the applicant's Statement of Facts and Contentions, as Exhibit (AS 48g). In this letter, Mr Davey discusses the continuing phone complaints still being registered by the COT claimants. Mr Davey correctly names all the claimants except the applicant. Instead of using the applicant's name, Mr Davey refers only to 'Cape Bridgewater', where the applicant operated his business at the time, and notes, on page 4, that, in reference to Cape Bridgewater: "*Telecom has admitted existence of unidentified faults to AUSTEL.*" Between the reference on page 3 to Graham Schorer, the last claimant listed before the applicant, and this reference to Cape Bridgewater on page 4, a number of paragraphs have been concealed. It would therefore seem that the applicant's name (which is the only one not included in the letter) is probably included somewhere in these concealed paragraphs, suggesting that, when this document was provided to the applicant under FOI in 2001, The Australian Communication Authority (now ACMA), concealed at least some important information pertaining to the applicant's claims.

The applicant maintains that, on 6th and 7th April 1994, during a briefing regarding the drafting of the AUSTEL COT Report, the applicant and other claimants were not permitted to leave the building without agreeing to strict confidentiality regulations and to being searched before they left. The applicant recalls that, during this briefing period, he saw, in a folder, a copy of the letter dated 26th August 1993 (see paragraph above); other documents related to his telephone problems; and Telstra documents admitting the existence of telecommunications problems affecting the Portland AXE exchange and the Cape Bridgewater RCM. The applicant remembers clearly that some of these documents were dated February 1994, a period that is covered by the applicant's Statement of Facts and Contentions in relation to the FOI claim issue that is currently under review. The letter of 26th August 1993, while not specifically included in the timeframe covered by the FOI claim under review, is however directly linked to that claim, demonstrating how important it is for the AAT to read the applicant's entire *Chronology of Events* document.

It is clear that NONE of the ongoing telecommunication problems and faults that (A) Telstra agreed (in 1993) were then affecting the applicant's business, and that (B) AUSTEL included in the draft report prepared by Bruce Matthews on 3rd March 1994 (see *Attachment Two* at point 3 on page 1) were ever investigated or fixed during the applicant's arbitration. The applicant believes that, if Robin Davey (past-Chairman of AUSTEL) was to learn of this present FOI situation, he would insist that the applicant immediately be given all the documents he needs free of charge to bring this appalling saga to an end.

In support of this evidence, the applicant can also provide to both the ATT and ACMA, numerous examples of:

- COT/Telstra-related Supreme Court documents that a lawyer faxed to a COT client at a different address to his normal business address, as well as other, similar documents faxed in the same way but to the client's normal address. Those faxed to the different address arrived with the lawyer's correct fax identification displayed across the top of the document, as would be expected, but the same documents arriving at the client's normal address arrived without the lawyers identification in place.
- Documents faxed by the applicant that arrived with the applicant's correct fax identification in place when faxed to one location but when the *same* document was faxed to AUSTEL (now ACMA) five minutes later, the applicant's fax identification was missing.

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This is why the applicant has requested, from ACMA, copies of documents he has faxed to ACMA in the past.

Both the AAT and ACMA should find the applicant's information of particular interest because:

- a. It suggests that, at least between April 1994 and 2002, Telstra-COT-related documents, intended for and faxed to AUSTEL and the ACA, were intercepted and then re-directed on to the intended recipients and
- b. Raises questions regarding whether or not ALL the intercepted material was actual forwarded on – which is why the applicant has raised this matter now.

The applicant's Statement of Facts and Contentions provides other examples of arbitration claim material that he faxed to the arbitrator but which did not always arrive at the arbitrator's office and shows that Telstra acknowledge this problem in arbitration records.

This AUSTEL and ACMA fax interception issue is directly related to the present ACMA FOI matters under review because ACMA has now stated that some Telstra/COT related technical documents that should be included in their list of located documents cannot be found. The AAT and ACMA must therefore view the applicants Statement of Facts and Contentions in its entirety.

Some of the documents provided to ACMA by the applicant are attached to the applicant's Statement of Facts and Contentions as proof that (1) Telstra perverted the course of justice during the applicant's arbitration and (2) AUSTEL (now ACMA) misled the applicant's lawyers in 1995 when the lawyers asked AUSTEL about Telstra's use of flawed material in their defence of the applicant's arbitration claims. These documents show why the applicant's Statement of Facts and Contentions should be provided to an appropriate law enforcement agency before the process can proceed any further.

In the applicant's Statement of Facts and Contentions, the applicant has explained why, in support of his contention that the decision under review is not correct, it has been necessary to provide a list of events and facts dating back to 1988. His 'Chronology' shows that the FOI matters presently under review are directly linked to previous FOI requests and other document issues.

On pages 92 & 93 in the applicants Statement of Facts and Contentions, the applicant shows quite clearly that on 16th October 1995, five months after his arbitration was deemed complete, AUSTEL (now ACMA) allowed Telstra, to address arbitration claim documents outside the legal arena of the arbitration procedure. This disallowed him his legal right to challenge Telstra under the agreed rules of arbitration. Attached as **Exhibit (AS 213)** to the applicants Statement of Facts and Contentions, is evidence Telstra used confidential arbitration material that should never have been released outside of the arbitration procedure. The sworn witness statement provided to ACMA, by Telstra on 16th October 1995, which Telstra originally used in their arbitration defence, has since been condemned by the Victoria Police Major Fraud Group as more than just a bias document. This 16th October 1995, issue shows that ACMA has an unhealthy relationship with Telstra when it comes to COT related document issues.

It is blatantly clear from the applicants Statement of Facts and Contentions that he provides a strong argument in support of his contention that some of the material that Telstra did not supply

to AUSTEL (now ACMA) in 1994, during the AUSTEL investigations into the applicant's previous phone faults, are directly related to some of the documents that ACMA now maintain they cannot locate, even though the applicant has proved they do exist.

The applicant has named Graham Schorer, Director of Golden Messenger Service, as a witness in support of the FOI matters under review.

SUMMARY

The applicant has provided (above) his argument regarding why he believes the AAT should call upon the appropriate State law enforcement agency or agencies before this matters can proceed any further. The applicant understands however that the AAT will have to read all the applicants Statement of Facts and Contentions before such a decision can be made. The applicant therefore leaves this matter in the hands of the Administrative Appeals Tribunal.

Sincerely,

Alan Smith

cc Ms Allison Jerney, Senior Lawyer, ACMA P.O. Box 13112 Law Courts Melbourne 8010