

**The Hon Malcolm Turnbull,  
Prime Minister of Australia**

**The Hon Barnaby Joyce  
Deputy Prime Minister**

**Mr Dan Tehan, Federal Member for Wannon**

**Ms Sue Laver, Telstra General Counsel**

**Mr John P Mullen, Telstra Board Chair**

**Cape Bridgewater Holiday Camp  
Service Verification Tests (Report)  
Collision, Deception, Misleading and Deceptive Conduct**

**Exhibits 46-F-to 62**

**Alan Smith  
Seal Cove  
1703 Bridgewater Road  
Portland (Victoria) 3305**

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

3<sup>rd</sup> November 2008

Mr Chris Chapman  
Chairman  
Australian Communications & Media Authority  
P O Box Q-500  
Queen Victoria Building NSW 1230

Dear Mr Chapman,

Although you, and the ACMA Board, are already aware of various matters regarding my claims against Telstra and the unethical way in which the TIO administered my arbitration and the arbitrator arbitrated my claims material, it is important that you are particularly aware of the issues detailed in the following letters:

**18<sup>th</sup> October 2008:** I notified Mr Friedman of the numerous documents AUSTEL/ACMA has withheld from me, and other COT claimants, during our respective arbitrations, noting that I therefore: "... believe I have every right to suspect they will do it again ..." and asking the AAT "... to direct ACMA to provide me with ALL the relevant information covered by the period included in my FOI application, including those documents not yet included in ACMA's list."

**28<sup>th</sup> October 2008:** I wrote to Ms Alison Jerney, Senior Lawyer for ACMA (copied to Mr Friedman), advising that I had received some FOI documents but there were still many outstanding. I included a \$30.00 cheque to cover another FOI request for the missing documents, noting: "It is apparent by ACMA limiting this release of the FOI documents that they have in fact 'sanitized' evidence adverse against ACMA, and in doing so they have protected Telstra."

**31<sup>st</sup> October 2008:** During the Administrative Appeals Tribunal telephone conference, Ms Jerney stated that ACMA had already given me all the relevant FOI documents for the period covered in the FOI request currently being reviewed by the AAT. This made it seem that ACMA had abided by the agreement reached during the previous AAT hearing on 3<sup>rd</sup> October 2008, but this is not so because I can prove the existence of a number of documents that were not included in the information ACMA released as part of the AAT review.

**Exhibit 1:** This page from the Senate Estimates Committee Hearing of 25<sup>th</sup> February 1994 includes Senator Richard Alston's questions on notice to AUSTEL's Chairman Robin Davey noting: "I refer you to a minute from Telecom dated 2 July 1992 in relation to Mr Alan Smith of Cape Bridgewater - no doubt well known to you and to me. This minute says: "... Our local technicians believe that Mr Smith is correct in raising complaints about incoming callers to his number receiving a Recorded Voice Announcement saying the number is disconnected. They believe that it is a problem that is occurring in increasing numbers as more and more customers are connected to AXE"

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**Exhibit 2:** Is the Telstra FOI document referred to by Senator Alston in Exhibit 1.

**Exhibit 3:** This document, "Senate Estimates Committee Responses By AUSTEL To Questions On Notice", relates to the Portland/Alan Smith/AXE exchange problem (see Exhibit 1). It states: "By letter dated 2 March 1994, AUSTEL sought from Telecom an explanation of the opinion expressed in Telecom's minute of 2 July 1992 as quoted by Senator Alston". Although the rest of the page is blank, this document confirms that AUSTEL wrote to Telstra during the time period of 1<sup>st</sup> February to 1<sup>st</sup> June 1994, the I nominated in my FOI application. However, this 2<sup>nd</sup> March 1994, letter is not included in ACMA's FOI schedule and/or the documents produced by ACMA on 27<sup>th</sup> October last, perhaps because, as I have commented above, the letter is most detrimental to Telstra.

The AXE / RVA / 008-1800 billing / and lockup problems were incredibly important to my claims against Telstra and, between 4<sup>th</sup> October 1994 and 16<sup>th</sup> December 1994, many letters were exchanged between AUSTEL's Bruce Matthews, Telstra's Steve Black, Telstra's Ted Benjamin and Dr Hughes in relation to these AXE / RVA / 008-1800 billing / lock-up problems. None of these specific issues raised in these letters the (008 billing problems, the RVA Recorded Messages or the lock-up problems) were never addressed during my arbitration. Although, AUSTEL/ACMA did allow Telstra to address these issues *secretly* on 16<sup>th</sup> October 1995, five months after my arbitration failed to address these issues. Even then, Telstra did not disclose to AUSTEL/ACMA that the Ericsson AXE and 008-1800 software problem was a national problem.

**Exhibit 4:** This document confirms I provided Ferrier Hodgson, the arbitrators Resource Unit, a claim document titled: "*Smith Reply - Samples of FOI Telecom documents - known AXE Faults and Phone Problems*," this part of my claim submission confirmed I was still having massive RVA / billing / lock-up problems while connected to the Portland AXE Exchange.

**Exhibit 5:** This is a list of Telstra's defence material and my claim documents that were provided by Ferrier Hodgson to the TIO-appointed Technical Consultants for assessment. This list does not include the "*Smith Reply - Samples of FOI Telecom documents - known AXE Faults and Phone Problems*" document referred to in Exhibit 4. Clearly Ferrier Hodgson kept this very relevant AXE report from being investigated in a so far successful attempt to protect their knowledge of the problems Telstra was having nationally with the Ericsson AXE exchange equipment, the very same problems I raised with DMR & Lane regarding both the AXE Ericsson equipment and the 008-1800 faults which the arbitrator would not allow DMR & Lane to address in their final report (see pages 84 & 85 in my AAT Statement of Facts and Contentions).

**Exhibit 6:** This Telstra internal document dated August 1992 title AXE report states on page 1: "*Productivity. The most inhibiting factor affecting our productivity is the crappy standard of software from LME.*" - and on page 2, notes: "*These numbers indicate to me the poor standard of Ericsson software. For as long as we have had AXE we have been having software lockups.*"

**Exhibit 7-a:** Two separate Telstra memos, written in November 1993, refer to the AXE / RVA / billing / lock-up problems. One notes: "*I have long held the view that AXE switch provides an inadequate and crude Fault Analysis & Diagnostic tools*" and the other states: "*Apparently Ericsson have known about this condition for some time and in Holland have a temporary patch in their exchanges to stop the LI's.*" Put these memos with the other attached exhibits related to

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the AXE problem and you can see clearly just how bad some of the AXE exchange problems really were.

**Exhibit 7-b** Two Telstra FOI documents folio H36293 and H36178 dated between 1<sup>st</sup> and 5<sup>th</sup> November 1993, reveal that Telstra had another national network billing software problem affecting customers who had installed a 008-1800 service to promote their businesses. Document H36293, notes: "All admin groups are being inundated with complaints from customers who have advertised their numbers as 1800 but their customers are simply unable to get through to them. I have spoken to our fault staff at Waverley who are also being inundated with the same complaints." Document H36178, notes: "Bruce is concerned that the matter requires fixing at a national level not just on a fault by fault basis. He also raises the question whether we should be actively promoting 1800 in the current circumstances."

Please note: Telstra did not advise the public or the Senate Estimates Committee, that there was a national and overseas network software problem with the Ericsson AXE exchanges or advise the same that this problem became a two-fold problem when the 008-1800 call was routed through an already faulty Ericsson AXE exchange.

**Exhibit 8:** This internal Telstra email dated 24<sup>th</sup> February 1994, also discusses the many ongoing Ericsson AXE problems noting: "You are quite correct in your thought that the anecdotal references applies more to AXE than ARE-11. 'Lockups' are generally well-known as a problem in AXE exchanges, not only in Australia but in overseas countries as well. Kevin, I did not use your comments on software (COMPATBL) of this time as they didn't seem relevant to the additional information that AUSTEL have provided. Ericsson are said to have suggested that call loss could be up to 15%."

**Exhibit 9:** This internal Telstra email dated 22<sup>nd</sup> June 1994 is another important document that discusses the Ericsson AXE exchange problems noting: "You may recall were trying to find a reference in our software problem data bases that matched a query from John McMahon at AUSTEL. Rob Brooker of Ericsson Australia advised that Telecom had a problem for a long time with an incapability problem with computer software in their exchanges and telephone equipment, the call loss resulted in a 50% loss"

**Exhibit 10:** These two documents titled Senate Estimates Hearing – 25 February 1994, although out of date sequence to the above exhibits, have been included here to highlight the true extent of Telstra's deception and contempt for the questions Senator Richard Alston, placed on notice during the Senate Estimates Committee hearing see also **Exhibit 2** and **3** above.

#### Questions:

- a) Could you explain why more problems are occurring as more and more customers are connected to the upgraded AXE exchange and has this problem since been rectified? if not, why not?
- b) Could you advise how widespread this problem is with other exchanges which have been upgraded to AXE?
- c) As Telecom intends on upgrading all exchanges to AXE by 1997 does it expect the same problems to occur as outlined in this minute?

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**Answer:**

"...In Summary, there was a single fault incident which affected Portland AXE Exchange for a short period of time. This was not a genetic problem in the network, but reflected the need for improved verification in the data preparation and loading procedures relating to AXE exchanges. Revised procedures were introduced promptly"

**Exhibit 11** This Telstra fault report dated 5<sup>th</sup> March 1993 notes: "...Rang Cape Bridgewater but Mr Smith was out, his assistant stated she had received several calls where on lift off all she heard was dial tone, this is after we shifted 267267 and 267230 into system3 in the RCM. I believe this is tied up with the AXE network problem which gives 1 burst of ring and the calling party gets busy," does not coincide with the answers given by Telstra to Senator Alston in Senate Estimates Committee as being a single fault problem in and around June/July 1992.

**Exhibit 12:** This letter dated 27<sup>th</sup> May 1997, from John Pinnock, TIO to COT claimant Graham Schorer notes: "I have recently been advised that Lane Telecommunications' business has been purchased from Pacific Star by Ericsson. I have been advised that Ericsson business such as equipment sales to Telstra and other carriers is conducted by different Business Units."

Lane was supposed to be the independent, TIO-appointed technical consultants to the COT arbitrations. How could Lane have been sold to Ericsson's, at the same time that Lane were assessing various COT arbitration claims that the Ericsson AXE equipment, including the Ericsson monitoring equipment, had contributed to the telephone problems that brought them to the arbitration process? Did my Ericsson AXE submission (that Ferrier Hodgson failed to provide DMR & Lane for assessment) end up in Ericsson's hands after Lane switched sides? Did Telstra get to Ferrier Hodgson so that my AXE and 008-1800 claim documents would not see the light of day?

**Page 84:** On the 30<sup>th</sup> April 1995, the TIO-appointed technical consultants DMR and Lane present their draft Technical Report to the arbitrator advising the report needs further weeks to complete. However, there were many problems with this report, not the least being that DMR and Lanes skipped a six-month period of my claim, from August 1994, to April 1995, including only assessing 23 fault claim examples from over 200 fault complaints (mostly concerning the continuing AXE / RVA / 008-1800 billing / lockup problems) I provided to the TIO-appointed arbitration resource unit Ferrier Hodgson for assessment. DMR & Lane also failed to address 13 bound volumes of evidence which demonstrated Telstra's continuing incorrect charging on my phone lines, including the Ericsson AXE submission that Ferrier Hodgson mischievously hid so that this damning information could not be assessed see *Exhibits 4 & 5*.

One of the exhibits attached to my AAT Statement of Facts and Contentions see (AS 26) is a list from the DMR & Lane Report dated 30<sup>th</sup> April 1995, which I have marked Arbitrators copy. The other attachment at (AS 26) is marked Final copy also a list from the DMR & Lane Report dated 30<sup>th</sup> April 1995. Both lists include the words "The information provided in this report has been derived and interoperated from the following documents." Any person with average intelligence would conclude that both reports dated 30<sup>th</sup> April cover the same twenty-three assessments and include the same technical information. The arbitrators list of sourced documents, are minus 13 documents to that which appear of the final report list. So who added the 13 sets of claim documents to the final list? And where is the Ericsson AXE problem Report which Ferrier Hodgson's acknowledged they received from me see *Exhibit 4 & 5*?

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In the DMR & Lane Report provided to Dr Hughes 30<sup>th</sup> April 1995, where this condensed list came from, there is one difference, although not a technical matter. Included on page 2 of this report are the words: "...There is, however, an addendum which we may find it necessary to add during the next few weeks on billing, i.e. possible discrepancies in Smith's Telecom bills" and on page 3: "...one issue in the Cape Bridgewater case remains open, and we shall attempt to resolve it in the next few weeks, namely Mr Smith's complaints about billing problems. Otherwise, the technical Report on Cape Bridgewater is Complete. How can the report I received be complete when the arbitrator's version with the same date needed extra weeks to be complete?"

According to the Commonwealth Fraud Control Guidelines - May 2002, which applies to all agencies that are subject to the Financial Management and Accountability Act 1997 and the Commonwealth Authorities Act 1997 (CAC), agencies that are at least 50% budget funded for their operating costs have an obligation to expose any evidence they uncover during their regulator duties that confirms a crime has been perpetrated against Australian citizens and/or the Commonwealth, as was in the case when Telstra misleading the Senate Estimates Committee on 25<sup>th</sup> February 1994.

Documents received seven years after my arbitration, show AUSTEL secretly negotiated with Telstra to address the AXE / RVA / 008-1800 billing software problems in an effort to finally have these problems properly addressed. AUSTEL's behaviour, in this instance, was totally immoral and unethical and, because this all happened outside the legal arena of my arbitration there was no way for me to challenge the corrupt material Telstra used in their 16<sup>th</sup> October 1995 submission, in their successful attempt to hide the true extent of the problems from AUSTEL.

It is so blatantly obvious that Telstra's submission dated 16<sup>th</sup> October 1995 does not address either the Ericsson AXE / RVA / software problem, nor the national 008/1800 billing problems that Telstra knew were not only continuing to affect my business throughout my arbitration and beyond, but were seriously affecting many other customers too.

This AXE letter dated 2<sup>nd</sup> March 1994 see Exhibit 3, is only one of many FOI documents that I have clearly proved exist somewhere, but which ACMA has failed to make available to me. Please *also* make sure that the Board investigates why their FOI unit has failed to locate the missing documents which were part of my FOI matters recently under review by the AAT.

Thank you,



Alan Smith

cc Mr Mark Hughes, Case Officer, Administrative Appeals Tribunal, P.O. Box 9955, Melbourne 3001

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The document identified some 70 circuits about 25 of which affected Telecom's Fortitude Valley exchange - an exchange which also services another of the *COT Cases*, Mrs Garms.

7.37 The contemporaneous reports reinforce the anecdotes of businesses attending the Brisbane meetings referred to in Chapter Two and in responses to Mrs Garms' questionnaire referred to in that Chapter about the difficulties they experienced when serviced by Telecom's Fortitude Valley exchange.

7.38 The problem was not confined to Brisbane. Telecom's February 1994 report indicates that the potential fault condition was detected in the vast majority of the suspect systems before it caused *call drop out* on a large scale and that only one circuit in a call path affecting traffic in Mitchelton (servicing Mrs Gillan) and one circuit in a call path affecting traffic to Maidstone (servicing Mr Dawson of Dawson's Pest & Weed Control) deteriorated to the extent that calls were lost. Again, the conflict between contemporaneous evidence of the extent of the fault in the Brisbane area and the more recent report is difficult to reconcile.

#### AXE network fault

7.39 In the period February to April 1993, Telecom staff responding to complaints lodged by Mr Smith of the Cape Bridgewater Holiday Camp recorded in their notes that there was a fault known to exist in AXE (digital) switching equipment which could give rise to a single burst of ring, followed by a busy tone to the caller and dial tone to the called party. For example -

*"I spoke to Alan Smith .... He received one burst of ring at 1.15 pm and 5.05 pm yesterday, when he picked up the receiver he heard dial tone. This problem occurs intermittently through-out the Network and although it is recognised as a problem there appears to be no one person or group involved in resolving it."*

(Customer Complaint Form, 4 February 1993)

*"I rang Cape Bridgewater but Mr Smith was out, his assistant stated she had received several calls where on lift off all she heard was dial tone, this is after we shifted 267 267 and 267 230 into sys 3 in the RCM. I believe this may be tried [sic] up with the axe network problem which gives only 1 burst of ring and the calling party gets busy tone."*

(Customer Complaint Form, 9 March 1993)

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*"Rang Mr Smith to check on cordless phone he was still not entirely happy with its operation he then mentioned receiving one burst of ring and on lift off getting dial tone. I rang Gordon ... at Portland exchange who said it was a problem caused by the AXE at Warrnambool not having enough software blocks released and this was to be done on 26/03/93. I then rang Mr Smith back and he accepted the explanation that it was not just him suffering the problem."*

(Customer Complaint Form, 25 March 1993)

*"Visited Mr Smith, 6/04 to do end to end test calls. The first call in prior to me starting testing gave two bursts of ring and when the phone was lifted there was only dial tone. The receptionist said it was the 2nd call that morning with the same result. She also stated several people had commented they receive busy tone when they rang the previous evening when she knew the phone was free."*

(Customer Complaint Form, 7 April 1993)

7.40 AUSTEL recently became aware that Telecom had prepared an internal document on the subject of this AXE fault and on 21 March 1994 sought a copy from Telecom.

### RAM Relay Armatures

7.41 Telecom's *Victoria Work Specification V-T 3189* refers to -

*"RAM relay armatures sticking in the unoperated position have been reported by Telephone Exchange since 1969. Complaints have been of 'sub busy when free' (SLM/S D and U relays), 'wrong numbers' (PBX rack relays), non-operation of vertical in GV Stage (GV-XY relays)."*

This problem poses a special risk in services using the rotary hunt facility.

7.42 The fault was apparently first identified in 1969 and was managed by active maintenance. In 1982 a work specification which would address the problem by modification of equipment was issued by Telecom's New South Wales Administration. Corresponding specifications were issued considerably later in other administrations -

- Western Australia February 1983
- Queensland August 1983

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AUSTEL  
AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

95/0569

8 March 1995

Mr S Black  
Group General Manager  
Customer Affairs  
TELECOM

Facsimile No: (03) 632 3241

Dear Mr Black

**Freedom of Information Application - Graham Schorer, Associated Entities and Companies etc**

I refer to my letter dated 6 March 1995 seeking to transfer part of Mr Schorer's Freedom of Information ("FOI") request to Telecom and to our subsequent telephone conversation on 8 March 1995 relating to this matter.

In considering AUSTEL's actions in response to Mr Schorer's FOI request, I believe that documents containing (a) people's business or professional affairs and (b) the business, commercial or financial affairs of Telecom are encompassed by the request.

While I have not identified all of the documents as yet, I would appreciate it if you could advise me if Telecom or any of its employees (who may be referred to in documents encompassed by the part of the FOI request not proposed for transfer to Telecom) would be likely to make any submissions in support of a s43 exemption under the FOI Act 1982. If this is likely to be the case, submissions may be made by Telecom or any of its employees in relation to documents encompassed by the part of Mr Schorer's FOI request not proposed for transfer to Telecom.

5 QUEENS ROAD, MELBOURNE, VICTORIA  
POSTAL: P.O. BOX 7443, ST KILDA RD, MELBOURNE, VICTORIA, 3004  
TELEPHONE: (03) 828 7300 FACSIMILE: (03) 820 3021

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The documents which are being transferred are:

- (i) documents whose subject-matter is more closely connected with the functions of Telecom than the functions of AUSTEL;

and, (once paragraph (i) is satisfied), the documents are described as follows:

- (ii) all Telecom internal documents, that is, documents which have been produced by Telecom for internal consideration whether or not such documents have been subsequently obtained by AUSTEL;
- (iii) all documents sent by Telecom to third parties including Mr Schorer; and
- (iv) all documents received by Telecom from third parties including Mr Schorer.

(The reference to "third parties" in paragraphs (iii) and (iv) above does not include AUSTEL.)

Submissions will therefore be directed to documents which do not fall under category (i) AND do not fall under categories (ii), (iii), or (iv).

Submissions may be made by Telecom or any of its employees in relation to any correspondence between AUSTEL and Telecom.

Alternatively, it would assist AUSTEL even further if Telecom and any of its employees as defined above were prepared to authorise AUSTEL to disclose any material encompassed by Mr Schorer's FOI request.

I note that as a result of this letter I determine that it is appropriate to extend the period in which the request (including the transfer of the request) may be processed (see s15(6) FOI Act). As stated in my letter dated 6 March 1994 I am not expecting to be able to process Mr Schorer's FOI request for at least 2 months after clarification of the request.

Yours sincerely



Lesley Gordon  
General Manager - Corporate Resources  
FOI Co-ordinator



CONFIRMATION  
OF EARLIER FAX

AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

95/0569

8 March 1995

G Ellacott  
Freemans Plummer & Pullinger  
C/O Golden Messenger Pty Ltd  
493-495 Queensberry Street  
NORTH MELBOURNE VIC 3051

Dear Mr Ellacott

FOI REQUEST DATED 9 FEBRUARY 1995

I refer to my letter dated 10 February relating to the above matter.

I am writing to inform you of action AUSTEL intends to take in response to your Freedom of Information ("FOI") application dated 9 February 1995 and to seek clarification of issues regarding this application.

Although AUSTEL has previously responded to an FOI application from your client which covered some of the material requested in this application, AUSTEL will process this application without regard to the previous one.

I note that the scope of this FOI application requests access to a considerable body of information. AUSTEL is currently assessing the extent of documentation potentially covered by your request. At this stage it appears that meeting your request could substantially and unreasonably divert the resources of the agency from its other operations. Section 24 of the FOI Act 1982 could therefore be applicable.

AUSTEL wishes, however, to accede to your request, and to this end would appreciate any assistance you may be able to provide in narrowing its scope. At least three matters will affect the size of the processing task:

- A. Clarification of the attitude of third parties to material which relates to them;
- B. Your clarification of the ambit of the FOI request; and
- C. Telecom's agreement to the transfer of part of the request to it under s16 FOI Act.

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In broad terms, AUSTEL considers that the information to which you have sought access falls into two categories:

- (1) information which contains references to either your client, his business affairs, and associated telephone services;
- (2) information which does not contain a reference to either your client, his business affairs, and associated telephone services, but which raises issues potentially related to the Casualties of Telecom ("COT") group, particularly as specified under section (4) of your FOI application.

**A. Attitude of third parties**

An important consideration in processing your FOI application is that a considerable body of information contained under category (2), and to a lesser extent some information contained under category (1), potentially affects the personal privacy of other individuals, and upon examination of this material AUSTEL may determine that this information should be exempted under the relevant sections of the FOI Act 1982. I note, however, that much of this information probably concerns other members of the COT group who are known to your client, and I consider that it would assist both yourself and AUSTEL if you were able to obtain the authority of these COT members to the release of material related to their own affairs.

AUSTEL would require a letter from each individual agreeing to the provision of information concerning their own affairs as covered by the scope of your FOI application dated 9 February 1995. I suggest that the majority of the individuals concerned would be those individuals who were the subject of the AUSTEL investigation of complaints by the COT Cases. There may be other individuals, for example, Mr Ralph Bova and Mrs Suzanne Bova, and Mr Dixon of J & A Pine Products, who fall within the scope of your request and may be similarly approached.

**B. Clarification of FOI request**

As previously noted, an important consideration in AUSTEL's processing of your FOI application is the considerable resource demands placed on our agency in providing access to all the information covered in the scope of your application. The resource implications in responding to your application are an important factor in the course of action to be taken by AUSTEL as detailed below.

**Category (1)**

In respect of information falling under category (1), as a person authorised under the FOI Act 1982 I have decided to remit all processing charges incurred by AUSTEL in dealing with this information. I note that your FOI application does not specify a preferred form of access to information, and AUSTEL will provide you with information under category (1) in the form of photocopies of the relevant documents. Documents which contain variations in the spelling of your client's name or the title of your client's business will be treated as referring to either Mr Schorer or Golden Messenger respectively. Should information be identified which cannot be photocopied, access to this information will be provided under an alternative form of access, as specified in the FOI Act 1982. AUSTEL will contact you separately to inform you of access arrangements should such material be identified.

Category (2)

In respect of information which falls under category (2), AUSTEL has not yet made a decision on whether your client should be charged for access to this information. I note that in section (6) of your FOI application you have requested that all documentation provided to your client be provided free of charge on the grounds of your client's financial hardship and that the information being sought in the application is "of public interest". Before I can make a decision to provide this information free of charge I will require a detailed statement which supports your request for consideration on these grounds. A preliminary estimate of the amount of time which will be required to process information contained within category (2) of your application is approximately 500 hours. Were you to be charged for this processing, a \$20 per hour processing charge would apply. Photocopies of documents will cost 10c per page. Further information regarding charges is set out in the Schedule to the FOI (Fees & Charges) Regulations which is enclosed.

C. Telecom's agreement to the transfer

Part of your FOI request clearly relates to information which is more closely connected to the functions of another agency, that being Telecom. AUSTEL has requested that Telecom accept the transfer of part of your FOI request for all documents the subject-matter of which is more closely connected with the functions of Telecom than with the functions of AUSTEL, as set out in the enclosed letter dated 6 March 1995. I am awaiting Telecom's response to the transfer request.

Other matters

Treating your request as a global one, it is apparent that s27 of the FOI Act is relevant (ie. documents relating to the personal and business affairs of Telecom will be involved). In this regard I have sought information from Telecom (see enclosed letter dated 8 March 1995). It is hoped that these matters may be quickly resolved in the way suggested. In the meantime, I advise that it is appropriate for the period set out in s15(5)(b) to be extended, although despite our best efforts it may still eventuate that AUSTEL will be unable to comply with the statutory time limit for the reasons stated.

In summary, I have indicated the following:

1. Investigation is currently underway to determine the number of documents potentially the subject of your request.
2. The task may "substantially and unreasonably" divert AUSTEL from its other operations. While AUSTEL will strive to clarify and comply with the request, it is anticipated that strict compliance with time limits in the FOI Act may be exceeded. Once the matters in this letter are clarified, I expect that the procedure will take at least two months.
3. It will assist AUSTEL in processing your request if authorisation is obtained from third parties referred to in the documents.
4. The transfer of part of the request to Telecom will expedite the processing of your request.

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5. Clarification of various matters set out in this letter will facilitate the processing of your request.
6. Charges may be applicable as set out in the enclosed schedule.

I view this letter as simply an attempt to expedite your request through preliminary clarification of issues. Although there are various review rights referred to in the FOI Act, I do not believe that they are applicable at this stage.

Please contact me on (03) 828 7381 if you require clarification of any of the matters contained in this letter. Otherwise, I would appreciate your response to the matters I have raised as soon as possible. If matters are not clarified by you, AUSTEL will respond to your request in the terms set out in this letter.

Yours sincerely



Lesley Gordon  
General Manager - Corporate Resources  
FOI Co-ordinator

Attachments:            Schedule of FOI (Fees & Charges) Regulations  
                                 Letter dated 6 March 1995 from AUSTEL to Telecom  
                                 Letter dated 8 March 1995 from AUSTEL to Telecom

**47B**



06 249-7829

AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

92/0596(9)

31 March 1994

Mr G Schorer  
Golden Messenger

Facsimile No: (03) 287 7001

Dear Mr Schorer

**COT CASES - AUSTEL's REPORT**

The purpose of this letter is to advise that a copy of AUSTEL's draft report will be available for your perusal at AUSTEL's premises in Melbourne from Wednesday, 6 April.

The Telecommunications Act 1991 requires, in effect, that where as a result of an investigation AUSTEL makes a finding that is adverse to a respondent it must afford the respondent an opportunity to make submissions in relation to the matter. Accordingly, AUSTEL will be making a copy of its draft report available to Telecom for its perusal at its premises on Wednesday, 6 April and Thursday, 7 April 1994. This will give Telecom the opportunity to advise of any factual errors that may be in the report.

As a matter of courtesy I would like to give to you and other directly interested parties the opportunity to view the draft report. To assist you in coming to grips with the report we propose to give a brief presentation on its contents and point you in the direction of those parts of the report that will be of most interest to you. AUSTEL will consider any factual issues that you might like to raise about the report along with those that Telecom might raise and intends to publish the report as soon as possible in the week following your inspection of it. Your comments may be made orally to staff who will be made available to you for that purpose during the time or by writing on the copies of the report itself.

Please let me know as soon as possible if you are able to participate in this arrangement.

Yours sincerely

John MacMahon  
General Manager  
Consumer Affairs

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**FILE NOTE***Legal and Professional Privilege Applies - Telecom Confidential*

**FILE: MR ALAN SMITH**  
**FROM: LYN CHISHOLM**  
**SUBJECT: BILLING DISPUTE 1800 TELEPHONE SERVICE**  
**DATE: 16 JANUARY, 1998**

On 14 January, 1998, Lyn Chisholm and Phil Caricas of Telstra's Customer Response Unit met with Mr Smith to examine documentation in relation to his complaints lodged with the Minister's Office and the Telecommunications Industry Ombudsman regarding his 1800 telephone service.

Mr Smith in these complaints had made general allegations with regard to overcharging of the 1800 telephone service, however, Telstra had not received any supporting documentation along with his complaints.

In telephone discussions with Mr Smith, I advised him that in order for Telstra to address his claims, documentation supporting his complaints would need to be forwarded to allow Telstra to fully investigate the matter.

Mr Smith raised concerns with regard to the matter and the Arbitration and I advised that I would be investigating any instances he put forward since the conclusion of the Arbitration. Mr Smith stated that he had evidence of instances that spanned through the Arbitration and that the problem was not addressed in the Arbitration and further that the same instances continued after the Arbitration.

I suggested that we meet so that Telstra could view the documents he was referring to and work at resolving the matter from there.

**Meeting Notes 14 January, 1998**

**Present at Meeting**

Lyn Chisholm - Telstra  
Phil Caricas - Telstra

Alan Smith - Cape Bridgewater Holiday Camp  
Ray Whitworth - Observer

49A

Alan Smith explained that he had attempted to have this matter addressed in his Arbitration and via Austel and the Ministers office for quite some time. He believes that this issue was not addressed in his Arbitration although Telstra had given an undertaking to Austel in November, 1994.

I explained to Alan that it was my understanding that at the time Austel wrote to Telstra, the Arbitration was in process and that Telstra had written back to Austel and the Arbitrator that it believed the matter would be addressed in the Arbitration.



2

I then explained to Alan that Telstra had replied to the letter from Austel dated 4 October, 1994 and to further letters from Austel on this matter dated 1 December, 1994 and 3 October, 1995 and in this provided a response to his complaints of charging discrepancies and short duration calls on the 1800 telephone number.

Mr Smith put forward two copies of the Lanes Resource Unit reports. One that had been forwarded to him as part of the Arbitration and one that had been obtained from Dr Hughes's office by mistake when he collected his Arbitration documents.

In what appeared to be a "Draft" of the Lanes report, a paragraph appears relating to Mr Smith's billing complaints, that an addendum report was to be provided at a later date otherwise the report is complete.

Mr Smith stated that the issued report did not include the addendum report nor did it make any reference to his 1800 complaints.

Further Mr Smith produced various printouts of CCAS data in comparison with his Telstra accounts. In many instances the calls add up however, in some cases there appeared to be differences in the duration of the call times.

Mr Smith also provided Telstra accounts that showed an overlap in the time of calls.

Mr Smith stated that there were also discrepancies in details taken by the Commonwealth Ombudsman. He advised that he had asked the Commonwealth Ombudsman to only use the 1800 telephone number when contacting Mr Smith. In the Assessment Documentation for Mr Smith's claim for compensation for FOI matters, Mr Smith states that there is a large discrepancy between the number of calls listed by the CO as being made to Mr Smith and the number of calls he had been charged for on the 1800 account.

I note that the examples given by Mr Smith at the meeting spanned the period of the Arbitration and after the conclusion of the Arbitration.

I advised that Telstra had not seen copies of his examples and had not been able to clearly respond to his complaints without being able to examine the documentation he had put forward at the meeting.

Mr Smith advised that he had provided all details to the TIO office, I responded that we may not have seen all the documentation he had put forward and that the TIO at this point had not raised a formal dispute or complaint regarding the matter.

I advised Mr Smith that I would seek copies of any additional information that they may have with regard to his complaint.

Mr Smith advised that he would provide me copies of all documentation that he had with regard to the 1800 number and copies of the documentation he had produced at the meeting. Mr Smith advised that he would provide this material to me during the week beginning 19 January, 1998.

49A

2

I advised that once Telstra had received the information, further investigation could be carried out in the matter.

Mr Smith again enquired about the matter of the Arbitration. I again advised that I would be examining the documents with regard to complaints after the Arbitration, and that a further response with regard to the Arbitration would be provided.

49A

I, **RONDA FIENBERG**

of 10 Appleberry Place, North Ringwood, Victoria, Australia

do solemnly and sincerely declare

**THAT**

Alan Smith of Cape Bridgewater Holiday Camp has been a regular client since 30/7/94 and the majority of his work comes to my office by fax.

Many times over the years I have received unreadable pages where the fax slowed right down and the words on the incoming page have been dragged out into long, dark lines - totally illegible. This has meant I have had to ring Alan (long distance) and ask him to re-send the problem page (or pages).

Also, on many, many occasions, about a 2 cm strip is sliced off the start of incoming pages and then, when the rest of the page comes through, the first few lines are missing. This has never happened with any other client, including incoming faxes from overseas and interstate.

DECLARED at *Croydon* in the

State of Victoria this

*24<sup>th</sup>*

day of

*July*

one thousand

nine hundred

*+ eighty-eight*

Before me

*A. Gambetta*

ANN ELIZABETH GAMBETTA  
A NATURAL PERSON WHO IS A CURRENT  
PRACTITIONER WITHIN THE MEANING OF  
THE LEGAL PRACTICE ACT 1996.

Suite 7, 16-18 Croydon Road  
CROYDON Vic 3136

*R. Dowling*

**49B**



# Chrissy Hawker's

## SECRETARIAL SERVICE

24th July 1998

Mr. Alan Smith,  
Cape Bridgewater Camp,  
PORTLAND. 3305.

Dear Alan,

Just a quick note to describe to you what actually happened with our fax transmission this morning.

I received a fax call at approx 8.23am this morning the 24th July. 3 Pages came through my fax machine as normal but the 4th page was very, very slow as if it was having difficulty coming through.

I checked my machine and all I could see coming through was black lines running across the page and down the whole of the page. This page on its own must have taken a minute or more to come through.

As it was still coming through you contacted me asking if there was a problem with this page. I stated what was happening as you were talking to me and you stated that you would repeat this same page for me.

The 4th page of the document then came through with no problem.

On a number of previous occasions I have experienced other trouble with your transmissions and I have listed them below for you.

- Blank Paper coming through in the middle of transmission.
- A strip of approximately 3cm coming through.
- Distorted figuration that looks like stretching of letters appearing at the end of a page.
- A page with black lines all the way as described above.

As you can appreciate, being the only secretarial service in Portland, my fax machine is a valuable tool in my office and as to date I have never experienced problems with any of my other clients.

Regards,

CHRISSEY HAWKER

49B

Mr Alan Smith  
Cape Bridgewater  
25/7/98

Dear Alan,

This letter is to confirm that during our electronic communications between Cape Bridgewater and Geelong during the past two years there have been occasions

when:

- incomplete faxes of materials were received (part paper, black pages or extended pages)
- and
- initial faxes were never received by me, and that a re-faxing was required from you or Cathy.

Regards,

*Robert Palmer*  
Robert Palmer.

Please contact Robert Palmer on 0852 414045, or write to  
P.O. Box 961 Geelong, 3220.

49B

Linda Johnson  
59 Blair St.  
Portland Vic. 3305  
31-12-05

Whom it may concern,

My husband & I worked as caretakers at Cape Bridgewater Holiday camp from 1997-2000 as mentioned in a previous letter my husband & I experienced problems with the telephone lines out there.

People were complaining that ~~our~~ phone was always engaged & that they could never get thru to us, but in actual fact we were not on the phone at all.

Whenever we rang out sometimes we experienced a crossed line, we were listening to other peoples private conversations & they ours.

The camp also experienced these problems also, people were trying to ring & book accomodation & school camps, and were unable to get thru because their end was always engaged (the camp end)

This didn't just happen once or twice, it was always an ongoing problem & it really was irritating & annoying.

Thanking You.

L. Johnson

49c

Commonwealth of Australia  
STATUTORY DECLARATION  
Statutory Declarations Act 1959

I, ~~Darren Lewis~~ <sup>DARREW William Lewis</sup>  
OF 1721 Blowhole rd Cape Bridgewater VIC  
Make the following declaration under the Statutory Declarations Act 1959

The following chronology can be supported by documentation which I have on file.

**PHONE & FAX PROBLEMS**

1. I purchased the Cape Bridgewater Holiday Camp (now Cape Bridgewater Coastal Camp) December 2001.
2. Within a week or so of taking over the business from Alan Smith, friends and new clients were stating they could not get through to us on successfully on the phone.
3. By mid 2002, my wife Jenny and I realised we were having major problems with in-coming calls and our out-going faxes were a major problem.
4. From discussions with the previous owners Jenny and I now fully understood that we had inherited some of the phone and fax faults Mr Smith had been reporting for some time.
5. Letters from us to our local Federal Member of Parliament, the Hon David Hawker, Speaker in the House of Representatives, led to Telstra visiting our business to investigate these continuing problems.
6. In November 2002, after Telstra realised there was in fact a Telstra related problem and not (customer related equipment) they informed us that the new wiring they were installing was worth thousands of dollars but not to worry as Telstra would pick-up the cost.
7. After Telstra rewired the business including disconnecting a Telstra installed faulty phone alarm bell, we were informed Telstra had found other problems and believed who ever had installed the wiring had done an unprofessional job.
8. Internal Telstra documentation provided to me by Ailan Smith confirmed Telstra themselves had done the wiring.
9. Jenny and I noticed that although our incoming-call rate had more than doubled once this rewiring had taken place Telstra was still unable to provide a satisfactory reason as to why we were still having problems.
10. Telstra connected fault finding equipment called Customer Access Call Analysis (CCAS) to 55-267267 business line.
11. This CCAS data recorded numerous faults that could not be explained by the (Level Three) Telstra fault managers. Hand written notations on some of these CCAS data sheets, confirm even the Telstra technicians themselves were aware of the ongoing problems.
12. By 2004, with the problems not resolved I again sought help through the Hon David Hawker.
13. Correspondence from Mr Hawker in August 2004, confirms Telstra had advised him that the local un-manned exchange was soon to be upgraded.
14. From 2004 until most recently still no upgrades.
15. In August this year we contacted Mr Hawker's office regarding the ongoing problems and advised his staff we have no real alternative but to sell the business.
16. Because we were with AAPT and it appeared they had no control over the faults being experienced we changed back to Telstra.

Darrew

49d

17. From Tuesday to Thursday evening (August 2006), Telstra technicians were present at the Holiday Camp and surrounding area attempting to locate and fix the problems they had experienced themselves.
18. During this three day period even Telstra's own technicians couldn't understand why their own fault testing equipment was malfunctioning.
19. Telstra informed us we had what is commonly known in technical words as (a line in line lock-up rendering our business phone useless until the fault is fixed.

The technicians then in hook up consultation with outside office guru's did a fault graph reading on our 55 267267 line with the outcome that their office technical staff stated words to the affect the reading was impossible (couldn't be correct). It was then that the local technician became quite annoyed when the technical guru insinuated that the equipment the local tech was using must be faulty. The local tech then informed the technical guru that there was nothing wrong with the equipment at all.

It was then that the local technician informed me that as strange as it might seem he believed that because our business was on optical fibre and was so close to the Beach Kiosk (junction box) (his could very well be part of the problem. Apparently either under powering over powering was also an issue He realised that after testing all the other optical fibre outlets with his testing equipment and still reached this impossible reading (according to the technical guru), he would have to move us off the fibre.

It was on this note that the technician informed me that although it was a back ward step he was going to investigate the possibility of moving the business off the optical fibre and back on to the 'old copper wiring'.

After investigating this possibility our business was then moved back onto the 'old copper wiring'. The above is more evidence of the continuation of the phone and fax problems my wife and I inherited when we purchased our business.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of an Act of the Parliament of Victoria rendering persons making a false declaration for wilful and corrupt perjury.

DECLARED at Port Melbourne in the

State of Victoria this

day of Fourth day two thousand ) D Lewis  
 and Sept 2006

Before me

Stuart Gordon Hesterman  
 Constable of Police Sec 75,  
 Portland Police Station  
 Albany Street Portland

**49d**



TEL NO.

17 Feb 61 19:30 P.01

Word Processing  
 Legal Typing  
 Medical Typing  
 General Typing  
 Financial Typing  
 Brevary  
 Assignments  
 Newsletters  
 Spreadsheets  
 Theses

Desktop  
 Publishing  
 Computerized  
 Transcripts  
 Audio  
 Transcripts  
 Letters  
 Manuscripts  
 Reports  
 Manuals



73 West Street,  
 WASHINGTON DC, 20004  
 BR/Fax: 202 898 1027

30<sup>th</sup> January, 2000

**TO WHOM IT MAY CONCERN:**

On the 28<sup>th</sup> December, 1999 I was contacted by Alan Smith from Cape Bridgewater Holiday Camp re doing some computer work for him. I run a small business engaged in doing a variety of computer jobs, ie. word processing, etc. Alan rang and we organised for him to fax the work through. One page and a small portion of the next came through and then the line disconnected. Alan tried numerous times to get the fax through, but to no avail and he eventually had to make other arrangements for the work to be done nearer to him.

On the 5<sup>th</sup> January 2000 Alan again contacted me regarding doing some work for him. He tried so many times over a period of about 3 1/2 hours and finally the work came through. We probably spoke about twice during this time about the failure to get through, the other times were tries to fax. On the 6<sup>th</sup> of January Alan again tried to fax the remainder of the work through and we managed to connect a lot quicker, although it was still about half a dozen times trying beforehand.

When the work was finished, I managed to fax it back to him, although I had to make three or four tries as several pages would go through and then the connection would cut.

49E

The following day, 7<sup>th</sup> January, Alan faxed through a few changes, but this time they came through after only a couple of tries.

It has proved to be very hard to contact Alan at Cape Bridgewater Holiday Camp via fax and indeed it has cost me work by not being able to establish a fax connection. I have not experienced this phenomenon before on such a regular basis.

Yours faithfully,

MARGARET VAN RUN.

49E.

28<sup>th</sup> December 1999

Letter from Margaret Van Run, from Dial A Secretary service in Warrnambool on the following page confirms she alerted me to the fact that not all my faxes on this particular day did not connect through to her office facsimile machine 0355611027. Why then do my Telstra accounts show that ALL these transmissions were all successful?

5<sup>th</sup> January 2000

Margaret Van Run, again writes about the continuing problems when receiving faxes on this particular day where 17 successful calls are charged by Telstra as affective (re Telstra fax account bottom of page). The extract of my fax journal for the 5<sup>th</sup> January 2000, is copied directly below which confirms that only two transactions were actually transmitted and sent to Ms Van Run from the 18 charged calls shown on my account. This is the same type of situation as described in Telstra's B004 report 23<sup>rd</sup> May 1994 faxes not being received by the arbitrator where their own evidence sworn under oath confirms they charged my business for FIVE non-transmitted faxes.

Line	Status	Time	Place	Number	Rate	Min:Sec	Cost
19	OK	02:02:12	BCU	96140011	04-01	14:45	0582400C4900
20	407	08:05:35	XMT T	0355611027	05-01	18:41	000440200000
21	OK	08:01:02	XMT T	55611027	05-01	20:49	020440200000
22	S-OK	08:00:03	XMT T	55712044	05-01	20:59	000400000000
23	S-OK	08:00:04	XMT T	55615071	05-01	21:00	000400000000
24	OK	08:00:42	XMT T	95114335	06-01	06:01	040440AC2000
25	OK	08:00:40	XMT T	96140011	06-01	06:05	040440AC7400
26	OK	08:00:42	XMT T	96140011	06-01	06:17	040440AC2400

STD calls continued

Date	Time	Place	Number	Rate	Min:Sec	\$	
Telephone Service 03 5626 7206 continued							
45	05 Jan	05:33 pm	Melbourne	0300761254	Day	2:00	0.65
44	05 Jan	05:37 pm	Warrnambool	0355611027	Day	1:16	0.5
708	05 Jan	06:40 pm	Warrnambool	0355611027	Day	0:45	0.21
709	05 Jan	06:41 pm	Warrnambool	0355611027	Day	9:40	1.72
113	05 Jan	06:52 pm	Warrnambool	0355611027	Day	0:43	0.20
170	05 Jan	06:58 pm	Warrnambool	0355611027	Multi Rate	0:44	0.25
107	05 Jan	07:01 pm	Warrnambool	0355611027	Economy	0:22	0.20
111	05 Jan	07:03 pm	Warrnambool	0355611027	Economy	0:30	0.22
112	05 Jan	07:04 pm	Warrnambool	0355611027	Economy	1:19	0.29
114	05 Jan	07:06 pm	Warrnambool	0355611027	Economy	0:32	0.22
89	05 Jan	08:49 pm	Warrnambool	0355611027	Economy	1:20	0.29
84	05 Jan	08:51 pm	Warrnambool	0355611027	Economy	0:23	0.21
80	05 Jan	08:53 pm	Warrnambool	0355611027	Economy	0:28	0.21
85	05 Jan	08:56 pm	Warrnambool	0355611027	Economy	0:36	0.22
88	05 Jan	08:58 pm	Warrnambool	0355611027	Economy	0:27	0.21
93	05 Jan	08:59 pm	Hamilton	0355712044	Economy	0:05	0.17
87	05 Jan	08:59 pm	Warrnambool	0355611027	Economy	0:14	0.19
92	05 Jan	09:00 pm	Warrnambool	0355615071	Economy	0:05	0.18
90	05 Jan	09:00 pm	Warrnambool	0355611027	Economy	2:42	0.41
97	05 Jan	09:06 pm	Warrnambool	0355611027	Economy	0:44	0.22

49E

16. AUG. 2001 9:22

SENATE COMMITTEES 617 9779830

NO. 2901



AUSTRALIAN SENATE

ENVIRONMENT, COMMUNICATIONS, INFORMATION  
TECHNOLOGY AND THE ARTS

REFERENCES COMMITTEE  
LEGISLATION COMMITTEE

16 August 2001

PARLIAMENT HOUSE  
CANBERRA ACT 2800  
Telephone: + 61 2 6277 3326  
Facsimile: + 61 2 6277 5818  
E-mail: ecits.sen@aph.gov.au  
Website: www.aph.gov.au/senate\_environment

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

Dear Mr Smith

**Casualties of Telstra (COT) Matter**

I refer to your letters of 26 July to the Secretary of the ECITA Standing Committee and 6 August 2001 to me, relating to the COT Cases. As Chair of the ECITA Legislation Committee, I am very concerned with your statement in the 6 August letter that you are in the possession of two in camera Official Committee Hansards, relating to this issue, dated 6 and 9 July 1998. Furthermore, that you intend sending these confidential Hansards to Mr Brian Pickard, Ms Sandra Wolfe's solicitor.

I wish to remind you that evidence or documents taken in camera or submitted on a confidential or restricted basis cannot be disclosed to another person, unless by order of the Senate. This does not occur very often, although the Senate, on 30 August 2000, did authorise the release of the Hansards of 6 and 9 July 1998 to the Victoria Police Major Fraud Group to assist in their investigations.

The fact that you have received unauthorised confidential committee documents is a serious matter, but if you disclose these documents to another person, you may be held in contempt of the Senate. I would remind you that section 15 of the *Parliamentary Privileges Act 1987* provides for penalties in relation to these matters. I would also point out that section 16 of the *Privileges Act* provides that it is not lawful for the material in question to be used in any court or tribunal. A copy of the Act is enclosed. You may wish to consult your legal adviser in relation to this.

49F



I have to advise you that I am unable to provide you with any further assistance in relation to the matter as the committee has concluded its inquiry and has reported to the Senate.

I would respectfully suggest your remedies lie with the Telecommunications Industry Ombudsman and normal legal processes.

Yours sincerely

Alan Eggleston  
Chair

49F

9674

# Information

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## Fraud inquiry into Telstra row with clients

**Helen Meredith**

The major fraud group of the Victoria Police is investigating allegations of fraud associated with a dispute between a group of small-business operators, members of the group known as COTs (Casualties of Telecom), and Telstra.

A police spokesman has confirmed an investigation was under way into the alleged alteration of documents provided by Telstra in support of its defence in the protracted COTs dispute.

Victoria Police media director Mr Kevin Loomes declined to provide any details of the investiga-

tion, noting: "It is still early days." The investigation comes two weeks after a Senate working party delivered a damning report into the COTs dispute. The report focused on the difficulties encountered by COTs members as they sought to obtain relevant documents from Telstra.

The report found Telstra had deliberately withheld important network documents and/or provided them too late and forced members to proceed with arbitration without the necessary information.

Presenting the report, the chairman of the Senate Environment, Communications, Information Technology and the Arts Legisla-

tion Committee, Senator Alan Eggleston, accused Telstra of forcing COT members into an over-legalistic, unequal arbitration process based on quick access to documents. "Forcing things to go Telstra's way has been their way ever since," he said.

An independent report by communications experts from the firm Ambidji found most of the COTs' requests for documentation had been reasonable.

But according to the chairman of the working party, Mr John Wynack, of the Commonwealth Ombudsman's Office, "final sweep searches" for documents had

exposed how Telstra had misrepresented requests, unilaterally varying them.

Senator Eggleston said: "They [Telstra] have defied the Senate working party. Their conduct is to act as a law unto themselves."

The dispute dates back to 1992 when the small business subscribers first grouped. They claimed that inadequacies in their telephone service over a prolonged period had led to a decline in their businesses. Most members of the group were single operators or husband and wife partnerships operating in service industries.

Some complained that people

calling them received a ring tone while they had no indication of an incoming call. Others said callers heard a busy signal or a number disconnected message for no reason.

To prove a reasonable causal link between their perceived service difficulties and loss of incoming calls, COTs members needed access to general exchange and network information documents held by Telstra.

The fight is now in its eighth year. It is estimated to have cost the carrier \$24 million in the past five years. Of that, only \$1.8 million has been spent on settlements with COTs members. The rest has paid Telstra's administrative and legal costs.



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

our reference

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

Dear Mr Smith

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

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

If the material you have provided to the Department as part of the independent assessment process indicates that Telstra or its employees have committed criminal offences in connection with your arbitration, we will refer the matter to the relevant authority.

Yours sincerely

David Lever  
Manager, Consumer Section  
Telecommunications Division

17 March 2006

494



OFFICE OF HON MICHAEL LEE MP
Rep by Min
Rep by SA
Rep by Dept
Information
Action
Advice
Copy held for min to see
Final WRT

54/0269-05
22

Parliament House
Canberra ACT 2600

Prnce
Fg. Can w
discuss.
12/10

Circumstances and past actions of senior staff within Telecom have made it necessary to bring to your attention some very concerning activity that my colleagues and I feel can no longer be ignored or dismissed.

We hesitate to bring the following instances to your attention but decided it was necessary as this situation is far too serious to be allowed to continue, and attempts we have made within the organisation to bring our concerns to light have fallen unheard. In bringing this matter to your attention we do not wish to paint the picture that all staff are involved in certain activities, we strenuously would like to make the point here, there are staff within the whole framework of the staff of Mr Steven Black who have and are continuing to work towards the recommendations of the Cooper and Librad and Austel report toward addressing customer issues fairly and ethically.

Concerns and Issues.

Mr Steven Black Group General Manager of Customer Affairs who has the charter to work to address and compensate Telecom's "COT" customers as well as the management of other customer issues related to Telecom is involved in and initiates conduct and work practices that are totally unethical and he has managed to achieve certain results in relation to major cases due to the assistance of his senior executives, past colleagues and friends with whom key strategic activities have been assigned. These individuals have not the skills or expertise required for the job and has jeopardised Telecom's position in attaining positive beneficial results for customers as the following instances will highlight.

1. Implementation of a complaint handling procedure throughout Telecom though outwardly giving the appearance of acceptance and uniformity of work practices, ~~nothing more than outward~~ deception to external regulating parties. Mr David Fickling in association with Mr Steven Monro have deceived AUSTEL as to the implementation of core initiatives.

Existing within Telecom nationally is different Regional offices operating in various ways to address customer complaints. This situation is attributable to a lack of:

- comprehensive documentation to staff at time of training
comprehensive training by competent individuals to all manner of staff
a incomplete database unable to capture and store required criteria for most purposes specifically reporting
continued failed deadlines to major initiatives, resulting in blatant short cuts being needed.

To meet certain commitments to AUSTEL made by Mr Black and Mr Fickling a incomplete complaints handling process has been forced down staff throats, resulting in much resentment and confusion whereby key initiatives are not in place.

2. The management of COT customers by Mr Rod Pollock is nothing more than a unprofessional, adversarial approach towards customers. Mr Pollocks approach to these customers has been one of manipulation and deception as in his dealings with the top four COT customers and subsequent eleven customers Mr Pollock has lied and deceived these customers.

Damaging evidence against Telecom has been conveniently removed or altered to suit the case. Junior staff or temporary agency staff have been requested not to place pertinent information on customer files so as no to weaken Telecom's case further. COT customers that may prove to be a threat to Telecom have been expertly manipulated and paid settlements. Evidence?

begin

than (s)
from
office

maybe
not
take
by intern

is agree
was very
complete

↑

Wendie Smith has been critical of Pollock on some issues.

50A



94/0269-05

3. Unfortunately the Legal advice and expertise that Telecom has sought from its internal legal group has also been sadly lacking in ethical direction. In the management of major customer disputes the legal area has sought to hide and skirt around the truth. ~~Telecom legal solicitors have resorted to external statutory authorities with only half of the information required fully aware of not providing all information.~~ Their general position has been to sit behind the legal word and its many interpretations in so doing avoiding full disclosure of information. ~~There have been instances where the legal group has contacted or advised staff to limit the disclosure of information to external authorities, in so doing slowing down or redirecting the effects of natural justice.~~

Not sure of context of the could be the it talker about A's COT investigation of 12 months

serious allegation

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

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

In relation to the Robert Bray case Steve Black has sought to cover up the true facts of disclosure of customer information. Particularly he has sought to cover up "broadcasting" of the customers private information.

It seems like Sn has been dis associated with this issue

As you can see from what I have mentioned to you something needs to done. As you can appreciate we are not in a position to go any deeper than what has already been outlined. As to where next that lies in your hands. We have done what is unfortunately our only form of address to the situation.

50A

~~Warwick~~

**URGENT**

Attached is a fax received from Alan Smith regarding access to FOI documents at Telecom.

Smith is alleging that the documents are not in chronological order and blanking done for earlier FOI inspections has made the collection of appropriate documentation uncertain and diminished the opportunity for him to satisfactorily present his case.

Mr Smith has demanded a TIO member be present at today's examination of papers by him at Telecom.

I have attempted to contact Peter Bartlett as the most appropriate person to comment in your absence but he is unavailable.

I have also attempted to contact Gordon Hughes to seek his views but at this point he too is unavailable.

Finally I have contacted John McMahon at Austel to see if he was aware of any undertakings regarding the access to FOI documents and commitments about the presentation of these that might have been given by Austel or any other parties. He said he was not aware of any such commitments.

*[Handwritten signature]*

Sue

16 May 1994

PS Mr Smith subsequently arrived in the office. He asked that someone from the office go to Telecom with him. I said that this was not possible but that he should call this office and advise us of his telephone number when he was allocated an office in the Telecom building. In the interim I undertook to:

- advise you of his concerns as soon as you arrived and said that you would call as appropriate;
- advise Hughes and/or Bartlett of his concerns when they were available;
- seek your advice as to whether the Commonwealth Ombudsman's office should be involved.

I also noted that the absence of proof in the form of documents may be seen as weakening his case but could also be seen as weakening Telecom's defence and he should bear this in mind when examining documents. Mr Smith was also concerned about documents which stated that there were attachments where no attachment was available. He left an example of this with us (also attached).

10/5

*Spoke to Smith + further  
advising re process etc.*

**508**

I, ALAN SMITH

of CAPE BRIDGEWATER

in the State of Victoria

HOLIDAY CAMP PORTLAND

do solemnly and

sincerely declare

3306

THAT  
At approximately 4.20 pm yesterday, I spoke to Detective Superintendent Jeff Ponrom (Federal Police) regarding my concerns about what had just taken place.

Telecom had just returned to me, two (2) identical copies of an Austel letter addressed to Telecom attached to two (2) different types of header sheets of different dates.

My purpose for being at Telecom House was that when Telecom had originally supplied the F.O.I. documentation, they had somehow failed to supply the adjoining documentation that should have accompanied some of these Fax Header Sheets, (fifty six (56) header sheets in all).

It was now apparent my concerns were justified.

Telecom had no intention of supplying the full documentation either maliciously or by the fact of their own admission made yesterday by Mr Pollock the Telecom F.O.I. Officer, because that much of this documentation is out of the correct chronological order due to so many viewings that had taken place, either by Austel, Coopers & Lybrand, Commonwealth Ombudsmans Office and others. Mr Pollock also stated in the company of two (2) other Telecom employees, one male, one female, in the office provided for me, that because much of the F.O.I. documentation was so blanked out that it was hard to match the correct correspondence to the Telecom Header Sheets in question.

I asked Rod Pollock, how can I put my claim together if the material, that I have requested under the F.O.I. agreement is in such a mess, that even Telecom themselves, their own office, is unable to be sure that the information they are supplying to me is in fact the correct documents I originally applied for under the F.O.I. agreement.

Even though an office had been allocated for me, with a note on the door to that effect, "reserved from 8am to 6pm", the moment I brought to their attention the irregularities regarding the two Fax's in question, there was an immediate urgency to terminate my presence and I was asked to leave at 4.40 pm. These two Telecom employees made it known there was no bad feelings, however the male Officer also made it very clear, that like Rod Pollock had previously said, because of the way the F.O.I. documentation was laid out and had been viewed by so many different People and Departments etc., they were finding it hard to match the correct F.O.I. Fax Header Sheets to correspond with the original documentation.

With reference to this signed declaration and the admissions of these Telecom employees mentioned, one can only perhaps wonder for good reason, has the C.O.T. Case Members actually received their appropriate documentation under F.O.I. conditions (Act), which will allow them to have every opportunity to have their known communication faults shown by the correct data presented by Telecom?

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of an Act of the Parliament of Victoria rendering persons making a false declaration punishable for wilful and corrupt perjury.

DECLARED at Camberwell in the

State of Victoria this 14<sup>th</sup>

day of May One thousand

nine hundred 47

Before me



N. D. CREASEY  
Senior Constable 21524

Camberwell Police Station  
317 Camberwell Road.  
Camberwell 3124



50B



Our Reference:

Your Reference:

Contact:

273.

163

**FACSIMILE MESSAGE**

Regulatory Policy Branch  
Telecommunications Policy Division

**TO:** Norm O'Doherty  
**FAX NUMBER:** 03 828 7450  
**TELEPHONE:** 03 828 7342  
**FROM:** Nina Martiniello  
**FAX NUMBER:** 06 279 1555  
**TELEPHONE NUMBER:** 06 2791508  
**DATE:** 16 June 1994  
**NO OF PAGES:** 21. (Including this one)

**Message**

Dear Norm

As discussed with your secretary over the phone, the attached documents form a part of an FOI request on the COT cases. They were sent to AG's for comments and they got back to us today advising that we should consult with AUSTEL about their release. (See Chris Gallagher's written comments on each document.) If you would like to discuss the matter with him he can be contacted on 06 270 2347.

Could we please have AUSTEL's comments by midday tomorrow.

Regards.

Nina

50c

CONFIDENTIAL

FREEHILL  
HOLLINGDALE  
& PAGE

CONFIDENTIAL

Melbourne Office

To:	Ian Row Corporate Solicitor	From:	Denise McBurnie
At:	Telecom Australia	Direct line:	(03) 288 1383
		Switch:	(03) 288 1234
To fax:	634 8832	From fax:	(03) 288 1567
		Date:	10 September 1993
Phone:	834 3300	Matter No:	1650521 Pin No: 274
Page 1 of		Approval:	<i>Denise McBurnie</i>

The information in this facsimile is privileged and confidential, intended only for the use of the individual or entity named above. If you are not the intended recipient, any dissemination, copying or use of the information is strictly prohibited. If you have received this communication in error, please immediately telephone us (we will accept reverse charges) on:

(03) 288 1341 Fax (03) 288 1567 (International phone orders + (61 3)) or Telex AA33004  
and return the original facsimile to  
Level 43, 101 Collins Street, Melbourne Vic 3000 Australia

Dear Ian

N00743

"COT" Case Strategy

- \* As requested I now attach the issues paper which we have prepared in relation to Telecom's management of "COT" cases and customer complaints of that kind.
- \* The paper has been prepared by us, together with input from Duesburys, drawing on our experience with a number of "COT" cases. If there are any aspects of the issues paper which you would like us to expand upon or if there are any other issues you would like us to consider please don't hesitate to contact us. Both Freehills and Duesburys would be happy to assist you should any further presentations to Telecom management be required on any of the matters raised in the issues paper or with regard to any other matters concerning management of "COT" cases and customer complaints.

Yours sincerely  
FREEHILLS HOLLINGDALE & PAGE  
per:

*Denise McBurnie*

Denise McBurnie

Enc

copy to: Deanne Weir

503

LEGAL PROFESSIONAL PRIVILEGE

CONFIDENTIAL/COMMERCIAL IN CONFIDENCE

The contents of this document are privileged and confidential and no part thereof shall be disseminated, copied or used without the express permission of the Telecom Corporate Solicitor.

A. PROFILE OF A "COT" CASE

Set out below are some of the common characteristics attributed to "COT" cases. The particulars are drawn from FHP's experience with the following "COT" cases:

- Golden Messengers/Graham Schorer
- Tivoli Theatre Restaurant/Ann Garms
- Japanese Spare Parts/Ann Gillan
- Cape Bridgewater Holiday Camp/Alan Smith

It should be recognized, however, that this list is neither definitive nor exhaustive of those characteristics.

Common Characteristics

1. Single operators of small businesses generally operating in service industries. If partnerships are involved it is usually a husband/wife partnership.
2. Questionable business stability or viability regardless of alleged telecommunications problems.
3. Common distrust of Telecom's network performance and distrust of Telecom's claims that network performance accords with "acceptable standards".
4. Claims of dissatisfaction by the claimant as to the handling of the case by Telecom.
5. Distrust of Telecom's testing procedures. N00750
6. Numerous faults alleged and claimed to be supported by documentary evidence collected by the claimant, but which do not match Telecom's fault reporting records.
7. A high level of understanding (acquired by experience) with FOI procedures and the procedures involved in accessing Telecom documentary information. However, this level of understanding is not necessarily matched with the ability to accurately or correctly interpret the information obtained.
8. There is usually a reluctance to pursue a claim through court action. Apparent or claimed reasons being:
  - cost
  - difficulty of proof
  - claim has a component relating back to when Telecom's statutory immunities applied
  - Telecom's size and ability to defend action proves to be oppressive.

**SOD**

**MEMORANDUM OF ADVICE: PRIVILEGED AND CONFIDENTIAL - Advice on Legal Professional Privilege - re CoTs**

- (i) The cases of *NCA v S* and *Esso*, referred to above, make it clear that a claim to privilege must expose sufficient facts to justify the claim. A vague or bald assertion of the privilege is seen as no claim at all.
- (ii) The definition of privilege indicates that only communications between a lawyer and a client for the dominant purpose of providing or receiving legal advice or for litigation (and communications between a lawyer or client and a third party for the dominant purpose of litigation) will be protected by privilege (see *Baker v Campbell* and *Esso's* case referred to above).

It is difficult to see how a document, or documents, merely described as "Network Data" would fall within the definition of a communication between a lawyer and client for the dominant purpose of advice or for litigation, or communication between a lawyer or client and a third party for the dominant purpose of litigation.

There appear to be 39 claims to legal professional privilege, which are merely listed as LPP in *Attachment 1*, being further detailed in *Attachment 2*. Further, there appear to be 74 claims to legal professional privilege listed in *Attachment 2* (it is not clear why there is such a variation between these two amounts of claims). A perusal of the file descriptions in *Attachment 2* indicates not only incomplete and inadequate claims to privilege but also claims which appear to be erroneously made.

For example, it is difficult to see, without further information being supplied, how a "Chart - Call analysis with handwritten annotations", a "Map - Bova Enterprises Call per exchange", a "Table - Bova's directory listings" or a "Fax confirmation report" could be covered by legal professional privilege.

**(3) made defective or erroneous claims to privilege, and/or**  
 There is also some evidence of (3) i.e. making defective or erroneous claims to privilege.

For example, in the letter from Mr John Armstrong of Telstra to Mr Ross Plowman dated 28 September 1998, Telstra concedes that it has erroneously classified some documents as privileged.

**(4) knowingly made false or spurious claims to privilege?**

There is also some potential prima facie evidence of (4) i.e. knowingly making false or spurious claims to privilege. For example, there is a potential structure set up for the possible abuse of the doctrine of legal professional privilege in the faxed document entitled "COT" Case Strategy, marked "Confidential" dated 10 September 1993 from Ms Denise McBurnie of Freehill Hollingdale and Page, Melbourne Office to Mr Ian Row, Corporate Solicitor, Telecom Australia.

I refer in particular to section 4 on page 6, which states:

"Of critical importance in the constitution and function of the DMA (Dedicated Management Area) is the direction of the first referral of the claim by Business Unit Management. The initial point of referral should always be to the Corporate Solicitors Office. This is in order to bring into operation the potential protection of legal professional privilege for documentation and other reporting procedures. It may also be appropriate for the Corporate Solicitors Office to continue as the point of referral and control in order to maintain legal professional privilege (where possible). Over information and documentation created during the handling of the 'COT' case."

**JOE**

**DRAFT - IN CONFIDENCE**

Consumer will undertake an immediate inspection of all elements of the CAN and certify that the service is constructed in a manner that complies with standard practice. Any defects/abnormalities will be noted and corrected. Pairs will be "clean" between the exchange and the customer's premises with any common pairs cut away. Consumer will formally certify that the inspection has been carried out and record the results of their investigation.

Commercial will test the customer's service and record the test results. This test will be repeated at regular intervals (at least weekly) to ensure stability and consistency. Where appropriate, CPE will be tested. On occasions it may be desirable to install recording equipment at the customer's premises.

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All technical reports that relate to the customer's service are to be headed "Legal Professional Privilege", addressed to the Corporate Solicitor and forwarded through the dispute manager.

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The only contact with the customer will be by the dispute manager or the Regional Manger unless the MD Commercial chooses to become personally involved. All contacts with other individuals will be referred back to the dispute manager.

The Regional General Manager will ensure that all other elements of Telecom are advised of the declaration of a Category A dispute. The managers of these other elements will ensure that all parts of their organisation are aware of the existence of a dispute and that staff are advised that they are not to comment on the customer's service. On all occasions only staff with exceptional "intelligence" and who have been fully briefed on the dispute are to be assigned to any dealings with the customer or related activities.

It is important that operational systems (including DCRIS, LEOPARD, Service\*Plus) should be made capable of displaying an appropriate warning mark against the customer's record indicating that a sensitive customer dispute is in progress and identifying the dispute manager. Local instructions should be issued to advise staff to refrain from commenting on service performance issues but to refer these to the dispute manager.

SEP/

COT1306.DOC

R00524

**SOF**

Revision 13



Pittard, Rosanne

---

To: Paton, Steve  
Cc: Denholm, Paula  
Subject: North Melbourne Exchange survey

Steve.

Thanks for your E-mail- sorry for replying late, my mail system was not fully efficient.

North Melbourne is a combination of AXE and ARE.

It would be best to avoid COT case member, Mr Graham Schorer of Golden (Messenger) to avoid embarrassment as you say. His main numbers are 03 329 7355 and 03 329 7255, but he has several rotary groups and about 40 lines in total. I do not have all the details but shall get as much by Monday midday as I can.

Please prepare the results for the Corporate lawyers under legal professional privilege and limit distribution of the results.

Please go ahead as soon as possible.

Rosanne Pittard

Ms Geary—I can assure you that Telecom is doing everything it can to do that as quickly as possible.

Senator BOSWELL—I turn to the Australian Federal Police report. Senator Bolkus said, 'I am assured by the Australian Federal Police that, as indicated in the Senate on Monday 17 October, the DPP advice had little or no effect on the final outcome of the AFP investigation.' This advice is contrary to that provided to Ann Garms by the investigating office of the Australian Federal Police. The Australian Federal Police is getting advice that Telecom has a shield of the Crown, so it could not be prosecuted. It is quite obvious to me that, if that is your legal advice, then it is wrong.

Mr Krasnostein—I will address that because I have some personal knowledge of it. I am not sure where this allegation emanated from. There was never a period of time when Telecom either received advice or asserted a position that it had a shield of the Crown. I do not know who is asserting that, but it is nonsense to do so.

Senator BOSWELL—I would hope so.

Mr Krasnostein—What the Australian Federal Police have concluded and what the DPP have concluded is something that we are not privy to. We have given full cooperation in the Australian Federal Police investigation, to the extent that we were lawfully able to do so—which was almost total. They interviewed whoever they wanted to interview, they gained access to documents that they requested. There was only one issue of some tapes that they had a problem getting hold of. We are not privy to the result of that investigation. We are not privy to what their recommendation was—or their report, if they did not make a recommendation to the DPP, and we are not privy to what the DPP deliberations are.

Senator BOSWELL—Why did Telecom advise the Commonwealth Ombudsman that Telecom withheld FOI documents from Alan Smith because Alan Smith provided Telecom FOI documents to the Australian Federal Police during their investigation?

Ms Geary—Could you please repeat that?

Senator BOSWELL—Why did Telecom advise the Commonwealth Ombudsman that Telecom withheld FOI documents from Alan Smith because Alan Smith provided Telecom FOI documents to the Australian Federal Police during their investigation?

Ms Geary—I am not aware that that has been said. I can take that on notice.

Senator BOSWELL—Mr Krasnostein would probably be able to—

Mr Krasnostein—No, I am not aware of who at Telecom made that statement. I would be happy to take it on notice unless you have some information that sheds some light on it.

Senator BOSWELL—All right, I will do that. I will ask you another question. Telecom is cooperating fully with the Australian Federal Police inquiry. Why would Telecom withhold vital documents from the AFP? Also, why would Telecom penalise COT members for providing documents to the AFP which substantiate that Telecom had conducted unauthorised interceptions of COT members' communications and subsequently dealt in the intercepted information by providing that information to Telecom's external legal advisers and others?

Mr Krasnostein—Could you ask that question again?

Senator BOSWELL—You may take it on notice. It will be on the record.

Mr Krasnostein—I might add that—and I am sure the Australian Federal Police will confirm this to you—we had total cooperation with the Australian Federal Police. They were able to interview whatever staff they wanted to and they were given free and unrestricted access to a document room containing all the documents they wanted. They photocopied whatever they wanted. Inspector Penrose, who conducted the investigation, said to me that we cooperated fully and freely, and I do not know where an allegation would come from that there has been anything but total cooperation with the Australian Federal Police.

Senator BOSWELL—Thank you very much.

Senator TILKNEY—I refer to a question I put on notice in the Senate on 10 October

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Bruce Pendlebury states not to check Smiths complaint, probably in RCM, Page 17 Cape Bridgewater Submission.

The writer of a Telecom document, who said the ELMI testing was not connected to the CBHC on the 13 October 1992 when it was. I complained to Commercial Melbourne. (Cape Bridgewater Submission Part Two August 1994).

(Cape Bridgewater Submission One Page 32 August 1994).

Rosanne Pittard told lies to Freehill Hollingsdale & Page, that I only had 9 faults on my line from January 1993 to August 1993. This can be substantiated by checking Telecom 13999. 1100, 008 033849.

Re-video clip 1100 Telecom operator. Told lies. (Arbitrator and Telecom have a copy).

Steve Richards 03-720 6646 another fault operator, treated C.O.T. and myself with contempt. Had it not been for C.O.T. Coopers & Lybrand confirm the attitude of the operators.

24. In relation to page 48:

The Claimant alleges that his phone has been unlawfully tapped and the confirmation of that fact was received by the Claimant from Detective Superintendent Penrose of the Australian Federal Police.

L69179

- (a) State the date and circumstances and substance of the disclosure by Detective Superintendent Penrose that the Claimant's telephone was allegedly unlawfully tapped.

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**Answer Question 24:**

- (a) This matter is currently under investigation by the Federal Police. In the interest of fair justice I believe that I should not further comment apart from what I have already stated that it is true that I was told this by Detective Superintendent Penrose. If the Australian Federal Police are prepared to disclose the details of their investigation and of their dates of conversations with myself, then Telecom will be able to obtain the same.

L69180

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COMMONWEALTH & DEFENCE FORCE  
**OMBUDSMAN**

Prudential Building, over London Circuit & University Avenue, Canberra City  
GPO Box 442, Canberra, A.C.T. 2601, Australia  
Tel: (06) 275 0111; Fax: (06) 245 7828; Int. Fax: + 61 6 245 7829

30 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.

23.94 Telecom has delayed providing access to documents.

23.94 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 Frazer.

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.

23.5.94 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).

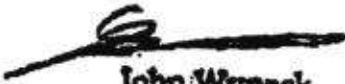
27.10.94 Telecom unreasonably refused access to GCS7 Call Statistics documents dated 4/11/93, 5/11/93, 6/11/93 and 9/11/93. (Mr Smith's letter to Mr Benjamin dated 27.10.94 refers).

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

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# 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 1985 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).



**50K**

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 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 DREEN

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, Anne 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 1<sup>st</sup> floor. He was driving his private car to the airport. I arranged to meet Rod at Kellor Park Drive, East Kellor. 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 1<sup>st</sup> floor.
18. I met him outside the Cafeteria, and he pointed out Anne 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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Melbourne; 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: [Handwritten 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: [Handwritten Signature]

Date: 10/08/06

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

Signature: [Handwritten Signature]

Name: P. J. SPENCE

Title: SENIOR INVESTIGATOR

**SJK**

# STATEMENT

Of Bob HYNINEN

NAME:	Robert Thomas HYNINEN
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 HYNINEN. 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 Lansdale 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.

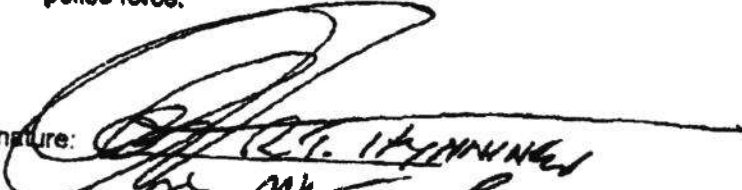


504

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:

  
8/1 April 2006

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:


  
8/8/2006

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

Signature:

Name:

Title:

  
R. J. SPENCE  
~~SENDS INVESTIGATOR~~  
ELI

502

28 January 2003

COPY



Telecommunications  
Industry  
Ombudsman

John Pinnock  
Ombudsman

Total Pages: 19

Dear

**LEVEL 3 COMPLAINT**

TIO reference: 02/101638-1 - Mc Kenzie

The Telecommunications Industry Ombudsman (TIO) has received a complaint against Telstra Corporation from Mr & Mrs Darren & Jenny Lewis regarding telephone number 0355267267.

The TIO has raised this complaint at level 3 because of the complexity of the complaint and likelihood that extensive testing may be required. Mr & Mrs Lewis have advised the TIO that they have an on-going complaint with Telstra Corporation in relation to their telephone service and have as yet been unable to resolve this matter. The TIO has invested time assessing Mr & Mrs Lewis' correspondence and believes that further investigation is warranted.

Mr & Mrs Lewis claim in their correspondence attached:

- That they purchased the Cape Bridgewater Coastal Camp in December 2001, but since that time have experienced a number of issues in relation to their telephone service, many of which remain unresolved.
- That a Telstra technician "Mr Tony Watson" is currently assigned to his case, but appears unwilling to discuss the issues with Mr Lewis due to his contact with the previous Camp Owner, Mr Alan Smith.
- That on 27 September 2002 "Ian" advised him that an EMG was causing the faults at the local exchange and that a technician would be sent out to fix this.
- That on 28 September 2002 "Renee" advised him that that the local exchange could only handle a certain amount of traffic, that there was nothing that Telstra Corporation could do about the problem and that this problem was not new to Cape Bridgewater.
- That Telstra Corporation advised him on 26 November 2002 that the phone extension wiring was laid too shallow and was not installed correctly, thus it believed that Telstra Corporation had not installed that wiring. Mr Lewis also claims that it was suggested that the line had been tampered with.
- That Mr Alan Smith had provided him with documents confirming that Telstra Corporation did all the cabling and wiring in question.
- That the phone problems have decreased dramatically since Telstra Corporation rewired the business on 9 December 2002 and disconnected the phone alarm bell, however he is still

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

*JOM*

Website [www.tio.com.au](http://www.tio.com.au)  
Email [tio@tio.com.au](mailto:tio@tio.com.au)  
National Headquarters  
Level 15/114 William Street Melbourne Victoria 3000

Telecommunications Industry Ombudsman Ltd ABN 46 057 634 787

PO Box 276  
Collins Street West  
Melbourne  
Victoria 8007

Telephone (03) 8600 870  
Facsimile (03) 8600 879  
Tel Freecall 1800 062 058  
Fax Freecall 1800 630 614

experiencing intermittent problems with receiving calls, and continued to have problems with his fax line.

- That Telstra Corporation have checked his fax machine and confirmed that it is working correctly.
- That he believes that as the same problem has been experienced when attempting to send or receive faxes from a number of locations, it is unlikely that the fault is with the other party's fax machine.
- That the problems experienced resulted in the frustration of his clients being unable to contact him to make bookings for his camp and are affecting the profitability of his business.

Mr Lewis has outlined a number of these problems on page 3 of his correspondence attached. In particular, Mr Lewis has identified the following concerns:

- That he has been contacted by a number of people advising that the telephone had not been answered when ringing previously, despite Mr Lewis' assertion that someone was there at the time.
- That many faxes sent to his potential clients have not been received at the intended destinations, despite his fax transmission records confirming that the fax had been successfully sent. Furthermore, Mr Lewis claims that he has been charged for each of these calls.
- That he has experienced problems receiving faxes from his clients.
- That when he uses \*10# to retrieve missed phone calls, he is sometimes given numbers from days before which had not registered earlier.
- That people had reported that when attempting to call Mr Lewis' business they first hear a message that the telephone has been disconnected, but when trying again are connected through on the same number.
- That when picking up the receiver to make a call, he had intermittently heard another person's conversation quite clearly.
- That on 25 October 2002 a caller reported that when trying to contact Mr Lewis earlier, he heard only clicking noises on the telephone line, but the call did not connect.
- That a caller reported that they had called and heard an engaged signal, despite Mr Lewis having call waiting activated on the service to prevent missed calls.
- That another caller reported that every time he called he received a fax connection tone.
- That on 13 November 2002 he picked up the receiver and heard a deep breathing sound but no dial tone.

The TIO asks Telstra Corporation to present its perspective on the complaint.

If Telstra Corporation decides that the complainant's claims have merit after reviewing the complaint, how does Telstra Corporation propose resolving the complaint?

If Telstra Corporation is of the view that there is no merit to some or all aspects of this complaint, please provide reasons for its view, identifying any facts in dispute. In addition, please supply all documentation relevant to the complaint. In particular, please provide:

- All Customer Care Notes for the account
- All Fault Reports for the account
- Telstra Corporation's assessment of whether Mr Lewis is entitled to compensation under the Customer Service Guarantee in relation to any of the faults reported above. Please include its reasons for the assessment for each fault reported.

5011

The TIO has forwarded a copy of this letter to the complainant and asked them to pay any undisputed charges. While this complaint is under consideration, the TIO expects that Telstra Corporation will suspend credit management on any disputed charges.

The TIO may also forward Telstra Corporation's response to the complainant. For this reason, please ensure that it is written in plain English.

Please forward your reply to this letter within the next 28 days. The TIO may escalate the complaint to Level 4 status if Telstra Corporation does not respond to the TIO within this time frame or provide information requested.

Please contact me if you would like to discuss any aspect of this complaint.

Yours sincerely



Gillian Mc Kenzie  
Investigations Officer

50111

26 February 2003

Mr Alan Smith  
Seal Cove Guest House  
RMB 4409 Cape Bridgewater  
PORTLAND 3305



Telecommunications  
Industry  
Ombudsman

John Pinnock  
Ombudsman

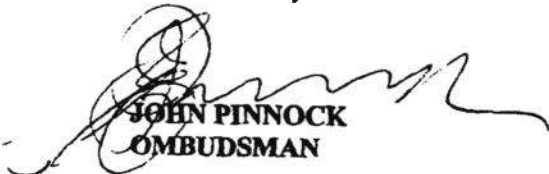
Dear Mr Smith

I refer to your letters of 27 January and 3 February 2003.

Each letter raises yet again issues relating to your Arbitration which was concluded almost eight years ago. As I have said on numerous previous occasions, I do not propose to take any further action on a matter that was the subject of a final decision by the Arbitrator.

In your letter of 3 February you state that the TIO has a duty to speak to the new owners of Cape Bridgewater Holiday Camp who, you say, are blaming you for not disclosing to them ongoing problems with the telephone service. That is a matter between you and the new owners. The TIO will consider any complaint made by the current owners of the camp, provided it does not seek to canvass the same matters which you have raised relating to the Arbitration.

Yours sincerely



JOHN PINNOCK  
OMBUDSMAN

plainant/1918

50N

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

Telecommunications Industry Ombudsman Ltd ABN 46 057 634 787

Website [www.tio.com.au](http://www.tio.com.au)  
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5.20 AUSTEL then continued to work with Telecom and the *original COT Cases* to facilitate agreement -

- on the terms upon which assessment of Mrs Garms' and Mrs Gillan's claims might take place
- the person who might be appointed to make the assessment.

5.21 Extensive negotiation took place during which Mrs Gillan reached an initial '*settlement*' with Telecom in May 1993.

5.22 This left only Mrs Garms in a position of not having reached a settlement. Telecom had agreed that it would be bound by the independent assessor's findings of fact but it would insist upon the right to seek court intervention on any matter of law of concern to it. AUSTEL recommended that the draft terms of reference which had been produced at this time be accepted but Mrs Garms, having regard to independent legal advice, was not prepared to agree. Mrs Garms then commenced to negotiate directly with Telecom and an offer was made to her with a two week period for acceptance.

5.23 At this time Telecom found in its possession certain monitoring data which Mrs Garms had long sought to help in estimating the incidence of fault and the consequent financial impact. While the material was made available to her it was at a very late stage in the claim/negotiation period and AUSTEL wrote to Telecom stating that it would be reasonable to give Mrs Garms the opportunity to revise her claim. Before Telecom responded, AUSTEL was informed that a "*settlement*" had been reached between Telecom and Mrs Garms. This was in June 1993.

#### THE INITIAL SETTLEMENTS

5.24 As observed above, four of the *original COT Cases* pursuing compensation for inadequate service engaged in a process of negotiation with Telecom with AUSTEL acting as an *honest broker*.

#### Mr Smith, Cape Bridgewater Holiday Camp

5.25 Mr Smith was the first of the *original COT Cases* to reach an initial '*settlement*' with Telecom. It is understood that he -

- identified the type of faults which his business had experienced

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- indicated the incidence of the faults by way of -
  - statements by individuals who had sought unsuccessfully to contact him
  - demonstrating a reduced effectiveness of advertising he had undertaken.

Telecom had a knowledge of at least some of the faults impacting on Mr Smith's business as well as having access to relevant fault records and monitoring data. It was also aware of the extent of problems and difficulties at its local exchange servicing his business.

5.26 At the end of the process (December 1992) a *settlement* figure was agreed. It was a condition of the settlement that the amount paid by way of settlement was to remain confidential - a condition that applies in the other cases. Although the details of the settlement are confidential, Mr Smith has informed AUSTEL that his major concern and stipulated condition at the time of the '*settlement*' was that his service should operate, and continue to operate, at normal network standards.

#### Ms Hawkins, the Society Restaurant

5.27 In the case of Ms Hawkins, '*settlement*' was reached in January 1993. One of the conditions is understood to be that the business was to receive its telephone service via a modern digital exchange. The business has since been sold.

#### Mrs Garms and Mrs Gillan

5.28 The initial '*settlement*' process involving Mrs Gillan and Mrs Garms is outlined above. It is relevant to mention here that as a result of Telecom's stance that settlement would only be made once the service was being supplied at normal network standards, both Mrs Gillan and Mrs Garms informed AUSTEL that they ceased reporting faults in order to hasten the settlement process.

#### Mr Schorer, Golden Messenger

5.29 The fifth of the *original COT Cases*, Mr Schorer, had particular concerns about Telecom's limited liability and the impact that the limitation was likely to have on any claim he might make for compensation arising from an inadequate telephone service. Instead of seeking compensation in those terms, he pursued a

claim in the courts under the *Trade Practices Act 1974*. In simple terms, Mr Schorer claimed that Telecom had -

- sold him a particular type of customer equipment which was unable to meet his needs (which were known to Telecom)
- made claims for the equipment which the equipment was not able to deliver.

While Telecom defended the action, it did make a *payment into court* with a denial of liability. The effect of the *payment into court* was that Mr Schorer had to decide whether to accept that amount or fight on in the knowledge that even if he was successful in his claim against Telecom, in the event that his claim was assessed at less than the *payment into court* he would have had to bear not only his own costs, but also those incurred by Telecom from the time it made the *payment into court*. On the advice of his solicitors, Mr Schorer concluded that he could not afford to fund continuation of the case and he decided to accept the *payment into court*.

#### CONTINUING FAULTS

5.30 Understandably the *original COT Cases*, having reached an initial 'settlement' involving -

- compensation for past losses
- restoration of an adequate telephone service

expected that they might be able to resume their business activities afresh.

5.31 Unfortunately that did not prove to be the case. Soon after his initial 'settlement' Mr Smith reported continuing problems to AUSTEL. Even prior to her settlement, Mrs Garms reported continuing faults to AUSTEL. The decision by Mrs Garms and Mrs Gillan not to report faults to Telecom in order to hasten a financial settlement is noted above. Mr Schorer continued to report faults to AUSTEL throughout the period.

5.32 The fact that faults continued to impact upon the businesses in the period following the settlement shows a weakness in the procedures employed. That is, a standard of service should have been established and *signed off* by each party. It is a necessary procedure of which all parties are now fully conscious and is dealt with elsewhere in this report. Its omission as far as the initial 'settlement' of the *original COT Cases* were concerned meant that there was continued dissatisfaction with the service provided without any steps being taken to rectify

it. This inevitably led to a dissatisfaction with the initial '*settlement*' and to further demands for compensation. To avoid this sort of problem in the future, AUSTEL is, in consultation with Telecom, developing -

- a standard of service against which Telecom's performance may be effectively measured
- a relevant service quality verification test.

### AUSTEL'S ESCALATION OF ITS INVOLVEMENT

5.33 AUSTEL was concerned not only about the continuing complaints from the *original COT Cases* but also over the emergence of additional cases displaying characteristics similar to those of the *original COT Cases*. In the circumstances AUSTEL took the view that it must establish, by collecting *hard information* precisely how the telephone service supplied to the *original COT Cases* was performing. Accordingly, on 30 June 1993 it requested Telecom to institute monitoring and testing to measure the extent and nature of the faults about which the *original COT Cases* complained. AUSTEL also sought from Telecom a range of fault data, details of exchange standards and performance together with exchange maintenance details.

5.34 Telecom was reluctant to comply with AUSTEL's request and to provide the data and detail sought by AUSTEL. It suggested that the monitoring and testing was resource intensive and that it lacked the necessary testing equipment. Some six weeks after AUSTEL's request Telecom had not instituted any monitoring. Moreover, there was no indication that Telecom had or was about to adopt a more co-operative or constructive attitude on the matter and supply the information sought.

### AUSTEL's direction

5.35 Accordingly, on 12 August 1993, AUSTEL issued Telecom with a direction under section 46 of the *Telecommunications Act 1991* relying on its function expressed in section 38 of the Act to protect consumers. The direction required Telecom to institute a range of monitoring and testing procedures in relation to the three *original COT Cases* who were still carrying on business (Mr Schorer, Mr Smith and Mrs Garms) as well as five other businesses whose situation was then being considered by AUSTEL. AUSTEL also exercised its powers under section 400 of the *Telecommunications Act 1991* to require Telecom to supply all relevant documentation relating to the eight businesses and their terminating exchanges as well as details of exchange performance standards, actual performance, maintenance and fault records for 100 numbers adjoining those of each of the businesses.

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*Would you please advise*  
**Telecom**  
AUSTRALIA

*Dianna 29/4/94*  
Group General Manager  
Customer Affairs  
37th Floor, 242 Exhibition Street  
MELBOURNE VIC 3001  
Ph: (03) 632 7700  
Fax: (03) 632 3241

April 27, 1994

*Rob 27/4/94*  
Mr. Robin Davy  
Chairman  
AUSTEL  
3 Queens Road  
St Kilda  
Melbourne, VIC 3005

BY FACSIMILE: (03) 620 3021

Dear Rob,

Attached for your information, an updated draft of the standard Verification Tests for use in Telecom's Public Switched Telephone Network.

The tests have been prepared in consultation with Mr Cliff Mathieson of AUSTEL and will form the basis for determining whether an individual telephone service is operating satisfactorily. I would appreciate your confirmation that the tests have met all the requirements of AUSTEL for service Verification Tests.

Once agreement has been reached on these Verification Tests, Telecom will be in a position to commence the testing of the services associated with COT customers, and ensure they meet the agreed requirements for a satisfactory service. As you would appreciate the completion of this testing is required under the recommendations of the recent AUSTEL report on COT customers.

Sincerely,

*Steve Black*  
Steve Black

criteria which guide such scheduling. This issue is also of particular relevance to the determination of the required maintenance standard for analogue exchanges (recommendation 2), and AUSTEL cannot accept any Telecom analogue exchange maintenance proposal until this information has been received and assessed.

### **Development of New Fault Management and Complaint Management Procedures**

Telecom is instituting new fault handling and complaint management procedures, these having been developed in conjunction with Coopers & Lybrand. A major training program has been developed to implement and reinforce these procedures. Telecom provided AUSTEL with a copy of its fault management manuals on July 18 1994 and will be providing copies of the complaint management manuals in the near future. Procedures in the manuals embrace a number of the report's recommendations and will significantly impact on Telecom's handling of faults over the next several years. AUSTEL's Consumer Advisory Committee will be consulted on issues of specific consumer interest or concern. Further reporting on this matter will be provided in our next quarterly report.

### **Service Verification Tests**

An important component of Telecom's 4-stage fault handling process is the Service Verification Tests (SVT). These tests are applied during stage 3 of this process. AUSTEL has indicated an initial acceptance of the SVT in the form in which Telecom has now released the document. These tests are important for Telecom to be able to provide objective data about the end-to-end performance of its network in regard to the service of an individual customer on the date the tests are conducted. It is the nature of such tests that they are more able to demonstrate that the network is not performing to an acceptable standard as opposed to a demonstration of compliance. In its briefing, Telecom indicated (and we will seek confirmation and further detail in writing) that if the SVT indicates an unacceptable level of service then the required replacement of network equipment will be undertaken.

AUSTEL will be revisiting the issues identified above and a range of other issues as part of our review of the SVT. Unfortunately AUSTEL has been continually frustrated in regard to monitoring this recommendation by Telecom's slow and incomplete responses to requests for data necessary to the evaluation of the tests. AUSTEL will be engaging a consultant in the near future to assess technical and methodological issues concerning the SVT.

**Recommendation 18:** Telecom acquire equipment suitable for monitoring the service actually received at a customer's premises (cf: Coopers & Lybrand Recommendation 10 and Bell Canada International's Rotary Hunting Group Study Recommendation 8.3).

**Telecom Update - October 1994**

*Both Telecom and AUSTEL have accepted the terms of reference and have nominated members for a joint working party tasked with developing a specification for customer premises line monitoring equipment.*

*A number of meetings have been held and an Equipment Specification has been prepared.*

**TIMETABLE**

*A preliminary report from the joint working party was completed on 30 September 1994. Contracts for the trial test equipment will seek supply by 30 March 1995.*

**AUSTEL Comment**

AUSTEL is satisfied with Telecom's response to date on this recommendation.

**Recommendation 19:** Telecom satisfy AUSTEL that the monitoring systems and procedures Telecom uses to test individual services are effective.

**Telecom Update - October 1994**

*AUSTEL is examining the detail of tests specified in the new Fault Management Procedures and Work Instructions. They have indicated they will focus particularly on the suitability of specific procedures at various stages of the Fault Escalation Process and will provide comment to Telecom as necessary.*

**TIMETABLE**

*These procedures are scheduled for introduction as a component of Telecom's new fault handling procedures by 31 December 1994.*

**Recommendation 25:** Telecom commit itself to rectify the majority of difficult network faults which reduce the level of service below a level determined by AUSTEL within three to six months and all within a period of twelve months.

**Telecom Update - July 1994 Quarter**

Telecom's fault rectification standards are outlined in Section 3.6 of the Public Switched Telephone Service (PSTS) Tariff. These standards state that "Telecom will repair telephone services by the date agreed with the customer. Telecom aims to repair services in accordance with the following standard:

- (i) In urban areas within one (1) working day of being notified of a fault.
- (ii) In rural areas within two (2) working days of being notified of a fault.
- (iii) In remote areas within three (3) working days of being notified of a fault."

These rectification requirements are meant for all customers, including DNF customers.

Telecom has also scheduled the DNF customers for Service Verification Tests to objectively confirm that their services meet an appropriate performance standard.

Telecom's comment on an appropriate standard of service for an individual telephone service are included under Recommendation 26.

**AUSTEL Comment**

The major issue in relation to the PSTS tariff and Difficult Network Faults (DNF) is the means of determining whether the fault rectification objectives have been realised for DNF customers. (This issue shares many similarities with Recommendation 2). In the near future AUSTEL will be discussing with Telecom the practicality of instituting a reporting regime which reports against the achievement of these PSTS standards specifically for DNF customers.

AUSTEL notes that DNF customers have characteristically reported recurring faults over extended periods of time.

Clarification will be required of the definition of "service repairs" when a fault recurs after initially having been determined as "repaired". This issue will need to be addressed in the context of this recommendation.

Issues to do with the Service Verification test are discussed under Recommendation 41.

55





## BARNABY JOYCE

The Nationals Senator for Queensland

15 September 2005

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

Dear Mr Smith,

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

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

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

In response, I am pleased to inform you that the Minister has agreed there needs to be finality of outstanding CoT cases and related disputes. The Minister has advised she will appoint an independent assessor to review the status of outstanding claims and provided a basis for these to be resolved.

I would like you to understand that I could only have achieved this positive outcome on your behalf if I voted for the Telstra privatisation legislation.

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

Kind regards,

Senator Barnaby Joyce  
The Nationals Senator for Queensland

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

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

16 November 2006

Dear Senator Coonan *Helen,*

**CoTs cases and related disputes**

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

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

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

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

Yours sincerely

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

---

90 The Terrace, St George QLD 4467  
senator.joyce@aph.gov.au - www.nationals.org.au  
Tel: 07 469 1200 Fax: 07 469 1200 668 195 Fax: 07 469 1211



**SENATOR THE HON HELEN COONAN**

**Minister for Communications, Information Technology and the Arts  
Deputy Leader of the Government in the Senate**

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

17 MAY 2007

Dear Mr Smith

**Outcome of representations to Telstra**

On 6 September 2006 I met with Senator Barnaby Joyce and a group of current and former Telstra customers (the Casualties of Telstra (COTs)) and former contractors of Telstra regarding ongoing disputes with the company. At that meeting I made a commitment that I would make a final representation to Telstra regarding your unresolved complaints

I have now made both formal and informal representations to Telstra on behalf of the CoTs. However, Telstra's position remains that this is a matter that is most appropriately dealt with through a Court process. Telstra is not prepared to undertake an alternate means of pursuing this matter.

I also appreciate the depth of feeling regarding the matter and suggest you consider whether any court proceedings may be your ultimate option.

Yours sincerely

HELEN COONAN

57B

Seal Cove Guest House  
1703 Bridgewater Road  
Portland 3305

28<sup>th</sup> September 2009

Ms Deirdre O'Donnell  
Telecommunications Industry Ombudsman  
P O Box 276  
Collins Street West 8007

Dear Ms O'Donnell,

**LETTER 1**

I apologise for accidentally omitting to enclose the corrected version of my letter dated 13<sup>th</sup> September 2009 with my letter dated 21<sup>st</sup> September 2009. The corrected version is now enclosed here.

As these two last letters show, the arbitration process provided no help to me, as the claimant, because the faults I complained about continued to affect the operation of my business and erode my customer base, long after my arbitration had been deemed to be completed. After reading my letters, I believe the TIO Board and Council will conclude that AUSTEL, then the Government Regulator, was wrong not to give me a copy of their draft findings (Alan Smith – Cape Bridgewater Holiday Camp) when they provided them to Telstra, the defendants in my arbitration. I also believe that the Board and Council will agree that, if Dr Hughes had been aware that the telephone faults I complained about had continued to occur, unabated, and that, to support their contention that the Cape Bridgewater *Customer Access Network (CAN)* was operating correctly, Telstra had unlawfully provided false Service Verification Test results as part of their arbitration defence material, then Dr Hughes would have been duty bound to refuse to hand down a finding in relation to my claims until:

1. Telstra was made accountable for providing defence material they knew was false; and
2. Telstra was able to provide conclusive evidence that my business was no longer experiencing any more telephone or fax problems.

On page 4, at point (d), in my last letter I referred to "... my Supreme Court claim ..." and I realise now that this probably needs more explanation. I had contemplated a Supreme Court action because, on 13<sup>th</sup> December 1995, my solicitors, Law Partners, wrote to me, stating: "*Overall however, we are of the opinion that the FTAP was fundamentally flawed given its objectives. The actions of Telstra and other key figures in the process were to say the least, against the spirit of the FTAP. In short we believe it would be possible to set aside the arbitrator's decision on the basis of failure of natural justice during the course of the FTAP.*" Over the next few weeks I wrote a number of letters to Mr Pinnock (then the TIO), each time stressing that my claims were valid. Each time these claims were rejected as 'frivolous'.

On 31<sup>st</sup> December I wrote to the TIO again, asking him to provide me with all 'relevant pre-arbitration procedural documents' that had been exchanged between Dr Hughes, the Resource Unit and the TIO's office, including all 'inter-arbitration correspondence' that had been exchanged between the TIO and Dr Hughes. This request was made because, at that point, I had remembered that the COT Spokesperson (Graham Schorer) solicitor had assured us that the agreement included clauses that guaranteed the TIO's Special Counsel and the TIO-appointed Resource Unit would be liable for any proven act of negligence that occurred during the COT arbitrations but, when I went back to the agreement so I could show these clauses to my solicitors, Law Partners, I discovered that the clauses had somehow disappeared. When I advised Law Partners that the clauses were missing, they suggested that perhaps the clauses had been attached to the agreement separately (annexed) and recommended that I check all the pre-arbitration material that was available from the TIO. On 10<sup>th</sup> January 1996 however, the TIO responded to my

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request, noting that he did not "... propose to provide you with copies of any documents..." from his office.

What I was trying to emphasize in my last letter was that, if the TIO had given me a copy of the letter Dr Hughes wrote on 12<sup>th</sup> May 1995, which described the arbitration agreement as 'not credible', or if I had received proof that the TIO had conspired with Dr Hughes and the TIO's Special Counsel to change and/or remove sections of the arbitration agreement without my knowledge or consent, I could have used this material in a Supreme Court action and Dr Hughes' findings would have been set aside because, after all, how could a Supreme Court judge argue against the arbitrator's own findings that he had handed down my award using an agreement he himself had branded as 'not credible'?

In summary, it is very likely that a Supreme Court judge would have found against Dr Hughes if we had also been able to show that:

1. The arbitrator had conspired with the TIO's Special Counsel to secretly alter or remove particular clauses from my arbitration agreement, to the detriment of my claim, and then re-instated those clauses for the remaining twelve COT arbitrations;
2. After the arbitrator had completed my arbitration, and having condemned the agreement as 'not credible', he then proceeded to use the same deficient agreement for the next three claimants;
3. Because of the deficiencies that Dr Hughes had identified in the agreement, he was forced to allow the next three claimants an extra thirteen months to three years in which to prepare their claims.

I would be grateful if you would provide this letter 1, and the attached letter 2, along with those written on 13<sup>th</sup> and 21<sup>st</sup> September, to the TIO Board and Council before they come to any decision regarding my request for documents.

Sincerely,

Alan Smith

*Copies to*

*Mr Paul Crowley, CEO, IAMA Ethics and Professional Affairs Committee*

58-A

↓  
10 January 1996

CONFIRMATION  
OF FAX



Telecommunications  
Industry  
Ombudsman

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

John Pinnock  
Ombudsman


Dear Mr Smith

I refer to your letter of 31 December 1995 in which you seek to access to various correspondence held by the TIO concerning the Fast Track Arbitration Procedure.

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

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

Yours sincerely

  
JOHN PINNOCK  
OMBUDSMAN

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

58-B

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Seal Cove Guest House  
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1<sup>st</sup> September 2010

Mr Graeme Samuel, AO  
Chairman  
Australian Competition & Consumer Commission  
GPO Box 520  
Melbourne Vic 3001

Dear Mr Samuel,

The attached letter dated 1<sup>st</sup> September 2010, to Mr Chris Chapman and Members of the Board of ACMA, is forwarded because it confirms how AUSTEL, the predecessors of the ACMA, breached their statutory obligations when they withheld from the relevant Minister many of the more adverse findings that resulted from their investigations into the COT Case complaints.

As I have noted in the closing statements in my letter to Mr Chapman, it is dangerous to be right when the Government is wrong but I know that AUSTEL, the Government Telecommunications Regulator, should never have allowed Telstra to pressure them into removing their true findings from the final version of their 13<sup>th</sup> April 1994 COT Report when the draft of the AUSTEL Cape Bridgewater Holiday Camp Report, dated 3<sup>rd</sup> March 1994 (which I didn't receive until November 2007, thirteen years after my arbitration) states that my business had been connected to an old and outdated RAX exchange that, according to Telstra's own records, had been declared obsolete around 1983/1984 but was still in use at Cape Bridgewater until August 1991.

As a part-time member of the ACMA Board and Chairman of the ACCC you would now be aware (if you and/or your staff have assessed my earlier letters and CD) that my claims against AUSTEL (now the ACMA) are neither vexatious nor frivolous. It was not only unethical for a Government Regulator to alter their true findings in the report they provided to the Minister and the COT arbitrator, but those changes created a 'snowball effect' when Telstra refused to provide the claimants with documents related to the Cape Bridgewater exchange so that my technical advisor, George Close, Data Telecommunications Consultant, was forced to rely on AUSTEL's doctored final COT report as he prepared his report on my behalf, not knowing that that report had been changed so that it did not disclose just how old the Cape Bridgewater exchange really was. This meant that although I spent \$25,000.00 on Mr Close's report, more than half of it was based on false information supplied by AUSTEL.

The Telecommunications Act 1991, Section 340, Reference of Matters to Trade Practices Commission: (3) clearly states: "*The Trade Practices Commission may hold an investigation into the matter and, if it decides to do so, it must report to AUSTEL on: (a) the conduct of the investigation; and (b) any findings that it has made as a result of the investigation*", and Section 342 Reports of Investigations, states: "*After concluding an investigation under section 335 (3) AUSTEL must prepare and give to the Minister a report under this section. (3) A report under this section must cover: (a) the conduct of the investigation concerned; and (b) any findings that AUSTEL has made as a result of the investigation*".

Since you are a part-time member of the ACMA Board I am aware that you may have a conflict of interest in regard to these matters but I have every faith in your integrity and I don't believe you would let your position with the ACMA cloud your judgement regarding whether or not AUSTEL (as the Government Regulator) breached their statutory obligations to the COT Cases when they chose not to report all the results of their investigations and therefore did not abide by the Act.

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Since I am not the only consumers to suffer as a result of the information that AUSTEL withheld from the Minister this is therefore a matter of public interest and I would like to know if this is also a matter that you could address as Chairman of the ACCC (if it does not create a conflict of interest) or whether you believe it would be best to have it addressed by another Government organisation. If this is the case I would appreciate your advice regarding which organisation you believe has the correct jurisdiction in this matter.

I look forward to your early response to these questions,

Sincerely



Alan Smith

*Copy to Mr Chris Chapman, Chairman of the ACMA*



Seal Cove Guest House  
1703 Bridgewater Road  
Portland 3305  
1<sup>st</sup> September 2010

Mr Chris Chapman and Members of the Board of ACMA  
P.O. Box Q-500  
Queen Victoria Building  
NSW 1230

Dear Mr Chapman and Members of the Board,

**My letter is not a Geoffrey Robertson hypothetical. This is a living, breathing public interest matter.**

The following four examples entitled MELU RVA Fault, Heywood/Portland Register RVA Problem, Lightening Strike and ARK Exchange v RAX Exchange shows how the suppression of the AUSTEL draft Cape Bridgewater Holiday Camp report – stopped the arbitrator from correctly assessing the true value of the telephone faults that had affected the viability of my business.

**Example 1** MELU RVA Fault Points 95 to 118 in AUSTEL's Cape Bridgewater draft report they note: *"In terms of the volume of incoming call traffic affected, was when the Cape Bridgewater number code data was not correctly programmed at the Windsor Digital Trunk Exchange MELU. Telecom's own internal documentation on the duration of both problems demonstrates that there is evidence that faulty relay problems certainly existed longer than stated, and that uncertainty exists on the duration of the MELU RVA problem"*.

A letter dated 2<sup>nd</sup> February 1994 from AUSTEL, to Telstra, numbered as FOI document folio 95/0603-01 – 74, was not provided to me by the ACMA until 13<sup>th</sup> February 2009, fifteen years after the end of my arbitration. FOI folio 95/0603-01 – 75 which AUSTEL marked as (Attachment A) discusses the MELU exchange RVA fault with a Telstra hand-written note at the top of the page stating: *"Aug '91 – cutover from RAX to RCM When? – approx 7/8 mths 50% maximum"*. It is clear that the hand-written note refers to the MELU fault having lasted between seven to eight months. This letter from AUSTEL to Telstra, confirms that AUSTEL was returning to Telstra evidence that records the MELU fault as having lasting for 7 to 8 months. A further hand written Telstra document FOI folio K02643 (which can be provided on request) states: *"Fault history – Cutover to RCM when? – likely length of MELU problem"*, this statement coincides with FOI folio 95/0693-01 – 75 RVA message which advised callers to my business that I was no longer trading. This problem had been ongoing for at least 7/8 months.

In their defence of my arbitration claims, Telstra stated that the MELU Recorded Voice Announcement (RVA) fault had only lasted for sixteen days when AUSTEL and Telstra both clearly knew it had lasted at least seven and possibly eight months but, like the lightning strike issue (see below) that Dr Hughes (the arbitrator) accepted had only lasted for four days when it had, in fact, lasted for three months, and the Heywood Digital Register problem that Dr Hughes accepted had lasted for only five days when it had lasted for five weeks (see below), in Dr Hughes' award, his comment on the MELU RVA problem was that. : *"... all calls through this exchange to Cape Bridgewater were directed to RVA for at least 16 days"* – obviously nowhere near seven or eight months!

**Example 2:** Heywood Portland Switching 40 Register RVA Problem: At point (89 to 91) in the AUSTEL Cape Bridgewater draft report they note: *"2 October and 7 October 1992. It is not clear how the duration or extent of the problem were so precisely identified. Other evidence also suggests the problem had existed for a longer period than a 5 day period. From the recent information provided by the Heywood caller via Mr Smith the problem commenced at least 10 days earlier than the period Mr Smith was informed by Telecom"*. Telstra FOI document R01444 confirms the problem was in existence from at least 2<sup>nd</sup> September 1992 to 7<sup>th</sup> October 1992 five weeks NOT five days as Telstra advised the arbitrator.

In the arbitrator's award he notes: *"there is evidence that one of the 40 registers in the Portland ARF minor switching centre was fault for 5 days between 2 October and 7 October 1992"*.

**Example 3: Lightning Strike:** At point 158 in the Cape Bridgewater Holiday Camp draft report AUSTEL notes that: "The crucial issue in regard to the Cape Bridgewater RCM is that assuming the lightning strike did cause problems to the RCM in late November 1992 these problems were not resolved till the beginning of March 1993, over 3 months latter". Telstra fault file (XLS - 736-737) confirms the fault lasted for at least three months.

On page 33 in the arbitrator's award (on this same subject) he notes: "damage was caused to Cape Bridgewater RCM equipment by lightning strike on 21 November 1992, resulting in a variety of complaints which affected services for 4 days before restoration action was taken".

**Example 4: ARK Exchange v RAX Exchange** The following information shows how the suppression of this same draft report - stopped both the arbitrator and my technical advisor, George Close, Telecommunications Consultant from being able to correctly investigate the first three and a half year period of my claims.

**Exhibit 1**, pages 2 and 3 from AUSTEL's covert draft report dated 3<sup>rd</sup> March 1994 notes, at point 6: "A Telecom Minute from regional Manager dated 5 October 1992 provides background to the service changes which have occurred at Cape Bridgewater Holiday Camp. Mr Smith has had an ongoing complaint about his level of service for some time... Customer was originally connected to an old RAX exchange, which had limited junctions between Portland and Cape Bridgewater".

**Exhibit 2**, point 7.29 on page 164 of AUSTEL's final report dated April 1994, notes: "Mr Smith of the Cape Bridgewater Holiday Camp, one of the 'original COT Cases', reported a significant level of faults when serviced by the analogue ARK exchange at Cape Bridgewater. That exchange was replaced in 1991 with a modern AXE digital at Portland together with a Remote Customer Multiplexer (RCM) at Cape Bridgewater."

**Exhibit 3**, page 2 of George Closes' report dated August 1994 notes: "The ARK unmanned exchange was by 1988 an obsolete and outmoded electro-mechanical. It was severely under-trunked for its requirement and being unmanned suffered continued maintenance limitations. In August 1991, Telecom replaced the obsolete ARK exchange at Cape Bridgewater and replaced it with a Remote Customer Multiplexer (RCM)".

**Exhibit 4**, page 3 of Telstra's B004 Arbitration Defence report dated 12<sup>th</sup> December 1994 notes: "It is significant that the original exchange configuration is erroneously identified as being an ARK exchange parented by Portland AXE 104 exchange. An ARK exchange operates in an entirely different way compared to an RAX exchange and the Portland AXE 104 exchange was not in place originally, nor did it act as a parent exchange for the RAX exchange at any time. It is therefore impossible to consider, let alone support, any of the points made in the Close Report regarding the traffic handling capacity, operation of or maintenance practices associated with Mr Smith's services."

#### **MOST IMPORTANT**

Government records from before my arbitration show that AUSTEL advised various Government Ministers that the first four COT claimants (of which I was one) were not being provided with FOI documents to enable them to prepare their claims.

Because Telstra would not provide the FOI documents I needed to support my arbitration claim, when George Close, my telecommunications consultant, was preparing his report on my behalf, he was therefore forced to rely on the final AUSTEL COT Report. As we now know however, the final version of AUSTEL's report incorrectly states that the telephone exchange in use between February 1988 and August 1991 (the first part of my claim) was an ARK. Mr Close of course had no way of knowing that the final AUSTEL report had been 'doctored' which benefitted Telstra arbitration defence, and so he based his findings on the information in that final report. After all, if we cannot rely on a report prepared by the Government Regulator, what can we rely on?

It has since been pointed out by various technical people that Telstra couldn't risk AUSTEL's final report showing that my business had been connected to an old and outdated RAX exchange (as shown in AUSTEL'S draft report on pages 2, 6 and 64) because the RAX exchanges were supposed to have been phased out by 1983. If it became general knowledge that Cape Bridgewater had still been connected to an RAX exchange in 1991,

eight years after the RAX exchanges had been declared obsolete, then Telstra would not have been able to defend any of my arbitration claims, nor any other claims that might have been lodged by other Cape Bridgewater businesses and/or residents, who believed they were entitled to compensation from Telstra. When AUSTEL stated, in their draft report, that: *"A Telecom minute of 5 October 1991 indicates the old RAX had limited junctions between Portland and Cape Bridgewater meaning that congestion was a problem for all customers on the Cape Bridgewater exchange,"* they confirmed that there was a serious risk of numerous compensation claims against Telstra if those findings remained in the final, public report.

In August 1991, when Telstra was still using the RAX exchange at Cape Bridgewater, there were seventy-two dwellings comprising of approximately 156 people, all using the same RAX exchange but that RAX exchange had been declared obsolete eight years earlier, because it only had eight final selectors which meant that, if four people in Cape Bridgewater were talking on the phone at the same time, then only four incoming calls could get through to the other 152 residents. And in the summer months the population more than doubled when holiday-makers arrived.

On 8<sup>th</sup> November 2002 I received a letter from a Barry Sullivan, stating: *"I am writing to you following viewing the Channel 9 Sunday Programme on 3/11/02. After viewing the Sunday programme, I realise the similarities your business and others had with Telstra ten years ago with the similarities our building business had, when we lived at Bridgewater. During a period of time between the late 1980s and early 1990s we had considerable amount of difficulty with our phone. Our phone problem had such a negative effect on our building business over a period of time that our work dried up."* This corresponds with AUSTEL's draft report when it noted: *"Given the range of faults being experienced by Mr Smith and other subscribers in Cape Bridgewater is clear that Telecom should have initiated more comprehensive action than the test call program"*, thereby confirming both Mr Sullivan's experience and statements made by various technical experts who all noted that the AUSTEL report would have had to have been doctored under pressure from the Telstra Board.

The issue of the RAX exchanges is covered in a Telecom Acronyms and Abbreviations Dictionary dated January 1985 which notes, on page 78, that the *"RAX (switching) Remote Automatic Exchange - now obsolete"*. In the revised edition of the Acronyms and Abbreviations Dictionary dated July 1986, there is no mention of the existence of the RAX exchanges. So, in the same way that Telstra pressured AUSTEL to change the information in their draft report (which recorded 120,000 COT-type customer complaints) so that the final AUSTEL report recorded instead 'more than fifty COT-type' customers, it seems that Telstra again pressured AUSTEL into changing more of the true facts in their final report concerning the long-outdated Cape Bridgewater RAX. We don't need to be mathematicians or technical consultants to understand the ramifications of Mr Close not knowing that the Cape Bridgewater exchange was actually thirty years older than was shown in the final AUSTEL report. Mr Close's report cost me \$25,000.00 and it is now quite clear that the section of his report that covered the first three and a half years of my claim (which covered six years in all) would have been quite different if only he had been in a position where he could have asked the arbitrator to ask Telstra to explain why old RAX equipment was still in use in Cape Bridgewater in August 1991, when it had been declared obsolete eight years earlier (in 1983).

A comparison of AUSTEL's covert draft report dated 3<sup>rd</sup> March 1994, on the Cape Bridgewater Holiday Camp, and the final version of the final AUSTEL COT Cases Report proves that many of the adverse findings in the draft Cape Bridgewater report are not broadcast in the final report, as they should have been according to Section 342 of the Telecommunications Act 1991 (3), which states that: *"A report under this section must cover: (b) any findings that AUSTEL has made as a result of the investigations"*.

At point 3.7 and 3.8 in the arbitrator's Award on my matters under the heading **AUSTEL Report** he notes: *"(a) The AUSTEL Report recorded the results of AUSTEL's investigations into the substance of the complaints by the COT Cases regarding the service received by Telecom," The report accepted that the COT Cases had experienced like service difficulties and faults but these faults were "intermittent" and their fault causes difficult to trace." The report emphasised, however, that these observations were not necessarily relevant to the determination to be made by me as to whether Telecom had failed to meet acceptable service standards or whether these deficiencies had caused the losses claimed by the COT Case"*.

4  
The AUSTEL draft report clearly states (in my case) that Telecom did not meet acceptable service standards noting: "*Cape Bridgewater Holiday Camp has a history of service difficulties dating back to 1988. It is apparent that the camp has had ongoing services difficulties for the past six years which has impacted on its business operations causing losses and erosion of customer base. Service faults of a recurrent nature were continually reported by Smith and Telecom was provided with supporting evidence of this in the form of testimonials from other network users who were unable to make telephone contact with the camp. In view of the continuing nature of the fault reports and the level of testing undertaken by Telecom doubts are raised on the capability of testing regime to locate the causes of faults being reported*".

**PLEASE NOTE:** there is no reference in the draft AUSTEL Cape Bridgewater Holiday Camp report that records my telephone faults as having been intermittent. Just imagine what the arbitrator's award might have shown had he been in receipt of AUSTEL's draft report on my matters.

As the current Chairman of the Board, how can you ignore this clear proof that AUSTEL's final report to the Minister did NOT include all the findings that resulted from their investigations? Neither you nor the Board have a choice here Mr Chapman, because this evidence proves that AUSTEL, your predecessors, clearly breached their statutory obligations to me when they provided doctored information to the relevant Minister and the arbitrator rather than the true facts.

Your office is also in receipt of a letter dated 15<sup>th</sup> July 1995, from Amanda Davis, AUSTEL's previous General Manager of Consumer Affairs in which she notes: "*...The AUSTEL report looks good to the casual observer, but it has now become clear that much of the information accepted by AUSTEL was at best inaccurate, and at worse fabricated, and that AUSTEL knew or ought to have known this at the time*".

I conclude on these comments. Voltaire warned that it is dangerous to be right when the government is wrong. I believe if freedom matters, oppression and abuse of power simply must be resisted. I believe that one person's stand can make a difference.

Even after sixteen years struggling for justice, I hold firm to the principle of equality before the law for all. It matters. It is a non-negotiable value of this nation. It sustains our freedom and democracy.

At this very hour, our government is sending soldiers to Iraq and Afghanistan on the promise to these two nations that freedom and democracy is worth fighting for. The collusion that existed between AUSTEL and Telstra during my arbitration has made a mockery of the words freedom and democracy.

Please accept this letter as further evidence in support of my request to the ACMA for free access to the documents requested under FOI, in the public interest.

Thank you,



Alan Smith

Copies to:

*Mr Graeme Samuel AO, Chairman of Australian Competition & Consumer Commission,  
Mr Paul Crowley, CEO Institute of Arbitrators Mediators Australia, and other interested parties.*

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

9<sup>th</sup> September 2010

Ms Clare O'Reilly  
ACMA  
P O Box 13112,  
Law Courts  
Melbourne 8010

Dear Ms O'Reilly,

Thank you for your letter of 3<sup>rd</sup> September 2010 which notes, at point 18, that my claim for free access to the documents I am seeking is not in the public interest and, at point 19, that the COT / public interest consideration has been reviewed numerous times by several public bodies over the past fifteen years or so, and that the TIO and ACMA consider the matter now closed.

#### **COLLUSION 1**

You may not be aware that the TIO is not a public body – it is owned (and paid for) by Telstra and other Telco companies. During the TIO-administered COT arbitrations the TIO seconded a Telstra employee, Grant Campbell, to run the TIO's fault-handling division. During my settlement process, Mr Campbell even signed letters to Telstra on behalf of the TIO (then Warwick Smith), letters directly related to my Fast Track Settlement Proposal (FTSP). Some of the letters that Mr Campbell signed advised Telstra that certain fault issues were not part of my arbitration even though they had already been included in my interim Statement of Claim. Interestingly, this part of my claim vanished during my arbitration and was never sighted again. Copies of these letters can be provided. This is the same Grant Campbell who is missing from the staff list in the TIO's annual report of 1993/94 and is not included in a photo of TIO employees that year – probably because he was not being paid by the TIO but by Telstra – the defendants of my claims. This is also the same Grant Campbell who dealt with my claims of ongoing lock-up/billing fax and 008/1800 problems during the early part of my arbitration but then jumped ship and joined Telstra's Customer Response Unit, which is the division of Telstra that he had previously written to while wearing his TIO hat, about what he said were not problems associated with my FTSP. Then Mr Campbell began to work on addressing the same 008/1800 faults (the same ones I had raised with him when I believed he was employed by the TIO) on behalf of Telstra in relation to another COT complainant. Furthermore, Telstra's Ted Benjamin, who was manager of the Customer Response Unit was also, at the same time, a sitting member of the TIO Council and, on 26<sup>th</sup> September 1997, Mr Benjamin admitted to a Senate Estimates Committee, in front of John Pinnock (then the TIO) that, when he was on the TIO Council between June 1993 and September 1997 he never once declared a potential conflict of interest when TIO-administered COT/Telstra arbitration issues were being discussed. When Senator Schacht asked Mr Benjamin, for the second time, "Did the council make any decisions about CoT cases or express any opinion"? Mr Benjamin replied: "I might be assisted by Mr Pinnock." and Mr Pinnock replied: "Yes" however neither Mr Pinnock nor Mr Benjamin ever advised the Senate that, during the COT arbitrations, a covert agreement had meant that all documents submitted to the arbitration were first vetted by the TIO-appointed Resource Unit of Ferrier Hodgson Corporate Advisory who were secretly given authority by Warwick Smith (TIO) in conjunction with Telstra's Steve Black in deciding which documents would be passed on to the arbitrator and which would be withheld.

The ACMA already has information proving that the 008/1800 billing information that AUSTEL sent to the arbitrator concerning my matters never reached him. Also, some of the 008/1800 information that I sent to the TIO while Mr Campbell was there signing letters on behalf of the TIO were not returned to me

after the end of my arbitration, indicating that this information had also been hidden or destroyed so that the arbitrator would not see it.

All this information clearly and thoroughly negates your 'advice' that the TIO has already correctly investigated my matters. Other information in the ACMA's archives will also prove that:

1. Mr Benjamin wrote to Mr Pinnock on 4<sup>th</sup> February 1998, thirty-three months after my arbitration, in relation to 14<sup>th</sup> January 1998 Telstra file notes regarding their investigation into my complaints of ongoing lock-up/billing problems, but Mr Pinnock saw fit to withhold this letter from me until after I had sold my business in December 2001;
2. When the new owners of my business began to complain of the same ongoing telephone problems that I had first raised with AUSTEL in 1993, Mr Pinnock allowed Telstra to provide the new owners Darren & Jenny Lewis, with a report that ridiculed them, inferring that they had imagined the problems and almost calling them liars. A copy of this report can be provided.
3. According to a report dated 26<sup>th</sup> July 2007, prepared by Mr Brian Hodge MBA (B.T. Telecommunications), who had worked for Telstra for 29 years before setting up his own business, Telstra fudged the results of Service Verification Tests supposedly carried out at my business. According to Mr Hodge these tests had not been carried out at all and neither had the so-called BCI, Cape Bridgewater RCM tests that AUSTEL's Cliff Mathieson secretly told me had not been performed as reported. He also noted in this report concerning the ongoing telephone complaints by the Lewis' that: *"The failure of Telstra to carry out standard performance tests (e.g. bit error rate etc), at the multiplexer (RSM) at Cape Bridgewater is alarming & of concern. CCAS data over recent times (e.g. 2004-2006), indicate a continuing & worsening level of "Outgoing Released During Setup" calls (ORDS). These reports on the CCAS data indicate that the calls are not successful in the call set up stage of the connection or is lost in the network."*

At point 212 in the 3<sup>rd</sup> March 1994 Cape Bridgewater Holiday Camp draft AUSTEL report it is noted: *"...In view of the continuing nature of the fault reports and the level of testing undertaken by Telecom doubts are raised on the capability of the testing regime to locate the causes of faults being reported."*

#### **FREEDOM OF INFORMATION ACT (THE ACT)**

When the FOI Act was formulated, no-one would ever have believed that a Government Regulator like AUSTEL would breach its statutory obligation to fellow Australians by deliberately withholding relevant information from a Government Minister and would allow another Government-owned Corporation (Telstra) to submit false statements to an arbitration process that had been endorsed by the government, under oath – which is what Telstra did when they stated that their Cape Bridgewater Holiday Camp SVT testing regime had met all of the Regulator's specification when they had already been warned by that same Regulator that they did not meet the AUSTEL's specifications. If anyone had thought that this might happen in the future then the FOI Act may have included a provision that, if someone could prove that a public servant or a Government Agency was aware of this illegal behaviour but had concealed what they knew, then the documents that might implicate those public servants or Government Agencies could have been considered to be 'of public interest'.

On 20<sup>th</sup> January 1994 when Telstra was refusing to supply AUSTEL documents to enable them to prepare their COT Cases Report, Ms Philippa Smith, Commonwealth Ombudsman wrote to Jim Holmes, Telstra's Corporate Secretary noting: *"...I received complaints from three 'COT Cases' Mr Graham Schorer, Mr Alan Smith and Mrs Ann Garms, concerning Telecom's handling of their applications under the Freedom of Information Act (FOI Act). 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 interests, in the context of s(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."*

**COLLUSION 2**

A Telstra document printed on 10<sup>th</sup> February 2003 and headed Telstra Confidential (FOI folio 100265) says:

- (a) *"Min Rep 20021000381: David Hawker MP has written to Senator Alston on 10 October and included a 3 October letter from Darren and Jenny Lewis. This 3 October letter has been cc-d to the TIO but doesn't seem to have made it's way into Telstra yet. Will follow in Cicero and respond accordingly. Hopefully, the TIO will become involved and that will take the Minister and Member out of the equation..."*

this suggests that, with Senator Richard Alston (Minister for Communications and the Arts) and David Hawker MP (Federal Minister of Parliament for Mr & Mrs Lewis) out of the way, and with the assistance of the TIO, Telstra could continue to conceal just how bad the ongoing telephone problems had been, and still were, at the Cape Bridgewater Holiday Camp. If this document doesn't make you wonder if there could possibly be another side to that presented by the TIO, the TIO board and the TIO Council, then I ask that you also consider Telstra FOI document 100271, headed Telstra Confidential, also printed on 10<sup>th</sup> February 2003, which notes:

- (b) *"The TIO have now raised a level 1 complaint on behalf of Mr & Mrs Lewis. The TIO have specifically mentioned in their correspondence that the TIO have previously investigated a number of complaints raised by Alan Smith the previous account holder for this service".*

These two documents are particularly important because from 23<sup>rd</sup> June 1995 (six weeks after the end of my arbitration) until 27<sup>th</sup> February 2003, I continually wrote to the TIO, John Pinnock, warning him that the arbitration had neither investigated nor fixed the on-going lock-up problems on my three service lines but not once in those eight years did Mr Pinnock ever notify me of the result of any investigations he might have carried out, into the telephone problems at my business that were referred to in Telstra FOI document 100271, which confirmed that the TIO had investigated at least some of my complaints. I have always believed that no-one involved with the TIO's office would transparently investigate my telephone complaints after the end of my arbitration because that would have revealed Telstra's submission of false evidence to the arbitrator (e.g. when Telstra falsely stated, under oath, that they had carried out their Cape Bridgewater Holiday Camp (SVT testing regime) according to all of AUSTEL's specifications).

**PERVERSION OF THE COURSE OF JUSTICE**

Back when the ACMA was the Australian Communication Authority (ACA) the Chairman was Mr Tony Shaw. Mr Shaw knows that EXICOM TF200 telephones manufactured in April 1993 all had a tendency to lock-up after each call but Telstra claimed that my problems were caused by beer found inside the EXICOM TF200 that they collected from my business. Mr Shaw, the TIO Board and Council, and Telstra's previous Corporate Secretary all have copies of Telstra's original laboratory file notes which prove conclusively that Telstra's twenty-nine-page TF200 report was simply 'manufactured': submission of this fraudulent report certainly perverted the course of justice during my arbitration however neither Telstra nor the TIO-appointed technical unit ever investigated why my fax line (03 55 267 230) kept locking up even after Telstra had installed a new EXICOM TF200 phone.

Documents I received from the TIO seven years after the end of my arbitration proved beyond all doubt that Dr Hughes did not base his technical findings on reports submitted by DMR Canada and Lane Telecommunication, even though the award states that he did, because the draft version of the award refers to Dr Hughes basing his findings on DMR Australia's report (not DMR Canada & Lane Telecommunication) and all the technical information in both the draft and final versions of the award are exactly the same. DMR Australia had to pull out of the arbitration process because of a conflict of interest and DMR Canada and Lanes were not accepted by the claimants until after 9<sup>th</sup> March 1995 but the draft award states: "... pursuant to paragraph 8 of the arbitration agreement, I had the power to require a "Resource Unit", comprising Ferrier Hodgson, Chartered Accountants, and DMR Group Australia Pty Ltd, to conduct such inquires or research as I saw fit, on 21 February 1995, by which time I was satisfied

that the submission of all relevant material by both parties was complete, I instructed Ferrier Hodgson (and through them, DMR) to conduct certain inquiries on my behalf." So the question is, who did provide the technical findings that the arbitrator used when he prepared his award? Because those findings (as opposed to AUSTEL's findings) were in favour of Telstra in relation to four major defence areas – the same areas that AUSTEL included in the draft version of their Cape Bridgewater Holiday Camp, finding so strongly against Telstra, but which were then entirely omitted from the final version of the AUSTEL report. This means that, if Dr Hughes had been given a copy of AUSTEL's draft version of their Cape Bridgewater Report then Dr Hughes' findings in those four areas would have been in favour of my claims, not in favour of Telstra's defence – which is the way it is in my award

#### TELECOMMUNICATIONS ACT 1991 – SECTION 342 (3)

The draft version of the AUSTEL Cape Bridgewater Holiday Camp report (dated 3<sup>rd</sup> March 1994) confirms that AUSTEL was not able to gain access to some of the most relevant documents they needed, in order to complete their investigations into my complaints, but they didn't bother to tell the Minister about this problem, even though they should have, according to Section 342 (3) of the Act, which states: "A report under this section must cover: (a) the conduct of the investigation concerned," when, in my case, at the very least (see points (48), (49), (71) and (140) as shown in the AUSTEL draft) AUSTEL's final report should have included notification for the Minister that they had to base some of their findings on insufficient information.

At point (48) in the draft Cape Bridgewater report AUSTEL notes: "AUSTEL has been hampered in assessing Telecom's dealings with Mr Smith by Telecom's failure to provide files relating to Mr Smith's complaints. (49) As a result of Telecom's failure to provide file documentation relating to Mr Smith some of the following conclusions are consequently based on insufficient information; (71) AUSTEL has not been provided with documents on which the conclusions in this briefing summary were reached. It can only be assumed that they are contained within the documentation not provided to AUSTEL; and (140) It should be noted that AUSTEL's investigation of matters relating to the RCM problem has been hampered by Telecom's failure to make available to AUSTEL a file specifically relating to the Pair Gains Support investigation of the RCM. This file was requested by AUSTEL on 9 February 1994."

Since we now know that AUSTEL didn't advise the Minister that Telstra would not cooperate with AUSTEL regarding the supply of relevant information, and neither did AUSTEL warn the Minister that Telstra was therefore not abiding by the Act, then AUSTEL clearly breached their statutory obligation to me, as one of the COT complainants under investigation by AUSTEL. And since it is clear that the telephone problems that continued to affect my business through the Cape Bridgewater RCM from the time of AUSTEL's report of 3<sup>rd</sup> March through until I sold the business in December 2001, it is clear that this non-supply of documents by Telstra destroyed my life and the life of my partner Cathy.

What the ACMA are currently failing to understand is that some of the FOI documents I am asking the ACMA to provide, free of charge and in the public interest, are some of the same documents that AUSTEL originally sourced from Telstra as they prepared their draft Cape Bridgewater report which produced such adverse findings against Telstra in relation to my claims. The information in those Telstra documents was only referred to in the draft version of the report, and completely omitted from the final, public version that was then provided to the Minister (according to Sections 335 and 342 of the Telecommunications Act 1991) – this should be reason enough to convince the ACMA that I should now be given those Telstra documents free of charge and in the public interest, particularly since the then Labor Government endorsed my arbitration.

What would you do if you discovered proof that the person who prepared an AUSTEL draft report (in my case that was Bruce Matthews) had been writing secretly to Telstra's Steve Black and the arbitrator, Dr Gordon Hughes, during your arbitration, in relation to major billing issues that you had legally and officially raised as part of your claims but that those same billing issues were NOT addressed during your arbitration, rather AUSTEL allowed Telstra's Steve Black to address them five months after the end of



your arbitration and therefore outside of the arbitration process, after first allowing Telstra to ignore them during the arbitration?

What would you do if you discovered proof that, on 19<sup>th</sup> May 1995, during your arbitration appeal period, the same Steve Black had written to the same Bruce Matthews, noting: "Please note that the letter may change pending the reconciliation of the Arbitrator's comments on Telstra's legal liability in the Smith decision," when the decision being discussed related to your arbitration process which was based on an agreement that the arbitrator had secretly allowed to be altered to your detriment and then, the day after using the secretly altered agreement to finalise your arbitration, the arbitrator wrote to the TIO (then Warwick Smith) declaring that the agreement was not a credible document and should be revised for the next three claimants?

What would you do, Ms O'Reilly, if you were in my shoes, knowing that the arbitrator had determined Telstra's legal liability, as discussed in the letter of 19<sup>th</sup> May, using an agreement he had allowed to be altered, which he had then used for your arbitration and which he then condemned as NOT credible? How could Dr Hughes have provided his opinion regarding legal liability, when the billing issues that Bruce Matthews first raised with Steve Black on 4<sup>th</sup> October 1994 were not addressed by Mr Black until 16<sup>th</sup> October 1995, five months after the end of my arbitration? It is just as important to know that Telstra provided Dr Hughes legal opinion on Telstra's liability to AUSTEL during my arbitration appeal period, but I was not privy to that information - which proves exactly how undemocratic my arbitration was.

As the ACMA's Senior Lawyer you would by now have noted that my matters have never been dealt with in a manner befitting a Government Regulator and my Government-endorsed arbitration was a very long way from being conducted transparently or according to the principals of natural justice. If these facts do not convince you to provide my FOI documents free of charge in the public interest then it might be seen by some that the ACMA is following AUSTEL down the same path of denial.

I believe I have produced a good argument for the release of the documents that AUSTEL must have used to arrive at their findings in relation to my matters, but which are not included in the list of FOI documents that AUSTEL intend to charge me for, because there should have been a special provision included in the FOI Act see above. I believe I have provided good argument to support my claims that the ACMA will never willingly provide the most relevant documents (which should have been provided in 1994) because these documents may implicate their predecessors, AUSTEL, in this giant blunder, which has ruined both my life and the life of my partner, Cathy.

I ask that you to reconsider your position in this matter and provide me the information I am seeking free of charge in the public interest.

I await your response.

Thank you,



Alan Smith

Cc Kate Hebbard, Director Communications Enforcement & Compliance, Communication Group ACCC and other interested parties.

Seal Cove Guest House  
1703 Bridgewater Road  
Portland 3305  
Phone: 03 55 267 170  
15<sup>th</sup> September 2010

Ms Kate Hebbard,  
Director  
Communications Enforcement & Compliance Communications Group  
Australian Competition & Consumer Commission  
GPO Box 520  
Melbourne Vic 3001

Dear Ms Hebbard,

Thank you for your letter dated 31<sup>st</sup> August 2010 (Complaint about AUSTEL and Telstra) in response to my letter to Mr Samuel on 8<sup>th</sup> and 11<sup>th</sup> August 2010. In my letters to Mr Samuel I detailed my concerns regarding the unethical way that AUSTEL omitted to include their own extremely adverse findings against Telstra in the final version of their COT Cases Report, which was then used in the COT arbitrations to assist both the COT arbitrator and the claimants regarding the matters being investigated by the arbitrator. I believe that most Australian citizens would find this situation intolerable. I am aware however, that no matter who investigates, or even attempts, to investigate, this matter, they will be misled by those with a vested interest in concealing the truth concerning the alterations to this Government-funded report.

In the third paragraph of your letter you refer to: "... the AUSTEL COT arbitral process conducted in approximately 1994 under which you obtained a settlement for your complaint about faults with your Telstra telephone service", suggesting that you believe I received a reasonable settlement at that time. As I have shown in my recent letters to Mr Samuel and Mr Chapman, Chairman of the ACMA, the settlement I received in 1995 did not take into account some of the more adverse findings against Telstra that, although they were recorded in AUSTEL's draft Cape Bridgewater Holiday Camp report, were deliberately withheld from the Hon Michael Lee MP (the relevant Minister), Dr Gordon Hughes (the arbitrator) and me.

In 2008 I provided Mr Chris Chapman, Chairman of the ACMA, with a copy of Telstra's CCAS Data for the Service Verification Testing (SVT) process carried out at the Cape Bridgewater Holiday Camp on 29<sup>th</sup> September 1994 (Exhibit SVT25 on the CD). This data confirms that the tests were never undertaken. It is an offence for a public officer to allow falsified documents to be provided to a Government Minister and I have been advised that it is possible that, during the COT arbitrations, at least two ex-AUSTEL employees were afraid that, if they had revealed AUSTEL's involvement in concealing the more adverse findings against Telstra, then Section 70 of the Crimes Act 1914 could be applied to them.

It is now well known that on 21<sup>st</sup> March 1995, AUSTEL's Cliff Mathieson advised me that AUSTEL knew then that the Cape Bridgewater RCM / BCI tests could never have been carried out as stated in the BCI report. The BCI & SVT - Telstra's Misleading and Deceptive Conduct reports that have been provided to Mr Samuel on CD confirm that, when I told Mr Mathieson, on 21<sup>st</sup> March 1995, two months before the arbitrator handed down his award on 11<sup>th</sup> May 1995, that I had warned the arbitrator, numerous times, that neither the BCI tests carried out at the Cape Bridgewater RCM nor the AUSTEL-facilitated SVT process had been performed in the way that Mr Mathieson and other AUSTEL employees had advised the COT claimants they would be performed (or had already been performed), Mr Mathieson told me he understood my frustration but there was nothing AUSTEL could do because these issues were subject to the arbitration process. The tone of Mr Mathieson's voice at the time could be described as a bit like a scared rabbit, strongly suggesting that he was struggling with having to tell me there was nothing AUSTEL could do about the way Telstra had illegally submitted false information to the arbitrator, under oath.

Section 70 of the Crimes Act 1914 directs that any unauthorised disclosure of information by Commonwealth Officers is a breach of the Act. If certain public servants of the ACMA are afraid to disclose what they know concerning AUSTEL's involvement in allowing Telstra to submit false evidence into an arbitration process because of the provision of various sections of the Crimes Act 1914, then the Act needs to be changed.

I decided to respond to your letter of 31<sup>st</sup> August because it was written after I had written to Mr Samuel and because of the seriousness of the issues I raised with Mr Samuel in my letter of 1<sup>st</sup> September, particularly the situation that arose as a result of this doctored Government Report being accepted as true evidence when the major findings against Telstra had been removed before it was submitted to the Government and arbitrator – a clear breach of AUSTEL's statutory obligation to me (as one of the complainants whose matters were the subject of the AUSTEL's investigations) under Section 335 (1) and 342 of the Telecommunications Act 1991 which states: (1) "After concluding an investigation under subsection 335(1). AUSTEL may prepare and give to the Minister a report under this section. (2) After concluding an investigation under subsection 335 (3) AUSTEL must prepare and give to the Minister a report under this section. (3) A report under this section must cover: (a) the conduct of the investigation concerned; and (b) any findings that AUSTEL has made as a result of the investigation."

In your letter you have noted that, in your view: "... it is not clear that any conduct that arose in these arbitrations or in the Senate would constitute "in trade or commerce" as is required to consider any possible contravention of section 52 in Part V of the TPA". While I respect your view in this matter, the problems I have raised are not just arbitration issues, they are issues of a Government Regulator (AUSTEL) allowing a Government-owned Corporation (Telstra) to submit, into a litigation process, evidence that the Regulator (AUSTEL) and the defendants (Telstra) both knew had been falsified in a so-far successful attempt to conceal, from the arbitrator, exactly how bad the telephone problems at the Cape Bridgewater Holiday Camp were. What makes this cover-up even worse is that AUSTEL's 3<sup>rd</sup> March 1994 secret draft report, "Alan Smith – Cape Bridgewater" was provided to Telstra but withheld from the Minister, the arbitrator and me.

In my letter dated 8<sup>th</sup> August 2010, to Mr Chris Chapman, Chairman of the ACMA (copied to Mr Samuel), I described the secret arrangement that had been reached between AUSTEL's Mr Horton (Acting Chairman, Telstra and the TIO on 11<sup>th</sup> January 1994, when they agreed between themselves that any documents that AUSTEL obtained from Telstra during AUSTEL's regulatory investigations into COT claims of ongoing telephone problems would not be released to the arbitration process until they had first been vetted by the TIO.

On 2<sup>nd</sup> August 1996, eighteen months after the arbitrator (Dr Hughes) had completed his deliberations on my arbitration the TIO-appointed arbitration resource unit (Ferrier Hodgson) wrote to advise Dr Hughes that, during my arbitration, they had vetted various letters addressed to him from AUSTEL and Telstra and chose to withhold that information from being investigated. This admission is clearly linked to the secret agreement entered into between AUSTEL, Telstra and the TIO on 11<sup>th</sup> January 1994 four months before the COT claimants even signed the arbitration agreement.

It is also astonishing to find that this same Government Regulator (AUSTEL) supplied their adverse findings regarding a Government-owned Corporation (Telstra) to Telstra but hid that information from the relevant Government Minister and the public while the Government-owned Corporation (Telstra) submitted false testimony in defiance of the Regulator's warnings, and told the arbitrator in a Government-endorsed arbitration process that the claimants (the members of COT) had no case against Telstra, even though the Regulator's draft report proved otherwise. In other words, even though Telstra was aware of AUSTEL's adverse findings concerning my telephone problems they still chose to lie under oath to the arbitrator concerning these proven findings: clearly Telstra knowingly perverted the course of justice in defence of my arbitration claims.

## CONCLUSION

The attached Report dated 16<sup>th</sup> September 2010, is a report addressed to Mr Graeme Samuel AO Chairman of the ACCC titled: "Is Section 70 of the Crimes Act 1914 being exploited by public officials to the detriment of Australia's constitution? – Did AUSTEL breach their statutory obligation under Section 335 and 342 of the Telecommunication Act 1991 No 98 of 1991"? This report and the accompanying exhibits will help you understand what really transpired during the COT arbitration process. As with all COT matters, what you have is a very small business fighting large Government Corporations and Departments. It would be bad enough if we had to fight Telstra alone, but we have also had to fight the Government Regulator AUSTEL because, as I have previously proved, they withheld vital evidence that, in my case, would have given me grounds to demand further investigation under the already signed Fast Track Settlement Proposal (FTSP). If that FTSP had been allowed to proceed, rather than the claimants being forced to move to an Arbitration Process, and if AUSTEL had provided the draft version of their Cape Bridgewater Holiday Camp report to the Minister, the arbitrator, and me, there would not have been any

need for an arbitration procedure because AUSTEL's secret draft report had already found so adversely against Telstra. After all, how could Telstra have argued against the legitimate findings of the Government Regulator, whose findings had been based on documents the regulator had sourced from Telstra? All that would have been required would have been for the assessor to award quantum and ensure that my phone problems had all been fixed.

In summary – AUSTEL's hiding of their true findings has cost me dearly and what the TIO, AUSTEL and now the ACMA have failed to understand is that it took eighteen months of my life and an enormous financial burden to complete my arbitration and all I was unknowingly doing was attempting to prove the facts that AUSTEL had already proved (in their draft report) while Telstra submitted false witness statements, under oath, denying there were any problems affecting my business!

Have the ACMA Chairman Chris Chapman, the ACMA Board or the TIO fully understood what happened as a result of AUSTEL concealing from the arbitrator and me what they knew to be the truth regarding my ongoing telephone problems? Senate Estimate Committee Hansard records confirm that Telstra spent millions of dollars in legal fees defending COT claims when, as it has now been revealed, the claims of at least two and possibly eight COT claimants had already been proved, months before the claimants signed the arbitration agreement.

Have the ACMA Board, the TIO Board and the TIO Council fully understood how much it has cost tax payers for Telstra to defend the COT claims when Telstra was a fully-Government-owned corporation? The cost to the taxpayer included the hiring of the TIO-appointed arbitrator; the TIO-appointed Special Counsel; and the TIO-appointed Resource Unit of DMR Canada and Lanes Telecommunications. The Resource Unit alone worked on assessing claim and defence documents from 1994 to 1998 – and all this money was spent as part of process where the Government Regulator had already secretly found in favour of eight of the COT claimants. If this isn't in the public interest then I would like to know what is.

On top of all these expenses (plus the enormous cost to the claimants) you can then add the cost of investigations run by Senate Estimates Committee Hearings between 1997 and 1999 and the Commonwealth Ombudsman's Office into the way Telstra refused to provide the claimants with the FOI documents they had a legal right to, particularly since the Government Regulator's secret draft report had already determined that Telstra had been at fault all along. The extra cost to the families who supported the COT claimants in this mammoth battle with the goliath Telstra Corporation simply can't be counted but that cost was also increased enormously by the protection that AUSTEL provided to Telstra so they could withhold vital evidence during the TIO-appointed arbitrations. If withholding the true findings of a Government Regulator's official investigation from the relevant Minister, a legally appointed arbitrator and legitimate claimants during a Government-endorsed arbitration process, at the cost to the Australian public (as part-owners of Telstra when it was fully owned by the Government) of millions of dollars, is not a matter of public interest then I have to ask again, what is in the public interest?

The issues detailed above are alarming, just on their own, and the enormous costs entailed could well have been avoided completely if the Government Regulator had exposed the evidence they uncovered in 1994 instead of hiding it, but this all pales into insignificance when you realise that the same Government Regulator is now demanding a \$1,845.20 FOI fee to provide me with some of the very same documents that they must have acquired from Telstra in order to produce their draft Cape Bridgewater report, but which they hid from everybody involved in the arbitration – except Telstra.

I will now wait to hear whether Mr Samuel believes this matter should be investigated by the ACCC or another Government agency.

Sincerely,



Alan Smith

Cc Mr Chapman, Chairman of the ACMA and other interested parties