

**CAV**  
**CHRONOLOGY**  
**LGE**

**Exhibit 459 to 489**



**AUSTRALIAN  
GOVERNMENT  
SOLICITOR**

VICTORIA

ACI House  
200 Queen Street  
Melbourne VIC 3000  
(03) 606 1223  
DX 50  
FAX (03) [REDACTED]

**CENTRAL OFFICE**  
Robert Gordon Clarke  
National Centre  
Barton ACT 2600  
(06) 220 0000  
FAX (06) 220 2013

**AUSTRALIAN CAPITAL TERRITORY**  
Law Society Building  
11 Forrest Place  
GPO Box 440  
Canberra City ACT 2600  
(06) 246 1211  
1000  
1 (06) 246 1271

OUR REF: 90500457/7117.sb

3 March 1992

RECEIVED IN  
TELECOM AUSTRALIA  
5 MAR 1992  
CORPORATE SOLICITORS

T

Office of the Corporate Solicitor  
A.O.T.C  
7 Floor  
470 Collins Street  
MELBOURNE VIC 3000

A05828

**NEW SOUTH WALES**  
St James Centre  
11 Elizabeth Street  
GPO Box 2727  
Sydney NSW 2000  
(02) 361 7777  
DX 44  
FAX (02) 223 0027

Dear Sirs

**QUEENSLAND**  
200 Adelaide Street  
GPO Box 1400  
Brisbane QLD 4000  
(07) 380 3400  
DX 110  
FAX (07) 380 5700  
and also at  
Brisbane Chambers  
12 White Street  
PO Box 1004  
Townsville QLD 4800  
(077) 71 4004  
DX 0452  
FAX (077) 21 2431

TELECOM-ATS- G M (MELBOURNE) HOLDINGS PTY LTD

I enclose a certified claim for payment form for the sum of \$295.00 being the amount payable to Equity Adjusters for professional services.

Please forward your cheque to our office, as soon as possible.

**SOUTH AUSTRALIA**  
Marsden House  
79 Currier Place  
GPO Box 2120  
Adelaide SA 5000  
(08) 305 4211  
DX 145  
1 (08) 305 4077

Yours faithfully  
AUSTRALIAN GOVERNMENT SOLICITOR

**WESTERN AUSTRALIA**  
211 Adelaide Terrace  
GPO Box 11194  
Perth WA 6000  
(09) 425 7131  
DX 60000 EAST PERTH  
FAX (09) 325 4320

Per: Richard N Boughton  
Telephone: (03) 606 1306

*please plc + send copy  
green form to niv + [REDACTED]*

*TBS  
cl- melinda  
Hughe*

**TASMANIA**  
Commonwealth Law  
Centre Building  
30-41 Davey Street  
Hobart TAS 7000  
(002) 30 1700  
DX 122  
FAX (002) 23 1185

*please type on slip  
"truly yours" or slip  
attached to pay ment at  
earliest convenience.*

**NORTHERN TERRITORY**  
National Mutual Centre  
11 Curragh Road  
Darwin NT 0801  
(089) 81 4033  
DX 120  
FAX (089) 81 0945

10/3/92

459

# C.o.T. Cases Australia

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

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

Senator Ron Boswell  
National Party Leader in the Senate  
Waterfront Place  
Brisbane QLD

Our Ref: 4041.doc  
18 January, 1999

By facsimile: (07) 3291 1848. *By Express Courier 19/1/99  
(DX)*

Dear Senator Boswell,

**Re: Unauthorised Interception, Diversion and Re-transmission of C.o.T.s' facsimiles or facsimiles intended to be received by C.o.T. members by an unknown third party.**

Mr Paul Cosgrave, Graham Schorer's barrister, who also acts for Mr Plowman and Ann Garms, stated to Schorer that the material presented to him by Schorer, **the evidence speaks for itself**, i.e. the facsimiles in question had been intercepted and re-transmitted.

On Monday, 28 December 1998, Ross Plowman rang Graham Schorer at his home and informed him of the identification and confirmation made by the Telstra technician in attendance at Plowman's premises on 24 December 1998, that Plowman's intended facsimile transmissions to Garms' dedicated facsimile line was being diverted.

On Tuesday, 29 December 1998, in response to the information received from Plowman, Schorer commenced an investigation into the facsimiles he had received from his legal advisers, the Commonwealth Ombudsman, Ann Garms, associated C.o.T. members and others.

During the period between 29 December 1998 to 4 January 1999, a number of test facsimiles were conducted, arrangements made for independent telecommunications expert to become involved in the testing and investigation.

Arrangements had been made for tests to be conducted week beginning Monday, 4 January 1999, that would enable the identification from live tests, 'the actual telephone number being used by alleged facsimile re-transmissions'. These arrangements included having Telecommunications and Facsimile Engineers inspect my fax machine and be present to witness the receipt of test facsimiles from those parties believed to have past facsimiles transmissions intercepted.

Also on Monday, 4 January 1999, Graham Schorer had the need to contact Roger Levy of Telstra by telephone on another matter. During this conversation, Mr Levy made inquiries of Schorer about the Ross Plowman incident and his complaint lodged with Telstra's Mr Frank Blount's office. Mr Levy stated to Schorer he had returned from holidays that day and had initiated a full inquiry. Schorer did not alert Levy to his own investigation into the matter or the fact that facsimiles Schorer received from his own legal advisers, the Commonwealth Ombudsman and other C.o.T. members indicated the facsimiles had been intercepted and re-transmitted by an unknown party.

With reason, Telstra still has not been advised of this fact at this point in time.

Schorer and the company's Telecommunications engineers inspected the facsimile footprints of faxes received on the main fax machine that receives C.o.T. and legal matters, Senate Working Party matters and general facsimiles to do with day to day business. The following was discovered:

With selective facsimiles:-

1. During the latter part of 1998 and up until approximately 3:30 PM, Monday 4 January 1999, transmitting fax machine transmission footprints of faxes sent to Schorer from his legal advisers, the Commonwealth Ombudsman's Office and others involved in the Telstra dispute have been deleted, changed or over written by a different transmission footprint.

GS 460

2. Ann Garms' fax machine transmission footprint on facsimiles received on GOLDEN's main fax machine had been partly obliterated with a new and different footprint printed above the original transmission footprint.
3. Advice received from two (2) independent technical engineers' evaluations of Schorer's (03) 9287 7001 fax machine and results of tests made, it is not possible for the original fax footprint from the transmitting fax machine to be obliterated, changed or replaced unless the original facsimile was being intercepted and re-transmitted.

During this period, Mr Schorer's technical expert witnessed that other facsimiles being received. The sender's original transmission footprint was still intact. These facsimiles were from parties unrelated to the Telstra dispute.

4. One test done was to send a facsimile transmission from Ann Garms to GOLDEN's Accounts Department's facsimile machine, with a different exchange prefix of 9286 0066, rather than 9287 7001. This completed test to 9286 0066 shows the sender's original unaltered transmission footprint.
5. After 3:30 PM on Monday, 4 January 1999, the original transmission footprints on faxes received from the C.o.T.s' legal advisers, the Commonwealth Ombudsman's Office, Ann Garms and associated others reappeared on Schorer's incoming facsimiles.

The reader should note that:-

1. Over the past few months, many of the C.o.T. members, i.e. Ann Garms, Fortitude Valley, Queensland, Ross Plowman, Toorak, Melbourne, Alan Smith, Cape Bridgewater, Victoria, Graham Schorer, North Melbourne, Victoria, have all experienced problems receiving from and/or sending facsimiles to each other. These problems include the presentation of the facsimile transformed, changing in size of print, i.e. expanded or reduced, changes in print font, and/or changes in presentation, i.e. one page being presented partly onto one page, the rest on the second page. According to a Telecommunications Engineer who has an experience in the field of intelligence, these difficulties are **NOT** a result of poor line quality, spikes in the line during transmission, result of a cross line. The simple explanation for such anomaly is the fax transmission has been captured into memory, then re-transmitted from that memory, and the anomalies have been caused by the extraction from memory during the re-transmission of the fax.
2. On numerous occasions, Graham Schorer has faxed documents to Ann Garms, then rang Ann Garms after the transmission was completed to discuss contents of it, only to discover the facsimile has not been received. On one occasion, one facsimile that was faxed three times, with a phone call after each transmission, only to discover the facsimile had not been received. Later that same evening, the document was received by Ann Garms.
3. In July 1998, Graham Schorer asked his office to facsimile a document to him at Senator Boswell's office. The first facsimile had been reduced and the presentation changed. From memory, it took two or three attempts before the true replica of the document was received. On his return to Melbourne, Graham Schorer rang Xerox to inspect the non-replica copy of the original documents that was received by Senator Boswell's facsimile machine in Canberra.

The enclosed Exhibits are unaltered copies of the original facsimiles received on Graham Schorer's fax machine (03) 9287 7001 or facsimiles received by the parties associated with the Telstra dispute.

Yours sincerely,

Graham Schorer

460

## INDEX OF EXHIBITS (FACSIMILE TRANSMISSIONS)

EXHIBIT NO.	FACSIMILE TRANSMISSION TO	FACSIMILE TRANSMISSION FROM	DATE	TIME
11	(03) 9670 4745 Aitken, Walker & Strachan	Deacons Graham & James		
11A			06/01/99	16:05
11B			06/01/99	06:06
11C			16/07/98	12:09
12	(03) 9287 7001 Graham Schorer	Senator O'Chee, Parliament House, Canberra		
12A			07/12/98	14:53
12B			14/07/98	8:54AM
12C			23/06/98	13:02
13	(03) 9287 7001 Graham Schorer	Sue Owens' office, Solicitor		
13A			06/01/99	12:17
13B			1/07/98	13:49
14	(03) 9287 7001 Graham Schorer	The Ambidji Group		
14A			17 JUL 1998	16:59
14B			17/07/98	16:49
15	Senator Boswell, Parliament House, Canberra			
15A		(03) 9553 3398 Ralph Bova	11/7/98	16:05
15B		(03) 9287 7001 Graham Schorer	10/07/98	13:28
16	Newspaper articles about available software used to interrogate or capture calls within a telecommunications network.			
16A	THE AGE, Saturday, 12 September 1998:	EC concern about US phone spies		
16B	THE AUSTRALIAN FINANCIAL REVIEW – WEEKEND, 10-11 January 1998:	ASC chases inside story		
16C	THE AUSTRALIAN FINANCIAL REVIEW – WEEKEND, 10-11 January 1998:	NetMap identified as corporate terrier		
17	(03) 9287 7001 Graham Schorer	Deacons Graham & James	13/01/99	12:37
18	Report prepared by SCANDRETT AND ASSOCIATES PTY LTD			
19	Report prepared by Total Communications			
20	Report prepared by Fuji Xerox Australia Pty Ltd			

460

## DESCRIPTION OF EXHIBITS AND POINTS TO NOTE

EXHIBIT NO.		DATE	TIME
1	Xerox test facsimile sent to GOLDEN on (03) 9287 7001 during the period the facsimiles from certain locations appeared to be intercepted and re-transmitted. Note: The Xerox facsimile machine's transmission footprint on top of page was received in the same format as transmitted.	04/01/99	13:41
2	Test facsimiles sent from Tivoli to GOLDEN's Accounts' facsimile machine (03) 9286 0066.		
2A	Note: The transmitting facsimile's footprint on top of each page is the original footprint transmitted by the Tivoli facsimile.	04/01/99	04:23PM
2B	same as 2A	04/01/99	02:43PM
2C	same as 2A	04/01/99	01:56PM
2D	same as 2A	04/01/99	01:53PM
2E	same as 2A	20/02/98	03:52 PM
3	Test facsimile sent from Tivoli to GOLDEN's main facsimile machine (03) 9287 7001.	04/01/99	03:17PM
	Note: The transmitting facsimile's footprint on top of page is the original footprint transmitted by the Tivoli facsimile. This facsimile was received after the phenomena ceased to regularly occur.		
3B	same as 3A	04/01/99	03:17PM
3C	Test facsimile sent from Tivoli to GOLDEN's main facsimile machine (03) 9287 7001.	04/01/99	15:19
	Note: The transmitting facsimile's footprint on top of page is NOT the original footprint transmitted by the Tivoli facsimile. This facsimile was received before the phenomena ceased to regularly occur. The third party footprint has not printed Brisbane time, it has printed daylight savings time that is applicable to Victoria, New South Wales and Canberra.		
3D	same as 3C	30/12/98	14:38
3E	same as 3C	29/12/98	16:29
3F	same as 3C	29/12/98	16:19
3G	same as 3C	29/12/98	15:50
3H	Facsimile of Tivoli's facsimile machine's Activity Report for the period December 24-29, 1998.	29/12/98	15:39
	Note: The foreign (third party) footprint overlaying the Tivoli's original footprint.		
3I	Copy of facsimile sent by Tivoli to (03) 9287 7001.	24/12/98	16:47
	Note: The transmitting facsimile's footprint on top of page is NOT the original footprint transmitted by the Tivoli facsimile. The third party footprint has not printed Brisbane time, it has printed daylight savings time that is applicable to Victoria, New South Wales and Canberra.		
3J	Copy of facsimile sent by Tivoli to (03) 9287 7001.	10/06/98	15:50
	Note: The transmitting facsimile's footprint on top of page is NOT the original footprint transmitted by the Tivoli facsimile.		
3K	Copy of facsimile sent by Tivoli to (03) 9287 7001.	01/05/98	02:45AM
	Note: The transmitting facsimile's footprint on top of page is THE original footprint transmitted by the Tivoli facsimile.		
3L	same as 3K	14/04/98	10:23AM
4	Copy of Commonwealth Ombudsman's facsimile Transmission Report.	08/01/99	00:00
4B	Test facsimile from Ombudsman to (03) 9287 7001. This facsimile received after the phenomena ceased to occur.	04/01/99	16:19
4C	Facsimile received from Ombudsman.	19/12/97	10:25
	Note: The original Ombudsman's facsimile machine transmission footprint on top of page.		

460

## DESCRIPTION OF EXHIBITS AND POINTS TO NOTE

EXHIBIT NO.		DATE	TIME
4D	Facsimile received from Ombudsman. Note: The original Ombudsman's facsimile machine transmission footprint has been replaced with a foreign (third party) footprint.	05/06/97	16:47
4E	same as 4D	29/10/98	10:20
4F	same as 4D	20/12/98	15:24
<b>5</b>			
5A	Copy of Ombudsman's facsimile transmission report.	08/01/99	00:00
5B	Test facsimile.	04/01/99	16:05
<b>6</b>			
6A	Test facsimile. Note: Originating facsimile machine's transmission footprint. Compare the original footprint format with the foreign (third party) footprint.	05/01/99	05:20PM
6B	Facsimile received from Hunt's. Note: The transmission footprint on top of the page is <b>NOT</b> the originating facsimile's transmission footprint.	07/12/98	09:58
<b>7</b>			
7A	Test facsimile from the facsimile machine used by Paul Cosgrave. Note: On bottom of page, the original transmission footprint.	06/01/98	12:39
7B	Facsimile sent by Paul Cosgrave to Schorer c/- Canberra International Hotel. Note: The original transmission footprint appears on top of page.	08/12/98	17:39
7C	Facsimile sent by Paul Cosgrave to Schorer at (03) 9287 7001. Note: The original transmission footprint <b>DOES NOT</b> appear on top of page, in fact, it has been eliminated and replaced with a foreign (third party) footprint.	03/12/98	11:28
<b>8</b>			
8A	Test facsimile from R Plowman to (03) 9287 7001. Note: The original transmission footprint sent by Plowman's machine.	10/01/99	16:49
8B	Facsimile from Plowman to (03) 9287 7001. Note: The original transmission footprint <b>DOES NOT</b> appear on top of page, in fact, it has been eliminated and replaced with a foreign (third party) footprint.	04/01/99	13:10
8C	same as 8B	13/11/98	12:50
9	Facsimile from A Smith to (03) 9286 0066. Note: At top of page, original footprint from Smith's machine, plus the same original footprint on facsimile sent elsewhere and facsimile sent back to Smith.	05/01/99	12:01
<b>10</b>			
10A	Test facsimile sent to (03) 9287 7001. Note: Original footprints are now appearing at all facsimiles.	05/01/99	12:16
10B	Facsimile from A Smith to (03) 9287 7001. Note: At bottom of page, the foreign (third party) facsimile transmission footprint. The telephone number reported in this foreign footprint has not been a valid telephone number since AUSTEL-Telstra increased the number range of all telephone numbers throughout Victoria.	29/12/98	15:12
10C	Facsimile from A Smith to (03) 9287 7001. Note: At top of page, the foreign (third party) facsimile transmission footprint.	03/11/98	14:14
<b>11</b>			
11A	Aitken, Walker & Strachan's fax header accompanying copy of fax letterheads from Deacons Graham & James.	06/01/99	16:05

460

## DESCRIPTION OF EXHIBITS AND POINTS TO NOTE

EXHIBIT NO.		DATE	TIME
11B	Copy of top of Deacons Graham & James' facsimile to Aitken, Walker & Strachan. Note: The original facsimile footprint of Deacons Graham & James.	06/01/99	06:06
11C	Copy of facsimile received by Aitken, Walker & Strachan. Note: The foreign footprint at top of page. This foreign footprint does not record the facsimile number of Deacons Graham & James.	16/07/98	12:09
	<p>The facsimile number that appears in this foreign footprint, according to this test done, is one of a group of telephone numbers that are included in the Holding Redlich Solicitors' in-dial telephone system. Holding Redlich are Telstra's solicitors who are representing Telstra in the Bova arbitration, and Aitken, Walker &amp; Strachan represent the Bova's.</p> <p>When Andrew Blogg from Aitken, Walker &amp; Strachan returns from overseas, further investigations will be done and effort will be made to obtain a copy of the firm's facsimile activity report for the day of 16/07/98.</p>		
12	Facsimile from Senator Bill O'Chee's Brisbane office confirming the facsimile footprint in Exhibit 12C is not that belongs to Senator O'Chee's office.		
12A	Facsimile from Senator Bill O'Chee's Canberra office. Note: Foreign transmission footprint on bottom of page. Note that nowhere in this document nor in the accompanying page does the footprint of the facsimile machine in Senator O'Chee's Canberra office appear.	07/12/98	14:53
12B	Copy of facsimile Senator O'Chee sent to Graeme Ward of Telstra. Note: On bottom of page appears the original facsimile transmission footprint that emanates from O'Chee's Canberra office.	14/07/98	8:54AM
12C	Facsimile from Senator Bill O'Chee's Canberra office. Note: Foreign transmission footprint on bottom of page. Note that nowhere in this document nor in the accompanying page does the footprint of the facsimile machine in Senator O'Chee's Canberra office appear.	23/06/98	13:02
13			
13A	Copy of facsimile received from the office of Sue Owens. Note: On top of page appears the foreign (third party) transmission footprint.	06/01/99	12:17
13B	Copy of test facsimile received from Sue Owens' office. Note: On top of page appears the original fax machine's transmission footprint.	1/07/98	13:49
14			
14A	Copy of Ambidji facsimile received by one of the following: John Wynack, Ann Garms, John Armstrong or Roger Levy. (I cannot remember how I acquired possession of this copy.) Note: The original facsimile transmission report of the Ambidji appears at the top of this page.	17.JUL.1998	16:59
14B	Copy of same facsimile as 14A received by Schorer. Note: The foreign footprint that appears on top of page.	17/07/98	16:49
15			
15A	Copy of facsimile sent by C.o.T. member R Bova to Senator Boswell's Canberra office. This facsimile has the correct original transmission footprint on top of page.	11/07/98	16:05

460



## DESCRIPTION OF EXHIBITS AND POINTS TO NOTE

EXHIBIT NO.		DATE	TIME
15B	<p>Copy of fax header received at Senator Boswell's Canberra office.</p> <p>It was either on this occasion or periods close to this that facsimile sent from (03) 9287 7001 to Senator Boswell's office were experiencing difficulties and been received in such a manner that indicated (according to current technical advice) that the facsimile had been captured or intercepted and re-transmitted.</p> <p>The end product received in Senator Boswell's office had reduced size of copy and re-formatted copy to appear on more pages than the original being transmitted by facsimile.</p> <p>On return from this trip to Canberra or another trip around this time, Xerox was called in to examine the fax machine connected to (03) 9287 7001 incoming calls to establish whether it was Schorer's machine causing such events to occur. NO FAULT FOUND IN MACHINE. Technician suggested it could be line quality or other such phenomena causing such problem.</p>	10/7/98	13:20
16	<p><b>16A</b> THE AGE, Saturday, 12 September 1998: EC concern about US phone spies.</p> <p>This article describes the sophistication of interception software now being used.            Note: This software's ability to monitor/intercept millions of personal and commercial communications every hour.</p>	12/09/98	
16B	<p>THE AUSTRALIAN FINANCIAL REVIEW – WEEKEND, 10-11 January 1998: ASC chases inside story.</p> <p>Article about how the NetMap software is used to interrogate telecommunications networks to detect crime.</p>	10-11/ 01/98	
16C	<p>THE AUSTRALIAN FINANCIAL REVIEW – WEEKEND, 10-11 January 1998: NetMap identified as corporate terrier.</p> <p>Article about how the NetMap software is used to interrogate telecommunications networks to detect crime.</p>	10-11/ 01/98	
17	<p>Facsimile from Deacons Graham &amp; James to Schorer on (03) 9287 7001.            Note: On top of facsimile appears the original transmission footprint of the Deacons Graham &amp; James' facsimile machine.            Refer to Exhibit 11C and compare the difference in the transmission footprints.</p> <p>This area requires further investigation.</p>	13/01/99	12:37
18	Report prepared by SCANDRETT AND ASSOCIATES PTY LTD.		
19	Report prepared by Total Communications.		
20	Report prepared by Fuji Xerox Australia Pty Ltd.		

460

Dwyer, Kevin

From: Dwyer, Kevin  
To: Gambia, Peter  
Cc: Humrich, Alan  
Subject: RE: Software query  
Date: Thursday, 24 February 1994 11:07AM

Peter,

You are quite correct in your thought that the anecdotal reference 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. A number of upgrades have included software which would reduce the incidence of lockups.

There is nothing to add to my previous notes on ARE-11 exchanges concerning claims of "incompatibility" problems.

Regarding the problems in AXE: ✓

In the NASM database (which has a record of faults reported from AXE exchanges, dating from 1988 when it was introduced, although it was not in widespread use till 1992/3) there are 105 reports of Lockups affecting customers. Two of these reports refer to PBX services, but there are no reports referring specifically to "Commander" services.

The TR database (Trouble Report system controlled by TNE to monitor problems reported, passed to Ericsson, and fixed by Ericsson) which was used prior to NASM for all records of faults does show lockups on AXE equipment which would have affected customers and PBX functions, but does not provide any realistic count of problem occurrences. It does not record any lockups specifically related to "Commander" systems.

As a general comment, if the first line was locked up and calls allowed to flow on to the other lines, then no calls would be lost until all lines were busy, so I fail to see how an estimate that "call loss could be up to 15%" could be made or repeated with any degree of integrity. ✓

There is also another NSIS database which would contain records of AXE faults which I have not checked yet but which I believe has records of large numbers of lockup instances affecting individual customer lines. I am reluctant to initiate a search of the NSIS database at present as the faults recorded therein would have no bearing on the CoT services in question, unless the fault occurred on their individual line.

Kevin.

From: Gambia, Peter  
To: Humrich, Alan; Dwyer, Kevin  
Cc: Wagland, Fran  
Subject: Software query  
Date: Thursday, 17 February 1994 7:04PM

Fran, I am not sure where Alan is - please pass to him if he is on the 24th floor.

Kevin, Alan

A13980

Kevin, I did not use your comments on software (COMPATBL) at this time as they didn't seem relevant to the additional information that Ausial have provided. John McMahon writes as follows:

✓  
I have references to Ericsson's having considered a lock up fault which was occurring where the first line would be locked out and this would allow calls to flow to the other lines. It was said in advice through the

GS 461

incompatibility of exchange software and Telecom's equipment. Ericsson apparently provided a solution and advised that particular Commander systems were most vulnerable. Ericsson are said to have suggested that call loss could be up to 15%.

Any thoughts on this new line? It sounds a bit like AXE rather than ARE to me!

Peter,

A13981

461

RECEIVED  
- 3 NOV 1994  
AUSTEL

COMMONWEALTH & DEFENCE FORCE  
**OMBUDSMAN**

Prudential Building, cnr London Circuit & University Avenue, Canberra City  
GPO Box 442, Canberra, A.C.T. 2601, Australia  
Tel: (06) 276 0111; Fax: (06) 249 7829; Int. Fax: + 61 6 249 7829

27 October 1994

281.

C/94/195

*Mr Wynack*

Mr John MacMahon  
Australian Telecommunications Authority  
PO Box 7443 St Kilda Road  
MELBOURNE VIC 3004

Dear Mr MacMahon

As I promised during the interview on 22 September 1994, enclosed is a copy of a transcript which was made by AUSCRIPT from the audio tape of the interview. I have enclosed a copy of the tape in case you wish to confirm the accuracy of the transcript.

Thank you for your assistance in this matter.

Yours sincerely

John Wynack  
Director of Investigations

GS 462

**TRANSCRIPT  
OF PROCEEDINGS**



ACT and Southern  
NSW Region  
Level 1  
Melbourne Building  
West Row  
Canberra ACT 2601  
GPO Box 476  
Canberra ACT 2601  
Phone (06) 249 7322  
Fax (06) 257 6099

**COMMONWEALTH AND DEFENCE FORCE  
OMBUDSMAN**

**RECORD OF INTERVIEW  
CONDUCTED ON  
THURSDAY, 22 SEPTEMBER 1994**

**INTERVIEWERS:**

**JAMES HINDS, Senior Investigation Officer  
JOHN WYNACK, Director of Investigations**

**INTERVIEWEE:**

**MR JOHN McMAHON**

MR J. HINDS: It is 3.20 pm on 22 September 1994. This is an interview with John McMahon at the offices of AUSTEL, 5 Queens Road, Melbourne. I would like those present to identify themselves. I am James Hinds, Senior Investigation Officer.

MR J. WYNACK: I am John Wynack, Director of Investigations.

MR B. MATTHEWS: I am Bruce Matthews. I work in AUSTEL's consumer protection area.

MR J. McNAMARA: And John McNamara from AUSTEL.

MR HINDS: Now, we will need to administer an oath. I am just wondering whether you want to make an oath or an affirmation.

MR McMAHON: An oath.

**JOHN McMAHON, sworn:**

MR WYNACK: Thank you, John. First of all, we're interested in filling in some understanding of the development of the fast track settlement proposal for the four original COTs which culminated in the agreement of 21 November 1993. I don't want chapter and verse. Our primary concern is what consideration was given to the processes whereby these people would be able to obtain documentation to enable them to submit their claims. So my first question is was there any discussion prior to the signing of the proposal of the means whereby the claimants could obtain documents?

MR McMAHON: Well, I think the - it was always envisaged that they would get their documentation from Telecom. Telecom wasn't going to hand it out simply by request and it was run down the FOI line and essentially AUSTEL always was under the impression that they would make FOI requests and have the documentation made available to them.

MR WYNACK: I don't have a copy of the letter with me, but AUSTEL in fact . . . .inaudible. . . . to Telecom and an FOI application lodged by Ann Garms. Robin Davey actually relayed it on to Telecom complete with the application fee. The letter concluded with a statement along the lines - or a request along the lines, "Would you process this application

urgently as Ms Garms needs the information to submit her claim to - under the FTSB." Were you aware of that letter going out, John?

MR McMAHON: Yes.

MR WYNACK: And is - was that really the expectation that Telecom would give some priority to FOI requests?

MR McMAHON: I think the background to that letter was that there was not good feelings between Telecom and the COT cases. There wasn't a high level of mutual trust at that stage and when Mrs Garms sought to get documentation from Telecom she just wanted to involve AUSTEL in the process, and so I think it was a unique set of circumstances, but rather than lodge a request directly with Telecom she wanted to relay it through AUSTEL to try to give it that extra highlighting, I guess, and certainly the COT cases had been reported to AUSTEL the difficulty that they had faced in getting documentation from Telecom. You know, we knew it wasn't really forthcoming and certainly the fast track settlement proposal sought then to lodge their submission within six weeks of agreeing I think, and so it was apparent that the success of the whole arrangement was going to revolve around getting prompt access to their documentation. And so when Mrs Garms' request was relayed by the chairman he just noted that prompt co-operation on the provision of documentation was - seemed to be important.

MR WYNACK: Do you recall whether there'd been any discussion with Telecom officers generally about giving some priority to the FOI requests.

MR McMAHON: Well, my recollection is there wasn't a - there wasn't such a discussion. We've always taken the point of view that FOI is not within our jurisdiction and it's not for us to make too much of a - too much of the issue, but as I've said you know there have been occasions in which the allegations made by the individuals that they had difficulty in getting these documentation provided was raised with Telecom, but it was raised you know as an issue of relevance and not one that we were in a position to pursue, but just in the spirit of what had been entered into it shouldn't - it was a necessary part of the process.

MR WYNACK: In that period, around November just prior to the finalising of those agreements, did Telecom and AUSTEL discuss whether there were perhaps alternatives to FOI to getting the documents to the COTs? Did Telecom for example suggest another way?

MR McMAHON: Prior to the FOI - prior to the fast track, I don't believe they - I don't believe that took place. I think from the - originally

the - originally we always thought that the FOI mechanism was the one that would be utilised. As I said, I mean, Telecom wasn't handing out documentation without FOI. And I think that you know part of Telecom's attitude was conditioned by some of the things that happened in the early stages of FOI where some of the - at least one of the COT cases got documentation which was sensitive as far as Telecom was concerned under FOI and they put it into the public arena, and the impression I got was that Telecom's attitude to FOI hardened at that point, that they didn't want to have sensitive documentation going into the public arena and so there was provision in the arbitration procedures whereby the arbitrator could determine - or if he considered that there was documentation that Telecom had that hadn't been made available, then he could seek that extra material under that provision and I think there was some suggestion that Telecom would be happier with that rather than FOI as a means of preserving the confidentiality of the documents.

MR WYNACK: These events occurred back in late February through March '94 I suspect, the ones you're talking about. That would have been between the period when an arbitration process was proposed by Dr Hughes and the period when the COTs accepted or agreed to enter into the arbitration in April - or are we talking about a different period?

MR McMAHON: We're probably talking about a probably a different period. I think we're probably talking about an earlier period and I think the - I think the things that really gave rise to the attitude was summary material on taping and that would have - that would have been, what, early - that would be early January, wouldn't it?

MR WYNACK: Yes, I think this correspondence was late December.

MR McMAHON: Yes, late December, just after Christmas, and I think the release of some suggestion as to the taping of conversations to the press was a bit of a watershed.

MR HINDS: So the proposal was in November and this correspondence that?

MR McMAHON: Yes, yes, the - the fast track settlement proposal had this provision whereby the arbitrator could seek additional detail. Now, that I believe is a fairly standard clause in arbitration. But it was probably after the - putting in the public domain some sensitive documents that Telecom started to see that that might be from their point of view a preferable mechanism. I mean, that's my judgment. I've got nothing to support it.



MR WYNACK: The fast track settlement proposal, clause 1B - have you got a copy of it there, John?

MR McMAHON: Yes.

MR WYNACK: It refers to the attached copy of a proposed arbitration procedure. Is your recollection that that proposed procedure in that paper, which I have not seen, but say - - -

MR McMAHON: Do you want it?

MR WYNACK: Yes, okay, then, perhaps it would fill out my files a little. But was it ever intended that those rules in that procedure would apply to the four COTs who were signatories to the fast track settlement proposal?

MR McMAHON: The - yes, it was a general approach. It was the approach that Telecom was suggesting that they would use in arbitration procedures and my recollection is we put these details in front of the COTs to let them get a feeling for the general approach Telecom was intending to adopt. But they - their own fast track settlement was going to have some unique provisions. So this would be the general approach, but there would be certain variations for them in terms of - yes, some of those conditions would have been liberalised for them.

MR WYNACK: We have been informed by two of the COT members that Robin Davey assured them that the rules in that document which at some stage was attached to the proposal were not to apply to the four COTs and that they were never actually given a copy of that document, the document being the attachment referred to in clause 1B. Have you any recollection if that was so?

MR McMAHON: No, I - I couldn't state firmly one way or the other. I - I do believe that - I mean, certainly my belief, without going back to the files, and I'm not even sure that the files would establish it. This is some of the chairman's own papers that don't have the COT documentation you know from the COTs themselves. It's more his writings. But I believe that they were - that this document was put in front of them and certainly - certainly discussed with them. I mean, you know we had discussions in the boardroom here as to the general approach, and I think they - my recollection - I'll just check with Bruce, but my recollection is they came back with comments on it.

MR MATTHEWS: Well, that's my general recollection as well, but I'm not certain on it either. I would have to go back and check our file documentation.

MR WYNACK: It would be difficult for us to verify whether it happened. One way to do it of course would be to speak to the former chairman - former chairman, isn't it - - -

MR McMAHON: Yes.

MR WYNACK: - - - on the matter. We did see the - what purported to be copies of the signed agreements - there were four of them - and none of those had the proposed arbitration procedure rules appended to and I'd be interested to know whether or not when - was it AUSTEL who forwarded them on to Telecom or did the Telecommunication Industry Ombudsman? I'm not sure now. But I'd be interested to know whether or not they were appended at the time they were signed.

MR HINDS: Well, would your records show that? You say you can check your records. Would they show that or - - -

MR MATTHEWS: It may show that. Our records may show that. I'd have to check that.

MR McMAHON: I would hope though they would show one way or the other, but I think pages have been on and off the file on so many occasions that I couldn't 100 per cent vouch for it, but the chances are they showed them and I guess we can identify that before you leave the premises.

MR WYNACK: No, there's no need to do that. Perhaps you can contact me some time later and let me know. So I'm quite happy for that - - -

MR McMAHON: All right. But the other thing I'd say - and sure, I appreciate the timing element in - but these conditions that are set out in the proposed procedure were also incorporated in the public COT report as to what the procedure that Telecom was proposing.

MR WYNACK: Well, I haven't looked at the report - the AUSTEL report - and the reason is that the Ombudsman's investigation here is confined to a complaint about Telecom's processing of an FOI request. The questioning I'm engaging in here now is necessary because of statements made - conflicting statements made as to what the expectations of the parties were in regard to the provision of documents prior to the formal processes being agreed with Dr Hughes, which occurred ultimately in April but commenced on 3 February.

If I could just depart from that for the moment, has AUSTEL been involved in seeking to speed up the provision of documents by Telecom by any means or is that just - once the agreement was reached did you bow out then?

MR McMAHON: I think there have been a number of occasions on which we have mentioned to the Telecom personnel that the COT cases were alleging they were having difficulty in getting it and my recollection is we probably made reference to that in one or two letter to Telecom. But again because we were - it was outside our jurisdiction you know we didn't make a big issue of it and indeed when the - when some of the COT cases have complained to us you know we've said, "Well, there's a very limited amount that AUSTEL can do about it. It's not within its power but you could well take the case to the Ombudsman's office."

MR MATTHEWS: Can I add a comment to that as well, and that is in our report - one of the recommendations in our report that goes to Telecom's treatment of FOI applications and I think the recommendation said something along the lines that Telecom should increase the resourcing of its FOI area and improve the treatment of FOI applications, so in a sense that's a general pressure that we put on Telecom to hurry up the process.

MR WYNACK: What was the date the report was issued, the AUSTEL report?

MR MATTHEWS: The final report was April - I can't remember the date in April, but April 1994. The draft report was produced in March 1994 and Telecom received their copy of that at that time.

MR WYNACK: So that observation was made by AUSTEL notwithstanding that there was in place then, or about to become in place, an arbitration process which enabled the arbitrator to make directions that Telecom provide documents?

MR MATTHEWS: It was a general statement. It didn't necessarily apply to the four COT cases. It was just a general statement.

MR McMAHON: But, yes, I mean to say you know some of the suggestions made were that FOI was not dealt with when the - when the person with that responsibility went on holidays. You know, nobody filled in for him. Whether that's right or wrong I don't know, but that was the suggestion made and I've never heard it denied. So you know - and I think that's part of the background to the recommendation that Bruce identified there.

provided to AUSTEL and some other people in the period prior to the date of his FOI application which was 24 November; he specified that date. And we were interested to ascertain whether AUSTEL has a record of the documents of Telecom which it examined in the 12 months prior to November 1993.

MR McMAHON: No, we would not.

MR WYNACK: How did you examine documents during your investigation?

MR McMAHON: We - we firstly put a direction on Telecom to make available to us all relevant documentation. The - Telecom came and said, "Look you know these are live documents that we're working on, etcetera. Rather than flood you and disrupt ourselves, would it be acceptable to you that we establish a room at Telecom headquarters in which we assemble all relevant documentation that you have sought? Where there are additional folios going onto those files you know we will continue to put them on so that you have the advantage of seeing any additional material that's coming on." And the chairman agreed to that, that we would have full access to all documentation in a viewing room in Telecom and so our personnel went over there and were able to assess - access them and where they saw material that they wanted to copy and to consider and put on - back on our record here, they took copies at the time.

MR WYNACK: So when you wanted additional information, that is, information which your people perhaps couldn't find in the viewing room, how would you go about accessing that? Would you write to Telecom or

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MR McMAHON: Yes, well, you know the rules were essentially that everything relevant was to be there. So everything should be there. You know, where we did seek additional material - we might have got a clue to its existence from examining the files - yes, we did write to Telecom and ask them can they provide us with something specific in addition.

MR WYNACK: And presumably their response would be in writing and would say they're now in the viewing room, or would they deliver them to you, or was the viewing room generally regarded as the ---

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MR McMAHON: Yes, you know my recollection is there were a couple of documents which involved them in processing some material and drawing up some additional charts which they forwarded to us eventually. Other things - if it was a file to which we saw references being made in the

view room but we couldn't locate it, we asked them for it and that was made available in the viewing room.

MR WYNACK: In the viewing room. So it may well be accurate to say that all of the information provided by Telecom to AUSTEL in connection with that investigation was provided in the viewing room.

MR McMAHON: That is essentially the case, yes. You know, I would say that's certainly 99 per cent.

MR WYNACK: I listed five documents in my note to you? Do they mean anything to you, those - - -

MR McMAHON: Certainly do. The first two and the last two are the same.

MR WYNACK: That's supplementary into exchange network. That's - it's not a - it suggests another name for the one report.

MR McMAHON: Yes.

MR WYNACK: And were they in existence prior to - - -

MR McMAHON: Well, the first - let's say the Telecom submission to AUSTEL - I mean, I can't say anything as to the date that it came into existence. It was made available to AUSTEL as Telecom's main submission. On the day we received it we never had any access to a preliminary draft or anything like that. It came to us in November. The other two documents that you list there, again we never saw any preliminary draft. They came to us with a - under covering letter dated 7 January.

MR WYNACK: 7 January what year?

MR McMAHON: '94.

MR WYNACK: That was - right, so the first you saw them was 7 January but you don't know when they were created?

MR McMAHON: No, but I mean let's say the - you're talking about the BCI supplementary inter-exchange network. Now, the - that was a matter of conducting some traffic tests in a range of exchanges and the document itself shows that they were - that the tests were run in December. So presumably they were run in December and the report assembled and prepared in late December, early January.

MR WYNACK: Those were the reports of the BCI tests. Did you ever examine the raw data on which those reports were based?

MR McMAHON: I don't believe so. I mean, it was - those reports were essentially reviewed by the technical people in AUSTEL. Yes, the background was BCI had undertaken some technical tests and the COP cases themselves and AUSTEL's technical people had some reservations about them and as a result of those reservations Telecom had BCI do those supplementary tests and the rotary hunting tests. So my recollection is that those reservations were reservations which arose from viewing the original report rather than the technical data itself, you know, the detailed technical data.

MR WYNACK: Do you have the date on which you received that Telecom submission?

MR McMAHON: We would have, yes.

MR WYNACK: It's critical for me to know whether or not it was before or after 24 November.

MR McMAHON: Right, yes.

MR MATTHEWS: We should be able to give you that today before you leave.

MR WYNACK: Yes, okay then, Bruce, if that's convenient. I don't think I need ask you any other questions, except perhaps recently you wrote a very short note to Ann Garms - - -

MR McMAHON: To Ann Garms, yes.

MR WYNACK: Yes, 14 April.

MR McMAHON: Right.

MR WYNACK: And it said, "This letter is to confirm that the fast track settlement proposal drafted by AUSTEL and signed by Telecom on 18 November and by you on 23 November refers to an assessment process and an assessor and makes no reference to arbitration or to an arbitrator." What prompted that - - -

MR McMAHON: A request from Mrs Garms, "Would you give me such a letter?"

MR WYNACK: I see.

MR McMAHON: So she phoned me up, asked me would I give her such a letter and it was simply a confirmation of fact.

MR WYNACK: Had there been any other requests from the COT case people in recent times for similar confirmations about the nature of the fast track settlement proposal?

MR McMAHON: I don't think so. I don't have a recollection of it. I mean, certainly there's always been some concern, I mean, that so many - almost signings of various documents and you know they've been frightened by various aspects of them such that they - at the end they jumped and wouldn't sign this type of thing. And this has been an issue with them for a long time, whether they were going into an assessment process or an arbitration process, and the - when they were taken through - when they made their own views known and when they were taken through the way the proposal was shaping up, it was just that it was in terms of an assessor. The final documentation made reference to arbitration, but essentially gave them an assessor.

MR WYNACK: What involvement did AUSTEL have with Dr Hughes in developing the arbitration rules?

MR McMAHON: I don't know that it had any. Indeed, when Hughes' appointment was announced, there was some question as to whether he you know would want a briefing from AUSTEL as to the background of the case. To my knowledge he didn't seek that and it was very much the chairman's point of view that he wasn't going to offer or put himself forward unless there was some wish from Hughes to know of it, and I don't know - I don't know that they ever met. I've certainly never met him.

MR WYNACK: Well, thank you, John. Have you got any questions regarding any of those things?

MR HINDS: No, I don't think I have.

MR WYNACK: Would you like to add anything, John, to expand on anything you've said?

MR McMAHON: No.

MR WYNACK: Well, in that case perhaps we can terminate the interview. It's now 5 to 4. Thank you very much.

**INTERVIEW CONCLUDED**

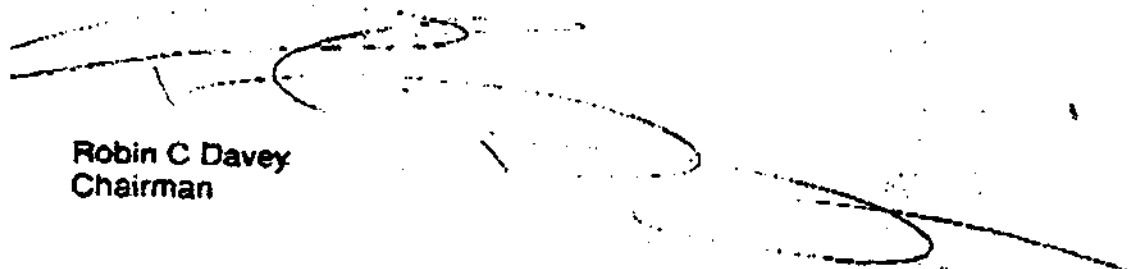
462





While the *Fast Track Settlement Proposal* was also silent on the issue of "set offs", I did have in mind that amounts previously paid by Telecom to any of the *COT Cases* would be "set off" against the amount, if any, determined in their favour. The issue of the "set off" of "... services carried out ..." in terms of clause 10.1.2 of the *"Fast Track" Arbitration Procedure* is one which perhaps should be clarified with Dr Hughes.

Yours sincerely



Robin C Davey  
Chairman

A10011

463

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P.2/2


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11 January, 1994

Mr Warwick Smith  
Telecommunications Industry Ombudsman  
Ground Floor  
321 Exhibition Street  
MELBOURNE VIC 3000

Dear Warwick,

I refer to your suggestion re. Mr Pengilly as an alternative assessor. Telecom's position is still as per my original letter to you of 24 December 1993. Telecom's view is that your nominee, Mr Rogers QC, is a suitable person who will provide an independent and impartial view. In respect of Mr Pengilly I do not have a detailed CV, but my enquiries have revealed that his primary expertise is Trade Practices Law and this background is not of direct relevance to this arbitration. An assessor with a greater level of direct commercial expertise and judicial background such as Mr Rogers QC is seen as necessary.

I have received your facsimile of 11 January 1994 and the attached letter from Mrs Garms. Mr Rumble's contact with Mrs Garms was in direct response to the voice monitoring issue and was also intended to deal with the supply of information under her FOI request. At no stage did Paul Rumble raise the issue of alternative assessors. Please be assured that Telecom will only consider assessors nominated by yourself and has not, and has no intention of, entering into discussions with the other parties to the arbitration in respect of potential assessors.

I have asked the Corporate Solicitor to comment on Mrs Garms' statement that Telecom had previously accepted the appointment of Mr Fox as suitable to themselves. Apparently, the name of Mr Fox was included on a list of names which was discussed with Mrs Garms some time ago. My understanding is that this matter never progressed and does not appear relevant to the current deliberations.

My personal view is that the appropriate way forward is to appoint one assessor to ensure the consistent application of legal principles in these cases. In addition, the assessor needs to be a person of some eminence in legal and commercial negotiations as the outcome of these cases is likely to establish a precedent for future complaint handling.

However, it does appear to me that the claimants are losing sight of an important factor and that is the fact that the TIO is the person with the responsibility for arbitrating on this matter, and that the assessor that is now under discussion is in fact making a recommendation to the TIO. Under these circumstances it appears to me that far too much weight is being placed on the appointment of the assessor. The primary requirement is that this person is definitively impartial and has the necessary professional standing and legal and commercial qualifications.

Please contact me directly (6327700) if I can be of any further assistance in obtaining a speedy resolution of this matter.

Yours sincerely,



Steve Black  
GROUP GENERAL MANAGER - CUSTOMER AFFAIRS

GS 464

to the Governor-General to replace her and yet it takes six months or more to replace Mr. Arena.

Senator Collins—Just before Mr. Hutchinson responds to that, I just want to say that that is not unusual in terms of the sort of different mix of skills that you are looking for. I must also say that quite often what happens in my experience in this portfolio is that you approach a large number of people and find that, because of other obligations, they are not available.

Just in passing, I noted a senior executive from one of our major companies on the ABC the other day making this point, and it certainly has been my experience in the case of women particularly. I guess because of the lower numbers involved, that it is particularly difficult because the ones that are of obvious note and skills get so many requests. I actually heard this fellow say the other day that a lot of the senior corporate women executives are approached on an average of once a week to fill directorships and so on on boards. The reason I am saying that is that quite often you can fill one particular appointment very quickly, because the first person that you go to says, 'Yes, I can do that', and in other cases on other boards it can take months, because you approach a whole series of people and they then have to think about it eventually come back to you and say, 'No, I cannot do it because I have got too much on my plate at the moment'.

Mr. Hutchinson—In the case of Mr. Tuckwell's appointment to Austral, I would not want the conversation in any way to be interpreted as that somehow being a best reason. As the minister has effectively said, good people are very difficult to find, and sometimes you have to wait until they are available. Neil Tuckwell has a contract with Clear Communications and it was a condition that he imposed on accepting the position that he would fulfil his contractual obligations to Clear. Given that he had the attributes that the minister was seeking for the appointment, the government decided to wait to make the appointment until Neil Tuckwell was available, and that is why it is taking so long for him to take up duty.

Senator BOSWELL—Mr. Davey, would you agree with the previous officer that was at the table when he said that the payments made to the COT cases were good—well, or would you say they were compensation?

Mr. Davey—My understanding of them was that they were paid by way of compensation. I have seen a cheque book or a cheque slip that so described the payment, as a compensation or out of a compensation account.

Senator BOSWELL—So you disagree with the previous gentleman. How long have the COT cases been going on?

Mr. Davey—They first came to Austral's attention, as it set out in the letter dated 12 August, in August last year. At that time we were trying to facilitate those settlements that have been referred to. Some of them took place sooner and some took longer. What has happened since those settlements is that the faults have continued, or they are said to continue, and that is possibly one of the more disturbing aspects of the thing, that the payments have been made but the faults continue.

Senator ALSTON—As to some instances payments were made on the basis that there would not be any future problem.

Mr. Davey—Austral has not been privy to the actual terms of settlement, but that is what has been conveyed to me.

Senator BOSWELL—Does Austral, in your view, have any power to resolve the difficulty? Are you happy with the power that you have under the legislation, or do you feel frustrated that you are not able to accommodate these people?

Mr. Davey—Depending on what the findings are, I think we can see a way forward. We do not have the power to order a monetary sum settlement and I think you would understand that, as I said before, that would be usurping the power of the courts.

Senator Collins—The only people that really can fix it, Senator, and I am sure you agree, at the end of the day are Telecom.

Senator BOSWELL—Yes, I know that in a perfect world that would be the way it would happen, but we do not live in a perfect world and any small business that wants to

take the night of Telecom or is not going to say the director very long. There has been one that tried and it cost him a lot of money. They just wait you out. So we do not live in a perfect world. We have not got the choice of taking our telephone business to another provider of service. Telecom is the only one that provides a domestic service. So what I am suggesting to you, Mr. Davey, if you have not got the power to set as the workman and provide some justice, is that perhaps you ought to make an appointment to see Senator Collins and point out to him that you need to have an adequate act to provide the—

Senator Collins—I do not think that is correct at all, Senator, as Mr. Davey's letter makes very explicitly clear in terms of remedies that are available.

Senator BOSWELL—If Mr. Davey cannot give a payment commensurate with the loss, and the only alternative is to go to the court to get that payment, then justice is not going to be—

Senator Collins—With the greatest respect, I disagree. That is the situation at the end of the day that we are in in most situations. At the end of the day the courts—

Senator BOSWELL—No, that is nonsense. If I do not want to deal—

Senator Collins—I mean in terms of getting money, Mr. Davey can answer the question, but just as a general proposition—

Senator BOSWELL—I can tell you where your proposition falls down. If I go to a provider of a service and he does not give an adequate service, I can then leave him and go somewhere else. But in the case of Telecom I am stuck. I cannot get any other service.

Senator Collins—Mr. Davey can certainly answer. I was responding to your particular concern that you raised a minute ago about getting legal redress. I just pointed out that the change that was made to the act in 1991 is that respect was very deliberately done, and it is referred to in the Austral letter.

Mr. Davey—We have legal advice which I am quite prepared to make available to you, Senator—I apologise that I have not got a copy with me at the moment—to the effect that, if we were to find misleading and decep-

tive conduct, as distinct from sheer incompetence, then we could direct Telecom to engage in an assessment process to assess the quantum. Having assessed the quantum, we do not have the power to enforce the quantum, but I am sure that at that point that would not be necessary. I think there would be such a moral persuasion at that point—

Senator ALSTON—It might be good if you actually make public your finding in the first instance.

Mr. Davey—As I indicated before, we intend to make public, after having given the relevant people the opportunity to be heard—

Senator Collins—Madam Chair, I know the hour is late but in fact Mr. Davey has provided all that information previously.

Mr. Hutchinson—Senator, can I perhaps add to that answer by drawing attention to sections 121 and 122 of the Telecommunications Act. Section 122 provides for there to be a limit on the amount of damages that a telecommunications customer can seek from the telecommunications company. That limit is imposed by a determination made by Austral. Austral has in fact made no such determination. Therefore, by not making such a determination, Austral has provided scope for people with cause of action against Telecom to use their rights under the act to sue. I am no lawyer but the word here seems to be tort. So there is a link there between Austral's powers and the amount that is recoverable in an action.

Senator BOSWELL—If you were BHP or one of the big companies, you may be able to afford to take that response in court. But what we are talking about here is small business that unfortunately in real terms cannot do that.

Senator Collins—If he was BHP he would not be here.

Senator BOSWELL—No, if he was BHP, he would not be here. Do you believe that the cash payments made to the COT case remain realistically reflect the business losses, assuming at the moment that these losses were as a result of an adequate phone service?

Mr. Davey—I personally do not have knowledge of the amounts paid to the COT victims. I know of one amount. It has been

465

594



## PARLIAMENT OF AUSTRALIA · THE SENATE

SENATOR RICHARD ALSTON

*Deputy Leader of the Opposition in the Senate  
Shadow Minister for Communications*

28 October 1993

Mr Robin Davey  
Chairman  
AUSTEL  
PO Box 7443  
St Kilda Road  
MELBOURNE VIC 3004

Dear Robin

Thank you for the opportunity to explore the implications of the latest proposals for resolution of the COT Case complaints and to put in place an appropriate process to deal with future complaints.

As I understand the proposal it would be based on the UK model. The process would be managed or facilitated by the Telecommunications Industry Ombudsman, who would then contract out arbitration responsibilities to one of a panel of arbitrators for each of the claims in order to enable all matters to be dealt with as expeditiously as possible.

Both sides would then put written material before the arbitrator who would then hand down a judgement without taking submissions or hearing evidence. The UK experience suggests that complex cases can take up to three months before a decision is handed down but it could be anticipated that these matters would not take that length of time.

I have already indicated to Ian Campbell that, whilst I was generally inclined to favour the proposals, the Opposition would reserve the right to consider the establishment of a Senate Select Committee if AUSTEL's report raised matters of serious concern regarding outstanding problems or if there is evidence to substantiate the persistent complaints made by COT Case members, particularly Mr Schorer, of "misleading and deceptive conduct" on the part of Telecom.

You will have received a copy of a letter dated 23 October 1993 from Mrs Ann Garms to Mr Frank Blount. Attached to this letter is a document setting out what are described as "extracts of documents identified by Coopers and Lybrand to substantiate COT allegations".

466

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- 2 -

If the quotations are accurate they would indicate that, despite a concession from Telecom Protective Services on 29 May 1990 that 28 incoming and unanswered calls had been received at Mrs Garn's restaurant, less than a month later the Corporate Secretary was indicating that special monitoring equipment had not revealed any problem. Whilst such an answer may be technically correct in relation to the results of the monitoring equipment, it clearly understates and indeed dismisses problems which Telecom had already conceded.

Further entries refer to "a minor intermittent problem with a relay contact", "a possible faulty rotary", "line one is being stepped over for no apparent reason", "network support confirmed a fault that exists", "problems being experienced ... line one going dead for a few minutes".

Yet on 17 January 1991, Telecom apparently reported to the Commonwealth Ombudsman that "all reports have been carefully checked but nothing has been revealed to indicate any problems ... so far nothing has been found to substantiate the customer's various claims". This answer would seem to be, at the least, disingenuous. In similar vein is the reply on 6 September 1991 "we have been unable to determine any network based condition that has the potential to cause the problems you allege". Again this would seem to be a less than frank answer. A further example would seem to be contained in the letter dated 15 September 1992 and the letter dated 6 April 1993.

If indeed Coopers and Lybrand have identified these documents and this would seem to be confirmed by a report in yesterday's Financial Review - I am somewhat surprised at my understanding from you that Coopers and Lybrand will not be dealing with these matters.

I therefore seek your confirmation that you will fully investigate such allegations and if necessary make the appropriate recommendations to ensure that such behaviour is unlikely to occur again. It could also be appropriate to recommend that in the event of future corporate misbehaviour, the Ombudsman should have jurisdiction to make a punitive award of damages.

Yours sincerely

*Richard Alston*

RICHARD ALSTON  
Deputy Leader of the Opposition  
in the Senate  
Shadow Minister for Communications

RKR/aw

466

**Holmes, Jim**

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**From:** Pinal, Don  
**To:** Row, Ian  
**Cc:** Blake, Ed; Holmes, Jim; Hill, Trevor; Campbell, Ian  
**Subject:** Information Retention  
**Date:** Monday, 25 October, 1993 2:57PM

Ian,

I have just issued a note to Regions re the need to retain Fault history material. I stipulated a notional period of seven years as a starting point but this may or may not be appropriate.

In the more general sense Freehills have advised a need to maintain all records in accordance with the statute of limitations and the archives act. I think we need some clear words to all Telecom staff on this subject if we are to avoid future problems. Is there anything in hand on this? What do we need to do?

I am thinking of a huge amount of information including network performance data, construction data, service order data, sales data, etc etc. Do we have any exemptions? How do we manage this?

Don

**Holmes, Jim**

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**From:** Pines, Don  
**To:** Sayer, Janet; Brabazon, Paul; Fuery, Patrick; Beattie, Ken; Scholz, Des; Pittard, Rosanne; Halliday, Trevor  
**Cc:** Holmes, Jim; Hill, Trevor; Campbell, Ian  
**Subject:** Leopard History  
**Date:** Monday, 25 October, 1993 2:36PM

Our CoT customers are currently critical of our failure to keep historic fault records, claiming that this jeopardises their ability to prosecute their claims.

I am advised by the Leopard people that on a weekly basis Leopard data greater than 12 months old is striped from the data base and sent to an outside agency for the preparation of microfiche. These fiche are distributed to the user businesses (Fault Bureaux) and the tapes are then reused, wiping the data. No central store of data is maintained.

Would you please review your Regions arrangements for maintaining historic fault data and ensure that this information is kept for (say) seven years or until further advice on this is provided. I would like to know how much data is available in each Region, particularly for the major cases subject to the Asutel investigation.

I have asked our legal people to advise on the appropriate data retention policy and when that is clear I will look at the desirability of establishing a central store rather than a distributed store.

I would welcome your comments.

Don



Date: Wednesday, 27 October 1993 9:47AM  
Priority: High

Gayle,

Your urgent advice, within Archives Act and any other relevant context would be appreciated please.

Jim

From: Pinal, Don  
To: Holmes, Jim  
Cc: Blake, Ed; Row, Ian; Hill, Trevor; Campbell, Ian  
Subject: Leopard History  
Date: Monday, 25 October, 1993 2:25PM

Jim,

A lot of attention is being given to Telecom's alleged failure to maintain fault records over time.

I have spoken today to Ian Woolle, Leopard Manager, who tells me that Leopard is stripped on a weekly basis on a rotational basis so that only 12-13 months history is kept on the data base at any time. The tape of the strip is forwarded to an outside agency where microfiche of the stripped data are produced. These fiche are then dispatched to the operational fault bureaus where they may or may not be kept. The tapes of the stripped data are reused, hence losing the data, and no central store of fiche is maintained.

Ian advises that he has previously sought legal advice from the corporate centre (assume the Corporate Solicitor's office) re the need to keep historic data but the answers have been unclear, probably due to our historic protections from suite and hence no requirement to defend actions.

Given the current climate we need to clarify the requirement to maintain records (centrally would be preferable) and an opinion on this would be appreciated. It may be that we require Austel to stipulate the period.

In the meantime I will advise all Regions to ensure that they maintain Fiche records on an on-going basis pending clarification.

It is important to ensure that Austel and other players such as C&L are aware that because of our regulatory/legal position there has been no need to maintain historic records. If this absence of records is to be a plank of the CoT argument then we should re-state our legal position - they cant have it both ways!

I would welcome your comment. I would also welcome copies of any legal opinions provided on this subject previously

Don

Hill, Trevor

**From:** Darling, Peter  
**To:** Johnstone, Philip R; Hill, Trevor; Quan, Alex  
**Cc:** Clarke, Lawrie; Duc, Nguyen; Darling, Peter; Dugan, Yasmin  
**Subject:** FW: AUSTEL Mandatory Performance Regulation  
**Date:** Monday, 13 December 1993 10:41AM  
**Priority:** High

-----  
**From:** Darling, Peter  
**To:** Campbell, Ian; Marshall, Ross ✓  
**Cc:** Hambleton, Dennis V  
**Subject:** AUSTEL Mandatory Performance Regulation  
**Date:** 13 December 1993 10:38  
**Priority:** High

Ross and Ian,

This E-Mail is to alert you to a possible regulatory interaction with the current work on "COTS Cases" and ongoing work with AUSTEL on network performance.

As you know, a Ministerial Direction gave AUSTEL power to set end-to-end network performance standards. The AUSTEL Standards Advisory Committee established a working group (designation WG 12/1) to set these standards, and Telecom has had a fairly hostile reception in this working group.

Yasmin Dugan from my area has been co-ordinating this work, working closely with Network Products (especially Operations) and the Business Units. The AUSTEL staff member leading the group originally wanted a very wide list of mandatory parameters, but after discussion with Bob Horton and a presentation to the Standards Advisory Committee by Yasmin, AUSTEL have agreed to limit the scope of the initial work to the few parameters our customer surveys had shown as being of most concern. This work is now well advanced. ✓

I believe that the "Service Operation Deemed Satisfactory" Project Team as part of the COTS case work has also been looking at issues relevant to a service specification and testing procedure, and that originally they came out with a large number of parameters to specify and test. ✓

The powers to set mandatory performance standards that AUSTEL has been given could well be used in some sort of regulatory outcome from AUSTEL's current COT case investigation. I believe it is essential that we provide a consistent approach to AUSTEL. I'm hopeful that your team has taken Telstra's corporate position to AUSTEL as the starting point for their work. I strongly request that you give us early advice if for strategic reasons we should change our position with AUSTEL in the SAC and the working group 12/1.

Peter Darling,  
Standards & Regulatory Strategy

- Telecom's Product Managers responsible for delivery of the PSTS to customers have now agreed to alter the BCS tariff filing to remove reference to the technical specification and replace that reference with a list of customer focussed technical parameters.

Because the SODS project team reports to a Steering Committee upon which AUSTEL is represented, it is therefore important that the project team ensures that it has an agreed Telecom position in respect of the service specification prior to its formal presentation to the Steering Committee.

I am concerned that within the project team there appears to be an undue focus on trying to develop a service specification which will be "all things to all people". That is, there would appear to be an attempt to develop a specification which addresses not only BCS service difficulties but also potential difficulties arising from a customer's use of CPE. This is not appropriate. AUSTEL has already issued technical standards in relation to CPE and its connection to a carrier's network.

Where Telecom supplies a service to a customer and also has an ongoing obligation in relation to the CPE (either via a rental or maintenance agreement) then your testing programme should be enhanced by reference to the requirements of the AUSTEL technical standards in relation to the CPE.

I note the timeframe for the project team is tight. I would strongly recommend that you proceed with caution and that your service specification should be narrow in focus. It should, in the time available only reference the same parameters as those proposed to be inserted into the new BCS tariff filing.

Please note that once AUSTEL's 12/1 Working Group has finalised its deliberations, then it is likely that there will be greater pressure placed on Telecom, a general carrier, to expand the range of technical parameters to be included in its BCS tariff filing. Telecom's acceptance should only occur after a careful process of consideration and deliberation and with a full understanding of the impact upon the Company in terms of the delivery and ongoing monitoring of service within those specifications.

A separate, but related, issue is the need to determine how Telecom will undertake a test call programme on an individual customer's service during the exchange "busy hour" or during a time period nominated by the customer. As you will appreciate, a test call programme of the nature contemplated in the scoping document for your project team (minimum 300 calls; outgoing/incoming) will greatly impact upon the customer's normal use of his/her service. I would ask that you obtain early advice from your Steering Committee (particularly the AUSTEL representative) as to how Telecom is to undertake this test call programme. ←

If you have any further questions on this please contact myself or Merv Sewell on (03) 634 8898 or (03) 634 8876 respectively.

Trevor Hill

Trevor Hill  
MANAGER CO-ORDINATION & PERFORMANCE REPORTING  
REGULATORY

468

R04208

Internal Memo



To Jeff Gitsham  
 Manager Network Operations SA/NT

From Trevor Hill  
 Manager Co-ordination & Performance Reporting

Subject Service Operation Deemed Satisfactory (SODS) Project Team

Date 6 December 1993

File HRH 293

Attention Dennis Hambleton  
 Philip Johnstone  
 Merv Sewell  
 Don Pinel  
 Ross Marshall  
 Alan Humrich  
 Ian Campbell  
 Jim Facey  
 Bob Douglas

Corporate Strategy  
Regulatory

Locked Bag No. 4350  
Melbourne Vic 3100  
Australia

Telephone (03) 634 8896  
International +61 3 634 8896  
Facsimile (03) 634 8842

Jeff,

The purpose of this memo is to provide formal Corporate Regulatory feedback to your project team on issues relevant to the development of a service specification and testing procedure arising out of the "COT Case" investigations.

I note that a number of these issues have previously been raised with your team by Merv Sewell, Assistant Manager Technical Regulation, who is assisting your project team.

Key Issue

Any service specification determined by the SODS project team needs to be consistent with Telecom's Corporate position in relation to BCS tariff filing and response to AUSTEL's Working Group 12/1 - Network End-to-End Performance Parameters.



Background

- Telecom as a general carrier contracts to supply services with its 8.5 million customers via provisions of the BCS tariff filing pursuant to the Telecommunications Act 1991 as notified to AUSTEL.
- Currently the technical characteristics associated with the PSTS BCS tariff filing are addressed by reference to Telecom's Technical Specification Document No. 1529.

468

## "FAST-TRACK" ARBITRATION PROCEDURE

## Scope of the Procedure

## Scope of the Procedure

1. This Procedure ("the Procedure") provides arbitration pursuant to the Commercial Arbitration Act 1984 (Victoria), as amended, ("the Act") as a final and binding method of resolving the disputes listed in Schedule A ("the Disputes") between the customer named in Schedule B ("the Claimant") and Telstra Corporation Limited ("Telecom Australia").
2. The Claimant and Telecom Australia will be bound by the Arbitrator's decision, and the Claimant, by accepting the application of the Procedure to the Disputes, subject to the Appeal provisions of the Act, will be deemed to have waived all rights to commence proceedings in any court or other forum in respect of the facts giving rise to the Disputes or the Disputes themselves.
3. Arbitration under the Procedure will be administered independently by the Telecommunications Industry Ombudsman of 321 Exhibition Street, Melbourne ("the Administrator") and conducted by Dr Gordon Hughes C/- Hunt & Hunt, Solicitors, 21st floor, 459 Collins Street, Melbourne, 3000 ("the Arbitrator").
4. A request for arbitration under the Procedure in respect of the Disputes does not relieve the Claimant from any obligation the Claimant may have to pay Telecom Australia any other amounts which are due and are not part of the Disputes the subject of this arbitration.

## Commencement of Arbitration

5. Each party shall complete and sign a Request for Arbitration form as set out in Schedule C in respect of the

469

*Stuart Blair*      *[Signature]*

Disputes. The form must be completed and returned to the Administrator by a party within 7 days of receipt of the form from the Administrator. The Administrator shall notify the parties and the Arbitrator in writing when he has received completed and signed Request for Arbitration forms from both parties.

#### Arbitration Proceedings

6. Unless the Arbitrator otherwise specifies, the arbitration will be on documents and written submissions only. The Arbitrator may form the opinion that he requires one or more oral hearings in which event the Arbitrator will, after consulting with the parties, advise the parties of a date, time and venue for those hearings. Any oral hearing will not be open to the public nor any other non-parties to the arbitration apart from any of:-

- ° The Administrator;
- ° A representative or representatives of the Administrator;
- ° Special Counsel to the Administrator, Mr Peter Bartlett, C/- Minter Ellison Morris Fletcher, Solicitors, 40 Market Street, Melbourne ("the Special Counsel"); or
- ° A representative or representatives of the Special Counsel.
- ° With the leave of the Arbitrator, a member of the Resource Unit (as defined in Clause 8.1).
- ° With the leave of the Arbitrator, one or more professional consultants to a party. If such leave is granted, the other party may also have its professional consultants present.

*[Handwritten signatures and initials]*

In an oral hearing no cross examination of any witnesses is to be allowed. Legal representation of the parties shall be at the Arbitrator's discretion. If the Arbitrator allows one party to have legal representation then the other party may also have legal representation.

All written evidence shall be in the form of an affidavit or statutory declaration. All oral evidence shall be on oath or affirmation. Either party or the Arbitrator may request a transcript of any oral evidence or submission given at the hearing. A copy of the transcript shall be given to the parties, the Arbitrator and the Special Counsel. The cost of the provision of the transcript shall be part of the administrative costs of the Procedure.

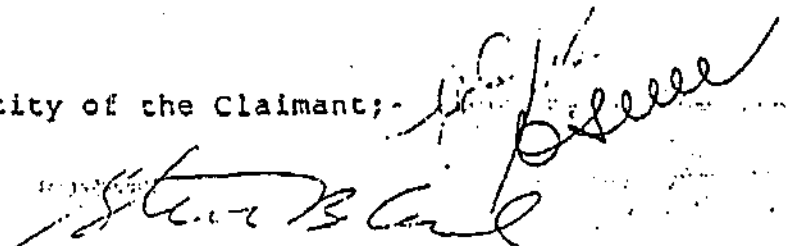
A copy of all documents and correspondence forwarded by the Arbitrator to a party or by a party to the Arbitrator shall be forwarded to the Special Counsel. A copy of all documents and correspondence forwarded by a party to the Arbitrator shall be forwarded by the Arbitrator to the Special Counsel and the other party.

7. The Procedure will be as follows:-

7.1 The time limits for compliance referred to in this clause are subject to the overriding discretion of the Arbitrator and may be the subject of submissions by the parties.

7.2 The Claimant shall within 4 weeks of receipt of written notice from the Administrator pursuant to Clause 5 that he has received completed and signed Request for Arbitration forms send to Telecom and to the Arbitrator in duplicate, its Statement of Claim and any written evidence and submissions ("the Claim Documents") in support of that claim. The Statement of Claim shall, with sufficient particularity, state the following:

7.2.1 the identity of the Claimant;



7.2.2 the service difficulties, problems and faults in the provision to the claimant of telecommunications service which are alleged to have occurred including the periods over which such service difficulties, problems and faults allegedly occurred;

7.2.3 the loss allegedly suffered and particulars of how that loss is calculated.

7.3 Telecom Australia shall within 4 weeks of receipt by it of the Claim Documents send to the Claimant and the Arbitrator in duplicate its Statement of Defence, and any written evidence and submissions ("the Defence Documents") in support of that defence. The Statement of Defence shall, with sufficient particularity, state the following:

7.3.1 Telecom Australia's answers to the allegations referred to in the Statement Claim; and

7.3.2 any affirmative defence which Telecom Australia will seek to rely upon.

7.4 The Claimant may send to Telecom Australia and to the Arbitrator, within 4 weeks of receipt of the Defence Documents, a Reply to the Statement of Defence together with any supporting documents. Such Reply will be restricted to points arising in the Statement of Defence and the Defence Documents, and may not introduce any new matters, points, or claims.

7.5 Without limiting any rights the parties may have to obtain documents or evidence under the Act, either party may, upon reasonable notice in writing to the other party, apply to the Arbitrator for directions upon any matter in relation to the proceedings including an amendment to the Statement of Claim,

*Steve Black* / *B. S. S. S.*



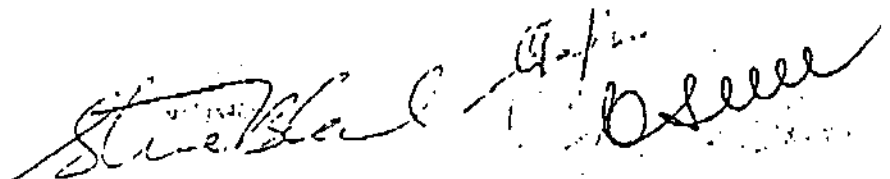
Defence or Reply, the production of further documents, further particulars of Statement of Claim, Statement of Defence or Reply. Each party is entitled to be heard on any such application. In giving directions, the Arbitrator, where appropriate, shall impose time limits for compliance with such directions. On any such application, the Arbitrator may not require the production of documents protected by legal or professional privilege.

7.6 The Arbitrator may by notice in writing require either party to provide any further documentary information and/or particulars which he reasonably considers would assist him.

7.7 If the Claimant does not furnish the Claim Documents within the time allowed pursuant to sub-clause 7.2 or any further time allowed by the Arbitrator and does not remedy this default within 2 weeks after dispatch to the Claimant by the Arbitrator of written notice of that default, the Claimant may, at the Arbitrator's discretion, be treated as having abandoned the Claimant's claim under the Procedure, and the arbitration will not proceed.

7.8 If Telecom Australia does not furnish the Defence Documents within the time allowed pursuant to sub-clause 7.3 or any further time allowed by the Arbitrator and does not remedy this default within 2 weeks after dispatch to Telecom Australia by the Arbitrator of written notice of that default, then subject to any directions the Arbitrator may give and subject to Section 17 of the Act, the dispute may be decided by the Arbitrator by reference to the Claim Documents only.

8.1 The Arbitrator may, as he sees fit, use as a resource unit the services of personnel employed by Ferrier Hodgson, Chartered Accountants, 459 Collins Street,

Handwritten signatures and initials at the bottom of the page, including a large signature that appears to be 'Steve Hall' and another signature that appears to be 'B. S. Hill'.

Melbourne and DMR Group Australia Pty. Ltd. of 1. [redacted]  
Southbank Boulevard, South Melbourne (the Resource Unit").

- 8.2 The Arbitrator may require the Resource Unit to [redacted] and to examine documents, inspect premises or systems, or to [redacted] carry out such other enquiries or research as he [redacted] directs. Such requirement shall be in writing and a copy of it shall be sent to the parties at the same time as it is sent to the Resource Unit. A report of any such activities shall be made available to the parties who shall be entitled to make a written submission upon such report on such terms as the Arbitrator thinks fit.
- 8.3 The Arbitrator shall disclose to the parties in writing all advice received from the Resource Unit. The parties shall be entitled to make a written submission in relation to such advice on such terms as the Arbitrator thinks fit.
- 8.4 The fees and expenses of the Resource Unit shall be part of the administrative costs of the Procedure.
- 8.5 Prior to undertaking any work or receiving any documentation or information relating to the arbitration each individual who is part of or engaged by the Resource Unit shall sign a form of confidentiality undertaking as in Schedule E and shall send that signed confidentiality undertaking to the Administrator.
9. The Arbitrator may, as he thinks fit, combine parts of this Procedure with parts of the identical procedure being used in respect of claims by those whose names appear in Schedule D including the hearing of oral evidence concurrently.

*[Handwritten signature]*  
*[Handwritten signature]*

The Award

The Award

10. The Arbitrator shall make his award having regard to the questions of Telecom Australia's liability and questions of loss as set out in this clause. The parties agree that in respect of some period or periods of the time covered by the Claimant's claims Telecom may not be strictly liable or have any obligation to make any payment to the Claimant.

10.1 In relation to Telecom's liability, if any, to compensate for any demonstrated loss on the part of the Claimant the Arbitrator will:

10.1.1 give effect to any contractual or statutory limitations on Telecom Australia's legal liability, and any limitations on Telecom Australia's liability to the Customer as determined by Austel pursuant to section 121 of the Telecommunications Act 1991 which limitations may apply in respect of some period or periods of time covered by the Claimant's claims and for that reason in making the findings the Arbitrator will:

10.1.1.1 determine for the time covered by the claim, the period or periods for which Telecom Australia is not strictly liable or has no obligation to pay and the period or periods for which Telecom Australia is liable and has an obligation to pay;

10.1.1.2 determine in respect of each such period the amount of loss, if any, incurred by the Claimant;

10.1.1.3 recommend whether, notwithstanding that in respect of a period or periods that Telecom Australia is

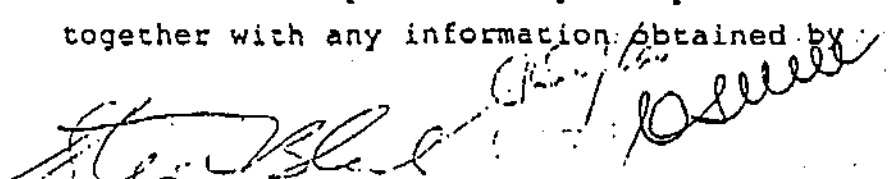
not strictly liable or has no statutory obligation to pay, due to a statutory immunity covering that period or periods, Telecom Australia should, having regard to all the circumstances relevant to the Claimant's claim, pay an amount in respect of such a period or periods and, if so, what amount.

10.1.2 set off against any amounts found by the Arbitrator to be otherwise owing by Telecom Australia to the Claimants any amounts paid to, rebates granted to, or services carried out for the Claimant by Telecom Australia to date.

10.2 In relation to the Claimant's loss, the Arbitrator:

10.2.1 will take into account the Claim and Defence Documents, any Reply and supporting documents, written evidence and submissions made by the parties and, if applicable, any sworn or affirmed oral evidence presented to the Arbitrator by the parties to the arbitration together with any information obtained by the Resource Unit or any advice given to him by the Resource Unit.

10.2.2 will make a finding on reasonable grounds as to the causal link between the alleged service difficulties, problems and faults in the provision to the Claimant of telecommunication services and the losses claimed and, as appropriate, may make reasonable inferences based upon such evidence as is presented by the parties together with any information obtained by



the Resource Unit or any advice given to him by the Resource Unit. Unless the Arbitrator is able to conclude that Telecom caused the loss claimed, there will exist no basis for a claim against Telecom.

11. The Arbitrator's reasons will be set out in full in writing and referred to in the Arbitrator's award.
12. If Telecom Australia appeals against the Arbitrator's award pursuant to Section 38 of the Act, Telecom Australia will provide funds from time to time to meet all reasonable legal costs incurred by the Claimant in relation to the appeal and the application for leave to appeal, which costs are to be assessed on a party/party basis (plus 10% of the party/party costs as assessed). Should any dispute arise between the Claimant and Telecom as to the timing of such funding, such dispute shall be determined by the Administrator who shall make his determination after hearing representations from the parties. Neither party shall seek an orders for costs in such appeal proceedings.
13. Telecom commits in advance to implementing any recommendation made by the arbitrator pursuant to sub-clause 10.1.1.3.
14. Subject to clause 17 and unless directed otherwise in the Arbitrator's award or the parties otherwise agree or a Court otherwise orders, within three weeks of dispatch to the parties of the Arbitrator's award, payment shall be made by Telecom of any monies directed by the award to be paid. Such payment shall be made directly to the Claimant or in such manner as the Claimant directs, and not through the Administrator. If the Arbitrator determines in respect of a Claimant's claim an amount less than that paid under an earlier settlement, Telecom agrees that the difference will not be recoverable.

*Handwritten signatures and initials:*  
 - A large signature, possibly "Alan Blal", is written across the bottom left.  
 - To the right, there are initials "in/60" and a signature that appears to be "P. Blal".

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

**Confidentiality****Confidentiality**

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

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

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

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

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

*Steve Blundell* *Bill*

subject matter or the conduct of the Procedure, the Confidential Information or the Arbitrator's award by either party, then the Arbitrator may take such steps as he thinks appropriate including the dismissal of the claim in the event of a disclosure by the claimant.

18. Notwithstanding clause 17 a party may disclose Confidential Information to any of the other Claimants whose names appear in Schedule D or to the party's legal or other consultants provided that the party ensures that every such individual Claimant and consultant signs a confidentiality undertaking in the form set out in Schedule E and sends that confidentiality undertaking to the Administrator prior to receiving any Confidential Information.
19. Clause 17 does not limit the right of any party to seek injunctive relief or make a claim for any damages suffered as a result of any disclosure.

#### Costs

20. The Arbitrator's fees and expenses shall be paid by the Administrator and are part of the administrative costs of the Procedure.
21. The administrative costs of the Procedure are subject to a separate agreement between the Administrator and Telecom Australia.
22. Subject to clause 21, each party shall bear its own costs of the arbitration.

#### Notices

23. All documents letters or notices to be sent to Telecom Australia in relation to this Procedure shall be sent to:

*Steve Blund*  
*BSU*

Mr Paul Rumble  
National Manager-Customer Response Unit  
Telecom Australia  
Level 8  
242 Exhibition Street  
Melbourne Victoria 3000

by being delivered by hand or sent by prepaid mail.

#### Liability of Administrator and Arbitrator

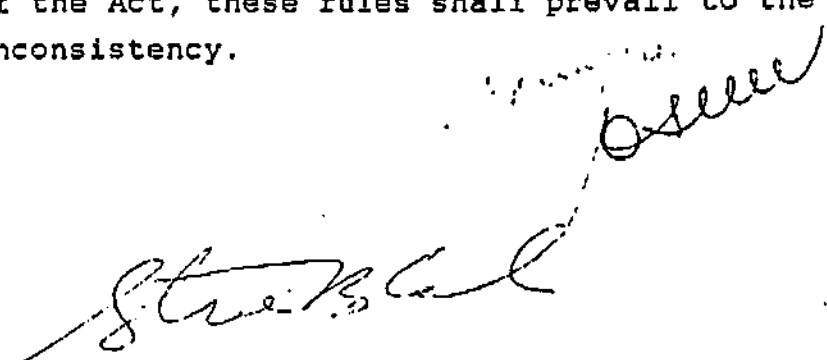
24. Neither the Administrator, the Arbitrator, the Special Counsel, a partner or employee of the legal firm of which the Special Counsel is a partner, a member of the Resources Unit, Ferrier Hodgson or a partner or employee of Ferrier Hodgson, DMR Group Australia Pty. Ltd. or a Director or employee of DMR Group Australia Pty. Ltd. shall be liable to any party for an act or omission in connection with any arbitration conducted under these Rules or involved in the preparation of these Rules save that the Arbitrator (but not the Administrator) shall be liable for any conscious or deliberate wrongdoing on the Arbitrator's own part.

#### Return of Documents after Arbitration

25. Within 6 weeks of publication of the Arbitrator's award, all documents received under this Procedure by the parties the Administrator, the Resource Unit and/or the Arbitrator and all copies thereof, shall be returned to the party who lodged such documents.

#### Conflict of Rules

26. In the event of any inconsistency between these rules and the provisions of the Act, these rules shall prevail to the extent of that inconsistency.





## Schedule A

## ("the Disputes")

\* For Claimants (plus other related claimants, companies, etc) other than Graham Schorer:

1. The liability of Telecom Australia to the Claimant in respect of alleged service difficulties, problems and faults in the provision to the Claimant of telecommunication services;
2. The adequacy of the amounts paid by Telecom to the Claimant under earlier settlements in relation to alleged service difficulties, problems and faults in the provision to the Claimant of telecommunication services;
3. The liability of Telecom Australia to the Claimant in respect of alleged service difficulties, problems and faults in the provision to the Claimant of telecommunication services since the date of the settlement payment for the respective Claimant's earlier claims, up to the date of the Arbitrator's decision;
4. If Telecom Australia is found liable in accordance with 1 or 3 above, the quantum of compensation payable by Telecom Australia to the Claimant for the Claimant's proven loss.

O R

\* For Graham Schorer (plus other related claimants, companies, etc):

*[Handwritten signature]*  
*[Handwritten signature]*

1. The liability of Telecom to the Claimant in respect of alleged service difficulties, problems and faults in the provision to the Claimant of telecommunication services (other than the matters covered by the earlier settlement between Graham Schorer's company and Telecom);
2. If Telecom Australia is found liable in accordance with 1 above, the quantum of compensation payable by Telecom Australia to the Claimant for the Claimant's proven loss (other than in relation to the matters covered by the earlier settlement between Graham Schorer's company and Telecom).

\* DELETE AS NECESSARY

*Steve Tish...*  
*Ed...*

Schedule B

("the Claimant")

Name: GRAHAM SCHORER

Address: Unit 4, 28 Kensington Road, South Yarra, in the State of Victoria

(Plus other related claimants, companies, etc)

- \* G. M. (NORFOLK ISLANDS) HOLDINGS PTY LTD ACN 005 010 559
- \* MAJOR SCHORER TRADING TRUST
- \* G. M. (NORFOLK ISLANDS) HOLDINGS PTY LTD ACN 005 010 559
- \* ~~GOLDEN~~ GOLDEN NOMINEES PTY LTD ACN 005 030 248
- \* GRAHAM JOHN SCHORER FAMILY TRUST
- \* POSITIVE ASSET ADVICE MANAGEMENT PTY LTD ACN 005 570 034
- \* GRAHAM JOHN SCHORER FAMILY TRUST NO 2

*Graham Schorer*  
*G. Schorer*  
*psccc*

Schedule C

Request for Arbitration

GRAHAM SCHORER of Unit 4, 28 Kensington Road, South Yarra in the State of Victoria, on <sup>21st</sup> ~~23~~ February 1994, hereby agrees to the *G.S.* Procedure annexed for the resolution of the Disputes between him and Telstra Corporation Limited in the manner described in the Procedure.

Dated this <sup>21st</sup> day of ~~April~~ 1994.

*G.S.* ..... *G.S.*  
.....  
.....

Telstra Corporation Limited hereby agrees to the Procedure annexed for the resolution of the Disputes between it and (insert name of Claimant and related claimants, companies etc) in the manner described in the Procedure.

Dated this <sup>21st</sup> day of ~~April~~ 1994.

..... *[Signature]*

*G.S.* *[Signature]*

Schedule D

Ann Garmis  
Maureen Anne Gillan  
Alan Smith

*Stanley*  
*Maureen*

Schedule E

Confidentiality Undertaking

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

I, Barry O'Sullivan (print full name)  
of 101/102 St Albans Street Southwicks VIC 3000 (print address)

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

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

Dated the Twenty Second day of June 1994.

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

[Signature]  
Signature of Witness

Barry O'Sullivan  
Full name of Witness

469



**Hunt & Hunt**  
LAWYERS

**COPY**

**Partners**  
Edward S. Boyce  
James G.P. Macgregor  
Colin A. Colby  
Gordon L. Hughes  
Mark T. Knapman  
Ian S. Kelly  
Peter J. Ellis  
Wayne B. Cahill  
Neville C.M. Deane  
Grant D. Sifton  
Charles Weaver  
Andrew Inglis-Smith

**Consultants**  
Kenneth M. Martin  
Richard J. Bellamy

**Associates**  
Peter A. Conish  
Shane G. Hill  
John S. Ashby  
Mollie A. Henderson  
Francis V. Callahan  
Ray Bell  
Randal P. Williams

2 May 1994

Our Ref: GLH

Master No:

Your Ref:

**BY HAND**

Mr John Rundell  
Ferrier Hodgson  
Chartered Accountants  
Level 11, 459 Collins Street  
Melbourne VIC 3000



Dear Sir

**TELECOM AUSTRALIA - COT CLAIMS**

As you are aware, Maureen Anne Gillan signed (through her power of attorney) the Request for Arbitration on 8 April 1994.

Ann Garms (on behalf of herself and other related claimants), Alan Smith and Graham Schorer (on behalf of himself and other related claimants) signed the Request on 21 April 1994.

Mr Steve Black signed each agreement on behalf of Telstra Corporation Ltd.

Pursuant to clause 5 of the "Fast-Track" Arbitration Procedure, the Administrator, Warwick Smith, has formally notified the parties and me in writing that he has received completed and signed Request for Arbitration forms from both parties in each instance. Pursuant to clause 7.2 of the Fast-Track Arbitration Procedure, each claimant must, within four weeks of receipt of Mr Smith's notice, send to Telecom and to me its Statement of Claim together with supporting claim documents.

I have been advised by the Administrator that formal notice pursuant to clause 5 was delivered to Garms, Smith and Schorer on 27 April and to Gillan on 3 May 1994.

I am anxious for these matters to proceed as expeditiously as possible. In the circumstances I believe it would be appropriate for the Resource Unit to familiarise itself with documentation which will unquestionably be placed in evidence, namely:

Melbourne  
Sydney  
Sydney West  
Brisbane  
Canberra  
Newcastle  
Perth  
Adelaide  
Darwin

11341692\_GLN/AK

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

Facsimiles: (61-3) 614 8730. G.P.O. Box 1833N, Melbourne 3001. DN 252, Melbourne.

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470

1. Bell Canada International Inc, "Report to Telecom Australia", 1 November 1993;
2. Coopers & Lybrand, "Review of Telecom Australia's Difficult Network Fault Policies and Procedures", November 1993;
3. Telecom Australia, "Response to Coopers & Lybrand Report and Bell Canada International Report", December 1993;
4. AUSTEL, "The COT Cases: AUSTEL's Findings and Recommendations", April 1994.

I believe a thorough understanding of this documentation will assist you in anticipating the scope and extent of investigations which the Resource Unit may be called upon to carry out.

I suggest also that you familiarise yourself with the *Commercial Arbitration Act 1984 (Vic)*.

Yours sincerely

GORDON HUGHES

cc P Bartlett, W Smith, M Gillan,  
A Gannus, A Smith, G Schorer, P Rumble





AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

95 / 0594 - 01

141

93/507

9 December 1993

Mr Ian Campbell  
Managing Director - Commercial Business  
Telecom

Fax 634 3876

Dear Mr Campbell

### BELL CANADA INTERNATIONAL REPORT

This letter is to convey to you advice to the effect that while AUSTEL was -

- consulted on the terms of reference for the Bell Canada International (BCI) audit of Telecom's testing and fault finding capability, and study of its network, to determine if there is a fundamental network fault
- of the view that the proposed testing would provide a useful snapshot of current network functionality and that the terms of reference allowed for sufficient flexibility to produce results relevant to a consideration of issues raised by COT Cases (without drawing conclusions on an individual customer's complaint),

on a preliminary analysis the report fails to live up to the expectations raised by the terms of reference.

#### Findings must be qualified

The BCI study concluded that "...customers served from the test originating and test terminating exchanges receive a grade of service that meets global network performance standards..." (sixth paragraph of the Executive Summary). Any findings to that effect must be qualified by the fact that the BCI audit focused on only one part of what is commonly called "the network", namely Telecom's exchange-to-exchange operations. BCI's audit did not extend to an equally significant part of "the network", namely the customer access network.

To put it another way, the tests conducted by BCI neither were nor purported to be "end-to-end" testing, but involved testing of part of the network only - the inter-exchange network. The tests were not applied in a manner designed to check complete end-to-end network performance from a customer's perspective. They were made from exchange equipment to exchange equipment and, except in one case, did not traverse customer lines or use customer premises equipment. The conclusions which may be drawn from the

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

471-A

study cannot go beyond the inter-exchange network. The findings cannot be presented in the way they were in the Executive Summary to suggest that they embrace the network as a whole, including the customer access network.

#### Test call patterns not typical of COT Cases

The test calling patterns adopted apparently reflected the main network traffic streams relevant to the exchanges currently providing services to the COT Cases and related customers, but did not necessarily reflect typical traffic patterns experienced by those customers. While the results can be considered indicative of the general switched public network performance of the exchanges involved, they cannot be guaranteed to be representative of calling performance from typical client locations to the exchanges serving the COT Cases and related customers.

Also for whatever the reasons, such as time constraints, the testing undertaken by BCI appears very narrowly focused. For example, in Melbourne BCI undertook test calling from only seven exchange localities out of the 100 or more in the Melbourne metropolitan area, with only selective test calling from the Western suburbs. This is particularly disappointing in that both of the Melbourne businesses included in the testing claim to have experienced difficulties with respect to calls from Western suburbs based clients.

#### Testing of PBX ("rotary") search facility

Particular concern has been expressed by COT Cases dependent on older (cross bar) exchange technology, in relation to periodic faults of the rotary search facilities which are designed to allow calls dialled to a single number to be offered to a group of access lines appearing in the customer's premises.

With the benefit of hindsight, exchange-to-exchange network integrity tests for COT Cases traffic cannot be considered comprehensive without the inclusion of testing of this facility in the terminating exchanges serving the relevant COT Cases.

I understand that BCI is currently undertaking further testing to redress this shortcoming in its report.

#### 008 services

Also with the benefit of hindsight, given the concerns expressed by certain of the COT Cases the realistic testing of network performance should have included test calling via any relevant 008 number.

#### Retrospectivity

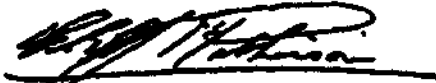
The report itself highlights the fact that the tests provide only a *snapshot* which does not necessarily reflect the problems that COT Cases have experienced in the past - see paragraph 5.00 of the report which "... recognises that the tests performed by BCI ... look at the network at a specific point in time. The results therefore, may be completely different from those obtained at some other point in time. Furthermore, as troubles are cleared when found, it is unlikely that the same trouble conditions will show up in subsequent tests".

471-A

In summary

Having regard to the above, I am of the opinion that the BCI report should not be made available to the assessor(s) nominated for the COT Cases without a copy of this letter being attached to it.

Yours sincerely



Cliff Mathieson  
Specialist Advisor - Networks

471-A

# Bell Canada International Inc.

1 Nicholas Street, Suite 800  
Ottawa, Ontario, Canada  
K1N 9M1

Tel: (613) 563 1811  
Fax: (613) 563 9679  
Telex: 053-4849

Mr Alan Humrich  
General Manager  
Central Area  
6th floor, 151 Roma Street  
Brisbane

14 December 1993

Subject: Austel Letter of 9 December 1993.

The purpose of this letter, is to respond to comments made in Austel's letter to Mr Ian Campbell dated 9 December 1993 and entitled Bell Canada International Report.

Austel's comment in the letter states that "on a preliminary analysis the report fails to live up to the expectations raised by the terms of reference".

In response to this comment, Bell Canada International Inc (BCI) was commissioned by Telecom Australia (Telecom) to test the network and to determine if there was a fundamental network fault or series of faults which would create the type and magnitude of troubles identified by the difficult fault customers. The BCI approach (given the study time requirements) was to complete an overall review of network translations and routing patterns and to assess any common network elements that could be applicable to the COT Customer's problems. The potential problem was deemed to be in the public switched telephone network.

The Austel letter states that "The test calling patterns adopted apparently reflected the main network traffic streams relevant to the exchanges currently providing services the COT cases and related customers, but did not necessarily reflect typical traffic patterns experienced by those customers..

The original tests covered over 17 exchanges and used 11 transit nodes.

The majority of all calls originating and terminating in Melbourne utilise final choice trunks via EXHA (Exhibition) and WINC (Windsor) exchanges.

All western nodes with the exception of Brunswick system 12, were tested.

K47459

471-B

Tests were run over periods of time, to ensure that the exchange office busy hours were selected as well as business and residential peak calling periods, including discount weekend calling patterns.

In our opinion and supported by additional tests carried out during the rotary hunting group study, expanding the tests to additional exchanges would not likely produce different results because the majority of switching and transmission paths are merely being re-tested.

Austel further identified that the network study should have included "Test calling via any relevant 008 number" BCI was not directed by Telecom to test the 008 service for specific customers however, 008 is essentially a service that utilises the inter-exchange network and is a set of translations which directs calls to the appropriate telephone number through the inter-exchange network.

Many services could have been tested however, not every COT customer has a common set of services that would create the problems being reported.

Finally, Austel's statement in the letter that "opinion that the BCI in its report should not be made available to the assessor(s) nominated for the COT Cases without a copy of this letter being attached to it"

The (Inter-Exchange) Network Study is a snap-shot of the network performance in exchanges selected for the study and that if a major network fault or series of faults were inherent in the network, they would have been identified during the study period.

The Austel letter raises specific COT customer issues which were ancillary to the BCI study.

The study is the property of Telecom for its intended use and BCI is prepared to stand behind the results and content of the study.

Yours Truly,



M. A. Norman

K47460

471-B

**Holmes, Jim**

**From:** Newbold, Greg  
**To:** Beadle, Ken; Humrich, Alan; Pinal, Don; Blake, Ed; Campbell, Ian; Law, Ann; Pittard, Rosanne; Mcburnie, Denise; Benjamin, Ted; Holmes, Jim; Hambleton, Dennis V; Hill, Trevor; Marshall, Ross; Long, Bernadette  
**Cc:** Vonwiller, Chris; Anderson, Keith  
**Subject:** Today's meeting  
**Date:** Wednesday, 17 November, 1993 8:33AM

Peter Sekules and I have prepared a draft news release, a one-page media aide for Ian Campbell plus the pre-emptive media strategy itself.

Am now raising with Sekules the merits/demerits of holding back the BCI info for a "cleansing" program immediately after the mess of Coopers. My thinking is that it would draw the focus away from the Coopers stuff and on to our network that works. ←

Greg.

A05254

Page 1


472

I, John Sherard Main  
OF Break-O'-Day Road Glenburn 3717 in the State of Victoria  
do solemnly and sincerely declare

THAT

I spoke to Ms Pia Di Mattina from the Telecommunications  
Ombudsman's Office at approximately midday today.

She advised me that the Bell Canada International Inc Report to  
Telecom Australia dated 1 November 1993 and the addendum dated  
10 November 1993 were flawed documents.

 JOHN SHERARD MAIN

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

DECLARED AT LILYDALE In the  
State of Victoria this SIXTH (6th)  
day of November One thousand  
nine hundred and ninety five

Before me

 J. SAVAGE  
COMPTROLLER 29345.

473

520 response  
21/7/94

# Hunt & Hunt

LAWYERS

Partners  
Edward S. Bayne  
James G.F. Harwood  
Charles A. Kelly  
Clement L. Hughes  
Mark T. Brennan  
Ian S. O'Leary  
Peter J. Smith  
Wayne S. Cahill  
Neville G.H. Debeney  
Grant D. Selman  
Charles Weaver  
Andrew Leslie Smith  
William P. O'Shea  
Counselors  
Kamogh M. Martin  
Richard J. Kellaway  
Associates  
Shane G. Hill  
John S. Mohr  
Malcolm A. Henderson  
Frank V. Colledge  
Ray Sell

18 July 1994

Our Ref: GLH

Matter No:

Your Ref:

Mr Paul Rumble  
National Manager - Customer Response Unit  
Telecom Australia  
Level 8  
242 Exhibition Street  
Melbourne VIC 3000

Dear Mr Rumble

### COT MATTERS

On 13 July 1994, the Resource Unit requested copies of the Bell Canada Report, the Coopers & Lybrand Report and the Telecom response to these Reports. The purpose of the request was to enable the Resource Unit to commence perusing relevant background documentation.

This documentation was provided to me by Mr Rod Pollock by hand on 15 July 1994 and has now been passed on to the Resource Unit. In addition, certain other material was provided to me. The documents concerned are numbered 1, 4, 5, 6 and 7 in the attached Table of Contents.

I do not know whether this additional material has previously been made available to the Claimants. I also do not know, whether the additional material is considered by Telecom to be related to the documentation requested by the Resource Unit or whether perhaps, Telecom considers that the documentation requested by the Resource Unit cannot be read in context without the benefit of this additional material.

You will appreciate that I cannot forward material to the Resource Unit which is not made available simultaneously to the Claimants. You will also appreciate that Telecom will have an opportunity to submit its own evidence in respect of each of the current claims once the respective Claimants have finalised their submissions.

Melbourne  
Sydney  
Sydney West  
Brisbane  
Canberra  
Newcastle  
Perth  
Adelaide  
Darwin

1128575\_GLH/RS

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 614 8711.  
Facsimile: (61-3) 614 8730. G.P.O. Box 1533N, Melbourne 3001. DX 252, Melbourne.

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Against this background, could you please clarify the basis upon which documents 1, 4, 5, 6 and 7 in the attached Table of Contents have been submitted to me?

Yours sincerely

**GORDON HUGHES**

CC R Pollock, P Bartlett, W Smith

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474

**Hunt & Hunt**  
LAWYERS

*Frechills  
Garry  
Blair  
Chalmers*

**Partners**  
Edward S. Bayly  
James G.F. Harcourt  
Christine A. Galley  
Gordon L. Hughes  
Mark T. Keenan  
Ian S. Cook  
Peter J. Cole  
Wayne B. Cahill  
Neville G.H. Odway  
Grant D. Selton  
Charles Veroff  
Andrew Leslie Smith  
William P. O'Shea

**Consultants**  
Kenneth M. Martin  
Richard J. Kelloway

**Associates**  
Shane G. Ford  
John S. Mehar  
Melissa A. Henderson  
Francis V. Colicchio  
Ray Sell

16 August 1994

Our Ref: GLH

Matter No:

Your Ref:

Mr Paul Rumble  
Group Manager - Customer Response Unit  
Telecom Australia  
Level 8  
242 Exhibition Street  
Melbourne VIC 3000

Dear Mr Rumble

**ARBITRATIONS - GARMS, SCHORER, GILLAN, SMITH**

I enclose copy facsimile from George Close & Associates Pty Ltd, undated but received 12 August 1994.

You will note Mr Close is seeking information to which he has apparently not yet had access. Presumably this may lead to a formal application by one or more of the Claimants pursuant to clause 7.5 of the "Fast-Track" Arbitration Procedure.

Before I give consideration as to what course to follow, do you wish to provide an initial response to the matters raised in Mr Close's letter?

Yours sincerely

*[Signature]*  
**GORDON HUGHES**

Encl

CC A Garms, G, Schorer, A Smith, A Davis, G Close, P Bartlett,  
W Smith, J Rundell

melbourne  
sydney  
sydney wc  
brisbane  
canberra  
newcastle  
perth  
adelaide  
darwin

475

M33999

11305499\_GLF/KS

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

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**Senator SCHACHT**—I will put that question on notice. As to the complaints to Telstra from the CoT cases—Mr Benjamin, you may think that you have drawn the short straw in Telstra, because you have been designated to handle the CoT cases and so on. Are you also a member of the TIO board?

**Mr Benjamin**—I am a member of the TIO council.

**Senator SCHACHT**—Were any CoT complaints or issues discussed at the council while you were present?

**Mr Benjamin**—There are regular reports from the TIO on the progress of the CoT claims.

**Senator SCHACHT**—Did the council make any decisions about CoT cases or express any opinion?

**Mr Benjamin**—I might be assisted by Mr Pinnock.

**Mr Pinnock**—Yes.

**Senator SCHACHT**—Did it? Mr Benjamin, did you declare your potential conflict of interest at the council meeting, given that as a Telstra employee you were dealing with CoT cases?

**Mr Benjamin**—My involvement in CoT cases, I believe, was known to the TIO council.

**Senator SCHACHT**—No, did you declare your interest?

---

**Mr Benjamin**—There was no formal declaration, but my involvement was known to the other members of the council.

**Senator SCHACHT**—You did not put it on the record at the council meeting that you were dealing specifically with CoT cases and trying to beat them down in their complaints, or reduce their position; is that correct?

**Mr Benjamin**—I did not make a formal declaration to the TIO.

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

29<sup>th</sup> December 2008

Mr Peter Bartlett ✓  
Minter Ellison  
Rialto Tower, Collins St  
Melbourne 3000

Dr Gordon Hughes  
Blake Waldron Dawson  
Level 39, 101 Collins Street  
Melbourne 3000

**Re Graham Schorer and Alan Smith, COT**

Dear Mr Bartlett and Dr Hughes,

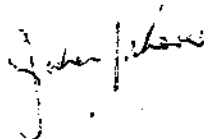
On 17<sup>th</sup> September 2008, Mr Chris Chapman, Chairman of ACMA, was provided with proof that our FTAP Arbitration agreement was altered after it had been distributed as the final version, to the three remaining foundation COT claimants, between 13<sup>th</sup> and 19<sup>th</sup> April 1994. We were not advised of the intended or the actual changes before we signed the agreement on 21<sup>st</sup> April 1994. The changes made included the removal of clauses 25 and 26 and alterations to clause 24, which exonerated Minter Ellison (Special Counsel), Ferrier Hodgson Corporate Advisory and DMR Inc, from legal suit.

On the day that we actually signed our agreement we were told that Steve Black would not be signing on behalf Telstra at the same time because he was unable to be at Minter Ellison for 'business reasons' and that you, Mr Bartlett, would courier the document to Telstra for later signature. It has since been shown that it took a further six days for the document to be delivered to us with Mr Black's signature added and we are both prepared to sign a sworn statement to this effect. Evidence only received earlier this year suggests that the signature on (page 12) of the agreement could well have been altered during the six days after we had signed it.

We would now like clarification of exactly when the agreement was altered and whether that was before or after we signed the agreement.

A copy of the letter dated 17<sup>th</sup> September 2008, to Mr Chapman (see paragraph 1, above), and 29<sup>th</sup> December 2008, to Mr Chris Chapman, ACMA Chairman and Ms Deirdre O'Donnell, Telecommunication Industry Ombudsman, is attached. It is considered these letters will assist you both in understanding the legal ramifications to what has transpired.

Thank you



Graham Schorer

Copies to

Ms Deirdre O'Donnell, TIO, P.O Box 276 Collins Street West, Melbourne 8007

Mr Chris Chapman, Chairman of ACMA, P.O. Box Q-500 Queen Victoria Building NSW 1230



Alan Smith

477

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

29<sup>th</sup> December 2008

Ms Deirdre O'Donnell  
Telecommunications Industry Ombudsman  
P O Box 276  
Collins Street West  
Melbourne 3000

**Re Graham Schorer & Alan Smith, COT**

Dear Ms O'Donnell,

Previously we both had a claim administered by the TIO in relation to the Fast Track Arbitration Procedure involving Telstra. We are again raising that matter with the TIO to ensure that you are aware of the information detailed in the following letters:

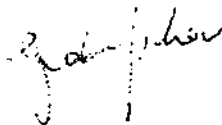
1. Letter dated 17<sup>th</sup> September 2008, to Mr Chris Chapman, Chairman of ACMA;
2. Letter dated 29<sup>th</sup> December 2008, to Mr Chris Chapman, Chairman of ACMA;
3. Letter dated 29<sup>th</sup> December 2008, to Dr Gordon Hughes and Peter Bartlett.

The documents attached to the letter dated 17<sup>th</sup> to Mr Chapman demonstrates how both Telstra's Steve Black and the then-TIO, Warwick Smith, were both totally opposed to the removal from the arbitration agreement, of the legal liability clauses 24, 25 and 26, that were later altered and/or removed without our prior knowledge consultation and/or agreement. In relation to these legal liability clauses, we are therefore now asking you to confirm:

- a) Was the TIO ever informed prior to 21<sup>st</sup> April 1994, that clause 24 would be altered and the original clauses 25 and 26 were to be removed, so that the TIO's Special Counsel and the arbitrator's Resource Unit would be exonerated from legal suit?
- b) Was the TIO ever warned that the FTAP agreement (page 12) could have been altered, without our knowledge or consent, during the six-day period after we had signed the agreement, but before we received it back with a Telstra representative's signature?

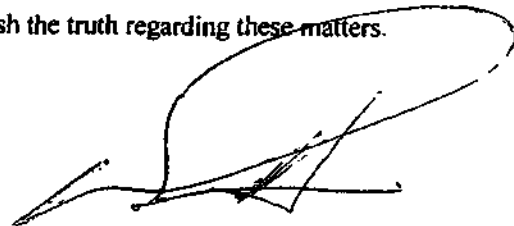
As the claimants in this process, we are entitled to establish the truth regarding these matters.

Thank you



Graham Schorer  
Copies

Mr Peter Bartlett and Dr Gordon Hughes (Melbourne)  
Mr Chris Chapman, Chairman of ACMA, P.O. Box Q-500 Queen Victoria Building NSW 1230



Alan Smith

477



## Office of the Attorney-General

121 Exhibition Street  
Melbourne Victoria 3000  
GPO Box 123  
Melbourne Victoria 3001  
Telephone: (03) 8684 1111  
Facsimile: (03) 8684 1100  
DX 210220

2 - JUL 2012

Mr Alan Smith  
1703 Bridgewater Road  
PORTLAND VIC 3305

Our ref: MC/12/3781  
(BC/12/14629 & BC/12/14139)

Dear Mr Smith

### INTERCEPTION OF FACSIMILES

Thank you for your correspondence of 2 June 2012 to the Attorney-General, The Hon Robert Clark MP. I also note your letters of 2 June 2012 and 12 June 2012 to the Department of Justice.

As you have been previously advised, telecommunications issues fall outside the portfolio responsibilities of the Victorian Attorney-General and are the jurisdiction of the Commonwealth Government. As you are aware, the government agency responsible for such matters is the Australian Communications and Media Authority, who can be contacted via the information below:

Australian Communications and Media Authority  
PO Box 13112 Law Courts  
MELBOURNE VIC 8010  
Telephone: (03) 9963 6800

You may also wish to raise your concerns with the Commonwealth Minister for Broadband, Communications and the Digital Economy, Senator the Hon Stephen Conroy, via the following details:

Senator the Hon Stephen Conroy  
Commonwealth Minister for Broadband, Communications and the Digital Economy  
Level 4, 4 Treasury Place  
MELBOURNE VIC 3002  
Telephone: (03) 9650 1188

If you require advice in respect to your claims about the arbitration process you can call Victoria Legal Aid for general legal information on 1800 677 402. The Law Institute of Victoria also runs a referral service that can assist you in finding a lawyer, the details of which are below:

The Law Institute of Victoria Referral Service  
Telephone: 9607-9550 (Monday-Friday 9:00am-5:00pm)  
Email: [referrals@liv.asn.au](mailto:referrals@liv.asn.au)  
Website: [www.liv.asn.au](http://www.liv.asn.au)

478



You should refer any claim of criminal conduct to Victoria Police. the details of your local police station are as follows:

Victoria Police – Portland  
Glenelg Street  
PORTLAND VIC 3305  
Telephone: (03) 5523 1999

Any allegations of telecommunication offences should be directed to the Australian Federal Police on (02) 6131 3000.

The Attorney-General's Office is unable to intervene in this matter.

Yours sincerely

A handwritten signature in black ink, appearing to be 'P. Denham', written over a faint circular stamp.

**PAUL DENHAM**  
Senior Adviser

478



# Department of Justice

Civil Law Policy

Level 24  
121 Exhibition Street  
Melbourne Victoria 3000  
Telephone: (03) 8684 0800  
Facsimile: (03) 8684 1300  
www.justice.vic.gov.au  
DX 210077

12 OCT 2011

Our ref: CD/11/467259

Mr Alan Smith  
Seal Cove  
1703 Bridgewater Road  
PORTLAND VIC 3305

Dear Mr Smith

## Interception of Facsimiles

Thank you for your recent letters to the Attorney-General the Hon. Robert Clark MP. The Attorney-General has asked me to respond on his behalf.

I regret that the Department of Justice and the Attorney-General are not able to assist you with the facsimile interception matter outlined in your correspondence.

It appears from the extensive documentation you have included with your recent correspondence that you have exhausted all available avenues where your claims may be investigated. Accordingly, I am not able to suggest an agency that may be able to assist you further. You could consider obtaining legal advice as to what avenues might be available to you if you haven't already done so. You may wish to contact your local community legal centre for advice:

South West Community Legal Centre  
79 Liebig St  
Warrnambool 3280  
1300 361 680

Yours sincerely

Susan Coleman  
Acting Director  
Civil Law Policy







# Department of Justice

Civil Law Policy

Level 24  
121 Exhibition Street  
Melbourne Victoria 3000  
Telephone: (03) 8684 0800  
Facsimile: (03) 8684 1300  
[www.justice.vic.gov.au](http://www.justice.vic.gov.au)  
DX 210077

23 MAR 2012

Our ref: CD/12/126775

Mr Alan Smith  
Seal Cove  
1703 Bridgewater Road  
PORTLAND VIC 3305

Dear Mr Smith

### Interception of facsimiles

Thank you for your letter to Susan Coleman of 8 December 2011. I apologise that the legal centre you were referred to, South West Community Legal Centre (also known as Community Connections), was not able to assist you with your matter.

I refer to previous correspondence and the Department's advice that you seem to have exhausted all available avenues where your claims may be investigated. Unfortunately, the Attorney-General and the Department of Justice cannot assist you any further with this matter.

Yours sincerely

*Chris Humphreys* 23/3/12

Chris Humphreys ..  
Director



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

Account 775 7288 200

Issue Date 01 Mar 89

Page 4

Item **STD Calls - Itemised continued**

**STD calls continued**

Item	Date	Time	Place	Number	Rate	Min:Sec	\$
	Telephone Service 03 5528 7285 continued						
247	21 Feb	06:15 pm	Melbourne	0398761853	Economy	1:17	0.30
248	21 Feb	08:17 pm	Melbourne	0398761254	Economy	0:50	0.20
245	21 Feb	06:39 pm	Colac	0352322449	Economy	1:08	0.30
278	22 Feb	12:12 pm	Melbourne	0392877099	Day	8:40	2.50
221	22 Feb	12:28 pm	Melbourne	0395268614	Day	2:34	0.80
288	22 Feb	12:32 pm	Melbourne	0395268614	Day	0:07	0.10
222	22 Feb	12:33 pm	Melbourne	0395268616	Day	9:30	2.70
298	22 Feb	02:41 pm	Melbourne	0398761254	Afternoon	4:05	1.10
271	22 Feb	03:40 pm	Warrambool	0355616193	Afternoon	1:35	0.40
273	22 Feb	04:31 pm	North Geelong	0352794444	Afternoon	0:55	0.30
239	22 Feb	08:08 pm	Melbourne	0398761254	Economy	1:08	0.30
194	22 Feb	09:12 pm	Warrambool	0355614038	Economy	1:14	0.20
207	24 Feb	07:42 pm	Melbourne	0395114338	Economy	17:22	2.50
276	24 Feb	08:30 pm	Grovedale	0352414048	Economy	3:39	0.60
284	24 Feb	08:34 pm	Melbourne	0395639030	Economy	34:05	3.00
285	24 Feb	09:19 pm	Buderim	0754453198	Economy	14:03	2.10
286	24 Feb	09:57 pm	Buderim	0754453198	Economy	1:09	0.30
218	25 Feb	09:41 am	Melbourne	0392877099	Day	18:22	5.20
217	25 Feb	10:00 am	Melbourne	0392877001	Day	2:13	0.70
223	25 Feb	11:41 am	Grassmere	0355654227	Day	3:11	0.70
224	25 Feb	11:58 am	Port Fairy	0356681057	Day	1:36	0.40
196	25 Feb	12:26 pm	Melbourne	0392877099	Day	8:58	2.60
263	25 Feb	01:07 pm	Melbourne	0392877099	Afternoon	1:05	0.40
258	25 Feb	03:51 pm	Melbourne	0398761254	Afternoon	4:50	1.30
259	25 Feb	03:58 pm	Melbourne	0398761853	Afternoon	1:02	0.40
257	25 Feb	03:57 pm	Melbourne	0398761254	Afternoon	1:34	0.50
231	25 Feb	06:48 pm	Melbourne	0392877001	Afternoon	0:52	0.30
209	25 Feb	07:18 pm	Melbourne	0398761853	Economy	1:19	0.30
195	26 Feb	08:39 am	Melbourne	0398761853	Day	0:57	0.40
244	26 Feb	10:49 am	Melbourne	0398761254	Day	0:19	0.20
243	26 Feb	10:55 am	Melbourne	0392877001	Day	0:47	0.30
229	26 Feb	11:05 am	Melbourne	0392877099	Day	10:12	2.90
225	26 Feb	11:20 am	Melbourne	0392877001	Day	1:57	0.60
227	26 Feb	11:24 am	Canberra	0282711000	Day	0:10	0.30
230	26 Feb	11:46 am	Melbourne	0392877099	Day	7:40	2.30
197	26 Feb	01:04 pm	Melbourne	0392877099	Afternoon	7:55	2.30
199	26 Feb	01:37 pm	Melbourne	0392877001	Afternoon	0:46	0.30
227	26 Feb	03:36 pm	Melbourne	0392877099	Afternoon	0:35	0.30
276	26 Feb	04:01 pm	Melbourne	0392877099	Afternoon	2:32	0.80

479

SID : GOLDEN

Number 11 : 613 9287 7881  
Number 12 :

Date : 26-02-99 14:14

Date/Time	Subscriber	Media	Pages	Duration	Status	Notes
25-02 15:29	3264223	FINE	1	2'14"	Correct	L1
25-02 18:39	61398889446	NORMAL	1	0'27"	Correct	L1
25-02 16:46	+61 7 3257 1583	NORMAL	3	1'37"	Correct	L1
25-02 17:11	61 3 96297209	NORMAL	3	0'49"	Correct	L1
25-02 17:17	61 3 92138049	FINE	1	0'49"	Correct	L1
25-02 18:12	+61 7 3257 1583	NORMAL	3	1'44"	Correct	L1
25-02 18:46	855 267238	NORMAL	1	0'47"	Correct	L1
26-02 7:51	93281881	NORMAL	1	0'47"	Correct	L1
26-02 8:28	61 6 249 7829	NORMAL	1	0'21"	Correct	L1
26-02 9:01	61 3 9685838	NORMAL	2	0'48"	Correct	L1
26-02 10:21	61 3 96328875	NORMAL	11	5'24"	Correct	L1
26-02 10:38	61 3 9432 4716	NORMAL	1	0'37"	Correct	L1
26-02 10:48	61 3 95328875	NORMAL	12	5'41"	Correct	L1
26-02 10:53	855 267228	NORMAL	1	0'42"	Correct	L1
26-02 11:08	61 3 96328875	NORMAL	3	1'12"	Correct	L1
26-02 12:01		FINE	1	0'39"	Correct	L1
26-02 13:06	855 267228	NORMAL	1	0'41"	Correct	L1
26-02 14:12	+6132652356	NORMAL	3	0'54"	Correct	L1

480

**FAX FROM:** ALAN SMITH

*Cape Bridgewater  
Holiday Camp*

*Portland 3305*

**FAX NO:** 03 55 267 265

**PHONE NO:** 03 55 267 267

**FAX TO:** SENATOR IAN CAMPBELL  
C/O MINISTER FOR  
COMMUNICATIONS &  
INFORMATION TECHNOLOGY  
PARLIAMENT HOUSE  
CANBERRA

**DATE:**

17/3 99

**NUMBER OF PAGES** (including this page)

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

Dear Senator Campbell,

In the course of preparing my last fax to you, as I watched the last draft arriving via my fax from my secretarial agency, the fax began to ring, even though a fax was rolling through. The fax from the secretarial agency stopped and a totally different fax, from my barrister in Melbourne, began to appear. The phone rang again and the barrister's fax stopped. The last pages of the fax from my secretarial agency then arrived. In other words, on a continuous strip of fax paper I have two pages from my secretarial agency then two pages from my barrister and another three (the covering faxes to the three cc's listed on your fax) from the agency.

I find this quite confusing. How can my fax machine have accepted two separate calls from two different addresses but at the same time? How could it be that the fax/phone actually rang as if a call was coming in when the second caller should have received an engaged signal?

All this is even more ironic when we remember that I was in the process of preparing my fax to you and that this fax was specifically related to past fax problems I had experienced!

So, I now have a continuous piece of fax paper showing the mix-up of these two different faxes and a print-out of my fax journal records which shows these faxes arriving consecutively. The fax journal also indicates a '490' fault had occurred with one of the faxes from the agency and one from the barrister. According to my fax manual, a '490' fault indicates 'received data has too many errors'. The manual suggests that this should be checked with the 'other party'. When these faxes were later re-sent to me there were no problems.

I have to now ask: How many faults are Telstra customers expected to accept?

Alan Smith

*copies to:*

*Mr John Wynack*

*Commonwealth Ombudsman's Office, Canberra*

*Senator Kim Carr*

*Labor Party, Canberra*

*Senator Ron Boswell*

*National Party, Canberra*

481

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

15/9/98

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

The President  
The Institute of Arbitrators Australia  
Level 1  
22 William St  
Melbourne 3000

10 PAGES FAXED

Dear Sir,

I am writing to ask when the Institute of Arbitrators is going to investigate Justice Shelton's involvement in the COT Arbitrations.

There are a number of points at issue here:

- 1 It is well documented in the Senate Hansard of 1994/95 that the four COT Arbitration processes were intended to be non-legal commercial assessments, not *legal arbitrations*;
- 2 It is clear that Telstra's preferred rules of arbitration and the rules that the COT four actually signed on 21 April 1994 were one and the same, except for a few minor cosmetic changes;
- 3 The COT four, and the Senate, were assured that we would receive natural justice through this specially designed *commercial assessment process*.

**POINT 1**

Peter Bartlett of Minter Ellison, together with the then TIO, Warrick Smith, informed me on two separate occasions that, when I signed for arbitration, I would not need legal representation. Telstra, on the other hand, were clearly represented by Freehill Hollingdale and Page. Obviously, as a solitary, non-legal person I was a dead duck from day one of the arbitration.

**POINTS 2 & 3**

I have now been advised by legal experts who have assessed the ITAP rules that, under these rules, my arbitration could never have delivered natural justice to non-legal people such as the COT four.

482

I can only assume that when Justice Shelton, who was then the President of your institute, was involved in drawing up the rules of the FTAP, he was not aware that:

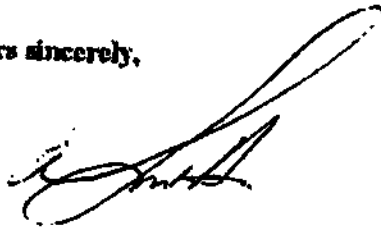
- the four members of COT had previously signed a commercial assessment agreement which was still in place and
- the commercial agreement was for a *non-legalistic* assessment.

Surely, if he had been aware of this pre-existing agreement, someone with Judge Shelton's qualifications would never have allowed the FTAP to take preference over the already established FTSP.

I ask again: does the Institute intend to investigate this matter?

I await your response.

Yours sincerely,



Alan Smith

copies to:

Mr John Pinnock, TIO, Melbourne

Mr David Hawker MP, Federal Member for Wannon, Hamilton

482

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

**STD calls** *continued*

	Date	Time	Place	Number	Rate	Min:Sec	\$
	<b>Telephone Service 03 5526 7267</b> <i>continued</i>						
609	15 Sep	11:44 am	Melbourne	0398761853	Day	1:32	0.65*
613	15 Sep	04:54 pm	Melbourne	0398761254	Afternoon	2:08	0.77*
614	15 Sep	04:59 pm	Melbourne	0398761254	Afternoon	0:31	0.30*
646	15 Sep	05:05 pm	Melbourne	0398761853	Afternoon	0:38	0.34*
652	16 Sep	02:40 am	Melbourne	0396295250	Economy	5:36	1.06*
653	16 Sep	02:55 am	Canberra	0262505900	Economy	5:41	1.15*
695	16 Sep	03:06 am	Melbourne	0396294598	Economy	1:36	0.41*
696	16 Sep	03:08 am	Hamilton	0355721141	Economy	2:11	0.37*
690	16 Sep	09:25 am	Warrnambool	0355612385	Day	4:22	1.02*
691	16 Sep	09:30 am	Warrnambool	0355612436	Day	2:40	0.69*
692	16 Sep	09:50 am	Melbourne	0392877099	Day	11:19	3.82*
693	16 Sep	10:48 am	Hamilton	0355721141	Day	1:36	0.47*
694	16 Sep	10:56 am	Melbourne	0396294598	Day	2:11	0.86*
651	16 Sep	11:30 am	Melbourne	0392877099	Day	0:08	0.19*
655	16 Sep	01:31 pm	Melbourne	0392877001	Afternoon	4:44	1.53*
654	16 Sep	02:23 pm	Melbourne	0396705694	Afternoon	41:30	12.29*
655	16 Sep	03:08 pm	Melbourne	0392856458	Afternoon	21:40	6.48*
656	16 Sep	03:36 pm	Melbourne	0396705694	Afternoon	1:34	0.61*
653	17 Sep	12:53 pm	Melbourne	0398761254	Day	0:20	0.25*
<b>Total for 03 5526 7267</b>							<b>\$158.14</b>
<b>Total for STD</b>							<b>\$158.14</b>

\* Indicates calls made under a Flexi-Plan

Item **Calls To Mobiles - Itemised**

**Calls Direct To Mobiles**

	Date	Time	Place	Number	Rate	Min:Sec	\$
	<b>Telephone Service 03 5526 7267</b>						
675	10 Sep	12:20 pm	Mobile	0417359290	Peak	1:23	0.75
676	15 Sep	01:25 pm	Mobile	018527052	Peak	0:42	0.25
<b>Total for 03 5526 7267</b>							<b>\$1.00</b>
<b>Total for Calls Direct To Mobiles</b>							<b>\$1.00</b>

\* Indicates calls made under a Flexi-Plan

Item **Previous Payment Details**

	Date	Method of Payment	Bill Number	\$
693	14 Aug	Mailed Payment - Thankyou	T141975707	199.35cr
<b>Total payments processed by 18 Sep 98</b>				<b>\$199.35cr</b>

483

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

30/7/98

Phone: 03 55 267 267

Fax: 03 55 267 230

Mr Wally Rothwell  
Deputy Ombudsman  
TIO's Office  
Melbourne

Dear Wally,

It is already clear from the information I have previously provided to your office that not all my claim documents reached Telstra's defence unit. If Democracy is still alive in Australia under the present Liberal Coalition Government, and in the interests of Natural Justice, then a full enquiry must be launched into how my faxed claim documents were received at Dr Hughes's office and if they all arrived as intended.

Your office has already been provided with supporting documents from the Occasional Office, Christy Hawker's Secretarial Service and Robert Palmer, Author. All three of these people have received blank pages, documents with extended pages or badly disfigured pages from my fax over the period they have worked for me. The statement from the Occasional Office has been provided in the form of a Statutory Declaration.

A copy is now attached of a four page letter dated 25/5/95 to Sue Hodgkinson of Ferrier Hodgson Corporate advisory (FHCA). Please note that the pages are clearly numbered 1 to 4. The second attachment is a copy of three pages marked "extended page 1.1, extended page 1.2 and extended page 3.1". These first two of these pages are copies of part of the original letter which I sent to Sue Hodgkinson via Dr Hughes office by fax on 25/5/95 at 02.10pm. The alarming thing about this letter is that it seems that only 1/4 of the original pages reached the Arbitrator's office. Further, and even more alarming, the page marked "extended page 3.1" was not part of my claim at all. This raises the question of who this document belongs to or who it came from and this leads to the inevitable conclusion that someone else's claim is probably incomplete.

I have left these three pages stapled in the original condition - as they were returned to me from Dr Hughes's office after the completion of my Arbitration, as part of my own documents.

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page 1

484



Not only is the identification information from my fax missing from these documents, including the date and time sent, but there is no identification for the third page either.

I have continually alerted your office to my belief that not all my claim documents were being seen by the parties they were intended to be seen by, including DMR and Lanes, and Telstra's defence unit. Although this letter to Sue Hodgkinson was sent after my Arbitration was completed (11/5/95) and therefore could not have been used as evidence to support my claim, the way in which they were received (or only partly received) at the Arbitrator's office supports my allegations that not all the claim documents that I faxed to the Arbitrator during my Arbitration actually reached his office.

As a matter of national justice, the TIO's office should demand an answer from both Telstra and the Arbitrator: they should be required to explain where the remaining 2 1/2 pages of the fax to Sue Hodgkinson went and, even more importantly, who the page marked "extended page 3.1" actually belongs to.

I now demand an explanation from your office as to why not all my claim documents arrived at the Arbitrator's office, thereby leaving Telstra in the lucky position of not having to address the missing documents.

Under the circumstances I also demand that I be supplied with a full and comprehensive list of all the claim documents that the TIO's Legal Counsel, Peter Bartlett of Minter Ellison, received from me during my Arbitration so that I can compare this with my own list of what Dr Hughes received and uncover how many ended up the same way as the Sue Hodgkinson fax noted above.

Mr Pincock continues to state that I can only have these matters addressed in the Supreme Court of Victoria but what he has forgotten is that, before the COT four signed for this Arbitration, Senator Richard Alston, Senator Ron Boswell and the four of us were assured by the then TIO, Warrick Smith, that these four COT Arbitrations would be *non-legalistic* and *fast-tracked*. This can be confirmed by referring to Hansard reports during 1994 and 1995. Because of this I stand firm in my belief that these matters fall under the jurisdiction of the Administrator of my Arbitration - Mr Pincock. The TIO's office has a duty of care to ensure that the "extended page 3.1" is returned to its rightful owner so that person can re-submit the claim document as a 'complete document' for both DMR / Lanes and Telstra to address.

The example of this fax to Sue Hodgkinson is further evidence showing that the Telstra Network was faulty, the very reason we COT members were in Arbitration in the first place. The whole situation was made worse by the fact that we were forced to use this faulty network to lodge our claims.

Because of this evidence the TIO's office must Intervene and instigate an enquiry into how many of my claim documents were lost when they were sent by fax and how many documents were lost by other member's of COT when they lodged them by fax. This enquiry must now proceed as a matter of urgency.

I await your immediate response.

Sincerely,



Alan Smith

copies to:

Amanda Vanstone, Minister for Justice, Canberra

Daryl Williams, Attorney General, Canberra

The President of the Institute of Arbitrators Australia

The President of the Law Institute, Melbourne.

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

**STD calls** *continued*

	Date	Time	Place	Number	Rate	Min:Sec	\$
	<b>Telephone Service 03 5526 7265</b>			<i>continued</i>			
469	28 Nov	10:03 am	Melbourne	0398761254	Economy	0:10	0.18*
472	28 Nov	10:05 am	Melbourne	0398761254	Economy	9:38	1.72*
357	28 Nov	01:34 pm	Melbourne	0398761853	Economy	19:23	3.30*
427	29 Nov	05:12 pm	Melbourne	0397555480	Economy	2:40	0.58*
424	30 Nov	10:34 am	Melbourne	0398761254	Day	1:01	0.48*
423	30 Nov	10:39 am	Melbourne	0392877099	Day	1:24	0.61*
425	30 Nov	10:42 am	Brisbane	0738521711	Day	12:12	4.42*
375	30 Nov	11:20 am	Melbourne	0398761853	Day	0:52	0.43*
374	30 Nov	11:21 am	Melbourne	0398761254	Day	1:49	0.74*
355	30 Nov	01:59 pm	Melbourne	0398761853	Afternoon	0:48	0.39*
394	01 Dec	08:56 am	Melbourne	0398761853	Day	2:54	1.09*
393	01 Dec	09:05 am	Melbourne	0398761254	Day	4:54	1.74*
395	01 Dec	10:30 am	Brisbane	0733623322	Day	1:12	0.57*
433	01 Dec	01:28 pm	Melbourne	0392877001	Afternoon	3:55	1.30*
434	01 Dec	01:32 pm	Melbourne	0392877099	Afternoon	1:44	0.66*
426	02 Dec	07:46 am	Melbourne	0398761853	Day	0:48	0.41*
443	02 Dec	05:11 pm	Melbourne	0398761254	Afternoon	1:56	0.72*
376	02 Dec	08:30 pm	Scaradale	0353428591	Economy	8:58	1.61*
387	02 Dec	08:50 pm	Alfredton	0353341229	Economy	9:47	1.74*
388	02 Dec	09:39 pm	Melbourne	0398761254	Economy	8:38	1.55*
369	03 Dec	06:08 am	Melbourne	0398761853	Economy	4:24	0.87*
465	03 Dec	07:21 am	Melbourne	0395538030	Day	5:35	1.97*
422	03 Dec	04:37 pm	Melbourne	0398761254	Afternoon	2:10	0.78*
408	03 Dec	08:30 pm	Melbourne	0395114336	Economy	4:01	0.81*
407	03 Dec	08:38 pm	Melbourne	0393983881	Economy	4:14	0.83*
373	04 Dec	06:05 am	Melbourne	0398761853	Economy	1:31	0.40*
371	04 Dec	01:00 pm	Melbourne	0395681824	Afternoon	4:55	1.59*
360	04 Dec	02:32 pm	Melbourne	0398761254	Afternoon	0:17	0.23*
361	04 Dec	02:48 pm	Melbourne	0398761254	Afternoon	0:33	0.31*
356	04 Dec	03:05 pm	Melbourne	0398761254	Afternoon	13:08	3.99*
458	04 Dec	04:13 pm	Melbourne	0398761254	Afternoon	14:33	4.41*
461	04 Dec	04:28 pm	Melbourne	0398761853	Afternoon	1:24	0.56*
460	04 Dec	04:30 pm	Melbourne	0398761853	Afternoon	1:18	0.53*
459	04 Dec	04:31 pm	Melbourne	0398761254	Afternoon	4:09	1.36*
462	04 Dec	04:51 pm	Melbourne	0398761853	Afternoon	0:36	0.33*
482	04 Dec	07:53 pm	Grovedale	0352414045	Economy	1:09	0.33*
378	04 Dec	07:55 pm	Melbourne	0395538030	Economy	20:43	3.00*
412	05 Dec	08:25 am	Melbourne	0395538030	Economy	0:19	0.20*
414	05 Dec	09:40 am	Melbourne	0395538030	Economy	2:17	0.62*
413	05 Dec	09:43 am	Melbourne	0392877001	Economy	1:37	0.41*
419	05 Dec	10:06 am	Melbourne	0398761853	Economy	1:07	0.33*
415	05 Dec	10:08 am	Melbourne	0398761254	Economy	0:20	0.21*
418	05 Dec	10:08 am	Melbourne	0398761853	Economy	0:46	0.28*
417	05 Dec	10:10 am	Melbourne	0398761853	Economy	0:47	0.27*
416	05 Dec	10:11 am	Melbourne	0398761254	Economy	1:33	0.40*

485

Continued page

*Alan Smith  
Cape Bridgewater Holiday Camp  
Blowholes Road  
RACB 4409  
Portland 3305  
Victoria, Australia.*

26 April 1998

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

Mr Wally Rathwell  
Telecommunications Industry Ombudsman's Office  
Exhibition St  
Melbourne 3000

Dear Wally,

The attached documents should enlighten you regarding my reasons for continually stating that not all the claim documents I submitted to Arbitration were addressed according to the Arbitration agreement signed by the COT four.

**THE "BRIEFCASE SAGA"**

Dave Stockdale and Hugh Macintosh of Telstra's National network Investigation division visited my business at Cape Bridgewater on 3 June 1993, to discuss my phone problems. Some time later I discovered an unidentified briefcase in my office. When I found that the briefcase was not locked, I opened it to ascertain the owner and found that it belonged to Mr Macintosh. After suffering for so many years with a phone service 'not fit for purpose', I am sure you will understand how I felt when faced with a file titled "SMITH, CAPE BRIDGEWATER". The information in this file indicated that Telecom knew of the full extent of the phone problems and faults suffered by my business and by my customers when they tried to contact me by phone. This file also indicated that Telecom had records dating back to the first complaints I had lodged.

486

**APPENDIX 1:**

**FOI documents CR4006, 7 and 8**

I believe that the hand-written comments made by Telecom's Rosanne Pittard on document CR4006 were made at the time of settlement. This settlement was reached on 11 December 1992 and, since these comments refer to Telecom being aware of the poor grade of network performance suffered by my business over the previous 3 - 4 years, this proves clearly that Telecom had been aware of my complaints from when I first began to lodge them in April 1988

**APPENDIX 2:**

**PART 1**

**Letter dated 13/8/94, to Mr John Wynack,  
Commonwealth Ombudsman's Office**

This letter is self-explanatory.

**PART 1A**

**Witness Statement dated 12/12/94, Rosanne Pittard, Telecom  
(attached to Mr Wynack's letter)**

This document includes the following statement:

*"During our settlement discussions Mr Smith had unlimited use of the telephone so that he could speak to his advisers if he required. I am aware that in my absence Mr Smith made several telephone conversations during the negotiation period."*

I would be interested to know how Ms Pittard knew about these phone conversations since Ms Pittard and I were the only people at this meeting, in a closed room. Ms Pittard told me the phone had a direct line out and I therefore had only to dial the number I required. She also told me that she would close the door when she left me to read the documents she had provided and if I needed tea or coffee while she was out of the room I should open the door and call for assistance. In other words, she could not have overheard me on the phone as the door was shut.

**PART 2**

**Telecom confidential memo dated 17/8/1994,  
from Rosanne Pittard to the Manager, Network Investigations.**

Please note that, in this memo, Rosanne Pittard states:

*"I refer to our telephonic conversation regarding the material contained in Mr Mocheloch's briefcase."*

Ms Pittard further states, in this same memo:

*"Whilst I can respond to the details regarding the information provided to him at the time of settlement, I cannot comment on the variation between what Mr Smith was told and the contents of The Network Investigation files."*

**PART 3**

**Letter from Austel.**

In this letter, Austel requests information regarding the "briefcase incident".

When FOI documents C04006, 7 and 8 (Appendix 1) are read in conjunction with the letter to Mr Wynack (Appendix 2, part 1), and the contents of the Network Investigation files which were in Mr Mocheloch's briefcase, it is quite clear that Telecom were not admitting to the full truth regarding the phone faults at Cape Bridgewater Holiday Camp.

Mr Wynack's letter shows that Ms Pittard had not told the truth regarding the faults which, at that time, Telecom knew had been continuing, unabated, for 3 - 4 years.

I now await your response as to what the TIO's office intends to do with regard to these two issues.

Thank you for your concern.

Sincerely,

Alan Smith

PS

I am now in receipt of a letter dated 17/4/1998 from Mr George Sutton of Telstra's Legal Directorate - FOI Unit, together with copies of page 1 from Telstra's XLS files which refers to logbooks dated 1/10/1990 and copies of CCAS test log books from 1/10/90 to 29/3/93.

I requested this information during my Arbitration, through the agreed discovery process, through FOI and via the Arbitrator. This information was never supplied to me.

In my letter to Mr Wynack (Appendix 2, part 1), as part of the settlement process of 11/12/1992, I also asked for copies of these early logbooks from 1990 to 1992. I had been advised by a number of different Telecom departments that no historic documents were kept by Telecom from before 27 June 1991.

Clearly these log books do exist. I believe some of the loose pages I saw in Mr Macintosh's briefcase came from these CCAS log books.

I spoke with Mr Sutton on 23/4/1998 and it appears that I may now finally receive this information, after five years waiting and three and a half years after my award was handed down by the Arbitrator.

copies to:

The Hon. Peter Costello, Federal Treasurer, Canberra  
The Hon. Richard Alston, Minister for Communications & the Arts, Canberra  
Mr David Hawker MP, Federal Member for Wannon, Hamilton



would be for a total exclusion of liability but, failing that, they would accept a lower cap more commensurate with their anticipated fees;

- (e) In relation to the Confidentiality Agreement appended as Schedule E, Mr Selak and Mr Ruddle believe reference should be made to the Administrator in Annex 2. They would also prefer a single undertaking to be executed by Ferris Hodgson Corporate Advisory (and another by DMG Inc) rather than by the various individuals within the organisation. They would remain vicariously liable for breaches by their employees.

I appreciate that one claimant has already executed the agreement in its current form. The others will no doubt be pressed to do likewise over the next few days. I further appreciate you will be reluctant to introduce additional changes to the draft procedure at this delicate stage of negotiations but it is of course also fundamental that account be taken of the concerns raised by members of the Resource Unit. Perhaps the agreement should be executed in its current form and then agreement sought from the parties to vary the terms to take into account any proposals by Ferris Hodgson or DMG which you agree are reasonable.

Could I suggest that you liaise direct with Mr Selak or Mr Ruddle about these concerns? Perhaps they could also speak direct to Warwick Smith.

Yours sincerely

~~GORDON HODGSON~~

cc W Selak  
J Selak, J Ruddle

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FERRIER HODGSON CORPORATE ADVISORY

BY COURIER

Our Ref: A1.4

15 November 1995

Mr John Pinnock  
Telecommunications Industry Ombudsman  
TIO Limited  
321 Exhibition St  
MELBOURNE VIC 3000

Dear Sir,

RE : Telecommunications Industry Ombudsman - Resource Unit  
Fast Track Arbitration - Alan Smith

We refer to your letter dated 9 November 1995 with the attached facsimile from Mr Alan Smith dated 8 November 1995, and your recent conversations with Ms Susan Hodgkinson of this office concerning the above completed arbitration.

You have asked us to provide clarification of the issue raised by Mr Smith relating to the deletion of references to a potential addendum on possible discrepancies in Smith's Telecom bills in the final Technical Evaluation Report. We have spoken to Lane Telecommunications Pty Ltd ("Lanes"), who acted as Technical Consultants to the Resource Unit in the above Arbitration, and they have provided the following comments in relation to the issue raised by Mr Smith:

*"At a late stage of the Arbitration process, at the time of preparation of the Technical Evaluation Report, there was discussion about billing issues which had been raised by Mr Smith. A draft of the Technical Evaluation Report therefore included reference to the billing matters, which it was thought might require further work beyond the time of issue of the Report.*

*The primary matter concerned Mr Smith's bills for outgoing calls from Cape Bridgewater. Mr Smith had observed that there was a discrepancy between the call durations of STD calls on his bills and the durations shown by Telecom's call recording equipment connected to Mr Smith's line (in the Customer Access Network).*

*Discussions were held with Telecom (Mr Peter Gamble) in Mr Smith's presence during the visit to Cape Bridgewater in April 1995, which provided the following information:*

FERRIER HODGSON CORPORATE ADVISORY (VIC) PTY LTD  
A.C.N. 052 403 040

EXECUTIVE DIRECTORS: DOUG CARLSON, JOHN SELAK  
LEVEL 25 140 WILLIAM STREET MELBOURNE VICTORIA 3000  
TELEPHONE 03 629 8855 FACSIMILE 03 629 8361

LICENSED INVESTMENT ADVISER

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16 November, 1995

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- For outgoing calls on a normal customer exchange line, the caller notes the answer of the called party by cessation of the ring tone and the answering voice. However, there is no corresponding physical (electrical) signal on the caller's line (CAN side of the exchange) for the call recording equipment to register that an answer has occurred. Consequently, timing of the call recording equipment is configured to allow a fixed time to answer (say 30 seconds) from the time the caller lifts the handset, or from the completion of dialling, until it assumes that answer has taken place. Thus the overall measured duration of the call from lifting to replacement of the handset is reduced by this fixed amount to give the (assumed) nominal conversation time.
- Billing on the other hand is based on signals recorded at the caller's exchange, including a physical signal to indicate called party answer. Thus the billing duration is precise.
- At an individual call level, there will therefore be discrepancies between the two sets of call duration records except where the actual and assumed times to answer are the same.
- Lanes considered and accepted this technical explanation from Telecom as plausible, and believe Mr Smith also understood and accepted it. Consequently, as the discussion appeared to have resolved this matter, it was not included in the formal Technical Evaluation Report.

A second matter involved 008 calls. Again, this matter was current at a late stage (April 1995) of the Arbitration process. This matter concerned possible overlap in the records of 008 calls made to Mr Smith, and for which he was billed. However, Lanes and DMR Group Inc concluded that the level of disruption to Mr Smith's overall service was not clear, and that it was unlikely that further work would clarify the matter to the extent that it would have a measurable effect on the Arbitrator's determination. The matter was discussed in Section 2.23 of the Technical Evaluation Report, and an assessment of "Indeterminate" was reached.

As no further progress was likely to be made on these matters, the formal version of the Technical Evaluation Report did not leave the billing issue open."

I trust that the above advice from Lane Telecommunications clarifies the issue raised by Mr Smith regarding the Resource Unit's Technical Evaluation Report.



If you have any further queries please do not hesitate to contact the writer or Ms Susan Hodgkinson on (03) 629 8855.

Yours faithfully,  
**FERRIER HODGSON CORPORATE ADVISORY**

A handwritten signature in black ink, appearing to read 'John Rundell', written in a cursive style.

**JOHN RUNDELL**  
Project Manager  
Associate Director

cc Dr Gordon Hughes, Hunt & Hunt  
Mr Andrew Crouch, Lane Telecommunications Pty Ltd  
Mr Paul Howell, DMR Group Inc



**MEMORANDUM**

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

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

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

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

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

I have attached copies and extracts of the relevant documents.

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

Regards



Sussan Hodgkinson

cc: Mr Matt Deeble, TIO Ltd