

**CAV**  
**CHRONOLOGY**  
**LGE**  
**Exhibit 790 to 818**



16 July, 1998

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

Telecommunications  
Industry  
Ombudsman

John Pinnock  
Ombudsman

Fax: 03 5526 7230

Dear Alan

I refer to our telephone conversation this morning and your serious concerns about the recorded message left on your answering machine.

I spoke to Mr Pinnock this afternoon about the matter. I mentioned also your letter to the Prime Minister and gave him a very brief outline of its contents. I further outlined your concerns about the fax pages which you consider did not reach the arbitrator, during your arbitration, and the mysterious blank pages.

Mr Pinnock intimated that he had also been in dialogue with the Department of Communications and the Arts, regarding the TIO's position in relation to matters raised recently by you, and he is providing them with a compendium response to some of their questions.

Regarding the incident with your answering machine, he has advised me that the TIO has no jurisdiction to investigate this matter and that you must take it up with either the State or Federal Police. You will recall that that was my thought also, this morning. While we would assist if we could, we have absolutely no investigative or coercive powers in matters such as this; nor do we have the expertise of the police.

With regard to the 1800 and Gold Phone matters, I have received information from Mr Bartlett and have asked Dr Hughes about his consideration of the matters during arbitration. I shall advise you when I have his response. Regarding the blank fax pages, I have asked Telstra, without mentioning your name, how this could happen.

Yours sincerely

  
WALLY ROTHWELL  
DEPUTY OMBUDSMAN

AS 790

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

Telecommunications Industry Ombudsman Ltd ACN 057 634 787

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315 Exhibition Street Melbourne Victoria 3000

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Telephone (03) 9277 0777  
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Alan Smith  
Cape Bridgewater Holiday Camp  
Blowholes Road  
RMB 4408  
Portland 3305  
Victoria, Australia.

24 July 1998

Phone: 03 55 267 267

Fax: 03 55 267 230

Mr Wally Rothwell  
Deputy Ombudsman  
Telecommunications Industry Ombudsman's Office  
Melbourne

Dear Wally,

Another chronological list of faxes which have been lost in transit to Dr Hughes is enclosed. Please note my signature on the covering letter which I wrote to Dr Hughes on 13/10/94 and which was sent at 14.20 to fax number 03 6148730. The page which followed this covering letter states "Extended page 1.1" in the top right hand corner but since I signed off on the covering letter it is clear that there was no extended page. Further, page 14, timed at 14.27, is a letter from the Commonwealth Bank which was also signed off, indicating that this document was complete. It is clear that the following document however, which is marked "Extended page 14.1", was not an extension of page 14 but should have been another page altogether. So the same fault occurred on page 1 and page 14.

As you know, the very reason I was in Arbitration in the first place was because of ongoing problems with my phone lines and because my technical advisor and I had proved that these phone faults had adversely affected my business. Did it not occur to the Arbitrator, at any time during my Arbitration, that these blank fax pages provided even more proof that my original complaints were founded on fact? I am aware that the Arbitrator was often overseas during the time of my Arbitration and therefore not available to directly supervise the running of his office but surely this should not have affected the quality of the attention he paid to my case. At no time did Dr Hughes or his staff ask me to re-fax pages which had come out blank at their end.

The TIO's Legal Counsel for the COT Arbitrations, Minter Ellison Morris Fletcher, rang me twice when they couldn't fax a ten page document to me on 21 March 1994. Their records will no doubt show that they finally succeeded in sending this fax on 22nd March. This was one of many similar incidents which I included in my claim for the Arbitrator's attention during the FTSP / FTAP. At least the TIO's Legal Counsel followed-up to make sure that these legal documents were received properly.

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page 1

AS 791

During my Arbitration, Dr Hughes's office was provided with a letter from Austel dated 20 June 1994, outlining my concerns regarding the ability of my fax machine to receive and/or send documents during my Arbitration. Perhaps this Austel letter also arrived at Dr Hughes's office as a blank page because I certainly never received a directive from Dr Hughes to re-send my claim documents because he hadn't received some pages correctly.

I have been told that during the time that Dr Hughes was Arbitrating on the COT matters he also sat for exams with the Institute of Arbitrators, Australia, to be admitted into the Institute as a graded arbitrator. I have also been told that he failed these exams. I believe there is no stigma to be attached to failing exams; I have failed myself, only receiving my diploma in hotel/motel management on my second attempt. The difference is that I went back and worked out where I had gone wrong the first time, before I sat for the exam the second time. Perhaps Dr Hughes should have gone back over the process of my Arbitration; perhaps he would then have noticed that he had not received all my claim documents leading to a situation where Telstra could not properly assess my claim.

My previous correspondence to your office, together with this letter, clearly shows that not all my claim documents were defended by Telstra. The flow-on result of this omission was that when I prepared my written response to their Defence, under the rules of the Arbitration, I was responding to an incomplete defence. Since the Arbitrator reached his final award as a result of assessing Telstra's documents as well as mine, this meant the errors were compounded all along the way.

Further, as Legal Counsel to the TIO, Minter Ellison were supposed to be supplied with copies of all correspondence between myself, Telstra and the Arbitrator, so the Legal Counsel missed out on seeing some claim documents too.

*One example of a possible missing document:* At one point during the Arbitration procedure I advised the Arbitrator that the rate of tourism in the South Western Region had increased over the 6½ year period of my claim. I supported this information with statistics supplied from a number of different sources yet in his 'award' of 11 May 1995, Dr Hughes stated that the rate of tourism had declined during this same period and he had to take that into account when he assessed my losses. I can only assume that this was one of the claim documents that never arrived at Dr Hughes's office and so here is an example of where the lost taxes contributed to a further loss for me (in the Arbitrator's findings). Since then I have provided to the TIO's office and my local Federal Member of Parliament, David Hawker MP, with copies of the Lands & Parks assessment regarding this increase in tourism.

Over the years, in an attempt to uncover the reason for the Arbitrator and his technical evaluation resource unit (DMR & Lanes) only managing to locate 26 faults for assessment, over my claim period of 6½ years, I have written some 600 or more letters to a number of different Cabinet Ministers and compiled three individual submissions which were also provided to various Government Ministers.

The pieces of the puzzle are beginning to fit together now that it appears that neither the Arbitrator or the resource team actually saw all the claim documents I believed I had submitted and which I intended Telstra to address in their defence of my claims. Now, 3½ years later, we know that many of these claim documents never reached their intended destination. This situation raises the following questions:

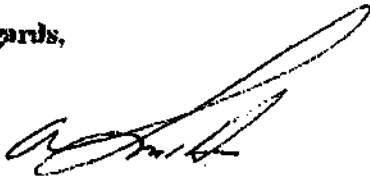
- A. Were these blank pages caused by Telstra's faulty network? or
- B. Were the documents intercepted (as shown by the symbols that appeared on a number of the blank pages)?

The following documents are also enclosed for your perusal:

1. A copy of page 36 from my reply to Telstra's defence: please note the comments which have been underlined.
2. Three pages regarding George Close and Assoc. and their assessment of my fax service line. This is the service line that Telstra covered in a 29 page report which they submitted as part of their defence. In this report Telstra technicians alleged that they had found beer inside the fax/phone. They also alleged that the beer was *still wet and sticky to the touch* when it was received at Telstra's laboratories, *10 days after it had been collected from my office (28 April 1994, thereby causing the faults on this service line, 267 230. These faults continued at least until October 1994 as records show. Perhaps it was the service line that was continually drunk and not the hand set connected to the fax machine?*
3. A copy of a letter sent to Jim Holmes, Telstra's Corporate Secretary from Fay Holdhuizen, assistant secretary to the Minister for Communications and the Arts.

I am now asking that the TIO's office be directed to ask their Legal Counsel to provide a full and comprehensive list of all my claim documents and correspondence which they received from Dr Hughes during my Arbitration. I look forward to advice regarding what the TIO and his Legal Counsel intend to do regarding all the matters I have raised over these past two weeks.

Regards,



Alan Smith

copies to:

The Commissioner, Federal Police, Canberra  
The President, The Institute of Arbitrators, Australia  
The President, The Law Institute of Australia, Melbourne

page 3

AS 791

Alan Smith  
Cape 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, Chrissy 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 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

AS 792A

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 3/4 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 Pinnock 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 Pinnock. 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	Scarsdale	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	0.52*
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*

**AS 792B**

*Alan Smith  
Cape Bridgewater Holiday Camp  
Blowholes Road  
RACB 4488  
Portland 3305  
Victoria, Australia.*

26 April 1998

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

Mr Wally Rothwell  
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. Sometime 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.

**APPENDIX 1:**

FOI documents C04006, 7 and 8

I believe that the hand-written comments made by Telecom's Rosanne Pittard on document C04006 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

AS 792 C

**APPENDIX 2:****PART 1**

**Letter dated 12/8/96, to Mr John Wynack,  
Commonwealth Ombudsman's Office**

This letter is self-explanatory.

**PART 1A**

**Witness Statement dated 12/12/94, Rosanne Pittard, Telstra  
(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 advisors 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 17/8/1993,  
from Rosanne Pittard to the Manager, Network Investigations.**

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

*"I refer to our telephone conversation regarding the material contained in Mr Macintosh'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 C94006, 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 Macintosh'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 Wannan, Hamilton

Internal Memo



To David Shepherd  
Manager  
Network Investigations

Subject Cape Bridgewater Holiday  
Camp

From Rosanne Pittard  
General Manager

File VSC/14

Date 17 June, 1993

Telecon Commerce

540 Springvale Road  
Glen Waverley  
Victoria 3150  
Australia

Telephone 03-550 75  
Message Book  
Facsimile 03-552 192

Date:

I refer to our telephone conversations regarding the material contained in Mr Macintosh's brief case.

Please find attached a letter from Austel requesting information regarding that incident. 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 Investigations files. I need your assistance for this. Can we discuss as soon as possible please?

*Rosanne Pittard*  
Rosanne Pittard  
General Manager  
Commercial Vic/Tas

792c

K03281

**APPENDIX 4:**

**FOI document R09830**

**23 August 1993**

792c

The situation with regard to the briefcase incident is as follows.

The briefcase contained the following papers

- file on Smith
- file on Dawson
- file on a Mr Dover
- some loose papers on retrofit programs for transmission equipment

The files on Smith and Dawson have been provided to Austel via Craig Downing of Regulatory at the request of Austel following a meeting with Austel on the issue. The other papers were not requested and not provided.

An assessment of Smith and Dawson files indicated that all matters could be satisfactorily explained.

Subsequently, it was realized that the other papers could be significant and these were faxed to Craig Downing but appear not to have been supplied to Austel at this point.

These papers on retrofit could be sensitive and copies of all papers have been sent to Ross Marshall.

David Shepherd

From: Patel, Don  
To: Shepherd, David  
Cc: Campbell, Ian; Holmes, Jim; Hambleton, Dennis V; Marshall, Ross  
Subject: The Briefcase  
Date: 23 August 1993 21:57

Would you please confirm that all necessary steps are being taken to identify the contents of the briefcase left at Alan Smith's premises and that these documents are provided to Commercial Business and to Austel per Regulatory.

Telecom is in receipt of journals from Austel that suggest that all documents have been provided as requested. Copies of Austel correspondence is available if required.

Don

792 C

R09830



383 La Trobe Street  
MELBOURNE VIC 3000

Our Ref: Promise  
Your Ref:

Telephone: (03)9607 7777  
Facsimile: 9607 7390

30 July 1998

A Smith  
Cape Bridgewater Camp  
Portland Vic 3305

Dear Sir,

I acknowledge receipt of your correspondence dated 21 July 1998 in which detailed your concerns regarding the disposition of 43 documents faxed to Telstra. I understand that it is your assertion that the situation of "... lost documents in a justice system of arbitration is a criminal act and one of the issues that must be investigated".

I note that you have been in contact with the relevant authorities over a protracted period concerning this issue and others relating to Telstra and you are now seeking the involvement of the AFP in resolving some of these matters through criminal process.

The efficient use of AFP resources requires that decisions on the acceptance of referrals be made in the context of the overall priorities of the relevant command. The AFP is not resourced to investigate every complaint made to it and must consider each case to decide whether or not to allocate the required investigative resources. It is not possible for the AFP to investigate all allegations made.

Given the nature of your allegations and taking into account the investigation priorities of this office, I regret to advise you that the Australian Federal Police is not in a position to enquire into this matter.

Your documentation is returned herewith.

Yours faithfully

Graham Gapside  
Coordinator  
Regional Operations Coordination Centre  
Southern Region

AS-793A



Item FaxStream Calls - Itemised continued

5

STD calls continued

	Date	Time	Place	Number	Rate	Min:Sec	\$
	<b>FaxStream Service 03 5526 7230 continued</b>						
795	24 Jul	04:09 pm	Melbourne	0392877001	Afternoon	2:02	0.74*
939	25 Jul	08:25 am	Melbourne	0398761853	Economy	0:45	0.27*
940	25 Jul	08:26 am	Melbourne	0398761254	Economy	1:07	0.34*
990	25 Jul	11:44 am	Grovedale	0352414045	Economy	0:36	0.25*
991	25 Jul	11:47 am	Grovedale	0352414045	Economy	0:31	0.23*
992	25 Jul	11:56 am	Grovedale	0352414045	Economy	0:36	0.25*
819	27 Jul	10:03 am	Melbourne	0396726640	Day	1:14	0.55*
820	27 Jul	10:07 am	Melbourne	0392877001	Day	2:17	0.89*
821	27 Jul	10:37 am	Melbourne	0392877099	Day	2:22	0.92*
822	27 Jul	10:46 am	Warrnambool	0355612356	Day	0:41	0.28*
823	27 Jul	10:57 am	Melbourne	0392877001	Day	1:34	0.66*
941	28 Jul	11:18 am	Melbourne	0392877001	Day	2:20	0.90*
942	28 Jul	11:21 am	Melbourne	0398761254	Day	3:17	1.22*
1017	29 Jul	10:51 am	Ballarat	0353313522	Day	0:16	0.24*
1018	29 Jul	10:52 am	Ballarat	0353313524	Day	1:13	0.54*
824	29 Jul	11:34 am	Melbourne	0396967709	Day	27:35	9.12*
1019	29 Jul	12:04 pm	Melbourne	0396967709	Day	21:40	7.19*
797	29 Jul	05:10 pm	Hamilton	0355721141	Afternoon	6:31	1.32*
798	29 Jul	05:20 pm	Hamilton	0355721141	Afternoon	0:49	0.30*
1054	29 Jul	08:59 pm	Melbourne	0398761853	Economy	0:55	0.30*
913	30 Jul	09:02 am	Melbourne	0398761254	Day	2:22	0.92*
914	30 Jul	09:05 am	Melbourne	0398761853	Day	3:22	1.24*
915	30 Jul	09:09 am	Melbourne	0398761853	Day	0:34	0.33*
759	30 Jul	10:20 am	Canberra	0262760111	Day	0:40	0.38*
760	30 Jul	11:41 am	Melbourne	0398761254	Day	1:04	0.50*
761	30 Jul	11:44 am	Brisbane	0732571583	Day	2:54	1.16*
1030	30 Jul	01:50 pm	Melbourne	0392877001	Afternoon	2:35	0.90*
910	31 Jul	08:56 am	Melbourne	0393292366	Day	0:18	0.24*
911	31 Jul	08:57 am	Melbourne	0393292366	Day	1:53	0.77*
1005	31 Jul	09:30 am	Melbourne	0393291543	Day	6:01	2.11*
848	31 Jul	03:24 pm	Melbourne	0392877099	Afternoon	2:35	0.91*
807	02 Aug	11:41 am	Melbourne	0398761853	Economy	2:06	0.49*
845	03 Aug	08:54 am	Melbourne	0398761254	Day	1:54	0.76*
779	03 Aug	09:29 am	Melbourne	0398761853	Day	4:09	1.50*
780	03 Aug	09:46 am	Canberra	0262497829	Day	6:53	2.55*
781	03 Aug	10:08 am	Ballarat	0353313524	Day	0:48	0.41*
782	03 Aug	10:25 am	Melbourne	0392877001	Day	1:18	0.58*
783	03 Aug	11:07 am	Melbourne	0392877099	Day	0:31	0.31*
784	03 Aug	11:11 am	Melbourne	0392877099	Day	3:12	1.19*
778	03 Aug	12:19 pm	Melbourne	0392877001	Day	0:43	0.39*
764	03 Aug	01:24 pm	Warrnambool	0355612356	Afternoon	1:11	0.36*
989	03 Aug	02:25 pm	Warrnambool	0355611333	Afternoon	1:15	0.38*
1039	03 Aug	03:02 pm	Canberra	0262760111	Afternoon	23:45	7.63*
1070	03 Aug	09:00 pm	Melbourne	0398876185	Economy	0:31	0.23*
1071	03 Aug	09:02 pm	Melbourne	0398761853	Economy	1:22	0.37*

AS 793B

Alan Smith  
Cape 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, Chrissy 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 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.

---

page 1

AS 794

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 3/4 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 Pinnock 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 Pinnock. 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.

Mr A. Smith,  
Cape Bridgewater Camp,  
PORTLAND, VIC. 3305.  
Ph: 03 5526 7267

30th July 1998

Dear Senator,

'ARBITRATION' - SMITH vs TELSTRA (FTAP)

I have attached with this letter a full comprehensive list of all the fax calls registered on my Telstra account which shows terminated at my arbitrator's office during an 8 month period of my arbitration.

When these fax times shown on this account are compared with 'ALL' the documents to which Telstra have acknowledged they received from my arbitrator during this 8 month period - there are some 40 odd fax calls which cannot be accounted for, documents which Telstra was supposed to receive from me via the arbitrator.

Evidence over the last few months presented to the TIO's office, show many faxes may have ended up blank claim documents or badly corrupted documentation which never saw the light of day once it left my business.

The fact that Telstra never defended 'ALL' my claim documents sent by my office during the FTAP, provided Telstra with an advantage that any defendant would be glad of.

Correspondence from Austel and the Minister for Communications (1994) addressed to Telstra during this procedure, acknowledges that the communication facsimile issues that I was trying to have addressed, were relevant on the very system (and the very same provider) that I proved were "NOT FIT FOR PURPOSE".

With a telephone/fax system not fit for purpose (as has already been proven by communication experts independent of myself), how could I rely on the system to accurately and conclusively transmit my claim documents for Telstra to defend?

Under the rules of my (FTAP) arbitration Peter Bartlett from Minter Ellison the T.I.O.'s legal council to my arbitration should have received 'ALL' my correspondence sent to Dr. Hughes during this 8 month period.

As Peter Bartlett will not supply me with a full comprehensive list of the documents he received from my arbitrator during this 8 month period, which will allow me to ascertain what documents were lost due to Telstra's poor network service. This has disadvantaged me in proving what claim documents were actually lost and how they were lost during my arbitration.

Will you please support me by contacting Peter Bartlett (on 03 9229 2000) and request him to supply this information.

Yours sincerely,

A. SMITH

794

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 FTAP rules that, under these rules, my arbitration could never have delivered natural justice to non-legal people such as the COT four.

AS 795A

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:

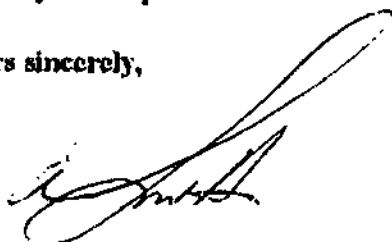
- the four members of COT had previously signed a commercial assessment agreement which was still in place and
- the commercial agreement was for a *non-legalistic* assessment.

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

AS795A



ATTORNEY  
GENERAL'S  
DEPARTMENT

Corporate Services Division

183443

18 August 1998

Mr Alan Smith  
Cape Bridgewater Camp  
PORTLAND VIC 3305

Dear Mr Smith

I refer to your recent letters to the Attorney-General regarding your dispute with Telstra and to my reply of 12 August 1998

As advised in my earlier reply, as the matters you raised primarily relate to the operations of Telstra, your correspondence was referred to the responsible Minister, the Minister for Communications, the Information Economy and the Arts.

I note from our telephone conversation on 17 August that your purpose in writing to the Attorney-General was specifically in relation to your concerns about the integrity and security of documents being transmitted by facsimile. I understand however that your concerns have previously been brought to the attention of the Australian Federal Police and they have declined to investigate the matter.

I regret that the Attorney-General cannot be of assistance to you in this matter.

Yours sincerely



Lester Watson  
Director  
Ministerial and Parliamentary Section

AS 795 B



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*
595	16 Sep	03:05 am	Melbourne	0396294598	Economy	1:36	0.41*
596	16 Sep	03:08 am	Hamilton	0355721141	Economy	2:11	0.37*
590	16 Sep	09:25 am	Warrnambool	0355612385	Day	4:22	1.02*
591	16 Sep	09:30 am	Warrnambool	0355612436	Day	2:40	0.69*
592	16 Sep	09:50 am	Melbourne	0392877099	Day	11:19	3.82*
593	16 Sep	10:48 am	Hamilton	0355721141	Day	1:36	0.47*
594	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*
555	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*
553	17 Sep	12:53 pm	Melbourne	0398761254	Day	0:20	0.25*

Total for 03 5526 7267

\$158.14

Total for STD

\$158.14

\* 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

Total for 03 5526 7267

\$1.00

Total for Calls Direct To Mobiles

\$1.00

\* 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>

*AS 795 B.*

**FAX FROM:** ALAN SMITH

Cape Bridgewater  
Holiday Camp

Portland 3305

**FAX NO:** 03 55 267 230

**PHONE NO:** 03 55 267 267

**FAX TO:** MR JOHN PINNOCK  
TIO  
MELBOURNE

LETTER NO. 1

**DATE:** 25/10/98

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

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

Dear Mr Pinnock,

Back in August 1995, as you are already aware, (3 months after Dr Hughes had brought down his findings in my arbitration), his secretary, Caroline, inadvertently provided me with a number of alarming documents. Most of these documents should have originally been passed to me under the rules of the FTAP. These rules clearly state that each party is to receive copies of any correspondence sent by the other party. Dr Hughes, however, had never before provided me with copies of the documents that Caroline inadvertently gave me in August 1995. This non-supply of documents was in direct breach of the FTAP rules and therefore in direct breach of the arbitration. You are also already aware that this was not the only time that Dr Hughes breached the FTAP rules.

The documents provided by Caroline clearly indicate that Dr Hughes continued to conspire with Telstra so that at least some of my claim documents would never be addressed. These documents relate to questions regarding incorrect charging by Telstra on both my fax account and on my 800/1800 account over a number of years. I originally raised these issues, under arbitration, in two bound books of claim documents which I submitted late in 1994. These claims have still not been addressed, either by Telstra or by the arbitrator. Copies of my records of these incorrectly charged calls were provided to you by the arbitrator, Dr Hughes.

Another alarming document supplied to me by Caroline proved that Telstra had advised the arbitrator, in writing, that they would address the incorrect charging of calls to my 1800 service. Telstra also advised Austel that they would address this issue.

Taken together, all this information indicates that your office would also have been aware of these issues; still nothing has been done. Because of this situation I believe that your office should not continue in the role of administrator to the COT arbitrations.

All the material referred to in this letter is available here at Cape Bridgewater if anyone from your office would like to see it. On the other hand, if no-one from your office is interested in assessing this information then it calls into doubt the integrity of the TIO's office and further supports my suggestion that your office should be immediately withdrawn from any involvement in any further COT arbitrations.

*AS 796*

Some of the material supplied by Dr Hughes's secretary is so disturbing that it leads me to wonder if she actually *intended* to provide me with all these documents in order to alert me to the unethical way in which Dr Hughes, and others, conducted this arbitration. One document in particular leads me to suspect that Caroline meant me to see this material: this is a copy of a fax which had been sent to the Arbitrator's office at 17.08 on 7/4/95, from Lanes Telecommunications in Adelaide. As you know, Lanes was one of the allegedly independent technical resource units which your office commissioned to assess the technical phone faults I was raising and the claim documents I lodged.

This fax shows quite clearly that the Lanes organisation assessed my claim, and not DMR Group Canada, even though I had refused to accept any involvement by David Read of Lanes because of his history as an employee of Telstra for 20 years. Obviously this history would have meant that Mr Read would know personally many of the Telstra personnel involved in my arbitration.

When I raised the issue of Mr Read's involvement in my arbitration I was reassured, in writing, by your predecessor, Warrick Smith, that Paul Howell of DMR Canada would assess my claim and that David Read would only assist him. Once more your office has misled me. Once more Peter Bartlett of Minter Ellison has misled me. Before I signed for the FTAP, Mr Bartlett assured me that all the existing rules and conditions of the FTSP would also cover the FTAP. This now appears to be questionable information, particularly since Mr Bartlett was well aware that I had limited experience in legal matters.

The fax from Lanes to Dr Hughes also shows that the arbitrator was aware that Lanes were assessing my claim instead of DMR. I have now finished comparing the document used by Telstra in their defence with the original DMR/Lanes Technical Evaluation Report on the Cape Bridgewater Holiday Camp. The DMR/Lanes report which I refer to was dated 30 April 1995. This comparison shows that none of the faults experienced by my business after August 1994 were valued or assessed, even if the claim documents listing such faults were submitted to arbitration. In other words, any supporting documents which I submitted after August 1994, covering faults which also occurred after 1994, were not assessed and therefore never addressed in the FTAP. What was this procedure all about, Mr Pinnock, if it was never intended to address any continuing faults that my phone service had (including and up to May of 1995)?

A copy of a page taken from the Lanes Telecommunications report is attached. You will note the following statement, under the heading "*Scope of Report*":

*"The report covers incidents and events potentially affecting the telephone services provided to the Cape Bridgewater Holiday Camp during the period February 1988 to August 1994."*

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On 7 October 1998 I wrote to David Hawker MP and forwarded copies of that letter to you and your legal counsel. This letter clearly defines the original FTSP agreement which your office has stated, in writing, formed the basis of the FTAP. Your office should therefore be aware of the intentions of Austel when the COT four signed the FTAP agreement on 23/11/95. This agreement read:

*"The intention is to obtain an agreement on the operational performance of their telephone service when a financial settlement is finalised."*

Evidence has been supplied to your office, and to a number of Members of Parliament, which shows that there is no doubt about the phone and fax faults that were still in existence on my services for many years after August 1994.

Your office is also aware of a number of people and organisations who have taken the time to produce Statutory Declarations explaining their experiences of these phone/fax faults right up to 1997/8. In fact, as late as June 1998, more written complaints were coming in from three different professional organisations, including a Solicitor's office. These complaints included lost faxes, receipt of only half pages and blank sheets arriving. How can it be that your office has still not investigated these complaints? ↗

Why did DMR and Lanes not value or address many of my claim documents? This has still not been explained. Further, it has been clear for some time that some kind of skulduggery has taken place in my arbitration. Why has this not been investigated either? ↘

How could 43 separate claim documents vanish between my fax and the recipient's fax, even though I was charged for all 43 transactions, many of the longer documents and attachments taking up to 8 minutes to 'send' (but never arrive)? Telstra's own defence documentation omits any reference to these 43+ documents: surely this indicates that the documents were never received? ↗

Since your office is supposed to be impartial, how much longer do you intend these matters to remain unaddressed?

I await your response.

Sincerely,

Alan Smith

*copies to:*

*Mr Peter Costello, Federal Treasurer, Canberra*

*Mr David Hawker MP, Federal Member for Wannon*

*Mr John Wynack, Commonwealth Ombudsman's Office,  
Canberra.*

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**FAX FROM:** ALAN SMITH

Cape Bridgewater  
Holiday Camp

Portland 3305

**FAX NO:** 03 55 267 230

**PHONE NO:** 03 55 267 267

**FAX TO:** MR JOHN PINNOCK  
TIO  
MELBOURNE

LETTER NO. 2

**DATE:** 25/10/98

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

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

### FAST TRACK ARBITRATION PROCEDURE

Dear Mr Pinnock,

It is quite clear from my letter no 1 of today's date that the technical resource unit of DMR & Lanes, who were commissioned by your office to assess and address the technical claim documents which I submitted, failed in their duty of care: they did not address any of the faults experienced by my business after August 1994, even though they did address faults which were presented in documents after 1994 but which occurred before 1994.

I would now like to draw your attention to the DMR & Lanes Technical Evaluation Report of 30 April 1995, on the Cape Bridgewater Holiday Camp. Your office already has a copy of this report.

This report lists assessments of 26 different faults experienced by my business and the value attached to the call losses suffered by my business, together with the consequential loss to my business. One fax problem in particular is not included in this list — this is a problem that existed from when my fax machine was first installed and which continued for the whole period of my claim. My claim documents relating to this fax problem clearly showed that numbers of claim documents sent by fax from my office during my arbitration did not reach their destination. One question which remains unanswered is where did these documents vanish to?

*FOI document R11431* (attached) dated 25/2/94, from the office of the then Minister for Communications, the Hon Michael Lee, clearly refers to my concern at that time, with the difficulties I was continuing to experience during my FTSP, both with the phone and the fax.

*FOI document A32874*, a letter from Austel to Telstra, again outlines my continuing concerns about these ongoing problems with sending and receiving faxes during the FTAP.

*FOI document K02489*, an internal Telecom letter dated 29/10/93, refers to further problems with the fax machine and indicates that the machine itself was not the cause of the problem. This document shows that Telecom's testing unit believed the fault was actually in their network.

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Over the past 5 years I have purchased three different brands of fax machine in an effort to alleviate the problems. As you know, this all proved to be a waste of money.

*FOI document K00957*, an internal Telstra letter dated 29/3/94, was written after I had written to the Hon Michael Lee. This letter shows that Telstra acknowledged that faults continued to be experienced on my fax line in March of 1994, during my FTSP. The 'old' paper referred to relates to a box of fax paper which I purchased at a sale. I had mentioned to Bruce Pendlebury of Telecom that I intended to purchase a fresh box from my local newsagent to see if that would alleviate the fax problems. Of course, this purchase didn't help either.

In FOI document K00957, at point 1, you will note a reference to 20 test calls which were made to my 1800 number with no failures experienced. Another FOI document later revealed that the technician making these 20 test calls noted that:

*"It appeared these calls were answered but no conversation took place."*

As my claim documents show, I continually asked Telstra, right through the arbitration process, to explain how a call could 'appear to be answered' if no conversation took place. I have never received a response to this question.

Your office has previously been supplied with copies of Telstra's CCAS technical data showing that, on 23 May 1994, I attempted to send a fax to the arbitrator's office. As you know, Telstra stated, under oath in their defence of my claims, that the seven separate attempts I made were all met with a genuine engaged signal from the arbitrator's office because their fax was in use at the time. I have also previously provided your office with a copy of my fax account showing that Telstra charged me for all seven of these 'engaged' calls which never connected.

Telstra's admission regarding these calls reaching an engaged signal proves that Telstra incorrectly charged calls to my business over several years before, during and after my FTAP award was handed down, but they won't admit to the lesser fault of 'lost' faxes. Surely they can't expect to have it both ways?

In October 1997 your office stated in writing, on seven different occasions, that you were investigating these incorrectly charged calls which were not addressed as part of my FTAP. It is now 12 months since the first of these seven letters were sent and I am still waiting for the result of these investigations.

*FOI document K01033*, another internal Telstra letter, again acknowledges that my fax problems are not in my imagination and again, this letter supports my claim documents.

796

In June of this year I alerted your office to the fact that these same faults were *still* being experienced and I provided names and addresses of four different people who were prepared to testify to this fact. All four of these people have stated that they have had continual problems sending to or receiving from my fax over the past 2 - 3 years and have also stated that they do not have these problems with any other faxes. A

Another 127 letters (with attachments) have been forwarded to your office in support of the allegations I have made, and continue to make, regarding phone and fax faults. It is now October, four months since I advised your office that I was still experiencing phone and fax faults, and I have still not heard from either your office or from Telstra as to what action, if any, is likely to be taken in relation to these issues.

Even though I continue to provide your office with irrefutable evidence that Telstra did not receive, from the arbitrator, 43 of my claim documents and even though I continue to provide your office with irrefutable evidence that I was charged for sending these 43 documents to the arbitrator during my arbitration, I have still not been told where these documents went.

As administrator of my arbitration, do you intend to instigate an investigation into my concerns or do you intend to continue to treat the truth with contempt? Considering the seriousness of my allegations today (allegations which indicate a possible conspiracy involving your own office, Peter Bartlett, Dr Gordon Hughes and Telstra) it appears that, together, you have halted the course of natural justice by keeping at least some of my claim material from being properly assessed or, indeed, included in my arbitration in any way.

I now wait to hear what you and your legal counsel, Peter Bartlett, intend to do regarding the issues I have raised in this letter. Since Peter Bartlett already misled me on the day I signed for the FTAP, will he continue to mislead me now?

Sincerely,

Alan Smith

*copies to:*

*Mr Peter Costello, Federal Treasurer, Canberra*

*Mr David Hawker MP, Federal Member for Wannon*

*Mr John Wynack, Commonwealth Ombudsman's Office, Canberra.*

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Telecommunications  
Industry  
Ombudsman

John Pinnock  
Ombudsman

10 February, 1999

Mr David Hawker MP  
Federal Member for Wannon  
190 Gray Street  
HAMILTON 3300

*Facsimile 03 5572 1141*

Dear Mr Hawker

Mr Alan Smith

I refer to your letter of 11 December 1998 and apologise for the delay in replying.

You will be aware from previous correspondence that Mr Smith has made numerous and varied accusations about the conduct of his Arbitration, which was completed in May 1995, by the TIO, the Arbitrator and the Resource Unit which provided expert assistance to the Arbitrator.

His most recent complaint concerning the transmission of facsimiles is, in my opinion, without substance. First, there is no evidence that his facsimile service has been, at any time, intercepted by Telstra or anyone else. Second, with certain minor exceptions I can say that all documents relevant to his Arbitration were forwarded to Telstra and the Special Counsel.

More importantly documents supplied to the TIO were forwarded to the Arbitrator as required under the Fast Track Arbitration Procedure.

The only matter outstanding which the TIO is considering is whether the Arbitrator considered Mr Smith's claim for overcharging on his then 800 service when he made his Award. I shall be writing to Mr Smith on that matter in the next week.

Yours sincerely

JOHN PINNOCK  
OMBUDSMAN

797

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

At/pinnock/1058

Telecommunications Industry Ombudsman Ltd

ACN 057 634 787

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200

TIO LTD

813 9277 8797

11.02.99 08:58



**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*

AS 798

# ALAN SMITH

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

5th May 1999

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

## LETTER NO. 1

Dear Mr Staley,

On 28 June 1995 Mr John Pinnock wrote to me concerning my formal request to the arbitrator on 28 December 1994, to have Telstra provide me with all the raw data associated with the Bell Canada testing. On page 2 of his letter, paragraph 1, Mr Pinnock states:

*"Dr Hughes provided you with a copy of this submission on 23 January 1995 noting that Telecom did not consider it had any further information of relevance in its possession. Dr Hughes then invited you, within twenty-four hours, to respond to Telecom's submission. Our files do not indicate that you took this matter any further."*

With regard to this statement I enclose a copy of my facsimile account from Telstra which shows a charge for a letter which I faxed to the arbitrator's office on 24/1/95 at 10.49 am. This call lasted for 2.19 seconds which is the time usually taken to fax two pages from Portland to Melbourne. Also attached is a copy of a letter to Dr Hughes, which was produced by my secretarial service. This was faxed to me from my service, The Occasional Office, on 24/1/95. The first line of this letter states:

*"I refer to your letter of 23 January 1995."*

This is the two page letter which I then faxed on to Dr Hughes in response to his letter of 23/1/95. Clearly I responded within the stipulated twenty-four hours.

As you are already aware, the FTAP rules state that all correspondence sent to the arbitrator by one party to the arbitration must be copied to the other party and to the administrator and his legal counsel and yet Mr Pinnock himself states that his office did not receive a copy of this letter which I clearly sent to Dr Hughes — faxed so that it would reach him, as requested, within twenty-four hours.

AS 799A

Throughout this whole disgraceful saga I have stated continually that my claim material was not reaching its intended destination, including the TIO's office and Telstra's defence unit. This is further proof that my allegations were correct. An inquiry needs to be carried out into this situation alone, in order to answer a number of questions:

- 1 Where did this important document end up? My fax account shows it reaching the arbitrator's office.
- 2 Why did Telstra never supply the information I requested?
- 3 Did my fax actually reach the arbitrator's office in the first place?
- 4 Did my fax vanish along the way, never reaching the arbitrator's office at all, in the same way many of my other faxes never arrived at their intended destination?
- 5 Why did I have to wait four years, until the second of May this year, to discover that the arbitrator knew, all along, that the information my technical advisor and I had formally requested, under the arbitration discovery process, was in Telstra's archives? This fact is confirmed by four separate letters from Telstra's defence unit to the arbitrator: FOI documents M34049, M34047, M34041, M33989. This means that more than 700 documents relating to the Bell Canada testing were withheld from my technical advisor — the very material I requested in my letter of 28/12/1994 and the 'lost' letter of 24/1/95.
- 6 Was my letter of 24/1/95 to the arbitrator conveniently lost so I could not use these 700 documents, which I STILL have not received under FOI?
- 7 Under the rules of our arbitration each party was to receive documents forwarded to the arbitrator by the other party. Why then didn't Dr Hughes copy on to me the four documents referred to in point 5 above?

A letter dated 12 July 1998, which was sent, with various attachments, to Senator Amanda Vanstone, Minister for Justice; Mr Daryl Williams, Attorney General; the Director of the National Crime Authority and the Director of the Australian Federal Police, shows that Telstra's own CCAS data records seven fax calls as being connected to the arbitrator's fax (03 614 8730) from my fax on 23 May 1994. Page 45 of Telstra's defence document (dated 12 December 1994) states that I complained of an engaged signal from the arbitrator's fax on this date but this was not the case: I actually complained that transmission was extremely slow — even in their official defence papers Telstra couldn't get the details right.

Telstra's defence documents, which were signed under oath, state that all these seven faxes received a busy signal and so did not get through to the arbitrator's office. Also according to Telstra's defence documents, the arbitrator's receptionist noted that the fax line was busy at the time I attempted to send these documents through so where were my seven faxes re-directed to? The interesting thing is that both my Telstra account and Telstra's own data show these faxes as ending up at the arbitrator's office.

799A

When taken together with the fax I so hopefully and trustingly forwarded to Dr Hughes on 24/1/95, these missing documents again provide proof that at least some of my claim material did not arrive at its intended destination. In other words, this proves that some of my claim material did not reach Telstra's defence unit, did not reach the arbitrator's office and did not reach the TIO's office.

In June of 1996, thirteen months after my arbitration, Telstra's arbitration defence unit provided me with a thirteen page chronological list of all the procedural material they had received from Dr Hughes during my arbitration. Page 10 of this list (attached), titled "*Smith FOI Data Base*", clearly shows that Telstra's defence unit did not receive, from the arbitrator, a copy of the letter I faxed to him on 24/1/95. When Telstra's thirteen page list is compared with my facsimile accounts for the same period, it is obvious that more than forty separate claim documents, and their attachments, which were transmitted to the arbitrator's fax number, 03 614 8730, were not received by Telstra's defence unit. This matter has already been raised with Mr Pinnock, the TIO, in an attempt to clarify which of my claim documents his office received from Dr Hughes. When asked to supply a chronological list similar to the one supplied by Telstra, Mr Pinnock replied, in a letter dated 10/1/96: "*I do not propose to provide you with copies of any documents held by this office.*"

This is disgraceful behaviour by a number of so-called prominent Australians who, through self-interest and because they have little or no respect for the law, have highjacked this arbitration process. The four members of COT were all vulnerable and under extreme duress when we signed for this arbitration process: all of us had little experience of the legal system and, because of this lack of legal experience, we were all crucified.

Sooner or later, in one way or another, this saga will be exposed.

Please advise if you, as the Chairman of the Board of the TIO's office, and therefore as the person with overall responsibility for the administration of the arbitration process, intend to investigate this issue, along with other examples of claim documents which 'went missing' during my arbitration.

I await your response.

Sincerely,

Alan Smith

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continued .....

Sections 4 and 5 are an impact assessment and summary. We have ascertained that there were times when the service provided by Telecom to Mr Smith, quite aside from problems with CPE, fell below a reasonable level. These times ranged in duration from years in some cases, to 18 months in one case, to an estimated 70 days in one case, to shorter times in other cases. These durations of poor service were, in our judgement, sufficiently severe to render Mr Smith's service from Telecom unreliable and deficient.

#### Cape Bridgewater Documentation

The "Fast Track" arbitration proceedings are "on documents and written submissions". More than 4,000 pages of documentation have been presented by both parties and examined by us. We have also visited the site. Not all of the documentation has real bearing on the question of whether or not there were faults with the service provided by Telecom. We reviewed but did not use Mr Smith's diaries (Telecom's examination of Mr Smith's diaries arrived in the week of 17 April 1995). Like Telecom, we separate the problems caused by Mr Smith's CPE from those in Telecom's service and concentrate only on the latter. A comprehensive log of Mr Smith's complaints does not appear to exist. ↙

The Technical Report focuses only on the real faults which can now be determined with a sufficient degree of definiteness. We are not saying anything about other faults which may or may not have occurred but are not adequately documented. And unless pertinent documents have been withheld, it is our view that it will not be feasible for anyone to determine with certainty what other faults there might or might not have been.

A key document is Telecom's Statutory Declaration of 12 December 1994. Without taking a position in regard to other parts of the document, we question three points raised in Telecom's Service History Statutory Declaration of 12 December 1994 [Ref B004].

#### "Bogus" Complaints

First, Telecom states that Mr Smith made "bogus" complaints [B004 p74, p78, Appendix 4, p10]. What they mean is his calls in June 1993 from Linton to test Telecom's fault recording. As others have indicated (see Coopers and Lybrand Review of Telecom Australia's Difficult Network Fault Policies and Procedures, November 1993, p6) "Telecom did not have established, national, documented complaint handling procedures [...] up to November 1992," and "documented complaint handling procedures were not fully implemented between November 1992 and October 1993." Furthermore, [p7] "fault handling procedures were deficient." Smith's June 1993 calls from Linton were, as he has stated, to test Telecom's fault reporting procedures, because people who had been unable to reach him told him that Telecom did not appear to be doing anything when they reported problems. We find Smith's tests in this instance to be unlikely to effect any useful results, but the term "bogus" does not apply.

There were occasions when Mr Smith mistook problems with his own CPE for Telecom faults, but this is a normal occurrence in the operation of any multi-vendor system, which the end-to-end telephone system increasingly is. Telecom takes pains to separate these CPE problems from the legitimate faults, which they acknowledge.

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- [holiday camp] customers receive a "busy" tone when phones are not engaged
- calls placed to the holiday camp "drop out"
- recorded voice announcements inform callers that phones are disconnected when they are not.

Telecom recorded and responded to Mr. Smith's complaints in a variety of ways. But Mr Smith did not express his satisfaction--in fact, in his claim of June 1994, he refers [p 3] to "the continuing problems that I am experiencing" and states that "my phone service is still operating at a totally deficient level." The alleged faults were not rectified up to the time of the claim.

Telecom, as the sole universal service carrier for Australia (both before and after the Telecommunications Act), has no alternative but to "ensure that a standard telephone service is reasonably accessible to all people in Australia on an equitable basis." This spirit is confirmed by Telecom in the letter to Mr Smith of 1 September 1992: "Should this investigation identify any faults in the Telecom component of your service they will be rectified in accordance with normal practice." And again in Telecom's letter to Mr Smith of 18 September 1992: "We believe that the quality of your telephone service can be guaranteed and although it would be impossible to suggest that there would never be a service problem we could see no reason why this should be a factor in your business endeavours." And again in Telecom's letter to Mr Smith of 25 May 1993: "Telecom Australia endeavours to provide at all times the telecommunications services in respect of which a customer has made application..." (Copies of the letters are attached.)

We have reviewed the specific faults reported, based exclusively on the sources of information listed at the end of the Technical Report. Were they Telecom's faults? Whether they were Telecom's faults or not, what action did Telecom take to rectify them, (or refer them to others, if they were not Telecom's faults), and in what timeframes? Was there appropriate management of network operations, fault logging, and network monitoring? Was the customer appropriately handled, considering the intensity and long duration of his complaint?

Our investigations of the documentation and the site focused only on the technical issues which might have affected the level of service, which we take to include:

- design of the network--i.e., was the network correctly configured and was the design (and capacity planning) process sufficient to give a reasonable level of service?
- selection, installation and on-going maintenance of network equipment, or replacement of obsolete equipment
- operation and monitoring of the network and services, which typically includes informing subscribers in advance of outages, if any, due to equipment change-out or maintenance
- keeping track of usage of the network for billing purposes

AS 799 C



SENATOR THE HON IAN CAMPBELL

*Parliamentary Secretary to the Minister for Communications,  
Information Technology and the Arts  
Manager of Government Business in the Senate*

Mr Alan Smith  
Cape Bridgewater Holiday Camp  
Blowholes Road, RMB 440B  
PORTLAND VIC 3305

2 AUG 1999

Thank you for your letters of 17 June and 4 July 1999 to the Minister for Communications, Information Technology and the Arts in which you ask a number of questions on the activities of the Telecommunications Industry Ombudsman and Telstra. As I have responsibility within the portfolio for the matter you have raised the Minister has asked me to reply.

I appreciate from your correspondence that you feel aggrieved by Telstra and are unhappy with the way your COT case has been handled.

However, I am unable to provide answers to your questions. These are matters best addressed by Telstra or where you allege unlawful conduct by the appropriate authorities responsible for enforcing the law and/or the courts. The Government is not in a position to provide you with legal advice.

While the Telecommunications Industry Ombudsman (TIO) scheme is required by legislation, the TIO is an independent company limited by guarantee. The TIO operates under the Corporations Law administered by the Australian Securities and Investment Commission. The TIO fulfils its role in accordance with arrangements made by the TIO Council and Board as provided for by the TIO company's memorandum and articles of association.

Telstra has been an independent corporation since 1992 and is subject to the Corporation's Law. Telstra's board and management are responsible for its management and day-to-day activities. The Government's role is to establish the regulatory and policy framework within which all telecommunication service providers (including Telstra) must operate.

It would seem from your correspondence that you are alleging Telstra has engaged in unlawful practices by diverting your incoming calls. It is not clear what law you

AS 800 A.

allege Telstra has contravened. Should you consider that Telstra has committed an offence under the *Telecommunications (Interception) Act 1979* the appropriate authority to investigate the offence is either the Australian Federal Police or the → Victorian police force. Should you consider that Telstra has contravened the provisions of the *Telecommunications Act 1997* dealing with the protection of communications (Part 13 of the Act), the Commonwealth Privacy Commissioner has responsibility for monitoring compliance. You should note however that you may also make a written complaint to the Australian Communications Authority concerning alleged contraventions of the *Telecommunications Act 1997* in accordance with Part 26 of that Act.

If you make a complaint to one of the above Commonwealth agencies and are dissatisfied with the way they handle your complaint you can then take your concern about the agency to the Commonwealth Ombudsman.

Given the avenues available for you to have your complaint investigated I do not consider there is a need for the Government to take any further action on this matter.

Thank you for bringing your concerns to the Minister's attention.

Yours faithfully,

Lesley C. Cooper

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MAJOR FRAUD GROUP

NO.	COM	PAGES	DURATION	X/R	IDENTIFICATION	DATE	TIME	DIAGNOSTIC
07	OK	01	00:03'36	XMT T	55681313	18-08	11:00	840440AC2800
08	OK	01	00:01'08	XMT T	55234449	18-08	13:38	840440A40800
09	OK	02	00:02'21	RCV	0398761853	18-08	20:34	0502402C4800
10	OK	01	00:00'59	XMT T	0398761853	20-08	09:20	8404402C2800
11	OK	02	00:02'18	RCV	0398761853	20-08	10:34	0502402C4800
12	OK	01	00:01'02	XMT T	55234449	20-08	11:02	840440A40800
13	S-OK	00	00:00'06	RCV	-----	20-08	20:07	220200UB0000
14	OK	06	00:05'13	XMT T	0398761853	21-08	11:27	8404402C2800
15	OK	02	00:02'58	XMT T	0398761853	22-08	08:11	8404404C2800
16	OK	02	00:01'12	XMT T	53425086	22-08	11:09	840440AC0800
17	OK	07	00:07'13	RCV	0398761853	22-08	17:49	0502402C4800
18	OK	03	00:02'50	XMT T	0395114335	22-08	20:15	840440AC2800
19	031	00	00:01'59	XMT T	0395266614	22-08	22:01	800440AC2800
20	031	03	00:04'30	XMT T	0395266614	22-08	22:03	800440AC2800
21	OK	05	00:04'50	XMT T	0395266614	22-08	22:09	800440AC2800
22	OK	02	00:02'22	XMT T	0398761853	22-08	22:17	8404402C2800
23	OK	02	00:02'31	RCV	0398761853	22-08	22:40	0502402C4800
24	030	00	00:00'16	XMT T	0395266614	23-08	08:38	800440AC2800
25	OK	17	00:10'38	XMT T	0395266614	23-08	08:39	800440AC2800
26	OK	01	00:01'04	XMT T	0395266614	23-08	08:54	800440AC2800
27	OK	01	00:00'37	XMT T	0395114335	23-08	21:13	840440AC2800
28	OK	03	00:02'21	XMT T	0398761853	25-08	05:45	8404402C2800
29	OK	06	00:03'31	XMT T	0353332135	25-08	08:07	840440AC2800
30	OK	05	00:02'52	XMT T	0353811056	25-08	08:11	840440AC2800
31	OK	04	00:05'34	XMT T	0353359425	25-08	08:14	840440240800
32	OK	04	00:03'24	XMT T	0353689611	25-08	08:27	8404402C0800
01	OK	05	00:03'07	XMT T	0353871561	25-08	08:34	840440AC2800
02	OK	05	00:03'50	XMT T	0354622209	25-08	08:37	840440AC2800
03	OK	04	00:02'08	XMT T	0353574276	25-08	08:41	8424804E0800
04	OK	04	00:02'41	XMT T	0353919203	25-08	08:44	840440AC2800
05	OK	05	00:03'06	XMT T	0353951323	25-08	08:48	840440AC2800
06	OK	05	00:03'35	XMT T	0353855325	25-08	08:51	8404402C0800

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# ALAN SMITH

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

David Hawker MHR  
190 Gray St  
Hamilton 3300

29<sup>th</sup> October, 2000

ATTENTION MEGAN CAMPBELL

Dear Megan,

I wonder if, like many other Australians, you really understand the depth of corruption and deceit, which exists within the Telstra Corporation? I suspect most people not only have no comprehension of the extent of this corruption but they also have no idea how long this has been going on – since before the old PMG split into Australia Post and Telecom.

In our phone conversation of 27<sup>th</sup> October, 2000, you suggested that some of the matters I was raising would be best dealt with by the Australian Federal Police but I have already been down this track, and it only led to much frustration. During the Federal Police (COT) Inquiry in 1994/95, Federal Police investigators visited my business on three separate occasions and I provided them with conclusive evidence, which I had collected from Telstra's own archives. This evidence clearly demonstrated that Telstra:

1. Was aware of the names of many of my business contacts
2. Knew the name of a business I had written to as part of a tender for work
3. Identified an interstate caller to my business who usually rang from one suburb in South Australia, when he phoned from a totally different location on one occasion.
4. Knew, weeks in advance, of periods I planned to be away from my business.

Telstra could only have come by this information by listening to my private phone conversations or by tampering with my mail.

In support of these allegations of phone taping I have enclosed two documents:

- A. The letter dated 10 February, 1994, from Mr John MacMahon of Austel to Mr Steve Black of Telstra confirms that Telstra provided Austel with nine audio tapes of COT members' telephone conversations and,
- B. The letter dated 17 June, 1997, from International Detective Services confirms that Telstra authorised illegal surveillance of another COT member, Mr Ken Ivory.

In relation to problems with my mail, I enclose a copy of a letter recently sent to me from the Portland Post Office, and dated October 28, 2000. This letter confirms that overnight mail that I had posted had not arrived at its intended destination five days later. This letter will be discussed in more detail on the following page.

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During the aforementioned Federal Police Investigation into my matters, they spoke with a witness who later confirmed her statement with a statutory declaration. This declaration stated that the witness had acted as a courier on my behalf to collect mail from a location in Ballarat, Victoria. On two separate occasions, after confirming by telephone that the mail was waiting for collection, she arrived at the location to find that someone else had already collected it.

On a number of occasions during my arbitration with Telstra in 1994/95, I confirmed with the arbitrator's secretary that arbitration claim material which I faxed to the arbitrator's office never arrived, even though my fax journal and telephone accounts register the documents as having been faxed to the correct number. Documents received from Telstra after my arbitration confirm that some forty-three sets of arbitration claim material, which appear on my telephone accounts as having left my office via fax, were never received by Telstra's arbitration defence unit. This means that Telstra did not have to defend any of the claims contained in those forty-three sets of documents.

Documentation provided to Mr John Pinnock, TIO (administrator to my arbitration) confirm that my arbitrator did not address a number of my claims as he should have, according to the rules of the arbitration. I can only now assume, in the light of all this new information regarding missing faxes, that either:

- i) The arbitrator breached the rules because he was acting in concert with the defence, or
- ii) He did not receive some/many of the documents I faxed to him and therefore did not have enough information to make a correct judgement.

I believe the attached letter from the Portland Post Office (as referred to on the previous page) is an indication that other documents mailed during my arbitration may also have 'gone missing'. I am particularly concerned about two bound volumes of indexed claim documents which I sent by mail to my arbitrator's office some time in February or March of 1995. These volumes contained copies of my telephone accounts from Telstra, compared them to some of Telstra's own data and showed that the data did not match the accounts. These two volumes so clearly demonstrated that I had been incorrectly billed over a very long period that my arbitrator would have had to have ruled against Telstra on these billing issues but, as can be seen from his written findings, he made NO written findings concerning these volumes. Surely this indicates that he did not receive them through the mail.

Many of the people I deal with on a regular basis have received overnight mail late: the Australian Tax Office; my accountant, Derek Ryan and my secretarial service, The Occasional Office. Like the incident documented by the Portland Post Office, on one particular occasion Derek Ryan received overnight mail four days after it was posted. These three businesses all have one thing in common: the documents in the mail were all related to matters involving my dispute with Telstra. The documents referred to in the enclosed letter, which were sent to my solicitor, William Hunt, were also to do with this same dispute.

I have evidence that shows that John Pinnock has acted in a biased manner towards me on a number of occasions, even to the extent of fabricating incidents that never occurred in a desperate attempt to support issues he knows to be incorrect. Even so, he remains as ombudsman. Since his office acted as administrator to my arbitration, they had a duty of care to correctly respond to persons who questioned them. His office also had a duty of care to confirm that his own investigations had shown that my arbitrator had collaborated with Telstra on a number of occasions, thereby breaching the law.

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Before my arbitrator brought down his 'award' I notified him of a number of instances where Telstra did not provide me with discovery documents under FOI, as per the agreed arbitration procedure. I explained to the arbitrator that this was severely hindering the preparation of my evidence to support my letter of claim. No action was taken in response to this complaint. Two years after my 'award' had been handed down, the Commonwealth Ombudsman's Office found that Telstra had been defective in the administration of these discovery documents during my arbitration. Records show that, the day before the arbitrator was to hand down this 'award', I received a number of arbitration discovery documents – too late to submit in support of my claim.

Mr Pinnock further failed to correctly inform a number of people that his office had wrongly advised me that I only had TEN DAYS to appeal the arbitrator's 'award'. Mr Graham Scorer, Spokesperson for COT, and others, can confirm this fact.

Further discovery documents arrived by courier at my office on 23<sup>rd</sup> May, 1995. These documents confirmed that Telstra knowingly misled my arbitrator during my arbitration, by unlawfully using test results as part of their defence when they knew those test results were impracticable.

Senator Richard Alston and the Major Fraud Group of the Victoria Police have been provided with conclusive evidence that, during the COT arbitrations, Telstra altered documents to suit their own defence to the detriment of the claimants.

Since you have mentioned that you believe I should contact the Australian Federal Police regarding my complaints I am prepared to provide David Hawker, in confidence, with the name of an ex-Australian Federal Police Investigator who visited Cape Bridgewater during the Federal Police investigation into my claims and who has attested that, had the Federal Police had the backing they needed at the time, charges would have been laid against a number of senior Telstra officials.

Mr Hawker has read a copy of my book "*Ring for Justice*" and I am sure he will be interested to know that I am currently collecting more information, which will be included in a revised edition of this manuscript. People who are now reading the draft of this revised edition are expressing concern that the present Liberal Government is protecting Telstra to the detriment of every-day Australians like myself.

I am not in the least angry with you, Megan, I just believe that all this indicates clearly that it is not me that is misleading David Hawker, it is the TIO's office.

Sincerely,

Alan Smith

AS 801

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

16 August 2001

Ms Andrea Griffiths  
Environment, Communications, Information Technology & the Arts Reference Committee  
Legislation Committee

Dear Ms Griffiths

**Casualties of Telstra (COT) Matter**

Further to our telephone conversation this morning, regarding the in-camera Hansard documents dated 6<sup>th</sup> and 9<sup>th</sup> July 1998, I advise that I only provided copies to:

- Graham Schorer, COT spokesperson
- Brian Pickard, Solicitor
- Derek Ryan, my accountant and
- Senators listed on my letter of 30 July 2001.

Our conversation left me with the impression that you didn't really believe the extent to which Telstra has stooped in order to crucify the COT members who were left to defend themselves. To help you better understand the unlawful way in which Telstra defended their arbitration process I have enclosed copies of two letters, both dated 15 August 2001, and I provide the following list of events which have occurred over the last few years in relation to my dispute with Telstra.

- Using information which they could only have acquired by listening into my phone conversations during my arbitration, Telstra documented which days I would be away from my business.
- Telstra hand written notes received under FOI confirm they were aware the time of day that my staff left the office when I was away on business.
- Telstra listed the names of people who rang my business and noted where these calls originated.
- Telstra listed the names of people I frequently phoned, including my ex-wife, Austel, and other COT members.
- Telstra recorded details of a contract tender regarding a bus charter I hoped to secure, including the name of the owner of the bus company itself. They could only have acquired this information by listening to my phone conversations or tampering with my mail.
- During my arbitration, with my life in tatters, I had a brief fling with a businesswoman in Portland who then all of a sudden began to experience problems with her phone and fax. Later, as part of an FOI release of documents from Telstra, still during my arbitration, I found a copy of one of her phone accounts among documents related to my phone problems.

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- Local Telstra employees have admitted to bugging my phones during 1993 and have not ruled out the likelihood that this bugging could have continued throughout my arbitration.
- A Telstra hand written document confirms someone named Micky, was acquiring and supplying someone the contact names of people I rang on my business after a particular episode.
- Two diaries plus booking records for business transactions suddenly disappear from my office at the time this information was needed to support my arbitration claim.
- During 1993/4, before my partner Cathy moved to Cape Bridgewater, she lived and worked in Ballarat and sometimes collected mail for me from a mailing service that notified her when there was mail to be collected. On two separate occasions someone else had collected this mail before Cathy could get there. All these letters were in relation to Telstra, Cathy reported this incident to the Federal Police in a statutory declaration.
- During my arbitration, on at least two separate occasions, the arbitrator's secretary advised me that documents faxed to her office hours previously, had not yet arrived.
- According to letters I have at hand Telstra confirms that during my arbitration, at least forty documents claim material faxed from my business to the arbitrator never arrived at their intended destination. My Telstra account show that these faxes left my office. Where are these documents? And most important is why hasn't the TIO investigated this matter.
- Telstra in their own defence documents on one occasion My 23 1994, confirm that faxes that should have arrived at the arbitrators office did not arrive because the fax line was busy, why then did my Telstra account show all five faxes were received at the arbitrator's office? Why hasn't the TIO investigated this issue?

Australia Post have admitted, in writing, that they cannot explain how overnight mail took five days to reach my solicitor, William Hunt. Again, these were Telstra related documents. Another solicitor and my accountant also advise that they have suffered delays in receiving overnight mail from me.

- My secretarial service has provided a number of statutory declarations detailing strange occurrences when assisting me with documents related to Telstra issues.
- Witnesses have confirmed that phone calls between other phones and mine do not disconnect for some minutes after I have returned the receiver to the phone cradle, i.e. when I pick up the phone minutes after hanging up, my line is still connected to the previous caller.
- Witnesses have experienced faxes being interrupted by the fax ringing and a second fax appearing before the first fax is completed, i.e. a second fax arriving in the middle of the first.
- In the time since my arbitrator handed down his award, further faxes have 'gone walkabout' between my business and my solicitor, my accountant, my secretarial service and the COT spokesperson. All these faxes were related to Telstra issues. Again, my Telstra account confirms that these faxes left my office.
- Why did Telstra rely on defence documents times and dates of particular incidences, when previously before signing for arbitration, Austel had warned Telstra that this material was misleading and deceptive?

AS 802

- Two days after my appeal period after the arbitrator brought down his award, 700 FOI documents arrived to late for me to mount a challenge against that award. Amongst this information were three documents N00005, N00006, N00037. These documents confirm Telstra were aware four months before they relied on this information in their defence, that this material was corrupt and impracticable.
- Regarding the above Bell Canada test results relied upon by Telstra in their defence, Why did Telstra mislead the Senate re Hansard Friday 26 September 1997. Stating there was only one clash of dates in the testing process, when Telstra is aware according to information they have at hand, that at least four separate days that these tests allegedly performed by Bell Canada also clashed and were impreactiable?
- Why has the TIO refused to abide by the rules of my arbitration process, and order Telstra to provide back to me ALL my submitted claim documents?
- Why did the TIO write to Laurie James, President of the Institute of Arbitrators misleading Mr. James into believing I had rung the Arbitrators wife at 2 am on the morning of November 1995, when Mr. Pinnock new this was a lie? Was it because Mr. James was asking alarming questions as to why the arbitrator withheld half of my submitted claim documents from the technical resource unit so they could not assess ALL my claim submitted documents?
- Documents inadvertently provided to me by the arbitrator's secretary three months after the arbitrator brought down his award. Confirm that DMR and Lanes technical resource unit wrote was still to address billing issues in my claim, and their report was not yet concluded. Why then did someone in this process provided me another report to which I responded to during my arbitration, oblivious to the fact that this was not the final finished report?
- Why did the arbitrator's copy and the technical resource unit DMR and Lanes copy differ by some 2,000 claim documents which I supplied to arbitration? Why does my copy of this report show 80% of my submitted claim documents as being viewed by the arbitrator's and technical resource unit and their copy only shows 40% of my claim documents as having been read?
- Why hasn't the TIO investigated the reason as to why Telstra wrongly disconnected two of my phone service after my award, when both these phone service was still suffering from the same faults that brought be to the arbitration process in the first place? Telstra refuse to connecting both these services until I pay for accounts that both the TIO and Telstra know were incorrectly billed.
- Six months after the arbitrator brought down his award FOI documents that I should have received 12 months previous during my arbitration, prove that Telstra notes when read with other documentation confirm that another Telstra defense documents was fraudulent manufactured. Why hasn't the TIO correctly investigated these issues with a written response to his findings?
- Most important of all, is Why did The Hon Senator Richard Alston during a meeting in Canberra attended by David Hawker MP and a number of COT members, prior to the Government winning office. Request that I provided his office with the above facts and further documented proof, regarding my claims that my arbitration was not conducted lawfully by Telstra, and when this information was supplied did nothing?
- Why didn't The Hon Senator Alston and John Pinnock TIO, investigate the information supplied by my accountant Derek Ryan, that an informant John Rundell of Ferrier Hodgson Corporate Advisory FHCA, admitted that under instruction from

AS 802

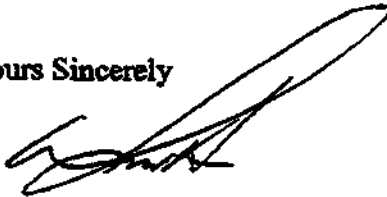
my arbitrator Dr Gordon Hughes, FHCA withdrew/removed information from their finished financial Report? Derek Ryan further confirmed with Senator Alston and John Pinnock, that John Rundell stated he was unable to discuss this matter until the appeal period of Mr. Smith's arbitration had expired. This informant John Rundell further went on to say, that he understood that the FHCA report was deficient owing to the removal of this information which disallowed Derek Ryan to recalculate how FHCA had arrived at their figures.

- Why hasn't the Hon Senator Alston, as a member of the present Government queried the appointment of Ferrier Hodgson Corporate Advisory as the auditors to the collapsed Christopher Skase empire, and to the One Tel collapse? The fact that a informant in FHCA working on my own arbitration case has admitted tampering and removing evidence in a FACA finished financial report on my losses should alarm the Government. For will we ever to know if FHCA has cooked the books in the case on their finical findings in the Christopher Skase and the One Tel collapse?

When you take into account all these events, I am sure you will understand how I saw the Hansard in-camera pages as an opportunity to alert the Senate to what has happened to me and those remaining sixteen COT members that the Senate Committee left behind.

I find it laughable that The Hon Senator Alan Eggleston stated to me in his letter of 16 August 2001, and I quote: "*I would respectfully suggest your remedies lie with the Telecommunication Industry Ombudsman and normal legal process*". When the above clearly confirms that there is no justice for every day Australians like myself who happen to find themselves in conflict with Telstra.

Yours Sincerely



Alan Smith

cc The Hon Senator Richard Alton Minister for Communications Technology Information and the Arts.

The Hon Senator Alan Eggleston Chair of the Environment, Communications, Information Technology and the Arts Reference Committee.

And other interested Senators and persons

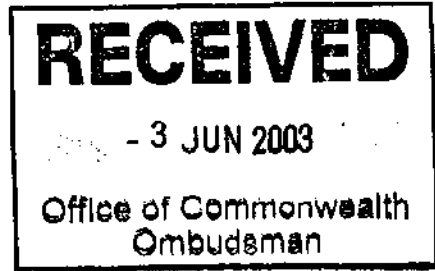
AS 802



114

2<sup>nd</sup> June 2003

Mr John Wynack  
Commonwealth Ombudsman's Office  
GPO Box 442  
Canberra 2001



Dear Mr Wynack,

As you know, Graham Schorer and I suffered from a number of fax-related privacy problems during our respective arbitrations in 1994/95. Documents show that these problems continued at least until December 1998 but I now believe it is important for you to know that they have never gone away and continue right up to the present time. I believe your knowledge of our previous complaints might assist your Melbourne office, as they investigate my case against Telstra, and I hope this letter will not be seen as anything other than my ongoing concern regarding what is still happening to my faxes.

You will remember that one of the concerns I previously raised related to numerous arbitration procedural documents which were sent from my office, intended for the arbitrator, but which never arrived at their intended destination. In particular, I referred to a fax sent on 3<sup>rd</sup> November 1998, with the last page received at 14:06, with my identification imprint across the top, indicating that it had travelled via a normal fax transmission. As I explained at the time, it was clear that the same letter, sent to another government department and received two minutes later (on the same day), had travelled via Telstra's fax stream system because it does not have my identification imprint on it. To show how this situation is STILL occurring, I have attached a more recent example of Telstra's determined interception of documents via their fax stream process:

1. Page one of a letter I faxed to Tony Shaw, the ACA Chairman on 23<sup>rd</sup> December 2002 has clearly been intercepted by Telstra's fax stream process. Note that my business identification is missing from this fax.
2. Page one of a similar letter to Mr Pinnock, the TIO, on 11<sup>th</sup> February 2003, however, does have my business identification across the top.

This clearly shows how some of my faxes are travelling in the normal way while others are travelling via fax stream. I have already provided your Melbourne office with evidence that the ACA, the TIO and Senator Alston's office have all refused to correctly investigate why Telstra systematically intercepts documents faxed from my office.

As you can see, I have also attached here a copy of one of my letters to Mr Jaffa in your Melbourne office, further detailing my concerns relating to this matter. Because I have not received any information from your Melbourne office since 2<sup>nd</sup> April 2003 however, I am becoming more than a little concerned. Is there some way you could find out what your Melbourne office thinks is the most appropriate way to force Telstra to provide a plausible explanation for their continued use of fax stream on some of my faxed documents and not on others (particularly since I have never requested the use of the fax stream system anyway)?

AS 803

16

During my arbitration, the arbitrator accepted my claims regarding privacy and phone bugging issues. This meant that it was therefore mandatory for Telstra to defend these claims. In a letter from Telstra Group Managing Director, Steve Black, to the Telecommunication Industry Ombudsman (then Warwick Smith), on 17<sup>th</sup> October 1994, Mr Black confirms, on behalf of Telstra, that they would address my voice monitoring claims under the arbitration. Telstra however was allowed to get away without ever addressing these serious matters.

On 27<sup>th</sup> June 1997, a Telstra whistleblower (whose name can be confirmed via Senate Hansard records) stated that, while he was working on matters directly related to the Casualties of Telstra, he was told by Telstra management that the Casualties of Telstra had to be stopped *at all costs*.

It is not hard to understand the effect all these events have had, not only on my life and the life of my partner, Cathy, but on many others as well. I apologise for misleading Jenny and Darren Lewis when they purchased my business but I must also stress, as explained above, that I truly believed that Telstra was fixated on ruining me personally and that, once I had left the business they would therefore have no reason to allow the phone faults to continue. I believed that, once the Lewises took over, the phone service would improve. How wrong I was!

I have copies of Telstra internal documents which confirm that, during investigations into matters I raised with them, the Australian Federal Police seized relevant litigation material from Telstra's archives. These documents numbered A58980 to A58994 included information in relation to me and to my claim against Telstra. Under the legal process of discovery, I should have been able to use this information before the Federal Police first seized it. If I am to be taken to court by the Lewises, this material and other documents of similar will easily satisfy the magistrate or judge that I have had good reason to doubt the integrity of some of Telstra's hierarchy. **I am formally requesting that the AFP supply me with copies of the Telstra documents A58980 to A58994. I am also formally asking that the AFP to supply me copies of all interview transcripts taken during their investigation at Cape Bridgewater, including documents supplied to them by me during this period, particularly the letter from the lady in Cairns, which I referred to earlier in this letter.**

I trust the AFP understand my need for the documents held in their archives considering the predicament I am now facing with the possible court action by the Lewises.

A cheque for \$30.00 is enclosed to cover the Freedom of Information application fee.

Sincerely



Alan Smith  
*Copies to*

Mr. Douglas Field, Assistant Commonwealth Ombudsman, Level 10, 2 Lonsdale St  
Melbourne

Mr. John Ralph, Deputy Chairman of the Board of Telstra, 5 Hill St Toorak 3142

AS 803

Ref No: A/97/123

20 August , 1998

Senator Patterson  
Chair  
Senate Environment, Recreation, Communications  
and the Arts Legislation Committee  
Parliament House  
CANBERRA ACT 2600

ADDRESS:  
6 TH FLOOR  
1 FARRELL PLACE  
CANBERRA ACT 2601

POSTAL:  
PO BOX 442  
CANBERRA ACT 2601

TELEPHONE:  
(02) 6276 0111

TOLL FREE:  
1 800 133 057

FACSIMILE:  
(02) 6249 7829

Dear Senator Patterson

**Working Party Convened to Report on Various Matters Relating  
to Telstra and COT/COT Related Cases.**

INTERNATIONAL  
FACSIMILE:  
61-2-6249 7829

This is the third of the fortnightly reports which you requested at the Senate Committee hearing on 9 July 1998.

I am pleased to report again that the Working Party has made considerable progress in the past two weeks.

Attached is a table which outlines the progress made against each of the recommendations which comprise our charter.

**Recommendations 1, 4 and 5 - Telstra provide lists to Parties and invite them to identify the documents they require.**

Completed for Messrs Bova, Plowman, Honner and Schorer.

Telstra will commence the search for Mrs Garms documents on 24 August 1998. Telstra has agreed to allow me to accompany their officers during their searches at several locations, which I will select on 24 August 1998. Telstra will prepare lists after completing the searches.

AS 804

**Recommendation 2 and 6- Inspection to ascertain relevant documents and Telstra to provide.**

Messrs Plowman and Bova completed their inspections on 17 and 27 July respectively and Telstra provided them with copies of large numbers of documents they identified during the inspections.

Mr Schorer identified a number of documents during his inspection on 24 July 1998. Telstra has not yet released any of the documents because Mr Schorer has not signed a confidentiality agreement covering 'commercially sensitive' documents.

Mr Honner inspected a number of documents on 30 and 31 July 1998 and identified a number of relevant documents. Telstra has not yet released any copies because Mr Honner has not signed a confidentiality agreement.

Mr Honner and his technical adviser wrote to me separately on 5 August 1998 expressing concerns that Telstra has not responded adequately to Mr Honner's requests for documents. I received Telstra's comments on the very strongly worded expressions of concern, on 19 August 1998, and I have invited Mr Honner's comments. I also asked Mr Honner to inform me of his intentions regarding the confidentiality agreement and his continued involvement in the Working Party's activities.

**Recommendation 3, 8 and 9 - Reasonableness of requests and consideration of concerns about Ambidji's reports on reasonableness.**  
Mr Plowman's, Mr Schorer's and Mrs Garms' meetings were conducted on 23 April 1998, 24 July and 10 August 1998 respectively.

Reasonableness of Mr Bova's requests are determined by reference to the Arbitrator's directions of 14 July 1998.

In light of Mr Honner's concerns with the Working Party process and with the requirement for a confidentiality agreement, I have not scheduled a meeting with Mr Honner's technical adviser. I will consider doing so after Mr Honner informs me whether he wishes to continue to participate in the process.

**Recommendation 7 - Confidentiality agreement.**

The complication involving Mr Schorer's confidentiality agreement, which is a pre-requisite to Telstra providing him with documents, remains unresolved. As the confidentiality agreement sought by Telstra will only apply to 'commercially sensitive' material, I remain of the view

AS 804

that it is reasonable for Telstra to insist on such an agreement before releasing commercially sensitive material. I will continue to press Mr Schorer to explain his position and to provide me with a statement of his intentions.

As I mentioned earlier, I asked Mr Honner to inform me of his intentions regarding a confidentiality agreement.

**Release of information to the Parties.**

I am still attempting to devise an arrangement which will enable me to form a view as to the reasonableness of the deletions (third party information) Telstra has made to the documents examined by the Parties. As I mentioned in my previous report, Telstra's solicitors informed me that the Telecommunications Act precludes them from providing the unedited documents for me to inspect.

Telstra has agreed to allow me to examine the documents they are withholding on grounds of Legal Professional Privilege (LPP) on condition that the Parties agree that Telstra will not have waived the privilege as a consequence of their disclosing the information to me. The Parties have agreed to the condition and I am examining the documents, which number about 850, on 21 August 1998.

**Telstra's search processes**

After I have completed my on site examination of the implementation of Telstra's searches for documents, which initially I am confining to Brisbane in the week commencing 24 August 1998, I will decide what further action I should take to enable me to advise the Senate Committee of my view of the reasonableness of the searches.

I sent copies of this report to Telstra, Mrs Garms and Mr Schorer.

Yours sincerely



John Wynack  
Chair, Working Party

AS 804

Ref No: A/97/123

10 July, 1998

Mr John Armstrong  
Telstra  
Level 38  
242 Exhibition Street  
MELBOURNE VIC 3000

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1 FARRELL PLACE  
CANBERRA ACT 2601

POSTAL:  
PO BOX 442  
CANBERRA ACT 2601

TELEPHONE:  
(02) 6276 0111

TOLL FREE:  
1 800 135 057

FACSIMILE:  
(02) 6249 7829

Dear Mr Armstrong

The Chair of the Senate ERCA Legislation Committee notified the Ombudsman of my appointment as Chair of the Working Party until 11 September 1998. The Ombudsman has agreed to release me for that purpose.

INTERNATIONAL  
FACSIMILE:  
61-2-6249 7829

Telstra has agreed to compensate the Ombudsman for my services to the Working Party. Please inform me of the name of the appropriate officer in Telstra with whom the Ombudsman's office may make the necessary arrangements. Alternatively, you may wish to ask a Telstra officer to contact Mr Chris Ross (phone 02 62760133) to make arrangements.

I understand that Telstra is prepared to arrange an inspection of Mr Plowman's documents in Melbourne at 9.30am on Monday 13 July 1998. Although the primary objective of the viewing is to enable Mr Plowman to identify those documents of which he would like to have copies, it is my opinion that it also presents an opportunity for the Working Party to form views as to the efficacy of the process to date.

Mr Plowman informed me that he would like Ms Owens, Mr Close, Mrs Garms and Mr Schorer to assist him in inspecting the documents. Mr Plowman also stated that he has no objection to me attending as an observer of the process. I do not think that a representative of the Ambidji Group should attend the inspection - it is my opinion that the Ambidji Group remain an independent adviser to the Working Party and be available to provide opinions on disputes which might arise.

I understand that there are a large number of documents and that it may take more than one day to complete the inspection. I should be grateful if you would advise me whether Telstra has estimated how long the inspection will take.

AS 805


It may be that the people inspecting the documents will require explanations of some of the documents. Please advise whether Telstra would be prepared to arrange for a Telstra officer to be available to facilitate the provision of such explanations. I envisage that any requests for explanations will be submitted through me and that any officer nominated by Telstra will not be expected to engage in debates with those inspecting the documents.

I should be grateful if you would respond to the matters raised in this letter before 3.00pm today (10 July 1998) so that those involved may make necessary arrangements.

I have notified Mr Reg Topp of the Ambidji Group that it is possible that the Working Party will require their services periodically commencing early next week. Mr Topp assured me that Mr Fitzsimons will be available at short notice to respond to requests I might make.

As discussed yesterday, I agree that the Working Party should develop a strategy including a timetable. It appears to me that it would be convenient for the Working Party to discuss that matter next week while all members are in Melbourne. I suggest that such a meeting could occur early on Tuesday 14 July 1998 - I should think the meeting would take about two hours to complete. I should be grateful to receive your response as soon as possible. Also, please advise who will be Telstra's representative on the Working Party.

Yours sincerely



John Wynack  
Chair, Working Party.  
Copies to Mrs Garms and Mr Schorer.

AS 805



# COMMONWEALTH OMBUDSMAN

Complaints: 1300 362 072  
Tel: (03) 9654 7355  
Fax: (03) 9654 7949  
[www.ombudsman.gov.au](http://www.ombudsman.gov.au)  
Level 10  
2 Lonsdale Street  
Melbourne VIC 3000  
Australia

REF: 2003-1953856

14 August 2003

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

Dear Mr Smith

I am in receipt of your letters of 2 and 8 August 2003.

From my reading of the content of those letters, there is nothing to persuade me away from my earlier decision to not investigate these matters further. I have, however, taken note on your request on page 2 of your letter of 2 August that the "fax streaming and the blank fax page issues" be transferred to the Telecommunications Industry Ombudsman (TIO).

Therefore, I shall be formally writing to the TIO in that regard. In support of that transfer, I shall be providing the TIO with a copy of your submission of 30 June 2003 and your letters of 2, 11, 18 July and 2 August 2003 and my letters to you of 15 and 28 July 2003, as well as a copy of this letter.

Yours sincerely

Doug Field  
Assistant Ombudsman

AS 806



Alan Smith, Seal Cove Guest House  
RMB 4409, Cape Bridgewater  
Portland, 3305  
Phone: 03 55 267 170  
Fax: 03 55 267 265  
Email: capesealcove@hotmail.com

28<sup>th</sup> August 2003

Mr John Pinnock  
Telecommunications Industry Ombudsman  
P O Box 276  
Collins St West  
Melbourne 8007

Dear Mr Pinnock,

As you are aware, under Section 6 (13) of the Commonwealth Ombudsman Act, the Commonwealth Ombudsman's office (COO) has formally transferred all the issues I have raised in relation to fax interception, faxes received as blank pages and the privacy issues surrounding these matters, to you for investigation. The COO has advised me that, in support of my claims, they have also forwarded to you a copy of my submission to the COO on 30<sup>th</sup> June 2003. An Australia Post registration docket, signed as received by your office on 22<sup>nd</sup> August 2003, confirms that your office also received a copy of this submission from me.

During 2002, under the TIO Privacy Policy Act, I received a number of documents confirming that your predecessor, Warwick Smith, wrote to Telstra in February 1994 with regard to these same fax privacy issues, which I had originally raised with him the month before. Your office has not yet advised me whether or not you received a response from Telstra on these matters.

During the period Warwick Smiths wrote to Telstra on these matters my accountant, Selwyn Cohen, who assisted me with my claim against Telstra, has acknowledged that, on at least one occasion, he received five blank fax pages from me instead of the requested information sought. Even though blank fax pages transmit very quickly, both his fax journal printout and my Telstra bill showed that the transaction lasted for some minutes. Mr Cohen has confirmed that my business fax identification did not appear on any of the five blank pages he received, which all related to my claim against Telstra. I believe you are also already aware that, on two separate occasions in 1994/95, during my arbitration, when I phoned the arbitrator's secretary, Caroline, to ensure that documents I had faxed to the arbitrator would be given straight to him for his immediate attention, she found she had only received blank pages.

Under the TIO arbitration agreement, once my arbitration was deemed to be completed, Ferrier Hodgson Corporate Advisory (FHCA) and Telstra were instructed to return to me a copy of all the claim documents I submitted to the arbitrator. The documents which were returned by both Telstra and FHCA match the lists of documents they received from the arbitrator, but it is clear that forty-one separate faxes I sent to the arbitrator were not sent from the arbitrator to FHCA or Telstra. These missing faxes are supported by my submission. This proves that forty-one sets of claim documents, faxed from my office to the arbitrator, were never assessed by FHCA or defended by Telstra.

AS 807

Even one of Telstra's defence documents, signed under oath, shows that their own investigations prove that, at least on one occasion, the arbitrator did not receive a number of documents faxed to him from my office. Why then was I charged for these five transactions as if they had been successful (refer submission)?

During my arbitration, AUSTEL advised that they had received blank pages which they believed had come from my office. To support this, they provided me with a copy of their fax journal printout and copies of the three pages they had received. These three pages had the same strange electronic numbering system on each page but no fax identification to show where the documents came from. AUSTEL's fax journal confirmed that they had come from my office and each page had taken one or two minutes to transmit. Computer experts I have since spoken to claim that the strange numbering markings appear to have come from a copying device similar to an electronic tape recorder. Documents received under FOI from the ACA confirm that Telstra acknowledges that they have used Fax Tape Recorders (refer submission).

I have attached Telstra FOI documents to my submission to the Commonwealth Ombudsman's office, confirming that Telstra documented the movements of both my staff and myself. The only way they could have acquired knowledge of our movements was from listening to my phone calls or intercepting my faxes during my arbitration. In one instance Telstra knew, weeks ahead of time, that I intended to travel to Melbourne. These are just some of the privacy issues which you are currently investigating.

I sincerely hope you will provide me with the results of your current investigation and thereby avoid yet another failure in the TIO's office of duty of care. As the following list shows, your office has failed me more than once in the past, in regard to my claims in relation to fax privacy:

1. **In 1994**, if I had been given a copy of any information you may have received from Telstra in response to your approach to them, I could then have passed this information on to the arbitrator;
2. **In 1995**, if I had been given a copy of Dr Hughes's letter to your predecessor on 12<sup>th</sup> May that year, in which he advised that that my just-completed arbitration had not been a credible process, I would have had enough evidence to proceed with an appeal against the arbitration award;
3. **In 1996**, if I had been given a copy of John Rundell's letter of 15<sup>th</sup> November 1995, I would have been able to provide it to Law Partners and it may well have convinced them to go ahead with a proposed pro-bono appeal against the arbitrator's award, which they decided against.
4. **In 1998**, during your own investigation (three years after John Rundell of FHCA had told you that my claim documents regarding fax privacy issues were never investigated during my arbitration), your office again failed to provide me with Telstra's response to your investigation.

Once you have read your copy of my submission to the Commonwealth Ombudsman on 30<sup>th</sup> June 2003, you will be able to come to only one conclusion: my TIO-administered arbitration was a grave miscarriage of justice and the fax matters now formally transferred to your office:

- A. Were never investigated correctly by your office before my arbitration;

AS 807

B. Were never investigated at all during my arbitration (refer FHCA admission in their letter of 15<sup>th</sup> November 1995);

C. Continued at least until 24<sup>th</sup> December 2002

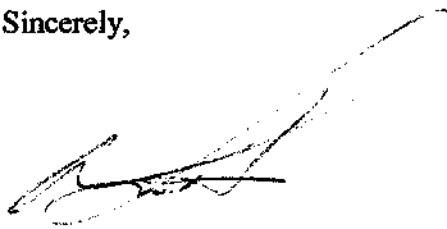
I would like to remind you that Telstra FOI documents which I first requested under discovery during my arbitration on this TF 200 matter but which I didn't receive until 28<sup>th</sup> November 1995, six months after my arbitration was deemed complete, revealed that:

- Telstra had tampered with evidence I freely gave during my arbitration so that the TF200 touchphone telephone, which had been connected to my fax line, and which they collected from my office, appeared to have wet and sticky been inside it when finally tested in Telstra's laboratories;
- Telstra advised the arbitrator that the testing took place on one date but the laboratory graphs show that it was actually tested on a different date.
- Telstra's arbitration defence document regarding the testing of my TF200 phone stated that the phone was not tested until sixteen days after it had been collected from my office and yet their laboratory working notes and graphs show that Telstra's laboratory staff found that beer poured into a TF200 dried within forty-eight hours (refer submission).

Telstra's fraudulently manufactured twenty-nine page TF200 report was allowed to remain in the arbitration process and was accepted as true evidence in support of Telstra's defence of the fax matters I had raised. This gave the report certain credibility when FHCA and the TIO-appointed technical resource team DMR & Lanes were assessing my claims. As you know, if documented evidence of a crime similar to fraudulently manufacturing a report for a legal process is provided to an Ombudsman or appointed commissioner during a legal proceeding, they have a duty of care to report the matter to the appropriate law enforcement agency. Although I provided all this information to you as soon as I received it, I remain seriously alarmed that you have allowed Telstra to continue to get away with perverting the course of justice by such unlawful tampering with evidence. Are we to assume that the TF200 phone currently connected to my fax machine (the fourth phone I have tried in this way) is also intoxicated, and that is why my faxes continue to be intercepted by Telstra?

This information is provided to assist with your current investigation.

Sincerely,



Alan Smith

Copy to Mr Doug Field, Assistant Ombudsman, Commonwealth Ombudsman's Office

AS 807



Telecommunications  
Industry  
Ombudsman

John Pinnock  
Ombudsman

7 October 2003

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

Dear Mr Smith

I refer to your letter of 2 October 2003 to this Office and to various other letters addressed to the Commonwealth Ombudsman.

As you note, on 14 August 2003, the Commonwealth Ombudsman formally transferred to the TIO your complaints relating to 'fax screening and the blank fax pages...'

In your letter of 2 October you claim that Telstra has had you under surveillance, including interception of your faxes, for a number of years. I have considered the information contained in that letter, as well as the more detailed information on this issue contained in your correspondence to the Commonwealth Ombudsman.

In my opinion, the information you have supplied amounts to no more than speculation and innuendo and I am not persuaded that there is credible evidence to warrant an investigation by the TIO.

Yours sincerely

JOHN PINNOCK  
OMBUDSMAN

AS 808

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

plainant/1987

Telecommunications Industry Ombudsman Ltd

ABN 46 057 634 787

Website: [www.tio.com.au](http://www.tio.com.au)  
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Facsimile (03) 8600 8797  
Tel. Freecall 1800 062 058  
Fax Freecall 1800 630 614  
TTY Freecall 1800 675 692



ATTORNEY-GENERAL  
THE HON PHILIP RUDDOCK MP

03/236838  
03/11980

12 JAN 2004

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

Dear Mr Smith

I refer to your letter of 13 November 2003 in relation to the arbitration of your dispute with Telstra.

You have asked that my office transfer documents you have previously provided the Prime Minister, the Hon John Howard MP, to the Australian Federal Police (the AFP) for investigation. You have indicated that the AFP response to earlier correspondence suggests that I must formally transfer matters to the AFP for investigation.

The AFP is an independent body with responsibility for the investigation of Commonwealth criminal offences. It would be inappropriate for me to direct the AFP to investigate a particular matter. The AFP is responsible for determining the allocation of resources in the investigation of offences. Should you hold concerns in relation to the investigation of those alleged offences, you may wish to contact the Commonwealth Ombudsman who has responsibility for inquiring into complaints in relation to the AFP.

As indicated in my letter of 10 November 2003, I am not in a position to comment on the actions of Telstra in this matter, nor am I able to comment on the conduct of the arbitration of your complaint by the Telecommunications Industry Ombudsman.

Yours sincerely

Philip Ruddock

AS 809



**Australian Government**  
**Attorney-General's Department**

**Information and  
Security Law Division**

03/11980  
04/9

3 February 2004

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

Dear Mr Smith

I refer to your letter of 2 December 2003 to the Attorney-General, the Hon Philip Ruddock MP, regarding alleged unlawful interception of telecommunications services. The Attorney-General has asked me to reply on his behalf.

As indicated in the Attorney-General's letter of 12 January 2004 the investigation of Commonwealth criminal offences, including unlawful interception, falls within the responsibilities of the Australia Federal Police (the AFP). In the event that you consider there has been an unlawful interception of your telecommunications services I would encourage you to draw this to the attention of the AFP.

I am not in a position to comment on the arbitration of your dispute with Telstra by the Telecommunications Industry Ombudsman.

Yours sincerely

Annette Willing  
Acting Assistant Secretary  
Security Law Branch

AS 810



## BARNABY JOYCE

The Nationals Senator for Queensland

15 September 2005

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

Dear Mr Smith,

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

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

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

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

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

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

Kind regards,

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

AS 811

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

10<sup>th</sup> March 2006

Ms Liz Forman  
Acting General Manager  
Department of Communications, IT and the Arts,  
GPO Box 2154  
Canberra 2061

Dear Ms Forman,

Thank you for your letter of 8<sup>th</sup> March 2006 regarding the DCITA Assessment process. I have now been informed by phone, by Mr David Lever of DCITA, that I have until next Friday, 17<sup>th</sup> March, to submit any further documents. I have also been advised this assessment process is not the Independent Assessment process agreed to by Senator Barnaby Joyce, in his discussion with the Hon Senator Helen Coonan in September 2005.

Although you have stated in your letter that "*... the assessment process will not extend to an examination of whether the law was broken by Telstra ...*" I have been advised that it is mandatory, under Commonwealth law, for DCITA and/or the Minister to notify the Attorney General of any unlawful activities they may uncover during official departmental investigations.

Since DCITA uncovered unlawful acts as a result of material I supplied in response to a DCITA request, and these unlawful acts relate directly to Telstra which, at the time of offences, was fully Government owned, and the Commonwealth Ombudsman's records confirm that my arbitration was endorsed by the Government of the day, DCITA now has a duty, under Commonwealth Law, to notify the Federal Attorney General of these offences. As you would be aware, there is no Statute of Limitations in relation to this type of crime against an Australian citizen and these particular crimes were first brought to the attention of the TIO nine years ago.

Please notify me as soon as possible regarding whether the Minister will now provide the Attorney General with the evidence of the crimes that were committed by Telstra, during my arbitration - crimes that have now been uncovered by DCITA during the assessment of the documents I submitted with my initial response to DCITA's request.

Sincerely,



Alan Smith

*Copy to Senator Barnaby Joyce, Senator for the Nationals Queensland  
The Hon David Hawker, Speaker in the House of Representatives*

AS 812





**Australian Government**

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

our reference

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


Dear Mr Smith

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

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

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

Yours sincerely

  
David Lever  
Manager, Consumer Section  
Telecommunications Division

17 March 2006

*AS 813*



# 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

AS 814



# 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

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

AS 815



## 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)

AS 816



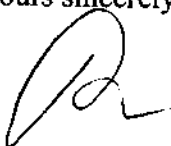
You should refer any claim of criminal conduct to Victoria Police, the details of your local police station are as follows:

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



**PAUL DENHAM**  
Senior Adviser

AS 816

The Hon Robert McClelland MP  
Federal Attorney-General

The Hon Robert Clark MP  
Victorian Attorney-General

In 1994 three young computer hackers telephoned Graham Schorer, the official Spokesperson for the Casualties of Telstra (COT), in relation to their Telstra arbitrations.

**Was Julian Assange one of these hackers?**

The hackers believed they had found evidence that Telstra was acting illegally.

Could they have found proof of:

- ❖ Collusion between some of Australia's most respected lawyers and the Telstra Corporation (which was then already pressuring the arbitrator to use Telstra's preferred rules of arbitration);
- ❖ A secret meeting between the arbitrator, the TIO, the TIO's Special Counsel and the defendants (Telstra), without the claimants (the members of COT), where the discussion centred on the removal of liability for the arbitrator's resource unit in relation to the COT arbitrations ;
- ❖ The arbitrator's secret agreement with Telstra, to use the arbitration agreement designed by Telstra (the defendants);
- ❖ An internal Telstra agreement to conceal just how bad their telephone network was, particularly in the areas serving the COT claimants, because if the truth was revealed, the Government and the public would discover that the Telstra network was operating way below the levels laid down by the Government;
- ❖ That the Government Communications Regulator, AUSTEL, had provided Telstra with a copy of their draft findings regarding the COT claimants' ongoing telephone problems, but had withheld those same findings from the Communications Minister, the arbitrator and the claimants;

Or was it something else that the hackers uncovered among the documents in Telstra's internal arbitration file that prompted them to telephone Mr Schorer? This is particularly interesting since, by 1997, when the Commonwealth Ombudsman's office tried in vain to obtain Telstra's 'arbitration file' on my behalf (as a COT claimant), Telstra responded by advising the Commonwealth Ombudsman that this file had been destroyed.

PTO

AS 817

Alan Smith  
Seal Cove  
1703 Bridgewater road  
Portland (Vic) 3305

11<sup>th</sup> July 2011

The Hon Robert McClelland MP  
Federal Attorney-General  
Attorney-General's Department  
Central Office  
3-5 National Circuit  
Barton ACT 2600

The Hon Robert Clark MP  
Victorian Attorney-General  
Department of Justice  
Level 26/121 Exhibition St  
Melbourne Vic 3000

Dear Sirs

Half way through our 1994 arbitration, Casualties of Telstra (COT Cases) Spokesperson Graham Schorer was contacted by three computer hackers (see covering page) and the attached statutory declaration dated 7<sup>th</sup> July 2011 from Graham Schorer which notes: *"... This call was to my unpublished direct number. The young man on the other end asked for me by name. When I had confirmed I was the named person, he stated that he and his two friends had gained internal access to Telstra's records, internal emails, faxes, etc. He stated that he did not like what they had uncovered. The caller tried to stress that it was Telstra's conducted towards me and the other COT members that they were trying to bring to our attention. After this call, I spoke to Alan Smith about the matter.*

I recall Graham telling me that these young hackers were prepared to provide us with copies of the evidence they had uncovered which supported Telstra's was acting unlawfully towards us. It should also be noted that, before this contact, at the suggestion of Detective Sergeant Jeff Penrose of the Australian Federal Police, and covered by a sworn statutory declaration dated 14<sup>th</sup> May 1994, I had already provided the Telecommunication Industry Ombudsman (Warwick Smith) and the arbitrator (Dr Gordon Hughes) with the very same type of documented evidence concerning this unlawful conduct that the hackers appeared to have uncovered. When Graham and I discussed the internal emails and faxes that these hackers were offering to provide, we did not know that Telstra's unlawful conduct towards us would be ignored by the TIO and arbitrator.

Please now carefully consider what the computer hackers could have uncovered in Telstra's 'Arbitration File' that would have prompted them to phone Graham and, since we don't yet know the answer to that question, I therefore believe it would be in the best interest of all parties if a joint application could be made, from your offices to the Victorian State Police, asking for any archival records the police may have, in relation to the computer hackers who were apprehended during 1994.

### Telstra's Arbitration File

During 1997 John Wynack, Director of Investigations for the Commonwealth Ombudsman Office, visited Telstra's Exhibition Street FOI complex as well as corresponding with Telstra seeking Telstra's arbitration file on my behalf - the same arbitration file that these young hackers had uncovered. It is clear from Mr Wynack's correspondence to Telstra that he did not believe their claims that this arbitration file was destroyed noting: *"... On the basis of the information given to me by Mr Benjamin and Ms Gill, it is extremely improbable that Ms Gill disposed of the documents in the "arbitration file", or indeed any other documents from Mr Black's office which would have been included in Mr Smith's FOI application of 18 October 1995".*

AS 817

In other words, we were fools not to have accepted this arbitration file when it was offered to us by the hackers who conveyed to Graham Schorer a sense of the enormity of the deception and misconduct under taken by Telstra against the COT Cases. Given the events that transpired during the first two months of our arbitrations – the clandestine arbitration meeting; the covert alterations to the agreement exonerating the arbitration Resource Unit and the TIOs Special Counsel of all liability; and the agreement between Telstra and the Resource Unit for the vetting of material before it reached Dr Hughes – Julian Assange (if he was one of the hackers) was right on target.

In hindsight, if we had accepted the documents on offer from the hackers, those documents, combined with my own evidence, may well have been enough to prompt a major enquiry Senate Enquiry into Telstra's unlawful conduct, including a possible enquiry by the Victoria Police as to why both the TIO and arbitrator had no control over Telstra's abuse of the law during our arbitrations. Although we had been informed that our arbitrations would be conducted according to the *Commercial Arbitration Act 1984*, the TIO advised the Senate Estimates Committee on 26<sup>th</sup> September 1997 that the arbitrator had no control over our arbitrations because they were "conducted entirely outside the ambit of the arbitration procedures"

### **Privacy Issues – Unresolved**

In February 1994 I spoke to an Australian Federal Police (AFP) officer, Ms Melanie Cochrane, regarding a letter I had received from a Telstra customer in Mirriwinni, North Queensland. I explained that part of the letter had warned me that: "...although no one may have let on that they want your land or business it will be made impossible for you to carry on in more ways than one. No one will threaten you, no one will ask you for it, there will be not the slightest hint, other than the telephone inconsistencies which you will attribute to incompetent staff, that there is something altogether different behind the whole thing." I don't for one minute believe that Telstra employees or the anonymous "forces at work" (see *Attachment 4*) in my letter dated 13<sup>th</sup> June 2011, to the Hon Reverend Dr Rowan Williams Archbishop of Canterbury (copied to you) were after my business, but Senate Hansard dated 24<sup>th</sup> June 1997, confirm that Telstra does have a 'surveillance network'. This same Queensland lady told me on the phone that we would find that we were experiencing odd telephone calls and odd telephone 'experiences' and she was exactly right because, over the years, exactly as that lady had described, Cathy and I often found music, or hollow, walking sounds (as if in an office corridor perhaps) on the phone line when the receiver was picked up to make a call, or we would find that the line would be completely dead until we disconnected the phone from the plug in the wall and re-connected it. This dead line – unable to make or receive incoming calls into our business was apparent on our service lines up to the time we sold the business in December 2001.

### **Telephone hacking**

On 16<sup>th</sup> July 1998 (three years after my arbitration) the Deputy TIO, Wally Rothwell, wrote to me noting: "I refer to our telephone conversation this morning and your serious concerns about the recorded message left on your answering machine. Regarding the blank pages, I have asked Telstra, without mentioning your name, how this could happen". I have never received advice from the TIO office to: "how this could happen".

Throughout 1993 and through to the end of my arbitration in May 1995, I continued to raise the issue of Telstra's admission to the AFP that they had intercepted my telephone conversations. I also raised the issue of how it was probable that this interception had led to complaints from some of my customers, particularly the female members of a singles, over-forties club that I ran at the Camp, who had asked me, on a number of occasions during this same period, if I had given out their private information because they had been receiving anonymous phone calls which, while not actually obscene, had the male caller hinting that he knew they were single.

On 14<sup>th</sup> April 1994 Telstra admitted to the AFP that the telephone exchange at Portland had an alarm bell set up to ring when a call came in for the Camp, and my phone conversations were then broadcast into the Portland telephone exchange. I believe Senate Hansard will show I raised this particular document on 21<sup>st</sup> March 1995, at Parliament House in Canberra, when I attended a Senate Estimates Committee hearing into the implementation of the Telecommunications (Interception) Amendment Bill



1994, a very distressed COT Case Robert Brae provided a similar document to the Senate Committee concerning his telephone conversations being broadcast through the Ballarat telephone exchange.

If the letter dated 10<sup>th</sup> February 1994, from the Communications Regulator AUSTEL to Telstra's Steve Black noting: "...Yesterday we were called upon by officers of the Australian Federal Police in relation to the taping of the telephone services of COT Cases. Given the investigation now being conducted by that agency and the responsibilities imposed on AUSTEL by section 47 of the Telecommunications Act 1991, the nine tapes previously supplied by Telecom to AUSTEL were made available for the attention of the Commissioner of Police", doesn't convince your department that our telephone conversations were taped (listened to) then what will convince your department?

### **Forces at Work**

On 21<sup>st</sup> March 1995, during the same *Telecommunications (Interception) Amendment Bill 1994* I asked Detective Sergeant Jeff Penrose of the Australian Federal Police if he could explain what protection the members of COT would have from Telstra once our arbitrations and the 'regulatory hype' was over regarding Telstra's prolonged interception of our telephone conversations – he made his way to the gallery without a reply. Thirteen months before this, when I spoke to Ms Cochrane (AFP) about the letter from Mirriwinni in Queensland (see above), I had no way of knowing that, on 18<sup>th</sup> April 1995, more than twelve months later, John Rundell, the Arbitration Project Manager, would warn the TIO, the arbitrator and the TIO's Special Counsel, that there had been "forces at work" that had derailed my arbitration process. Were these, I wonder, the same "forces at work" that, six months after my arbitration was no longer in the spot light, demanded that I pay all my outstanding Gold (customer) Phone accounts, even though that service was still suffering from major call drop-outs once my customers' calls had been connected, and even though this was the same service that the arbitration technical consultants' report had noted was routed through a faulty service line – and did the TIO, John Pinnock, help me with this matter? No, he did not. And so the Gold Phone service was disconnected in December 1995, by the authority of Ted Benjamin, Telstra's Customer Dispute Manager (who was also on the TIO Council), regardless of the many vain attempts the Hon David Hawker MP had made, in an effort to keep my phone connected and simply have the phone line fixed.

**PLEASE NOTE:** The Hon Mr Hawker was still writing to Telstra in June of 2001, but the service was never reinstated. My fax line suffered from the same kind of ongoing, lock-up problems – before, during and after my arbitration which Telstra also disconnected because I refused to pay for faxes that I could prove had never arrived at the intended destinations. This fax line was however, a vital tool for the survival of my business so I eventually paid for the faxes I knew had never arrived as complete documentation.

In January 2002 the TIO sent me a number of documents including some confirming that Telstra had provided the then-Communications Minister's office with copies of Telstra file notes dated 16<sup>th</sup> January 1998 that recorded how, from Telstra's investigation at the Cape Bridgewater Holiday Camp on 14<sup>th</sup> January 1998, it was apparent that the ongoing telephone problems raised in my arbitration had continued after my arbitration; but did the TIO (John Pinnock) help with this matter? No, he did not. Among these same documents from the TIO I found another one dated 2<sup>nd</sup> August 1996 to Dr Hughes (arbitrator) from Ferrier Hodgson Corporate Advisory (the TIO-appointed arbitration project managers), which admitted that Ferrier Hodgson had withheld various billing fault information from being addressed as part of my 1995 arbitration; but did the arbitrator or the TIO help me with this matter? No, they did not.

### **The Phone Problems Continue**

My letter to John Pinnock dated 17<sup>th</sup> February 1998 regarding these unaddressed phone/facsimile faults states: "...Pages 98 to 102 of the transcript of the oral hearing shows that, on four separate occasions during this hearing, I tried to submit these 4 exercise books into evidence in support on my claims. These pages also show that each time I tried to introduce them, Mr Black, Telstra executive, told the Arbitrator that he did not see the relevance of these exercise books and each time the Arbitrator agreed with him". It was unbeknown to me at the time I wrote this letter that John Pinnock had already advised the Senate Estimates Committee on 26<sup>th</sup> September 1997 that: "...Firstly, and perhaps most

*significantly, the arbitrator had no control over the process, because it was a process conducted entirely outside the ambit of the arbitration procedures".*

This means that Mr Pinnock had already advised the Senate Estimates Committee that Telstra controlled the arbitration process from the very beginning, before he received my letter dated 17<sup>th</sup> February 1998, advising him that, at my arbitration hearing, Telstra had dictated to Dr Hughes what evidence Telstra believed I should be allowed to submit to the arbitration and what they believed I should not be allowed to submit. This corresponds with the TIO-appointed arbitration resource unit's advice to Mr Pinnock's predecessor, Warwick Smith, on 18<sup>th</sup> April 1995, that there were '*forces at work*' that had infiltrated the arbitration process.

During the Australian Federal Police (AFP) interview of February 1994, on the advice of the AFP, and when Cathy Ezard (who is now my partner) was still just a Holiday Camp client, she agreed to collect mail from the Ballarat Courier Mail Newspaper office on my behalf, after I had sent out a survey asking people in Ballarat if they had experienced problems trying to contact me at Cape Bridgewater, from their country phone exchange. On two separate occasions, after I had been told there was mail waiting for me at the newspaper's office and Cathy had then called to collect it, she was told that the mail had already been collected by someone else who claimed (falsely) that I had given them the authority to pick up the mail.

As further testament that the Ballarat Courier Mail Newspaper office lost mail issues has been ongoing for years is summarised in my letter dated 29<sup>th</sup> October 2000 to the Hon David Hawker MP how the invasion of my privacy had still not been addressed noting: *"...In relation to problems with my mail. I enclose a copy of a letter recently sent to me from the Portland Post Office, and dated October 28, 2000. This letter confirms that overnight mail that I had posted had not arrived at its intended destination five days later. On a number of occasions during my arbitration with Telstra in 1994/95, I confirmed with the arbitrator's secretary that arbitration claim material which I had faxed to the arbitrator's office never arrived, even though my fax journal and telephone accounts register the documents as having been faxed to the correct number. I believe the attached letter from the Portland Post Office (as referred to on the previous page) is an indication that other documents mailed during my arbitration may also have 'gone missing.*

*Many of the people I deal with on a regular basis received overnight mail late: the Australian Tax Office, my accountant, Derek Ryan and my secretarial service, The Occasional Office. Like the incident documented by the Portland Post Office, on one particular occasion Derek Ryan received overnight mail four days after it was posted. These three businesses all have one thing in common: the documents in the mail were all related to matters involving my dispute with Telstra".*

To explain how these privacy issues have affected our lives ever since, particularly Cathy's, even as recently as this year, in our home of the last sixteen years (which has never really been our private castle) Cathy would look up at the smoke alarm in the ceiling over our bed after we had finished our love making and ask, out loud, "*Did you get that Telstra?*" If Cathy didn't joke about these privacy issues she would simply walk away! Three years ago she did walk away for six months moving into a one bedroom flat in Ballarat because of the stress associated with these unaddressed Telstra issues. Even today we never make a booking over the telephone for a planned trip away from our residence. It is therefore quite clear that open harassment and unnamed "*forces at work*" are problems that the COT claimants have had to live with for years and years, simply because we chose to ask for a phone service equal to the service provided to other Telstra customers accept as a right.

While I was going through arbitration I sought help from two psychologists, one of whom provided the arbitrator with a brief assessment of my mental state at the time. After hearing my story and reading some of my Telstra files, both psychologists commented that, although the Telstra saga had certainly affected my well-being, I was certainly not mentally ill. One of them reported also that, part way through my arbitration, someone had approached her, at her professional rooms, pretending to be acting on my behalf, and asked her for a copy of my file because 'it was needed to support my arbitration claim'. The psychologist, of course, simply noted that she could only provide medical information to me in person or to me through a recognised medical practitioner. I certainly did not ask

anyone at all to access those files, during my arbitration or at any other time. Amazingly, it was the psychologist whom I did not name in my arbitration until March 1995 who was approached in mid 1994.

### **Violation of Our Privacy Continues**

Cathy and I were not the only people to experience strange telephone 'incidents': a well-known journalist who had become interested in my case also began to experience strange 'telephone happenings' including hearing odd clicking noises on her phone just after speaking to a very senior Telstra executive. Naturally this journalist then promptly 'forgot' that I existed (I am prepared to name the journalist and the Telstra executive under confidentiality). Our fax machine continued to suffer from odd events – sometimes a fax would pause part-way through a page and another, unrelated fax would come through for a while and then the original fax would resume as though nothing had interrupted the transmission; or we would receive just blank pages, without even the sending fax identification across the top of the page; or pages we sent from our fax machine would arrive at the other end without any identification at all to indicate who had sent it. We lived with these so-called 'faults' from when we first began to complain to Telstra about them in **April 1988**, until **December 2001** while we still owned the Holiday Camp, and then at our residence next door until at least **October 2006**.

On the 1<sup>st</sup> October 2006 Darren Lewis the new owners of my business wrote to David Hawker MP Federal Member for Wannon (Also Speaker in the House of Representatives) noting: *"...This letter is to let you know that after meeting with you last Wednesday I have had a visit from a Telstra technician. I believe this visit could well have been arranged as a result of your intervention, for which I am most grateful. The technician, who comes from Colerain (also part of your electorate) advised me that he was aware that the problems I am experiencing now are the same problems experienced by the previous owner of the business (Alan Smith). When I asked him why this would be, he replied that the problems were caused because the wiring was old that it was now totally incompatible with all the new technology ('totally' was his exact word). I then described to him the latest fax problem – the one that I raised with you last Wednesday – when Alan Smith's fax (intended for destination in Melbourne) arrived at my business, cutting off my conversation with Cathy (Alan's partner) as it came through. I also explained that Telstra's local (Portland) technician, James, had tested and programmed my fax machine just recently, so there is clearly no problem with the machine itself".*

### **Lost Faxes**

John Pinnock (TIO) was provided with a graph showing forty-one claim-related arbitration documents that had been faxed from my office during my arbitration in 1994/95 but had never arrived at their intended destination. Mr Pinnock knows that the arbitrator's secretary and Telstra's Tony Watson both agreed that at least five of those faxes did not arrive at the arbitrator's office, even though Telstra billed me for all five of them and my account showed that I had dialled the correct fax number. Also during my arbitration a further missing faxed claim document ended up at the Portland Amcal Chemist and, if it wasn't for references to the Cape Bridgwater Holiday Camp in the content of the fax, the Chemist would not have known to phone me to let me know where the fax had, wrongly, ended up. Still, here we are in **September 2006**, with Darren Lewis in David Hawker's office with a three-page fax of mine in his hand, proving that nothing had changed in **eleven years**.

I would be grateful if you would now contemplate the following points:

1. On 7<sup>th</sup> January 1999, Telecommunications expert S J Scandrett of Scandrett and Associates Pty Ltd (Queensland) wrote to Senator Ron Boswell, then the Senate Leader of the National Party, noting: *"We were briefed on the background situation and made several tests of Tivoli services (a member of COT). The hard evidence given to us, showing possible interception related to unexplained changes in the header strip of some faxes sent between these parties and others with an interest in COT matters. We have been requested to offer an opinion on the matter of alleged facsimile interception. We canvassed examples, which we are advised are a representative group, of this phenomena – They show that*
  - *The header strip of various faxes is being altered*

- *The header strip of various faxes was changed or semi overwritten*
  - *In all cases the replacement header type face is the same*
  - *The sending parties all have a common interest and that is COT*
  - *Some faxes have originated from organisations such as the Commonwealth Ombudsman's office*
  - *The modified type face of the header could not have been generated by the large number of machines canvassed, making it foreign to any of the sending services. In summary then it appears to be almost certain that these faxes are being intercepted and resent, with an attempt to hide the same, to the receiving party. It appears that it is not the work of a single local party, nor is it a simple interception but more likely to be an orchestrated effort."*
2. On 11th January 1999, Peter Ross Hancock of Total Communications Solutions (Victoria) assessed the same COT fax information that Scandrett and Associates (Queensland) had assessed, including fax samples from my office. Mr Hancock's statutory declaration notes: *"It is my opinion from the evidence provided that a third party has been intercepting all of the faxes referred to above. In my experience there is no other explanation for the discrepancies in the facsimile footprints in question. I have read the report of Scandrett & Associates Pty Ltd and concur with its contents."*
  3. On 7<sup>th</sup> October 2003, John Pinnock (TIO) wrote to me noting: *"As you note, on 14 August 2003, the Commonwealth Ombudsman formally transferred to the TIO your complaint relating to 'fax screening and the blank pages... In my opinion, the information you have supplied amounts to no more than speculation and innuendo and I am not persuaded that there is credible evidence to warrant an investigation by the TIO."*

I have asked you to link the above three points together because Mr Pinnock's comment that my complaint *"amounts to no more than speculation and innuendo"* was made after he had read some of the same questionable faxes that both Scandrett and Associates and Total Communications assessed and they both arrived at a totally different conclusion to Mr Pinnock.

I would also like you to think about the above three points in conjunction with my most recent Administrative Appeals Tribunal hearing on 26<sup>th</sup> May 2011, where an Australian Government Solicitor and an ACMA Solicitor both insisted that all my matters had been addressed by the TIO (meaning John Pinnock), even though evidence already provided to those parties, in the form of Affidavits 1, 2 and 3, dated 5<sup>th</sup> April 2011, support my belief that the TIO's office is not impartial now and was not impartial during my arbitration.

It is alarming enough to find that two Government lawyers would state, quite wrongly, that a proper, full and transparent investigation into my arbitration matters has been completed by the TIO, but it is even more alarming to know that the TIO has not put on the public record those findings, and which I therefore cannot respond to and, as time continues to pass, anyone reading the transcript of the AAT hearing on 26<sup>th</sup> May 2011 will therefore conclude that all my matters have been transparently investigated – when this is far from the actual truth of the matter. Your office could easily uncover the real truth by appointing someone with experience in assessing faxes to read the latest fax interception files, which have continued to be updated since Scandrett & Associates and Total Communications first assessed them, because these files now prove that, at least in my case, my faxes were still being intercepted six to seven years after my arbitration.

One major experience most of the COT Cases have in common: when no-one in any Government Department or other Public Office will take a real and valid complaint seriously, the resulting breakdown in communications leads to the complainant being branded as vexatious and their complaints being branded as frivolous: the final result is that the complainant's life is ruined. What chance did Cathy and I have of resurrecting our telephone-dependent business after the arbitrator's resource unit based their final report entirely, and ONLY, on old, anecdotal, Telstra fault complaint documents and then the arbitrator based his findings on the resource unit's report, even though that unit had failed to investigate the very problems that sent me into arbitration in the first place (the ongoing telephone/facsimile problems)? My business was doomed from the day the arbitrator handed down his findings because not only did the resource unit ignore current fault evidence, but Telstra (the

defendants) mischievously and deliberately concealed all of the most recent ongoing fault complaint material under Legal Professional Privilege.

### **Legal Professional Privilege**

Back in 1993, Telstra refused to address my ongoing telephone complaints unless I first registered them, in writing, with their external lawyers (a company that was then one of the four largest legal firms in Australia). It appears as though Telstra set this process up because this legal firm believed it would provide a bridge between Telstra and their lawyers, thereby putting all of my ongoing telephone problems that Telstra was unable to fix or locate under the cloak of Legal Professional Privilege (LPP). As it turned out, Telstra and their Lawyers were wrong because, in June 2000, five years after the end of my arbitration, renowned Australian LPP specialist, Professor Suzanne McNicol, provided her professional opinion of a letter dated 10<sup>th</sup> September 1993, from this same legal firm (I have not named this firm for obvious reasons) to Mr Ian Rowe, Telstra's Corporate Solicitor. Professor McNicol's opinion was: "...There is also some potential prima facie evidence of (4) i.e. knowingly making false or spurious claims to privilege. For example, there is a potential structure set up for the possible abuse of the doctrine of legal professional privilege in the faxed document entitled "COT" Cases Strategy, marked "Confidential" dated 10 September 1993 from (name deleted) Melbourne Office to Ian Row, Corporate Solicitor, Telecom Australia.

Perhaps the most frustrating part of the process of lodging my phone complaints with Telstra's lawyers in writing was that, at least on one occasion, I had already written concerning a further ongoing fault before the lawyer got back to me with the result of the earlier complaint. I believe this waiting process was designed to wear me down and, unsurprisingly, that's what happened. I was mentally exhausted by the time I had to submit my arbitration claim.

A Telstra internal email dated for the month of September 1993, FOI folio K24548 subject: *North Melbourne Exchange survey* notes that "It would be best to avoid COT case member. Mr Graham Schorer of Golden (Messenger) to avoid embarrassment as you say. Please prepare the results for the Corporate lawyers under legal professional privilege and limit distribution of the results."

On page 22 in my 9<sup>th</sup> February 2011 Administrative Appeals Tribunal Statement of Facts and Contentions I note that "Telstra FOI document folio C04551 dated 2<sup>nd</sup> November 1990 is a Memo which states at point 5: "...The Australian Government Solicitor, on behalf of Telecom, has written to the Solicitors acting for Golden Messenger seeking their understanding not to disclose to their client or others the content of the report on the North Melbourne Exchange."

It is apparent that both folio C04551, dated 2<sup>nd</sup> November 1990 and folio K24548, dated September 1993 Subject North Melbourne Exchange survey (see above) which notes: "...It would be best to avoid COT case member, Mr Graham Schorer of Golden (Messenger) to avoid embarrassment as you say. His main numbers are 03 329 7355 and 03 329 7255. Please prepare the results for the Corporate lawyers under legal professional privilege and limit distribution of the results" show is that over an almost three year period Telstra concealed relevant technical information from Mr Schorer during his 1990 Federal Court action as well as during his 1994 arbitration.

A further Telstra FOI document folio R00524 tiled COT 1306.DOC Draft – In Confidence is just more of the same i.e. "...All technical reports that related to the customer's service are to be headed "Legal Professional Privilege", addressed to the Corporate Solicitor and forwarded through the dispute manger".

Telstra's 'Legal Professional Privilege' Alan Smith - document (B425) dated 7<sup>th</sup> March 1994, notes: "...28 February 1994 – data shows the 2 calls originated in Portland area. 2 interesting points – first call lasted 44 seconds with normal 4 sec wait till answer, while second had wait of 7 secs – indicates fax machine not connected for 2<sup>nd</sup> call." I can provide (on request) proof that, under Legal Professional Privilege, Telstra withheld more than two hundred of these kind of fault complaints until October 1997, thirty months after the arbitrator brought down his findings on my claim.

### **HARASSMENT CONTINUES**

In my 9<sup>th</sup> February 2011 AAT Statement of Facts and Contentions, on the back of page 19 and the front of page 20, I have recorded how, sometime around January 2003, Telstra's Tony Watson, who had dealt with my lost faxes issues during my 1994 arbitration, began to refuse to deal with the new owners of my business, Mr & Mrs Lewis, because Mr Lewis was in contact with me. Mr Watson was a senior, Melbourne-based, Telstra technician and this behaviour seems to indicate that he was still carrying some sort of grudge against me, eight years after my arbitration, because I raised the issue of the ongoing telephone problems I was experiencing, only now he was letting that grudge interfere with the assistance he should have been providing to Mr Lewis, who was experiencing the very same ongoing telephone and fax problems as the new owners of my property. It certainly seems there is some sinister motive for this strange behaviour, and that is disturbing enough on its own, but it is even more disturbing to find that Mr Watson knew that Darren Lewis had been telephoning me on a regular basis, even though I live next door to the Holiday Camp. Darren was phoning me, week after week, month after month, because he wanted answers to his questions:

- Why were the phone problems still occurring?
- How did Telstra know all these things about his private telephone calls?

Eventually, on 23<sup>rd</sup> September 2007, Ms Barbara Howard, a psychologist, made an appointment to visit me in relation to Darren who, she told me, was her patient and who had been contemplating suicide. At that visit Ms Howard explained that she was working on a risk management plan for Darren, should he find himself with suicidal thoughts again, and she wanted me to know that I was one of the people she had suggested Darren should contact in that sort of situation. I confirmed with Darren, that Barbara Howard was who she said she was before agreeing to meet with her. It was at this meeting that Ms Howard asked me if the telephone problems Darren had described to her were actually real and had I experienced the same problems years before. It was then that I provided evidence showing other businesses in Cape Bridgewater up to at least August 2004, had similar phone problems (I still have that evidence).

Three months after Ms Howard's visit, over the Easter break in April 2007, Graham Schorer (COT Spokesperson) paid a \$15,000.00 fee for a communication consultant, Mr Brian Hodge MBA, to assess Darren's situation and evaluate documents that Telstra's complaints department had provided to Darren. After checking Telstra's CCAS data Mr Hodge concluded that Darren was certainly not imagining the telephone and fax problems he had complained about. Mr Hodge's Cape Bridgewater Holiday Camp report of 26<sup>th</sup> July 2007, which has since been provided to the TIO and the Government Regulator (the ACMA), noted that, according to the Telstra documents that Darren had shown him, those problems were still apparent at least until 2006.

When I wrote to the Most Reverend and Right Hon Dr Rowan Williams, Archbishop of Canterbury, 13<sup>th</sup> June 2011, I attached as *Exhibit 1* a copy of Darren Lewis' letter dated 13<sup>th</sup> December 2008, to the Registrar of the Federal Magistrates Court of Australia, in which Darren explains that four files I compiled to help him with his bankruptcy court hearing had not arrived at the Magistrates Court three days after he had sent them in the overnight mail. Again, each of these reports was Telstra-related because Darren was using his inadequate phone service as part of his request for more time to lodge his Federal Magistrates Court appeal documents. On 9<sup>th</sup> May this year I received advice from Mr Warren Fisher, the current President of the IAMA, advising me that the IAMA had provided me with the results of their findings in relation to my matters, in December 2010. My statutory declaration dated 16<sup>th</sup> May 2011, to the AAT and the Australian Government Solicitor, firmly asserts that I did not receive that advice from the IAMA until May this year, and I certainly didn't receive it in December 2010.

### **Two Interception Facsimiles Files**

On page 17 of my 9<sup>th</sup> February 2011, Administrative Appeals Tribunal Statement of Facts and Contentions I note: "...On 23<sup>rd</sup> December 2002 and 7<sup>th</sup> January 2003 I wrote to Tony Shaw Chairman of the ACA. Copies of both these letters have since been returned to me from the ACA (now the ACMA) and it is clear that these two letters were also intercepted (seven years after my arbitration) before being redirected on to the ACA. The markings on these two documents are the same marking on

*the documentation assessed by Scandrett & Associates and Peter Hancock (see above) which they have labelled as having been intercepted.*

*I believe most Australian's would want to know, if the ACMA has nothing to hide on behalf of Telstra, then why would they not investigate these on-going interception issues in the public interest? I have two arch lever files that confirm that numerous COT claimants' commercial in-confidence documents were still being intercepted years after these COT cases went into arbitration. Surely, if a Government Communications Regulator refuses to address fax interception evidence I have offered to provide them, that confirm someone with access to Telstra's network was intercepting faxes during and after the end of their arbitrations, then this is a matter of public interest."*

The two emails referred to above, when received back from the ACA under FOI, it was clear that the header strip on these two faxes was altered and the header strip on both documents was changed and my business identification 'logo' completely removed (overwritten) as described in the Scandrett & Associates / Peter Hancock Total Solutions report.

### **Australian Federal Police Investigations**

Australian Federal Police (AFP) transcripts taken during two interviews in February and September 1994 indicate their concern at proof that, between August 1992 and January 1994, Telstra intercepted my telephone conversations. One of the concerns raised by the AFP in their interview on 26<sup>th</sup> September 1994 was: *"The thing that I'm intrigued by is the statement here that you've given Mr RUMBLE (Telstra) your word that you would not go running off to the Federal Police etc etc. Can you tell me what the background of this is?"* My explanation now is exactly the same as it was then: some time after very early March 1994 documents released by Telstra under FOI confirmed that Telstra had indeed been intercepting my telephone conversations, and this is why I provided that information to the AFP. Paul Rumble of Telstra then telephoned me, angrily threatening that I could 'kiss my arbitration good-bye' if Telstra discovered that I was supplying any more information to the AFP because, as he stressed, Telstra held all the documents I needed to support my claim. It was then that I promised Mr Rumble I would stop helping the AFP. Unfortunately I didn't know at the time that I would discover that one of the most damning of those Telstra documents confirmed that Telstra employees knew about a number of my private business transactions and so, when I learned about this, I felt compelled to provide that document to the AFP, who then asked Telstra to explain exactly how they obtained those records of my private business information.

It was during this same September 1994 interview that Constable Timothy Wayne Dahlstrom advised me AUSTEL had provided confirmation that Telstra had admitted to intercepting my Telephone conversations over an extended period but they could not provide that evidence because AUSTEL had supplied it noting: *"...I won't show it to you. - But it does identify the fact that, that you were live monitored for a period of time. So we're quite satisfied that, that there are other references to it".*

My official arbitration hearing transcripts dated 11<sup>th</sup> October 1994 confirm when I raised these interception issues with Dr Hughes in which he states: *"...You understand if you leave it in the claim, Telecom is entitled to ask what is the basis for this allegation" - Answer - "Right, okay, yes, all right" Dr Hughes: "So you want to leave the allegation in?" - Answer - "I will leave the allegation in." Dr Hughes: "Can you provide further substantiating evidence?" - Answer - "I can provide documentation from Austel that sent me a letter, stating the fact that my phones were listened to. A little bell used to ring every time somebody used to ring me". Dr Hughes: "If I may interrupt, you said in relation to that second point that you could come up with evidence to that effect?" - Answer - "Well I can come up" Dr Hughes: "What sort of evidence?" - Answer - "It's clearly in the submission that there is evidence."*

On 17<sup>th</sup> October 1994 (six days after my official arbitration hearing) Telstra's Steve Black wrote to Warwick Smith (TIO) advising him that Telstra would address the phone interception issues in their arbitration defence of my claims (they did not address these issues) and nor did Dr Hughes.

In my letter to you both dated 9<sup>th</sup> June 2011, I provided a newspaper article dated 15<sup>th</sup> April 1994 as exhibit 17, confirming that the former Prime Minister Malcolm Fraser was most disturbed that Telstra

had documented in an internal memo a conversation between him and myself regarding Telstra. I did not discuss this conversation with anyone. Mr Fraser was adamant that he had not either.

One of the letters in my interception file is dated the 15<sup>th</sup> July 1998 and is addressed to the then Prime Minister of Australia, John Howard. Although it was sent by road mail due to these interception issues, a copy of the letter was faxed to Graham Schorer at 18:07 on the 15<sup>th</sup> July 1998. This fax bore signs of interception. It is clear that the header strip on all four pages of this faxed letter was altered and the header strip was changed and my business identification completely removed, overwritten as described in the Scandrett & Associates / Peter Hancock Total Solutions report which I am begging your office to officially request in light of what has recently been revealed in the UK "News of the World" scandal (see below).

### **Closing Statement**

I believe no-one will ask to see my interception files; not your offices, not the TIO and not the ACMA, because you are all aware that even just one investigation of those documents will reach a finding that that Telstra was illegally intercepting COT, in-confidence information during legally conducted COT/Telstra arbitrations; and after the end of my arbitration, when Telstra continued to intercept my faxes for years after that arbitration.

Last weekend's report that News Limited, the owners of the *News of the World* newspaper, felt so strongly about the violation of people's lives as a result of this phone hacking that they have now closed down the 168-year old British icon. Although there may seem to be some ambiguity in relation to the phone and fax interception issues which were not investigated by the arbitrator as he agreed to do during my 1994 arbitration (which was finalised on 11<sup>th</sup> May 1995), there is no ambiguity at all in relation to the two 'interception' files referred to above: those files include 167 separate examples of faxes that were intercepted AFTER 11<sup>th</sup> May 1995 through to at least 2003. I now hope that your respective consciences will officially appoint at least two technical consultants to assess the interception facsimile evidence I am offering to provide.

I await your response to where we can arrange to have these interception files assessed.

Sincerely,

Alan Smith

*Copies to*

*Mr Julian Assange, England UK*



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Sincerely,



Alan Smith

Copies to

Mr Julian Assange, England UK

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Commonwealth of Australia  
STATUTORY DECLARATION

*Statutory Declarations Act 1959*

<sup>1</sup> Insert the name, address and occupation of person making the declaration

<sup>1</sup> I, Graham Schorer, Managing Director of Golden Messenger, 493-495 Queensberry St, North Melbourne, Victoria, 3051, make the following declaration under the *Statutory Declarations Act 1959*:

<sup>2</sup> Set out matter declared to in numbered paragraphs

<sup>2</sup>In early February 1994, our premises were broken into and all computer cables including the power cables were severed, as well as all power connections to the main server which was in a specially constructed room. The perpetrators forced entry into the building in what the police described as a "ram raid", where something similar to pneumatic tyre attached to the front of a vehicle was used to hit the front door with enough force to dislodge the steel frame attached to the brick work. According to the time on the server backup battery, the power was cut just prior to 2am.

Part of the microfiche copier and viewer was stolen, as well as the PC on my desk which contained all of my COT information and correspondence between regulators, politicians, etc. Also stolen was a book that contained a catalogue of computer file numbers against their description.

The police who attended our premises the next morning stated that it was a professional job, where the invaders had a specific mission or were disturbed. As there was no alarm system to alert them, it was more likely that it was a specific mission. The police asked questions about any sort of irregular business we had been involved in and who we may have upset.

The same day I spoke to Gary Dawson, from Dawson Weed and Pest control (another COT Case) on the phone, who told me that his business premises in Sunshine had also been broken into just after midnight and burgled. The only thing stolen was the Dictaphone tape which held a recording he had made of a meeting between him and two Telstra executives on the previous day.

By this stage, I had already lodged and elevated a formal complaint with the Commonwealth Ombudsman regarding Telecom's refusal to supply requested documentation under the Freedom of Information Act and despite the verbal assurances that Robin Davey (Chairman of AUSTEL) had provided to the foundation COT members on behalf of Telecom as inducement to sign the FTSP.

After I signed the arbitration agreement on 21<sup>st</sup> April 1994 I received a phone call after business hours when I was working back late in the office. This call was to my unpublished direct number.

The young man on the other end asked for me by name. When I had confirmed I was the named person, he stated that he and his two friends had gained internal access to Telstra's records, internal emails, memos, faxes, etc. He stated that he did not like what they had uncovered. He suggested that I should speak to Frank Blount directly. He offered to give me his direct lines in the his Melbourne and Sydney offices, the numbers to in his Sydney and Melbourne vehicle phones plus his personal mobile phone number, plus the number for his Melbourne apartment at the Como Hotel and his home phone number in Sydney.

The caller tried to stress that it was Telstra's conduct towards me and the other COT members that they were trying to bring to our attention.

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I queried whether he knew that Telstra had a Protective Services department, whose task was to maintain the security of the network. They laughed, and said that yes they did, as they were watching them (Telstra) looking for them (the hackers). He indicated that the Protective Services department was located somewhere in Richmond.

I then said that Telstra Protective Services would have the ability to track their calls. They said not in this case.

I queried why. They stated that they gained access to someone else's phone system and were using that system to gain internal access to Telstra's network, which would prohibit Protective Services from tracing them.

After this call, I spoke to Alan Smith about the matter. We agreed that while the offer was tempting we decided we should only obtain our arbitration documents through the designated process agreed to before we signed the agreement.

I informed them of our decision when they next rang. I requested that they did not ring again.

I was troubled by these events and after great deliberation I contacted Warwick Smith and informed him of the events.

After a considerable period of time had passed I asked Warwick Smith if there had been an outcome from the information I had supplied him. He told me that the hackers had been apprehended.

At the same time he shared with me information about a criminal organisation working out of Sydney who had accessed a Newcastle firm's PABX and used it to make out of hours calls and financial transactions to the USA (which turned out to be illicit transactions in gold bullion). They were only traced because the company had a non-standard billing period.

A short time later, I was at a barbecue where I met a gentleman who stated that he worked for the armed forces, but would not elaborate further.

As soon as I mentioned my name and Golden Messenger, he started paying closer attention and asked some leading questions about my dispute with Telstra.

I then described my problems with the Telstra service – the service faults, the ongoing problems and Telstra's conduct and interception of phone calls and faxes.

I mentioned the kids who had rang me, at which point his interest increased.

He asked several very pertinent and skilful questions about network vulnerabilities, call failures, etc and was clearly concerned about security within the Telstra internal network and the fact that Telstra was illegally intercepting calls of its customers who were in dispute with them.

He was deeply interested about the information I able to give him regarding the hackers and that their assertion they had been able to gain access to and infiltrate the Telstra Network Security, right down to their electronic monitoring the activities of Telstra Protective Service.

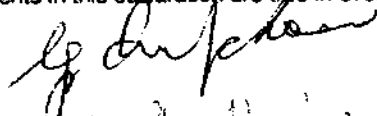
From memory, it would have been a considerable time when I asked Warwick Smith

about the information I had given him about the hackers. He told me that they had been caught and charged.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the Statutory Declarations Act 1959, and I believe that the statements in this declaration are true in every particular.

3 Signature of person making the declaration

3



4 Place

5 Day

6 Month and year

Declared at "Cheltenham" on "17"

of "July 2011"

Before me,

7 Signature of person before whom the declaration is made (see over)

7



8 Full name, qualification and address of person before whom the declaration is made (in printed letters)

8

**Brett WALKER**  
Senior Constable 32031

CHELTENHAM POLICE STATION  
1000 NEPEAN HIGHWAY  
CHELTHENHAM 3192  
DN 211453

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years — see section 11 of the Statutory Declarations Act 1959.

Note 2 Chapter 2 of the Criminal Code applies to all offences against the Statutory Declarations Act 1959 — see section 5A of the Statutory Declarations Act 1959.

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Alan Smith  
Seal Cove  
1703 Bridgewater Road  
Portland 3305

20<sup>th</sup> June 2012

The Hon Robert Clark MP  
Victorian Attorney-General  
Department of Justice  
Level 26/121 Exhibition St  
Melbourne 300

Mr Alan Stockdale,  
President of the Federal Liberal Party,  
Robert Menzies Centre,  
Level 3 / 104 Exhibition Street  
Melbourne 3000

Dear Sirs,

The attached ten-page letter of 11<sup>th</sup> July 2011, to the Hon Robert McClelland MP, Federal Attorney-General, and the Hon Robert Clark MP, Victorian Attorney General, included a copy of a statutory declaration from COT spokesperson Graham Schorer, also attached here.

As you can see, this ten-page letter was copied to Julian Assange in the UK. If requested, I would be happy to supply a copy of two letters sent by me to the lawyers representing Mr Assange during his extradition appeal to Sweden. These letters show that I was only asking for confirmation that it was Julian Assange and/or his friends who had been prepared to provide Graham Schorer (COT spokesperson) with documented evidence that Telstra, had acted unlawfully towards us during our arbitrations. It is blatantly obvious from the attached letter dated 11<sup>th</sup> July 2011; the exhibits attached to my November 2011 report; and my letters of 2<sup>nd</sup> and 12<sup>th</sup> June 2012 (all of which have already been provided to you both) that Telstra did act unlawfully towards us during our TIO-administered arbitrations, including intercepting faxes during our arbitrations and, in my case, someone with access to Telstra's network continued intercepting faxes from both my business and private residence up to at least December 2002.

Pages 15 and 16 from Andrew Fowler's publication about Julian Assange, ('The Most Dangerous Man In The World') are also attached because of the reference to how Mr Assange and his friends hacked into the Melbourne/Lonsdale Telephone Exchange, which serviced both my business and that of Graham Schorer during the period of our arbitrations. Mr Fowler's publication, which was released after I had written my letter of 11<sup>th</sup> July 2011 and my report of November 2011, suggests that it was either Julian Assange or his friends who offered to provide us with relevant information. I believe that, if we had not decided to decline that offer, both Graham and I could have used those emails and memos in 1994/95, to prove (as it has since been proved in Government in-confidence records) that Telstra did act unlawfully towards us during our TIO-administered arbitrations.

On page 1 in the attached letter dated 11<sup>th</sup> July 2011 to both Federal and Victorian Attorney-Generals I have asked: "*Please now carefully consider what the computer hackers could have*

AS 818

*uncovered in Telstra's 'Arbitration file' (which Telstra advised the Commonwealth Ombudsman has since been destroyed) that would have prompted them to phone Graham and I. Since we don't yet know the answer to that question, I therefore believe it would be in the best interests of all parties if a joint application could be made from your offices to the Victorian State Police, asking for any archival records the police may have in relation to the computer hackers who were apprehended during 1994".*

As my November 2011 report shows, just before my arbitration began the TIO himself was providing confidential Coalition Party information to Telstra's most senior executives in relation to COT matters; a TIO Council member was supplying similar confidential COT information to Telstra executives (see also my letters dated 2<sup>nd</sup> and 12<sup>th</sup> June 2012, which you already have); and Telstra had certainly known that my arbitration agreement was covertly altered after the unchanged version of the agreement had been faxed to my lawyers. Some of the Exhibits attached to my report also show that both the Resource Unit (which had secretly been exonerated from all liability related to any negligent acts they might be party to during my arbitration) admitted to withholding relevant information adverse against Telstra from being assessed by the arbitrator and me during my arbitration, as well as directly corresponding to Telstra on arbitration issues without copying that information on to me during my arbitration, as well as meeting with Telstra (the defendants), without the claimants being present, altogether suggests that the hackers were right on the ball. The fact that Telstra and the TIO (see page 18 Exhibit AS 590 in my November report) secretly appointed the Resource Unit to scrutinise/vet what Telstra documents would be supplied to the arbitrator for assessment and what would be withheld from the arbitration process further supports what the hackers stated they had uncovered.

In my letter of 20<sup>th</sup> October 1995, to John Pinnock (the then-newly elected TIO), see Exhibit AS 748 in my report, I have explained that: *"...In late 1994 I became quite alarmed after hearing of a conversation Graham Schorer had had the night before with a couple of computer hackers who had broken into the E-mail system at Telstra House in Exhibition Street. The information they passed on concerned me so much that I rang Warwick Smith at the TIO's office as well as a Member of Parliament and an advisor to a Senator. As just one member of Cot, I did not want to access or use illegal information gained during the FTAP. It was not what these fellows said on the second contact that alarmed me so much: it was a phrase that these lads used. This phrase has now come home to roost".*

We now know that the TIO:

1. Allowed three of Telstra's most senior executives to attend monthly TIO/COT meetings;
2. Provided Telstra with confidential, Coalition Government, in-confidence, party-room information concerning the COT claimants;
3. Allowed the arbitrator to covertly alter our arbitration agreement to protect the TIO-appointed Resource Unit and the TIO's Special Counsel, to the detriment of the COT claimants.

It would therefore seem that the information the hackers offered to Graham, was, more than likely, quite correct. Not long ago a certain Federal Court Judge was booked for speeding. Although he was, of course, well aware of the laws related to speeding, he apparently believed he was above the law and chose to lie to the police by insisting that he wasn't driving at the time, a friend was. This same Judge was eventually charged with perverting the course of justice.

Like this Judge, Dr Hughes (the COT arbitrator) knows exactly how the law is supposed to work for ALL Australians, yet he still allowed my arbitration agreement to be covertly altered after the unchanged agreement had been faxed to my lawyers and then, if that isn't bad enough, after I had signed the altered agreement (unaware of the secret alterations) he and the TIO's Counsel withheld their knowledge of these alterations, not only throughout my arbitration, but also during the designated appeal period, when Dr Hughes and Warwick Smith also withheld from me their knowledge that the altered version of the agreement was not a credible document for Dr Hughes to base his findings on. I believe that allowing alterations to a legal agreement that was to be used as part of a highly legalistic arbitration process, basing an arbitration award on an incomplete financial report regarding the claimants' losses and an incomplete technical report (see my letters of 2<sup>nd</sup> and 12<sup>th</sup> June 2012 provided to you both) are far worse crimes than lying about a speeding ticket but Dr Hughes has been allowed to get away with what he did, even though his actions, and the actions of those he exonerated from all liability for any act of negligence during my arbitration, has totally destroyed my life and the life of my partner, Cathy.

On pages 109 to 110 in my report, under the heading Personal Attacks (Exhibit AS 756), I explain how Tony Watson, one of Telstra's defence officers, knew that various claim documents faxed from my office to the arbitrator's office on 23<sup>rd</sup> May 1994, during my arbitration, had never arrived at the arbitrator's office, even though Telstra charged me for faxing these documents. TIO records for 28<sup>th</sup> January 2003 show that the same Tony Watson had refused to help Darren Lewis, the new owner of my business, because of what Mr Watson labelled Mr Lewis' "... *contact with the previous Camp Owner, Mr Alan Smith.*"

Was there a more sinister motive involved in Telstra's Tony Watson refusing to help Darren Lewis with the ongoing phone/fax problems that, nine years before, Dr Hughes (arbitrator) and Telstra had failed to transparently investigate? Something was terribly wrong for Mr Watson to still be holding a grudge against me in 2002/03, because of something that was supposed to have been addressed in my 1994/95 arbitration – i.e. the ongoing phone and facsimile problems that Mr Watson was now refusing to help Mr Lewis with, nine years later.

When Darren Lewis was in the process of appealing against being declared bankrupt he used the ongoing telephone problems as one explanation for the position he was then in and, in a letter dated 13<sup>th</sup> December, 2008 to Registrar Caporale of the Federal Magistrate Court of Australia, Darren noted: "*I was advised by Ms McCormic that the Federal Magistrates Court had only received on 5<sup>th</sup> December 2008, an affidavit prepared by Alan Smith dated, 2<sup>nd</sup> December 2008. PLEASE NOTE: I originally enclosed with Alan Smith's affidavit in the (envelope) overnight mail the following documents.*" The documents that Darren then listed were four Telstra-related submissions and other exhibits that I had provided to support my affidavit. None of these four reports and supporting exhibits were in the envelope when it reached the Federal Magistrates Court. A copy of Darren Lewis' Australia Post overnight mail receipt for docket numbers SV750626/7 confirm that the Portland Post Office charged Mr Lewis \$21.80 for this overnight envelope which then only contained my two page affidavit when it was received at the Magistrates Court.

In Andrew Fowler's book about Julian Assange he explains how the hackers were arrested, after the police had been tipped off. This leads me to wonder if the phone calls that Graham and I made to Warwick Smith and various Members of Parliament might have been the trigger for those arrests.

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## Telstra's Intelligence Networks

**24<sup>th</sup> June 1997:** Senate Hansard, confirms Senator Carr stated to Telstra's Ted Benjamin

*"...In terms of the cases outstanding, do you still treat people the way that Mr Smith appears to have been treated? Mr Smith claims that, amongst documents returned to him after an FOI request, a discovery was a newspaper clipping reporting upon prosecution in the local magistrate's court against him for assault. I just wonder what relevance that has. He makes the claim that a newspaper clipping relating to events in the Portland magistrate's court was part of your files on him. ...*

**Senator SHACHT** – *It does seem odd if someone is collecting files. ... It seems that someone thinks that is a useful thing to keep in a file that maybe at some stage can be used against him. ...*

**Senator CARR** – *Mr Ward, we have been through this before in regard to the intelligence networks that Telstra has established. Do you use your internal intelligence networks in these Cot cases".*

It appears as though this was the same Telstra Intelligence Networks referred to by Senator Carr that the hackers had infiltrated and discovered Telstra was acting unlawfully towards us during our arbitrations.

While some people in the Australian Government, and elsewhere, have branded Julian Assange as the "Most Dangerous Man in the World" because of his hacking episodes, these same people appear to have closed their eyes to the fax hacking that went on during the COT arbitrations, including the illegal interception/hacking of faxes:

- a. Sent to and from Parliament House and the Commonwealth Ombudsman's Office during various COT arbitrations;
- b. Sent as privileged, lawyer- to- client, Victorian Supreme Court faxes; and
- c. For at least seven years after my arbitration was supposed to have addressed these issues.

Why haven't those responsible for this hacking been transparently investigated and the results of those investigations made public as has been in the case of Julian Assange?

I would be grateful if someone could explain why an independent investigation should not now be carried out, perhaps by a combined group of people from each of your offices and the State Ombudsman Office. I believe such an investigation would prove that justice can be achieved, even when it seems to be a mission impossible.

Thank you,



Alan Smith

*Cc Mr George Brouwer Victorian Ombudsman, Level 9/-459 Collins St. North Tower Melbourne 3000*

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'the best account of Julian Assange's motives  
nts that make him so dangerous.'

HISTLEBLOWER OF THE PENTAGON PAPERS



# THE MOST DANGEROUS MAN IN THE WORLD

## FATAL ATTRACTION

When Assange and the others broke into the ANU computer system, their elation at having cracked the code must have been tempered by the discovery that, despite its lack of resources, the AFP was on their tail. As Day put it: 'We were watching them watching us.'

Assange was now nineteen years old and had moved out of home to live with his girlfriend. They soon had a son, Daniel, but Assange still found time for The International Subversives. The group started a magazine under the same name, which was solely distributed to contributors.

\* \* \*

The Lonsdale Telephone Exchange in the centre of Melbourne, with its black marbled façade, is an eye-catching building. In the late 1980s it was a gateway to other telephone exchanges and organisations linked to super computers around the world. One of the hackers who knew Assange describes breaking into the network as being like a shipwrecked man washed ashore on a Tahitian island populated by 11 000 virgins just ripe for the picking. But first they had to do it. And, of course, not get caught. They were motivated by the desire to gain knowledge and prove themselves against the best systems in the world. But The International Subversives were also bound by a code of ethics: nothing was to be altered in any of the data they saw and everything had to be put back exactly the way they found it. The International Subversives called it ethical hacking.

In the underground world of hackers everyone has a nom de guerre. Assange called himself Mendax. The *New Yorker* claims Assange took the name from the Roman poet Horace's 'splendide

## THE MOST DANGEROUS MAN IN THE WORLD

mendax', or 'nobly untruthful'. But it's just as likely he named himself after the 1920s Australian science-fiction writer Erle Cox's Major Mendax, an eccentric inventor. Mendax experimented with 'matter transmission', 'invisibility' and 'extracting gold from seawater'—an alchemy that might have delighted the teenage Assange. For Major Mendax the experiments never quite worked out. For Julian Assange it was just the opposite.

Just how Mendax broke into the Lonsdale Exchange is covered in the book *Underground* by Suelette Dreyfus and its co-author and researcher, Julian Assange, published in 1997. It required a lot of guile and intelligence, as well as a huge amount of nerve. When Assange, thinly disguised as 'Mendax', tried to dial in to the Exchange on a phone line with his computer, the Exchange at first refused to accept his connection. Assange was confronted by a blank screen. He tried again, but still no response. After several minutes he made it to the next stage, but he was unable to log in. To trick it, he entered the command 'log out'. The Lonsdale Exchange failed to accept his command. 'Not logged in,' it said. So Assange deduced: 'I have to type in log *in*, not log on.' He was right. In he went.

It asked for a username and password. Again Assange's deductive reasoning gave him a head start over the computer he was trying to outwit. Assange knew that Telecom was dealing with the giant Canadian telecommunications provider Nortel. It stood to reason that their technicians would have to have access—and the username and password would have to be straightforward and easy to remember.

Nortel?

Nortel.

He was in.